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# The Transfer of Governance by Regional Organizations

# The Case of ASEAN

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## Introduction

Established in 1967, the Association of Southeast Asian Nations (ASEAN) is arguably the most successful regional organization among developing countries.[[1]](#footnote-1) It currently comprises ten member states and a population of 600 million people: 8.8% of the world population. In comparative perspective, and especially during the early 1990s when most ASEAN members collectively experienced an ‘economic miracle’ and became part of the East Asian development model, ASEAN was commonly perceived to be an alternative to the European model of regionalism (Camroux and Lechervy 1996; Gilson 2005; Söderbaum and Van Langenhove 2005). Whereas the EU appeared to represent ‘regionalism’, a government-driven process of successive pooling of sovereignty into common institutions (integration), Asia represented ‘regionalization’, a business and production-network driven process of regional cooperation (Aggarwal 2005; Katzenstein 2005, : 44).

This paper is concerned with the question of whether ASEAN as a regional organization is an exporter of legitimate governance institutions. The paper maps the governance policy and instruments of ASEAN to answer this question. I argue that ASEAN, over most of its life time, has not acted as a provider of legitimate governance institutions in the sense specified by Börzel et al. According to Börzel et al “governance institutions” are “norms, rules, and procedures that are the basis for the provision of collective goods and collectively binding rules” defining the who, how, and for whom of governance (Börzel et al. 2011, : 4). Governance transfer is the explicit demand or intentional and active promotion of the building and modification of governance institutions in member states or third countries (Börzel et al. 2011, : 4). ASEAN’s understanding and conception of legitimate governance emphasizes the nation-state and Westphalian norms of interstate conduct such as non-interference and the sovereignty of states, and is therefore orthogonal to the concept of governance transfer. ASEAN members have promoted and practiced an inward-looking concept of governance that is directed toward the establishment of “empirical statehood” and governmental authority, not democracy. This policy is deeply embedded in members’ understanding that peace and security can only be achieved through concentrating on national welfare and the creation of functioning nation-states. This has led them to adopt a policy of non-interference in domestic affairs, rather than interference for the promotion of democratic values and human rights. However, since 2003, ASEAN has made a remarkable transformation. Members have decided to promote good governance institutions, democracy, the rule of law and fundamental freedoms, and have established a regional human rights mechanism. This report argues that the main drivers of these processes are threefold: the democratization of some member states, most importantly Indonesia; negative externalities produced by the policies of some member states (Myanmar and Indonesia) on other member states and ASEAN as a regional organization; and the rise of a global governance script. In the absence of these factors, given the heterogeneity among the political systems of ASEAN members and the consensus principle, the chance that ASEAN will develop into an exporter of regional governance is small.

The report is structured as follows: The subsequent second part provides a brief overview of ASEAN as a regional organization. It details the historical development of the organization, and its major principles. The third part begins by mapping governance transfer. It asks to what extent ASEAN has adopted and implements principles of legitimate governance transfer in accordance with the definition provided. The fourth part seeks explanations for an observed emergence of a governance concept in the form of the ASEAN Charter. The conclusion summarizes the key findings.

## Overview

ASEAN was established on 8 August 1967 by five Southeast Asian states: Indonesia, Malaysia, the Philippines, Singapore and Thailand. It was the third attempt of members to establish a regional grouping after similar past endeavors had failed. The Association of Southeast Asia (ASA), established in 1961 by the Philippines, Thailand and Malaya, as well as MAPHILINDO, an organization set up by Malaya, the Philippines and Indonesia in 1963 as an organization between Malay people, had previously made little progress because of conflicting territorial claims to Sabah which could not be resolved by the procedures established by these institutions. Other regional groupings with Asia-Pacific membership, like the Southeast Asian Treaty Organization (SEATO) established in 1954 as a functional equivalent to NATO in Europe, as well as the Asia Pacific Council (ASPAC) established in 1966 and comprised of Australia, Japan, South Korea, South Viet Nam and Thailand, had previously failed due to its heterogeneous membership.

The Association has experienced two enlargements: In 1984, Brunei joined the organization as sixth member, Viet Nam joined on 28 July 1995, Laos and Myanmar on 23 July 1997, and Cambodia on 30 April 1999. The accession of Cambodia had been delayed in 1997 because of political instability. ASEAN has no explicit membership criteria comparable to the EU. ASEAN also has no explicit membership criteria requiring domestic adaptations by member states. In direct contrast, it is the understanding of ASEAN that it “accepts member states as the ‘person’ they are” and does not require domestic adaptations (Interview 19-2010 2010). ASEAN members understand their organization as providing a forum for dialogue on regional security among like-minded states with similar external and internal security predicaments (Alagappa 2003). The accession of Myanmar, which was already at the time controversial because of its state of democracy, caused a brief public debate on accession criteria. ASEAN requires new members to sign and ratify all ASEAN documents and to have a stable government.

ASEAN is widely regarded as a truly ‘indigenous’ organization built on Asian norms of non-interference, non-alignment and the principle to avoid public discussion of contentious issues as agreed upon during the Bandung Conference of 1955 (Acharya 2009, : 78-89). The Association’s founding document, the Bangkok Declaration – a short document of less than two full pages length - defined the goal of the regional organization vaguely: The aim was, most importantly, to “accelerate economic growth, social progress and cultural development in the region through joint endeavors in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community” (ASEAN 1967, : art. 1). An important goal was to provide a unified front against external encroachments, to insulate the region from superpower competition and to provide stability for its members so that they could politically survive and economically thrive (Hoadley 2006).

ASEAN did not make much headway for about ten years and after its first decade, external observers credited the organization for a single achievement: that it had survived (Melchor 1978; Poon-Kim 1977). However, this changed with the onset of the Cambodian conflict and – more importantly – the changed role of the US in Southeast Asia after its defeat in the Vietnamese War in 1975, and the rise of Viet Nam as a Communist state. ASEAN members now feared Vietnamese support for internal Communist subversion movements, which spurred member governments into action. Their international environment was fundamentally shifting. According to Shaun Narine “ASEAN truly started to function as an international organization” (Narine 1997, : 968). In the following years, and until the signing of the Paris Peace Accords of 1991, which officially ended the Cambodian conflict, ASEAN carved out for itself a diplomatic role in the management of the Cambodian question, and members managed to maintain their solidarity despite diverging threat perceptions. Whereas Thailand and Singapore perceived Viet Nam as a major threat and China as a useful balancer against this threat, for Indonesia and Malaysia the reverse was the case. They regarded China as threat and Viet Nam as an ally against Chinese hegemonic ambitions. ASEAN successfully lobbied the United Nations (UN) against official recognition of the Cambodian government installed by Viet Nam, and supported the Coalition government of Democratic Kampuchea led by exiled Prince Norodom Sihanouk, even if this meant support for the Khmer Rouge, who were part of the Coalition government (Narine 1997).

After the Cold War, ASEAN was seen as becoming an essential part of an emerging East Asian regionalism, and actively started to shape regional institutions. Key factors influencing institution-building in the 1990s were the concerns of ASEAN member states about the continuing US presence in the region, and the economic and military rise of China (Beeson 2010, : 63). ASEAN became actively involved in the establishment of interregional and intraregional discussion forums (Katsumata 2006; Pempel 2005; Solingen 2008). Institutionalization of the Asian security complex occurred according to the ideas and practices of ASEAN, which assumed the ‘drivers’ seat’ because of competition for hegemony between China, Japan and the US. The ASEAN Regional Forum (ARF), established in 1994, brings together twenty-eight states in a Forum dealing with Asian security issues (Katsumata 2006, , Simon, 2006 #5454`).[[2]](#footnote-2) Inter-regional dialogue forums like the Asia Europe Meeting (ASEM 1996) and the Asia-Pacific Economic Community (APEC 1989) complemented the web of regional institutions (Aggarwal 1993; Hänggi, Roloff, and Rüland 2006). ASEAN Plus Three (China, South Korea, Japan) institutionalized a similar discussion forum between ASEAN members and East Asian governments (Nabers 2003).

ASEAN is perhaps best known for its specific approach to regional cooperation, also called the ‘ASEAN Way’. The ASEAN Way has been promoted as a specific form of cooperation emphasizing informal rules, consensual decision-making, loose structure and conflict avoidance instead of conflict management (Acharya 1995). The key words characterizing cooperation are ‘restraint’ in the form of a commitment to non-interference, ‘respect’ for each member state as expressed through frequent consultation, and ‘responsibility’ as expressed in the consideration of each member state’s concerns and interests (Narine 1997, : 965). Given member states’ post-colonial (‘subaltern’) identity (Ayoob 1995), the Westphalian state is the centerpiece around which standards of appropriate behavior for regional cooperation have been designed: all the organization’s declarations and official statements emphasize Westphalian norms such as respect for the sovereignty and territorial integrity of member states, and non-interference. The ASEAN Way of cooperation stresses the principle of flexible adaptation and circumvents over-institutionalization and bureaucratization. ASEAN cooperation is strictly intergovernmental. Consensus is the dominant decision rule, although various projects allow for a departure from the principle to ‘unanimity’ in the form of an ASEAN Minus X-decision rule. ASEAN prides itself on being a successful organization in its own right; one that does not aspire to become like any other regional organization, especially the EU. Although the EU serves as an example especially in the area of economic integration and ASEAN members closely follow developments in Europe, they hardly ever refer to the EU as a “model”. Other influences are also traceable, such as most importantly the United Nation’s influence and that of the OSCE (for the European influence in general, see Jetschke 2009; Jetschke 2010; Jetschke and Rüland 2009; Katsumata 2010).

The fundamental military and economic shifts associated with the global ascendance of China and India have raised concerns about a power transition at the top of the global hierarchy of states, and provided great impetus to ASEAN regionalism. The latest achievement in this regard is the ASEAN Charter (2008, in force since 2009), which envisions an integrated ASEAN Community (AC) along the lines of the European Community. Initially triggered by the financial crisis of 1997-1998, the ASEAN Charter answers the concerns of ASEAN member states that the Association will disintegrate and become irrelevant given the centrifugal forces of India and China. The ASEAN Charter (2008) and the accompanying “Roadmap for an ASEAN Community 2009-2015” aspire to develop ASEAN into a more deeply integrated “rules-based community”:

“ASEAN’s cooperation in political development aims to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN, so as to ultimately create a rules based Community of shared values and norms.” (Roadmap for an ASEAN Community 2009-2015, para A12)

As can be inferred from ASEAN’s major documents, ASEAN is still developing its “rules based” approach and values; the ASEAN Way is still the benchmark but members are struggling to catch up with the human rights and democracy wave.

ASEAN finances itself from member contributions which are determined by the financial capabilities of the least wealthy state, in this case Laos and Cambodia. Members pay US$ 1,0 million per year into an ASEAN Fund. The Fund was already established in 1969 and since then, membership contributions have not changed. The contributions were to remain part of the national budget of each member state, and were also to be administered by the national governments. In 1994 the Fund was renamed the ASEAN Development Fund and reoriented to support ASEAN projects like the Vientiane Program of Action. It was also decided that the fund will henceforth be administered by the ASEAN Secretariat (Association of Southeast Asian Nations 1994). Members are free to make voluntary contributions to the fund. The fund is also open to contributions by other international organizations, funding agencies and business. It is unclear what the total budget of ASEAN is, and ASEAN staff are reluctant to reveal budgetry figures.

### “Empirical statehood” as Goal of Regional Cooperation

As is revealed throughout ASEAN’s documents and official statements, ASEAN members share a particular understanding of state security. One important thread running through ASEAN statements and informing ASEAN as a regional organization is members’ preference for building up “empirical statehood”, to use a concept introduced by Robert Jackson (Jackson 1993).

Jackson argues that although ex-colonial states have been enfranchised and possess the same external rights and possibilities as other sovereign states (juridical statehood), they in effect lack the institutional features of sovereign states. Governments do not have the state capacities and institutional authority to guarantee their populations security from civil wars, or their economic well-being. Ex-colonial states, according to Jackson, only possess limited “empirical statehood” (Jackson 1993, : 21). Juridical statehood has an important effect on international relations, according to Jackson: Ex-colonial states would not be allowed to juridically disappear, as earlier states had been. They could not be deprived of sovereignty as a result of war, conquest, partition or colonialism. The new sovereignty regime was an “insurance policy for marginal states” where elites were beneficiaries of non-competitive international norms (Jackson 1993, : 24). ASEAN members appear to have fully bought into this concept. On the one hand they regard ASEAN as an additional insurance against foreign conquest, but on the other, regional cooperation is explicitly intended to build up “empirical statehood”.

Members never mention “empirical statehood” but their concept of state security termed “national resilience” and “regional resilience” (Hoadley 2006, : 17) is quite similar: National resilience means a focus on domestic self-strengthening. It has been described as an inward-looking concept, based on the proposition that national security lies not in military alliances but in self-reliance derived from domestic factors such as economic and social development, political stability and a sense of nationalism (Hoadley 2006, : 17). As internal threats to domestic security were declining, the countries adopted a more outward looking approach to security coined “regional resilience”. Regional resilience rested on the assumption that to achieve truly national independence, Southeast Asian governments had to guarantee themselves a considerable measure of autonomy and abstain from intervention. This included a commitment that they would not interfere in each other’s affairs and that they would likewise not give great powers, such as China, the United States and the Soviet Union an opportunity to interfere in the region (Jetschke 2006, : 292).

Thus, it is not the individual that is the bearer of rights but the state. The territorially defined nation-state is the target of governance, as there cannot be stability and economic welfare without a stable state. As post-colonial states, Southeast Asian governments sought primarily and foremost state security from internal threats to governmental authority and territorial disintegration (Jetschke 2011); they perceive themselves as “insecure states” (Drexler 2009).

### Can ASEAN Formally Act as Regional Standard Setter and Promoter?

We now examine the Association’s institutional development to answer the question of whether the organization has the authority to promote democratic norms of governance. This section seeks to determine in whose name the regional organization acts. Is it member states, or does the Association possess a supranational quality? This can be measured most importantly in terms of the centralization of the organization, the delegation of sovereignty (level) and the increase of its activities (scope) (Koremenos, Lipson, and Snidal 2001). Starting at a very low level of centralization, the Association has seen an increase in formalization. Overall, this increased formalization has not translated into greater autonomy for ASEAN, however.

ASEAN’s institutional design is a virtual copy of the European Free Trade Area (EFTA). When the five members decided to set up ASEAN, they took over the institutional structure of ASEAN’s forerunner institution, the Association of Southeast Asia (ASA) (Jorgensen-Dahl 1982, : 22).[[3]](#footnote-3) Upon establishing ASA in 1961, the three founding members, the Philippines, Malaya and Thailand, had a clear institutional template to draw on: EFTA, which had been established a year earlier.[[4]](#footnote-4) EFTA did not foresee political goals and institutions or the delegation of sovereignty by its member states, and it promoted a concept of ‘open regionalism’, as the UK as a founding member was not willing to sever its ties to trading partners within the Commonwealth (Haefs and Ziegler 1972, : 68). Given ASEAN member states’ strong export orientation and their preference for retaining their sovereignty, EFTA was certainly the better fit for Southeast Asian member states. This was the institutional design that was carried over to ASEAN and gave it its distinct ‘flying circus’[[5]](#footnote-5) design of rotating chairmanships.

ASEAN therefore initially had a highly decentralized institutional structure. The Association’s double core consisted of: (1) a council of foreign ministers, the ASEAN Ministerial Meeting (AMM), convening once a year and rotating on a yearly basis among member states; and (2) a Secretary-General (SG) who was selected from a member state on a rotating basis. A standing committee attached to the AMM organized work within the council meetings. The institutional structure surrounding the SG was decentralized and did not include a Secretariat. Instead, national ASEAN Secretariats in each member state provided their services. The SG also had a functional committee structure attached to it, but these committees were based in individual member states (as in EFTA). This institutional design soon contributed to the perception that the organization was too de-centralized, too consensus-oriented, and institutionally inefficient (Alagappa 2003; Wah 1992).

ASEAN members started centralizing the Association in the mid-1970s. Members established an ASEAN Secretariat, to be based in Jakarta, aimed at assisting the SG and serving as document depository, a High Council in 1976, intended as a dispute settlement mechanism for the Treaty of Amity and Cooperation (TAC), and the ASEAN Inter-Parliamentary Organization (AIPO) in September 1977, with the specific aim of anchoring ASEAN among the societies of ASEAN members. AIPO was a parliamentary initiative very much in line with the parliamentarization of other regional organizations around that time,[[6]](#footnote-6) and the organization remained outside of ASEAN’s formal decision-making structure. Until today, it serves a largely advisory role.[[7]](#footnote-7)

After the end of the Cold War, member states further strengthened the office of the SG. The Secretary-General received an enlarged mandate to “initiate, advise, coordinate and implement” ASEAN activities.[[8]](#footnote-8) He was accorded ministerial status. An expanded professional staff in the ASEAN Secretariat was appointed on the basis of open and region-wide competitive recruitment, equally considered a precondition for more autonomy from member states.

The financial crisis of 1997-1998 led to further changes in the institutional design, culminating in the adoption of the ASEAN Charter on 20 November 2007 (in effect since 15 December 2008). As a result of the institutional reforms spelled out in the ASEAN Vision of 1997 and the accompanying Ha Noi Plan of Action (1998), the Bali Concord II establishing an ASEAN Economic Community (2003) and the ASEAN Charter, the new ASEAN Community now consists of three official communities, each headed by a Council. These are the ASEAN Security and Political Community (ASPC), the ASEAN Economic Community (AEC), and the ASEAN Social and Cultural Community (ASCC). An ASEAN Coordinating Council helps leaders prepare for their summits, supported by the SG and the ASEC. The AMM, the prior major decision-making organ of ASEAN besides the biannual Summit Meetings, was renamed the ASEAN Foreign Ministers Meeting (AFMM). The role of the SG has again been strengthened and the number of Deputy SGs has doubled from two to four.

Members have taken largely unacknowledged steps that might point toward deeper political integration, if the new institutions develop related practices. For example, the new Committee of Permanent Representatives (CPR) is explicitly modeled after the Committee of Permanent Representatives of the EU (COREPER), a little acknowledged but powerful body that has spurred integration within the EU. The Permanent Representatives will oversee the work of the Secretary-General and prepare the ASEAN summit meetings. ASEC has adopted a new self-understanding as the ‘guardian of treaties’ and representative of ASEAN community interests (Interview 05-2010 2010). The ASEAN Charter establishes the first regional human rights mechanism: AICHR. Although the mechanism is strictly inter-governmental and gives the body little independent power, it might provide a crucial entry point for civil society associations.

The ASEAN Charter also provides the Association with a legal personality and promotes an ASEAN identity through a motto (‘One Vision, One Identity, One Community’) and an ASEAN anthem. ASEAN members have concluded comprehensive technical programs with different development agencies helping it develop the technical expertise necessary for economic integration (Martin 2009).

ASEAN has surely experienced an evolutionary development since 1967 in terms of the scope of issues it addresses (Khong and Nesadurai 2007, : 33). Cooperation tasks have expanded and now include such areas as economic integration, competition and consumer protection, disaster management and humanitarian assistance, but also non-traditional security issues like transnational crime and terrorism (Caballero-Anthony 2009).[[9]](#footnote-9)

The key question from an institutional design perspective is whether this move toward centralization and the acknowledgement of ASEAN by more states in Southeast Asia is accompanied by more independence or autonomy from member states. There is some movement toward greater organizational autonomy, but the reforms look better on paper than in practice. This, in turn, makes it difficult to substantially evaluate effects. For example, evaluating the Association’s legal personality, Simon Chesterman argues that from a legal perspective ASEAN still does not exist, as it has practically developed autonomy only in the ASEAN Economic Community and in the dispute settlement for the Southeast Asian Nuclear Weapons Free Zone. ASEAN’s capacity to enter into treaties on behalf of member states is nullified by member states’ practice of signing and ratifying treaties in their individual capacities, not collectively (Chesterman 2008, : 205-208). **Implementation remains the full responsibility of the individual ASEAN members. There is a movement toward introducing soft compliance mechanisms, especially in the ASEAN Economic Community (reporting obligations to the Secretariat), but ASEAN still lacks the basic competences to enforce ASEAN rules among member states.** This also means that the member states and their governments are the primary targets of governance transfer.

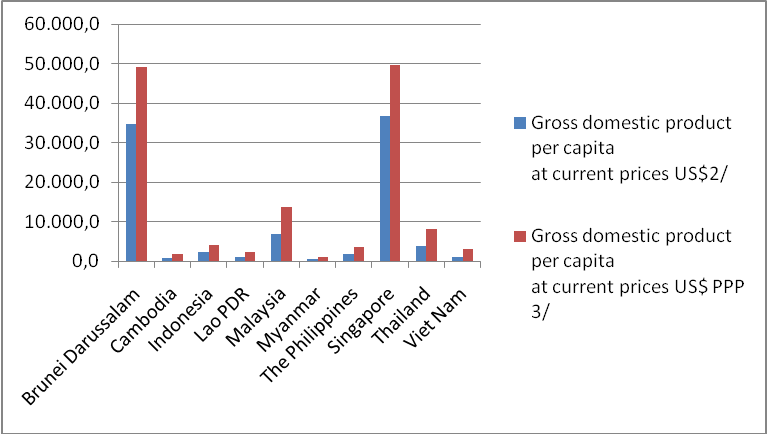
The next section briefly describes the key attributes of ASEAN members.

### State Attributes: State of democracy, variation of regime types, socio-economic disparities

#### Socio-Economic Disparities

ASEAN is an organization characterized by great differences between member states. Not only does the per capita income vary greatly (see Figure 4.1), but also the nature of their political systems.

Figure ‑: Per capita income of ASEAN States, 2010



Oil-rich Brunei and highly industrialized Singapore are the countries with the highest per-capita income in Southeast Asia, followed by Malaysia and Thailand. Indonesia and the Philippines find themselves amongst the low income group together with Cambodia, Laos, Myanmar and Viet Nam.

#### State of Democracy and Civil Wars

Political systems in ASEAN are very diverse. According to the CIA World Fact Book (https://www.cia.gov/library/publications/the-world-factbook/geos/sn.html) Brunei, Cambodia, Malaysia and Thailand are multiparty democracies under a constitutional monarchy, but they have quite different economic heritages (Cambodia as a former socialist state, Malaysia and Thailand as Western oriented “guided” market-economies, and Brunei as a sultanate and rentier state). Viet Nam is a communist state, and the Philippines and Indonesia are presidential democracies. Singapore is a parliamentary democracy with significant restrictions on civil and political rights.

Figures 1 and figure 2 show levels of democracy of the ten ASEAN members according to the Hadenius’ and Teorell’s Quality of Government dataset. The index ranges from 0 (least democratic) to 10 (most democratic) and is a transformation and combination of two indices, the Freedom House index and Polity IV dataset. Figure 1 describes the distribution of democracy score for the ASEAN-10 (blue) and the group of the old ASEAN-6 member states separately (new: Cambodia, Laos, Myanmar, Vietnam; old: Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand). What becomes apparent is the emerging gap between the old ASEAN-6 members’ quality of government score and the combined score of all ASEAN members after 1994. The new member states virtually drag ASEAN’s democracy score downwards.

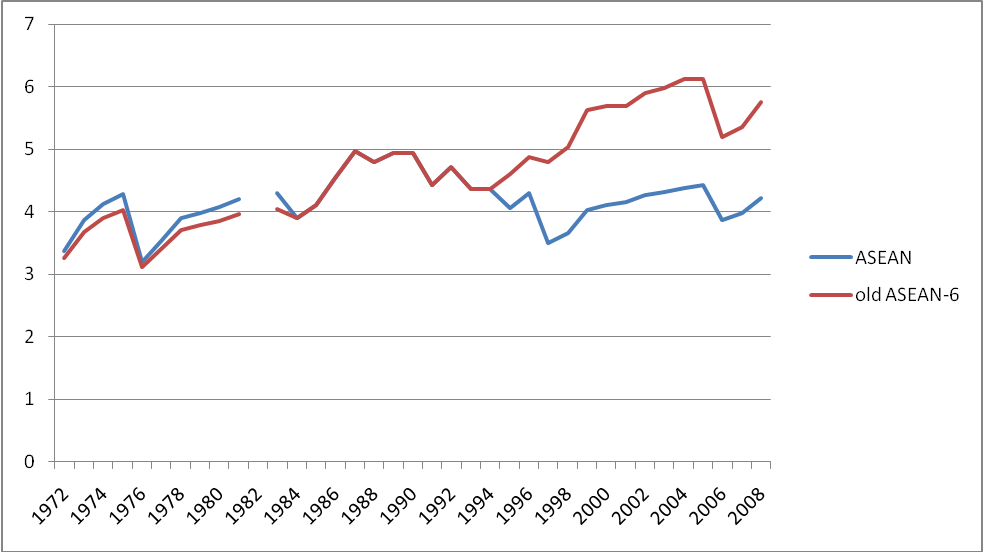


Figure : Democracy scores of ASEAN-6 and ASEAN-CMLV, Quality of Government Index, Hadenius and Teorell (2011)[[10]](#footnote-10)

At the same time, it becomes apparent that at no point during ASEAN’s history did the number of democratic states exceed those of authoritarian ones. Figure 2 shows the great variability of democracy scores within the group but also within single states. Thailand’s democratization process and slide-back into less democratic forms of government is clearly visible, as is Indonesia’s democratization process since 1998. Among the CMLV-countries Cambodia has seen significant changes of quality of government, whereas Myanmar, Laos and Vietnam have not seen significant changes of their score.

Figure Fehler! Verwenden Sie die Registerkarte 'Start', um 0 dem Text zuzuweisen, der hier angezeigt werden soll.‑2: Freedom House Political Rights Index, Time Series 1972-2008

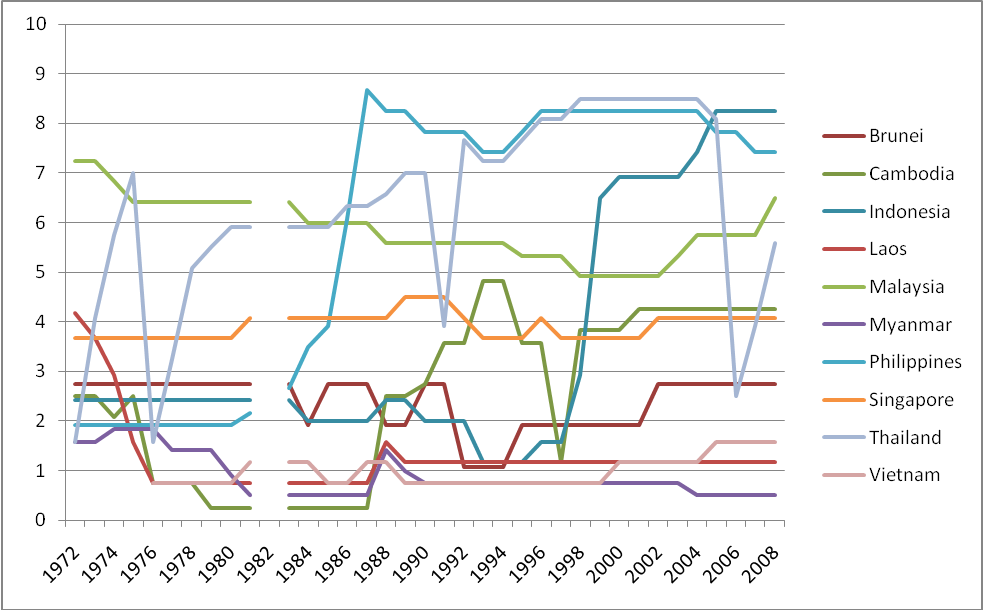


Figure 2: Quality of Government scores for ASEAN members, Hadenius and Teorell 2011

Therefore, a brief period of democratic opening on an aggregate level within the organization (when Indonesia, the Philippines and Thailand were in a transition to democracy) was cut short with the accession of Cambodia, Laos, Myanmar and Viet Nam after 1995. Within the Association, the disparity between the old member states and the new CLMV countries is apparent (see figure 2), leading to the argument that without the new members, ASEAN would be more democratic (Kuhonta 2006). However, this argument can be disputed, as Thailand and the Philippines have both seen a marked deterioration of their human rights practices in recent years, mostly related to Islamic separatist movements and the war on terror.

The majority of ASEAN members have seen their government’s authority challenged by various armed movements. As becomes apparent in Table 1, the main conflicts in Southeast Asia (even more pronounced since the accession of the Indochinese countries Cambodia, Myanmar, Viet Nam and Laos) were internal to the states themselves and not external. Almost all of the old non-communist ASEAN members had to cope with communist insurgencies during the Cold War; given the highly unequal structure of Philippine society, Communist insurgents are active in the Philippines even today. Indonesia had the largest Communist movement outside China and the Soviet Union until the mid-1960s, when the Communist movement was virtually eradicated through internal purges. Myanmar and Cambodia as new members, most importantly, have a long history of civil war. The governments of Cambodia, Myanmar and the Philippines have seen their authority continuously challenged by armed movements. Since 1967 and 1970 respectively, there has not been a single year without armed rebellion. Considering the number of rebel movements in Myanmar, the country can actually be considered close to state collapse (Guo 2008), and some of the ethnic groups survive on a drug-related war economy.

Table 2.2‑1: Militarized Internal Disputes of ASEAN members, adapted from PRIO Armed Conflict Data Set

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **YEAR** | **Location** | **International** | **Civil** | **Contested Issue** |
| 1967-1998 | Cambodia |  | KHMER ROUGE, KPNLF |  |
| 1980-1991 | Cambodia | Viet Nam | FUNCINPEC, KPNLF, KR |  |
| 1975-1998 | Indonesia |  | Fretilin | East Timor |
| 1990-2005 | Indonesia |  | GAM | Aceh |
| 1967-1981 | Indonesia |  | OPM | West Papua |
| 1989-1990 | Laos |  | LRM |  |
| 1967-1973 | Laos | South Viet Nam, United States of America | Pathet Lao |  |
| 1974-1975; 1981 | Malaysia |  | CPM |  |
| 1967-1972; 1992 | Myanmar |  | ANLP, CPA, BMA | Arakan |
| 1967-1988 | Myanmar |  | CPB |  |
| 1967-1992 | Myanmar |  | KIO | Kachin |
| 1967-1984; 1996-2009 | Myanmar |  | SSA, SURA, SSNLO, TRC | Shan |
| 1973-1981 | Myanmar |  | LNUP | Lahu |
| 1974-1977 | Myanmar |  | RPF | Arakan |
| 1976-2009 | Myanmar |  | KNU | Karen |
| 1985-1995 | Myanmar |  | MTA | Shan |
| 1990 | Myanmar |  | NMSP | Mon |
| 1994 | Myanmar |  | RSO | Arakan |
| 1990-1994 | Myanmar |  | ABSDF |  |
| 1996 | Myanmar |  | BMA | Mon |
| 1987, 1992, 1996, 2005 | Myanmar |  | KNPP | Karenni |
| 2009 | Myanmar |  | MNDAA | Kokang |
| 2006 | North Viet Nam, South Viet Nam | | CPN–M |  |
| 1993-2009 | Philippines |  | ASG | Mindanao |
| 1969-2009 | Philippines |  | CPP |  |
| 1970-1988; 1999-2009 | Philippines |  | MIM, MNLF | Mindanao |
| 1974-1982 | Thailand |  | CPT |  |
| 2003-2008 | Thailand |  | Patani insurgents | Patani |

## Mapping the Governance Transfer of ASEAN

### Chronological Description

ASEAN can certainly be described as a laggard concerning the adoption and the implementation of standards concerning good governance, democracy, human rights and rule of law in comparison with many other regional organizations. Table 3.1. (in Annex) provides an analytical and chronological overview of the development in this area, based on 11 key agreements among ASEAN members issued between 1967 and 2009. What becomes evident from these documents is the little to non-existent independence that ASEAN as a regional organization has from its member states. The promotion that takes place of legitimate standards is a self-commitment by its member states, but ASEAN or its organs are not explicitly mentioned as a promoter. Consequently, the addressees of standards of legitimate governance are members themselves, who usually pledge to commit themselves. A commitment to human rights promotion and protection is visible in terms of economic and social rights, but not concerning civil and political rights. Only from 2004 onwards do members speak of a commitment to human rights at all, especially regarding women’s rights. The two declarations on the protection of women are the only two documents that demand changes in domestic legislation, but again these need to be implemented by member states, and ASEAN bodies do not have the authority (incentives or sanctions) to promote these norms.

Some authors contend that the principles that ASEAN members subscribe to legitimate an illiberal peace and prevent changes in democracy and human rights (Kuhonta 2006). While this analysis is certainly true, it is important to realize that ASEAN members do not grant the organization autonomy across the board and not only in the areas of democracy and human rights promotion. Therefore, behind this policy seems to be a principled approach that puts the autonomy of member states before the organization.

### Standards: Content and Objectives

It is undisputed that the “shadow of hierarchy” enhances compliance. But various schools argue that small, centralized institutions with limited formal authority might also be able to promote compliance with norms and standards through socialization effects. Against the backdrop of this literature, it is first important to ask whether or not ASEAN members have collectively agreed on the specification of standards of legitimate governance, and whether there has been an increase in the precision or scope of these standards. Hence, we now focus on key declarations and documents issued by ASEAN. Based on a review of key ASEAN declarations, the next section evaluates whether the regional organization

* prescribes norms, rules and procedures as standards for legitimate governance institutions for member states and third countries and
* commits itself to actively promoting certain standards and specifies objectives and instruments for governance transfer at a general level

In a nutshell, ASEAN is a laggard concerning the adoption of standards for legitimate governance. It decided to adopt a policy on the promotion of democracy and human rights only in 2003, even if it refers to concepts such as human rights as early as 1993. The majority of ASEAN documents – with very few exceptions – are legally non-binding and only declaratory. The most relevant exception is the ASEAN Charter, in effect since 2008. However, ASEAN’s commitment remains imprecise and members have not adopted specific instruments to implement standards in member states. The newly established ASEAN Inter-Governmental Commission on Human Rights (AICHR) remains a consultative regional body, and does not foresee a state reporting system or enforcement mechanisms in cases of human rights violations. Implementation of the norms and principles of the ASEAN Charter is subject to the discretion of individual member states.

Some hold that ASEAN as a regional organization is unintentionally a promoter of illiberal norms (Collins 2007; Kuhonta 2006). While ASEAN’s contribution to good governance in the region can certainly be disputed, it is debatable whether this justifies claims that ASEAN contributes to the stability of authoritarian states. The variance among ASEAN member states in terms of their level of democracy and ability to undergo democratic transition rather suggests that ASEAN cannot shield its members from both domestic and international factors affecting democratization. While ASEAN has not supported democratization movements, it has likewise not intervened to protect fledgling dictators. As such, the ASEAN influence can probably be rejected. If anything, ASEAN is a promoter of stable governments, regardless of whether they are authoritarian or democratic.

The next sections provide a more detailed overview of the individual provisions for the categories “good governance”, “rule of law”, “human rights” and “democracy”, before I proceed to a document by document description.

### 3.2.1. Good Governance

ASEAN as a regional organization does not set a binding standard for good governance, but it mentions concepts that can be associated with “good governance”. Good governance is here defined by references to efficiency, effectiveness, accountability and transparency (Börzel et al 2011). It captures both an input and output legitimacy dimension. It needs to be emphasized, however, that the World Bank definition is somewhat more limited, as it explicitly limits itself to the role of an administration in economic development. For the World Bank, good governance refers to effective state institutions guaranteeing the efficient implementation of development programs and structural adjustments prescribed by financial organizations. The UNDP and OECD definitions are broader and refer to a greater extent to the existence of democracy (see also Börzel et al 2011: 7-8). Where institutions are effective, these organizations speak of good governance institutions.

Almost all declarations issued by ASEAN reference the concepts of effective management, rule-of-law, and participation. However, where members talk about “rule-of-law” they initially refer to the rule of international law among states. Where they reference “effectiveness” they initially refer to establishing an effective ASEAN machinery to implement the goals of the organization, but they do not refer to the domestic structures of member states. Since 1987, the organization continuously mentions the need to better integrate the “people of ASEAN” into ASEAN decision-making process and therefore make ASEAN more relevant (ASEAN is often referred to as an elite driven project, see: Busse 1999). But these references have no legal consequences: they do not come with specific regulations to implement them and they are expressed in visionary terms without time frames for their implementation or examination. Since 2003, the organization has begun for the first time to explicitly refer to the domestic structures of member states, and emphasize the need to increase adherence to the rule of law, good governance, the principles of democracy and constitutional government.

### 3.2.2. Rule of Law

The founding document of ASEAN, the Bangkok Declaration (1967), refers to the promotion of regional peace and stability “through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter” (para. 2), and the Declaration of ASEAN Concord (1976) mentions judicial cooperation among members, but only on an ASEAN Extradition Treaty (art. A.6). In the Declaration of ASEAN Concord (1976), until 2008 ASEAN’s first legally binding treaty, ASEAN members commit themselves to the principles of independence, sovereignty, equality, territorial integrity (art. 2.a), non-interference (arts. 2.b, 2.c), and the renunciation of the threat or use of force (art. 2.e). Articles 10 and 11 articulate these principles in more detail, prohibiting those activities that constitute a threat to the political and economic stability, sovereignty, or territorial integrity of other member states, and freedom to cultivate national identities without external interference, respectively. This treaty is therefore significant as ASEAN’s most thorough legal expression of those principles often thought to exist in tension with the protection of human rights and the transfer of good governance and democracy.

A clear shift toward emphasizing international legal principles related to sovereignty becomes visible only in the second half of the 1990s. In the ASEAN Vision 2020, adopted in 1997, members explicitly envision for themselves a “a peaceful and stable Southeast Asia … where the causes for conflict have been eliminated through abiding respect for justice and the rule of law” (ASEAN Vision 2020, para 1) and where “social justice and the rule of law reign” (ASEAN Vision 2020, para 4). Here, ASEAN members for the first time appear to refer to the domestic conditions of member states. The ASEAN Charter, entered into force in 2008, finally elevates the “rule of law” to a legally binding commitment. The preamble as well as articles 1,7 and 2.h refer to the desire to “enhance” the “rule of law”. The commitment is conditional on “the rights and responsibilities of the Member States of ASEAN” (ASEAN Charter 2008).

Aside from the vague reference to the rule of law, ASEAN does not prescribe any substantial principles for the rule of law, such as institutions guaranteeing the rule of law, the independence of the judiciary, principles of law-making etc.

### 3.2.3. Human Rights

In general, references to human rights are extremely vague and not very precise. When they are mentioned they primarily refer to so-called second-generation rights. The decisive break is the ASEAN Charter, which mentions human rights and fundamental freedoms, while the Blueprint for the ASEAN Socio-Cultural Community articulates these somewhat more specifically. The Declaration of ASEAN Concord (1976) prescribes “Social measures” like the promotion of the participation of women and youth in development efforts (art. C.2), as well as the expansion of opportunities for productive employment and fair remuneration for rural and low-income groups (art. C.1). These norms thus reflect (but do not explicitly state as such) second and third generation human rights. The ASEAN Vision 2020 (1997) echoes international human rights documents in its hope for ‘vibrant and open ASEAN societies … where people enjoy equitable access to opportunities for total human development regardless of gender, race, religion, language, or social and cultural background’ (p. 4). It also envisions ‘a clean and green ASEAN with fully established mechanisms for sustainable development to ensure the protection of the region’s environment, the sustainability of its natural resources, and the high quality of life of its peoples’ (p. 4), thus reflecting the right to a healthy environment as expressed in international environmental and human rights law.

The Declaration of ASEAN Concord II (2003) re-emphasizes this commitment in its plan for a socio-cultural community. Here, the alleviation of poverty, reduction of socio-economic disparities and promotion of economic equity are mentioned (art. C.3), as well as the active participation of women, youth and local communities in development programmes (art. C.2), and access to affordable medicine and adequate health care (art. C.4). Other provisions mention the right to a clean environment (art. C.6). As in previous documents however, these are not explicitly expressed as human rights.

Over the course of 2003-2007 ASEAN members have committed themselves to the elimination of discrimination against women and migrant workers. The Declaration on the Elimination of Violence Against Women in the ASEAN Region (2003), the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (2003), and the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007) all seek to promote the protection of vulnerable groups. Significantly, the declarations accord member states primary responsibility to promote these norms, e.g. art. 5 of the Declaration on the Elimination of Violence against Women urges signatories “to take all necessary measures to eliminate all forms of discrimination against women”, and at the intersection of human rights and good governance, “to enact and, where necessary, reinforce or amend domestic legislation to prevent violence against women, to enhance the protection, healing, recovery and reintegration of victims/survivors.” The Declaration against Trafficking in Persons Particularly Women and Children in art. 7 commits members to “undertake coercive actions/measures against individual and/or syndicate engaged in trafficking in persons and shall offer one another the widest possible assistance to punish such activities”, aunique commitment for ASEAN members.

The most significant document on human rights is, again, the ASEAN Charter (2008). It explicitly refers to the promotion of human rights and fundamental freedoms. It does not specify these rights, however. For example, there is no anti-torture provision. But the Charter foresees the establishment of a regional human rights mechanism. The ASEAN Inter-Governmental Commission on Human Rights (AICHR) has indeed been established in 2009 through the adoption of the Cha-Am Hua Hin Declaration (2009). It is envisaged that the AICHR will be the overarching institution responsible for the promotion and protection of human rights in ASEAN (Cha-Am Hua Hin Declaration, art. 8), and it is an institution within the ASEAN structure, not a region-wide mechanism (Chalermpalanupap 2011).

Predictably, the Charter also reiterates principles of sovereignty and territorial integrity (preamble p. 2, art. 2.a), and non-interference (preamble p. 2, art. 2.e-f).

### 3.2.4. Democracy

The Declaration of ASEAN Concord of 2003 for the first time in ASEAN’s history mentions democratic member states as a goal for the organization. The document outlines a security community that will “bring ASEAN’s political and security cooperation to a higher plane to ensure that countries in the region live at peace with one another and with the world at large in a just, democratic and harmonious environment” (art. A.1). This clause constitutes the first mention of democracy in an ASEAN document. However, it is followed directly by extensive provisions relating to sovereignty, non-interference and the renunciation of the use of force (arts. A.2-A.4).

This trend is established in the much more important ASEAN Charter of 2008. The ASEAN Charter, entered into force in 2008, provides the legal status and institutional framework for ASEAN. It also codifies the norms, rules and values of ASEAN, and sets standards for accountability and compliance. Indeed, this is the first occasion in which democracy is given legal status in an ASEAN document. However, the Charter also refers to “constitutional government” as legitimate governance institutions, without further specification.

Regarding participation as a constitutive part of democracy, a similar process as with “rule of law” can be observed. Participation initially refers to the need to make ASEAN as a regional organization more effective by increasing societal attitudes toward ASEAN. In the Manila Declaration (1987) members commit themselves to ensure greater inclusion of the “ASEAN people”. Para 8 of the legally non-binding declaration mentions the promotion of “increased awareness of ASEAN, wider involvement and increased participation and cooperation by the peoples of ASEAN, and development of human resources” (Manila Declaration 1987). The ASEAN Vision 2020 again foresees “a socially cohesive and caring ASEAN (…) where civil society is empowered” (ASEAN Vision 2020, para 4). The ASEAN Charter of 2008 again mentions the need to ensure the participation of civil society in the decision-making process of ASEAN.

There are no provisions concerning representation or elections in ASEAN documents, and the organization of election monitoring support is left to member states themselves or civil society organizations.

### 3.2.5. Document by Document Summary

The ***ASEAN Declaration (or Bangkok Declaration, 1967)*** established ASEAN as an association for regional cooperation among founding member states Indonesia, Singapore, Malaysia, Thailand and the Philippines. Therein, the aims and purposes of ASEAN are outlined, and include the promotion of regional peace and stability ‘through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter’ (para. 2). In order to achieve its aims, the Declaration further establishes the governing machinery of ASEAN.

The ***ASEAN Concord*** **(1976)** is the first of two ASEAN Concords adopted in 1976 as a soft law document by the five founding members of ASEAN, who comprise its signatories. The document is foremost concerned with establishing regional stability through the pursuit of a ‘Zone of Peace, Freedom and Neutrality’ (para. 2), the peaceful resolution of disputes (para. 6) and economic development (paras. 3 & 5). A programme of action is adopted toward these aims, which includes political measures at organizational level relating both to good governance: the ‘improvement of ASEAN machinery to strengthen political cooperation’ (art. A.5); and the rule of law: ‘study of how to develop judicial cooperation including the possibility of an ASEAN Extradition Treaty’ (art. A.6). Social measures include the promotion of the participation of women and youth in development efforts (art. C.2), as well as the expansion of opportunities for productive employment and fair remuneration for rural and low-income groups (art. C.1), thus reflecting (although not explicitly stating as such) second and third generation human rights. Significantly however, paragraph 8 constitutes the first articulation of the non-interference, sovereignty and self-determination principles in an ASEAN document.

The legally binding ***Treaty of Amity and Cooperation (1976)*** commits the five founding members of ASEAN to ‘perpetual peace, everlasting amity and cooperation among their peoples’ (art. 1) through adherence to the principles of independence, sovereignty, equality, territorial integrity (art. 2.a), non-interference (arts. 2.b, 2.c), and the renunciation of the threat or use of force (art. 2.e). Articles 10 and 11 articulate these principles in more detail, prohibiting those activities that constitute a threat to the political and economic stability, sovereignty, or territorial integrity of other member states, and freedom to cultivate national identities without external interference, respectively. This treaty is therefore significant as ASEAN’s most thorough legal expression of those principles often thought to exist in tension with the protection of human rights and the transfer of good governance and democracy.

The **Joint Communique of the 26th ASEAN Ministerial Meeting** of 1993 is the first document in which members explicitly refer to human rights. The non-binding declaration was issued briefly after the Vienna Human Rights Conference, which was characterized by a debate on human rights as a Western concept, and Asian values. Therein, foreign ministers welcome "the international consensus achieved during the World Conference on Human Rights in Vienna" and reaffirm ASEAN's "commitment to and respect for human rights and fundamental freedoms". They stress the indivisibility of human rights and their equal importance. These rights should be addressed in a "balanced and integrated manner" and the promotion and protection of human rights should not be politicized. The Foreign Ministers propose that ASEAN should coordinate a common approach on human rights and actively participate and contribute to the application, promotion and protection of human rights, but they also make clear that this promotion should occur in the spirit of international cooperation. "[T]he use of human rights as a conditionality for economic cooperation and development assistance is detrimental to international cooperation and could undermine an international consensus on human rights." The protection and promotion of human rights in the international community should take cognizance of the principles of respect for national sovereignty, territorial integrity and non-interference in the internal affairs of states. Moreover, foreign ministers note "the considerable and continuing progress of ASEAN in freeing its peoples from fear and want, enabling them to live in dignity." Significantly, the foreign ministers agree that violations of basic human rights must be redressed.

The ***ASEAN Vision 2020 (1997)*** is a non-legally binding aspirational document, adopted in 1997 by the then nine (with the accession of Brunei, Vietnam, Laos, and Myanmar) member states of ASEAN. It envisages among other things, ‘a peaceful and stable Southeast Asia … where the causes for conflict have been eliminated through abiding respect for justice and the rule of law’ (p. 1); and ‘a socially cohesive and caring ASEAN … where civil society is empowered … and where social justice and the rule of law reign’ (p. 4). It echoes international human rights documents in its hope for ‘vibrant and open ASEAN societies … where people enjoy equitable access to opportunities for total human development regardless of gender, race, religion, language, or social and cultural background’ (p. 4). It also envisions ‘a clean and green ASEAN with fully established mechanisms for sustainable development to ensure the protection of the region’s environment, the sustainability of its natural resources, and the high quality of life of its peoples’ (p. 4), thus reflecting the right to a healthy environment as expressed in international environmental and human rights law.

The significance of the **second ASEAN Concord** **(Bali Concord, 2003)** lies in its establishment (after the EU model) of three pillars of cooperation: the ASEAN Security Community, the ASEAN Economic Community, and the ASEAN Socio-Cultural Community. It was adopted by ASEAN’s current membership of ten states, including Cambodia. Therein, it is envisaged that the security community will ‘bring ASEAN’s political and security cooperation to a higher plane to ensure that countries in the region live at peace with one another and with the world at large in a just, democratic and harmonious environment’ (art. A.1). This clause constitutes the first mention of democracy in an ASEAN document, and is followed directly by extensive provisions relating to sovereignty, non-interference and the renunciation of the use of force (arts. A.2-A.4). The Declaration’s provisions for the socio-cultural community widely reflect second and third generation human rights, such as the alleviation of poverty, reduction of socio-economic disparities and promotion of economic equity (art. C.3), the active participation of women, youth and local communities in development programmes (art. C.2), access to affordable medicine and adequate health care (art. C.4), and the right to a clean environment (art. C.6). As in previous documents however, these are not explicitly expressed as human rights.

The ten member states of ASEAN adopted the **Declaration on the Elimination of Violence Against Women in the ASEAN Region (**DEVW) in 2003. Significant provisions include art. 5 committing signatories ‘to take all necessary measures to eliminate all forms of discrimination against women’, and at the intersection of human rights and good governance, ‘to enact and, where necessary, reinforce or amend domestic legislation to prevent violence against women, to enhance the protection, healing, recovery and reintegration of victims/survivors’.

In 2004, the member states of ASEAN adopted the **ASEAN Declaration Against Trafficking in Persons Particularly Women and Children** (DATPPWC). Significant provisions include article 6, committing states to act to respect and safeguard the dignity and human rights of victims of trafficking, and at the intersection with the rule of law article 7 provides for coercive actions/measures to be taken against individuals and/or syndicates engaged in trafficking.

The **ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers** (DPPRMW) was adopted by ASEAN member states in 2007. After recalling the UDHR and other international human rights conventions in the preamble, the DPPRMW outlines general principles (including taking into account ‘the fundamental rights and dignity of migrant workers and family members’, art. 3). It then expresses the obligations of receiving states (such as intensifying efforts ‘to protect the fundamental human rights, promote the welfare and uphold human dignity of migrant workers’ art. 5, and providing migrant workers, who may be victims of discrimination, abuse, exploitation, violence, with adequate access to the legal and judicial system of the receiving states, art. 9); and sending states (including enhancing measures related to the promotion and protection of the rights of migrant workers, art. 11, and establishing and promoting legal practices to regulate the recruitment of migrant workers, art. 14).

The **ASEAN Charter**, ratified in 2007 by the ten members of ASEAN and entered into force in 2008, provides the legal status and institutional framework for ASEAN. It also codifies the norms, rules and values of ASEAN, and sets standards for accountability and compliance. Indeed, this is the first occasion in which democracy, human rights, good governance, and the rule of law are given legal force in an ASEAN document.

Accordingly, the (non-binding) preamble commits signatories ‘to the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms’ (p. 2). Within the legally–binding body of the Charter, article 1.4 provides as an aim of ASEAN, to ensure that its member states and their peoples ‘live in peace with the world at large in a just, democratic and harmonious environment’, while article 1.7 requires member states ‘to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN’. These norms are emphasized again in article 2.h which states that member states shall accord with the principle of ‘adherence to the rule of law, good governance, the principles of democracy and constitutional government’, and article 2.i, committing states to ‘respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice’. Article 2.j refers to international law, requiring ASEAN states to uphold ‘the United Nations Charter and international law, including international humanitarian law, subscribed to by ASEAN Member States’.

Second and third generation human rights are also reflected (but not explicitly stated as such). Article 1.6 cites as a purpose of ASEAN ‘to alleviate poverty and narrow the development gap within ASEAN’, article 1.9 to promote sustainable development, the sustainability of natural resources, the preservation of cultural heritage and the high quality of life of its peoples, and article 1.11 to provide equitable access to opportunities for human development, social welfare and justice. Of note also is article 14, which commits states to establishing an ASEAN human rights body.

Greater democracy within ASEAN itself is implied. Article 1.15 commits states to an open, transparent and inclusive regional architecture, while article 20 provides for decision-making based on consultation and consensus.

Predictably, the Charter also reiterates principles of sovereignty and territorial integrity (preamble p. 2, art. 2.a), and non-interference (preamble p. 2, art. 2.e-f).

The **Cha-Am Hua Hin Declaration** establishes the ASEAN Intergovernmental Commission on Human Rights (AICHR). It was adopted in 2009 by the ten member states of ASEAN. It is envisaged that the AICHR will be the overarching institution responsible for the promotion and protection of human rights in ASEAN (art. 8).

The **Cha-Am Hua Hin Declaration on the Roadmap for the ASEAN Community (2009-2015)** is a roadmap for ASEAN adopted by member states in 2009. Like the ASEAN Vision 2020, it is an aspirational document outlining a future trajectory for regional integration. It comprises a blueprint for each of ASEAN’s pillars, as well as an Initiative for ASEAN Integration (IAI) work plan. While this document is not legally binding, it constitutes the most detailed account to date of ASEAN’s expectations regarding the implementation of governance norms.

Norms of democracy, human rights, good governance and the rule of law are articulated in the terms of the ASEAN Charter in the ASEAN Political and Security Community (APSC) blueprint (for example, ‘The APSC 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’, arts. 7, 12). More specifically, art. A.1.4, entitled ‘Promote good governance’, prescribes policies for best practices in this area. Likewise, art. A.1.5, ‘Promotion and protection of human rights’, outlines the policies to be adopted and governance structures to be established in the area of human rights. Article A.1.8, ‘Promote Principles of Democracy’ provides for actions in order to enhance democracy, while article A.1.3 outlines policy regarding the rule of law.

The ASEAN Socio-Cultural Community (ASCC) blueprint outlines policies for addressing social, economic and cultural issues. For instance, policies to alleviate poverty are set forth in article B.1, to increase access to healthcare in article B.4, to promote and protect the rights and welfare of women, children, the elderly, and persons with disabilities in article C.1, and to ensure environmental sustainability in article D.

The IAI Work Plan describes the measures by which the policies of the blueprints will be carried out, as well as management arrangements, resource mobilization, and monitoring and reporting arrangements.

The **Terms of Reference for the ASEAN Inter-Governmental Commission on Human Rights (2010)** (TOR) explicitly spell out the mandate of the Commission. Here, several aspects are significant. The Commission receives the mandate to promote human rights. The mechanism is primarily consultative, non-confrontation and should proceed through dialogue. It mentions that members despise of coercive measures and a “politicization” of human rights. The TOR foresee regular consultations on human rights issues and the elaboration of a common position on human rights issues that are of concern for all members. AICHR also receives a mandate to consult with other civil society organizations in the region and on an international level. As for the staffing of the Commission, it is almost revolutionary that members of AICHR “shall act impartially in accordance with the ASEAN Charter” and the “TOR” (Sec. 5.4.). This is the first time that ASEAN members grant an ASEAN body at least some discretion. At the same time, however, it needs to be mentioned that the TOR also re-emphasizes the principles of non-interference and sovereignty that characterizes all ASEAN agreements. The Commission will have its own budget coming from member ship contributions. Given that the membership contributions to ASEAN are quite low, it remains to be seen how significant AICHRs funding will be. External funding by non-ASEAN members is strictly limited to the promotion of human rights, human rights education and capacity building (Sec. 8.6).

The analysis of ASEAN documents suggests that members have included many broad concepts of legitimate governance institutions, but that these concepts have not become more specific over time. It is hard to say whether or not these concepts have become more or less legally binding, as ASEAN has only issued two legally binding documents in its life time and the overall record of issued documents is still not very impressive.

### 3.2.6. Governance Transfer: Adoption and Application

With the important exception of the establishment of AICHR, ASEAN as an organization has not developed formalized procedures to implement its proclaimed aims for governance transfer. Thus, the application remains a political process, subject to political pressures and opportunities or what Gehring calls “de-centralized enforcement” (Gehring 1995). ASEAN neither has the competence nor the instruments to engage in governance transfer, but member states exercise governance transfer in a diplomatic fashion, in particular concerning Myanmar. This has to be contrasted with diplomatic non-interventions in cases that constitute human rights violations but that are not on the agenda of ASEAN, most importantly in the Philippines, Thailand and recently in Indonesia (West Papua).

Diplomatic intervention

Myanmar joined the organization in 1997, and has since been an annoyance to the organization. The military junta did not acknowledge the result of national elections in 1988, when opposition figure Aung San Suu Kyi and her National Democratic League (NDL) won the elections. They put her under house arrest and installed a military government with strong restrictions on human rights and democratic freedoms. Nevertheless, ASEAN admitted Myanmar to the organization because members believed that they could handle the human rights situation and otherwise profited from an enlarged ASEAN market and the strategic position of Myanmar (Katanyuu 2006).

From 2003 onwards, ASEAN adopted a concerted policy toward the government in Myanmar. In 2003, it held an international forum on Myanmar in Thailand and collectively discussed political developments. More significantly, members collectively applied pressure on the government to forego its chairmanship of the organization in July 2005. Under normal circumstances, Myanmar would have routinely assumed the chairman’s role under the rotation principle. In December 2005, the group collectively condemned human rights violations and the handling of the domestic opposition, an open departure from the non-intervention principle (Emmerson 2008; Katanyuu 2006, : 839). Despite these unprecedented steps, the Association remained initially silent when the military in Myanmar cracked down on the opposition in August 2007 and shot into a crowd of demonstrating Buddhist monks. It again surprised observers, however, when the ASEAN Chair officially condemned Myanmar in a September 27 statement. The statement expressed “appall” over reports “of automatic weapons being used” and demanded that the Myanmar government “immediately desist from the use of violence against demonstrators.” ASEAN foreign ministers expressed their “revulsion” to Myanmar Foreign Minister Nyan Win over reports that the demonstrations in Myanmar were being suppressed by violent force (ASEAN Chair 2007). In December 2005 ASEAN decided to send a delegation to investigate the situation in Myanmar (Katanyuu 2006, : 839). The Joint Communiqué of the 42nd ASEAN Foreign Ministers Meeting of 20 July 2009 “calls on the Government of Myanmar” to “immediately release all those under detention” and to pave the way for “genuine reconciliation” (ASEAN Foreign Ministers Meeting 2009).

Diplomatic Non-Interventions

However, these instruments are limited to Myanmar and a pattern of applying instruments for legitimate governance transfer cannot be observed. For example, ASEAN has not commented on the deteriorating human rights situations in the **Philippines** and **Thailand**. In the Philippines, human rights monitors have identified a pattern of extrajudicial killings and disappearances for which the military is clearly responsible. The United Nations special rapporteur on extrajudicial, summary, or arbitrary executions condemned the human rights situations and impunity after a personal visit to the country in February 2007 (Jetschke 2011, : 253). Likewise, the human rights situation in Thailand has not been on ASEAN’s agenda, despite a state of emergency in Thailand’s South since 2005. Amnesty International claims that more than 2700 individuals suspected of trading in drugs have been illegally executed, and 18 human rights monitors have been murdered (Amnesty International n.d.). Here, the variance of issues that are being addressed by ASEAN members in other member states suggest that ASEAN members primarily react to non-compliance with standards that are high on an international agenda, but it does not react to issues that are not the focus of international attention. While one could argue that these country situations are not covered by AICHR because they occurred before the Commission’s establishment, this cannot be said for an incident in Indonesia. Since October, workers working for Freeport mine have been on strike and during the demonstrations at the end of October several workers were shot dead by the police. A district police chief was also shot dead. Here, the Indonesian government apparently struggles to downplay the incident to prevent the military and special Kopassus forces from taking over responsibility for public security (Antara News 2011).

## What Drives Legitimate Governance Institutions in ASEAN?

The evidence provided so far indicates an increase in the declaratory commitment by ASEAN members to good governance, democracy, the rule of law and human rights. The puzzle deserving explanation here is why ASEAN members have taken the unusual step of issuing the ASEAN Charter, the Association’s first legally binding document after the Treaty of Amity and Cooperation of 1976. More specifically, it should be explained 1) why members – in comparison to other regional organizations – commit themselves relatively late in ASEAN’s life-time to promote legitimate governance institutions, 2) why they adopted the Charter at this particular point of time, and 3) why they made a great leap with a legally binding document instead of a soft law declaration. At the same time, this question can also be asked more generally: Under what conditions do ASEAN states – against the backdrop of their own collective understanding of the principles of the organization - opt for committing themselves to higher governance standards? In other words, the question here is what the drivers and mechanisms of these changes are.

I would not say that there is continuous development within ASEAN toward greater acknowledgement of legitimate governance institutions, but that there have been decisive moments (or critical junctures) at which member states have decided to include these principles. It needs to be emphasized, however, that for the reasons mentioned already – lack of member state obligations spelled out in the Charter, lack of precision, lack of delegation to ASEAN – it is highly disputed whether or not the ASEAN Charter constitutes a decisive break with de facto ASEAN practices (Krome 2011). However, I proceed from the assumption that even the rhetorical change of ASEAN is unprecedented and should therefore be explained. I proceed in a theoretically oriented fashion and test the explanatory power of major theoretical approaches for ASEAN’s limited but unexpected governance commitment (but not yet transfer).

### Hegemonic Coercion

Several external actors need to be considered. Perhaps the most important one is the US, which has traditionally promoted its strategic interests in Southeast Asia. Although ASEAN has strong proponents of a non-aligned policy (Indonesia), member states have always regarded the US as the security guarantor in the region. While the US has traditionally understood itself as a defender of democracy, its policy toward Southeast Asia has not been characterized by the establishment of norms of legitimate governance transfer. It regularly supports democratization movements in member states if they emerge and promise to be viable, and sanctions human rights violations, but it does not extend this policy to ASEAN as a regional organization. Consistent with the modernization paradigm of the 1950s, the US was a staunch supporter of military-led modernization (Simpson 2008) and supported the rise of the military as the institution best capable of contributing to the growth of a rational-legal state in countries such as Indonesia and the Philippines. In the 1990s, the US became a crucial supporter of the democracy movement in Indonesia, however. The US was the trend-setter in putting pressure on ASEAN to change its policy toward Myanmar. The US adopted its first sanctions against Myanmar in 1990 and has continuously expanded the sanctions regime (see list of sanctions in Annex).

The EU has historically been the most important trade partner for almost all ASEAN members except the former socialist members, and next to the US it is the largest source of Foreign Direct Investment (FDI). The EU silently serves as an example of regional integration and has had an ideational influence on ASEAN, one that they would never openly admit, however (Jetschke 2010). However, the EU never adopted formal conditionality criteria in its interaction with ASEAN. Similar to the US, it promotes democracy in individual ASEAN states and has been a crucial supporter of the Indonesian democratization movement. This approach is not adopted toward ASEAN as a regional grouping, however.

Given ASEAN’s principled stance in the Asian values debate of the early 1990s, it was hard for the EU to claim moral high ground. The ASEAN Communique of the 26th Ministerial in 1993 did not reject a Western definition of human rights, but it did constitute a criticism of Western states’ conditionality clauses, emphasis on civil and political human rights and their policy of taking the stability of post-colonial states for granted. At the beginning of the 1990s, ASEAN firmly defended its principles and it was able to shape interactions with more powerful external partners, such as the EU (Rüland 2000).

Formalized relations between ASEAN and the EU have existed since 1977 and were institutionalized in 1980 (EC-ASEAN Co-operation Agreement). The EU explicitly acknowledged Asia’s international and strategic status in its “New Asia Strategy” (1994), a factor that led it to occasionally downplay human rights issues. At the ASEAN–EU Ministerial Meeting in Karlsruhe in 1994, and in light of Asia’s stand on human rights, the EU decided to focus only on economic and trade relations with ASEAN. Likewise, ASEAN was able to soften criticism by EU members on the human rights situation in East Timor and Myanmar, whose membership application had been positively evaluated by ASEAN members. This decision was highly controversial with the EU (Manea 2009, : 36; Rüland 2000, : 19).The economically dominated dialogues were expanded to include political and security issues in the 1990s, when the Asia-Europe Meeting (ASEM, 1996) was established. The Asia-Europe Meeting (ASEM) is an informal process of dialogue and co-operation, and brings the 27 European Union Member States and the European Commission together with 16 Asian countries and the ASEAN Secretariat. It meets every two years. According to the EU’s webpage, “Subjects covered have extended from the initial emphasis on economic cooperation to include human rights, rule of law, global health threats, sustainable development, and intercultural and interfaith dialogues.”[[11]](#footnote-11) According to observers, ASEM initially also focused on the promotion of human rights and democracy, and were – particularly during earlier years – used by the EU as a platform to discuss Myanmar’s human rights performance. ASEAN members were able to convince the EU to erase the issue of human rights from the official track of the interregional dialogue.

The EU and the Association of South East Asian Nations (ASEAN) perceive themselves as sharing a commitment to regional integration as a means of “fostering regional stability, building prosperity, and addressing global challenges”.[[12]](#footnote-12) Given the economic importance of Asia to the EU and its strategic importance vis-à-vis China, the EU has started to increase dialogue and cooperation with ASEAN, as well as to pursue closer coordination on regional and international issues. The Nuremberg Declaration and the joint EU-ASEAN Plan of Action formulate the goals of the ASEAN-EU relationship. The aim is to enhance the longstanding EU-ASEAN partnership by pursuing closer cooperation on political, security, economic, socio-cultural and development issues, as well as in the field of energy security and climate. On 22 November, 2007, a Plan of Action was issued by the first-ever EU-ASEAN Summit (Joint Declaration). The summit commemorated the 30th anniversary of EU-ASEAN relations.

The EU is actively supporting ASEAN’s integration efforts. Within the framework of the ASEAN-EU Program of Regional Integration Support (APRIS) and a Plan of Action signed in November 2007, the EU has offered financial support to ASEAN, aiming particularly at strengthening the institutional capacity of the ASEAN Secretariat and generally fostering regional cooperation.[[13]](#footnote-13) During the two project phases of APRIS (2003-2006; 2006-November 2009), the EU supported ASEAN in its development of program cooperation and provided technical assistance concerning standard setting and procedures. Much of the input into ASEAN’s Vientiane Program of Action of 2004, which seeks to achieve an ASEAN Economic Community, appears to have come through APRIS. This support does not include governance transfer, however.

In the absence of information about the universe of cases (when did which regional organization adopt standards of regional governance) it is unclear how much of ASEAN’s adoption of legitimate governance institutions is due to its interaction with the EU or the US, or to what extent it is the product of concern at “being left behind” regarding an important trend (Johnston 2008). ASEAN members have been vehemently criticized for shielding authoritarian regimes such as Myanmar. However, it is unlikely that these pressures had a direct impact on ASEAN members’ decision to adopt legitimate governance principles. Had the Asian financial crisis of 1997-98 and the subsequent downturn of urgently needed FDI to Southeast Asia not brought into question ASEAN’s own raison d’être at the beginning of the new millennium, it is unlikely that ASEAN would have adopted the ASEAN Charter.

### Liberal Intergovernmentalism (Rationalism)

Liberal intergovernmentalism provides a different approach to normative change in ASEAN. According to this approach, state preferences are the appropriate source of change on a regional level, but state preferences are themselves merely a reflection of the distribution of power among domestic groups (Moravcsik 1995; Solingen 1998). According to this literature, the ASEAN Charter could be an ideal instance of lock-in effects on a regional level. As Moravcsik suggests, it is neither autocratic nor democratic governments that have the greatest incentive to create regional human rights regimes. Rather, it is newly democratizing states that are the strongest promoters – and beneficiaries (Simmons 2009) – of regional human rights norms. Governments of states that have transited from authoritarian regimes to democratic ones want to embed or lock-in their state in a regional regime with the power to monitor the country’s human rights practice. They are concerned about the sustainability of democracy in their country. Consequently, they are the most likely to promote human rights.

This implies that the distribution of democratizing and democratic states among member states ultimately determines whether or not ASEAN as regional organization will increase its democratic governance. The more members are democratic, the more likely it is that initiatives to promote democratic governance on a regional level will emerge and be implemented. However, given the consensus principle within ASEAN, each ASEAN member, especially the non-democratic ones, have veto power over any changes of the ASEAN Way of non-interference.

At first glance, the empirical evidence on the ASEAN Charter appears to confirm this explanation. Democratizing Indonesia and to a much lesser extent democratic Thailand and the Philippines were the strongest promoters of the ASEAN human rights mechanism. Surin Pitsuwan, democratic Thailand’s foreign minister first advanced the concept of “flexible engagement” as an alternative to ASEAN’s policy of non-intervention ahead of the 1998 ASEAN Ministerial Meeting (AAM). Thailand offered three official reasons for this promotion of flexible engagement: “First, flexible engagement was to allow ASEAN to respond to the increasing interdependence faced by the region, as events in one country increasingly affected other countries. Second, flexible engagement was designed to confront new security threats, such as economic disruption and various cross-border security problems… Third, flexible engagement was to enhance the democratization and human rights in ASEAN countries.”[[14]](#footnote-14) As one observer put it, the Thai front state under Chuan Leekpai became, at least rhetorically, the first ASEAN administration to embrace the democratic peace proposition.” (Möller 1998, : 1103). It was Thailand and the Philippines that called for more openness in addressing intra-ASEAN differences during the Manila meeting of foreign ministers in July 1998 (Möller 1998, : 1103).

It took the democratization of Indonesia to give these preferences more leverage within ASEAN. In October 2003, ASEAN’s Senior Officials Meeting (SOM) announced that ASEAN would develop a Charter, issued as Bali Concord II ("ASEAN leaders seal Charter at Bali Summit" 2003). In early 2004, Indonesia, chairing ASEAN at this time, suggested the formation of an ASEAN Charter of Rights and Obligations and an ASEAN Regional Commission on Human Rights “to create a solid community” and “prevent possible intervention by countries outside the organization” ("RI proposing formation of ASEAN rights charter, commission" 2004). Then, the principal process of drafting the ASEAN Charter was taken in two steps: At the ASEAN summit of 2005, members established an Eminent Persons Group (EPG) to consult widely and to eventually recommend “bold and visionary” ideas for the Charter. The EPG consulted with former ASEAN Secretary-Generals, business leaders, scholars and researchers as well as representatives of civil society. It submitted its report in 2006. Based on that report, a High Level Task Force (HLTF) of ASEAN leaders and diplomats developed the text of the ASEAN Charter. Among others, it received input from the national human rights commissions of Indonesia, Malaysia, the Philippines and Thailand, who urged the HLTF to include human rights and fundamental freedoms in the Charter and to commit ASEAN member states to the establishment of national human rights institutions (National Human Rights Commissions of Indonesia 2007). The Charter was eventually signed in November 2007.

Throughout the year 2008, the Indonesian government, supported by the parliament, became the strongest advocate of an effective human rights mechanism. The parliament delayed the ratification of the Charter making it the last to ratify among ASEAN’s members. It linked its ratification to demands that the human rights commission be independent and vested with the right to monitor human rights violations and to carry out investigations (Lohman 2008).

On closer inspection, however, the liberal explanation falls short of explaining the timing of the ASEAN Charter in 2007 and its legally binding character. Given the consensus principle, it is surprising that ASEAN, for the first time in its lifetime, became an advocate of human rights norms, however small the chance of enforcement. And it is surprising that ASEAN’s autocratic members supported this move, despite its potentially negative repercussions in these countries. More importantly, by the time of the adoption of the Charter in 2007, Thailand and the Philippines had adopted restrictions on civil rights and political liberties and were rated as “not free” (Thailand) and “partially free” (Philippines) by Freedom House. One could perhaps argue that the ASEAN Charter simply comprises “cheap talk” designed for an international audience and to silence domestic opposition (Hafner-Burton, Tsutsui, and Meyer 2008). While I do not completely deny this rational for autocratic member states, it does not explain the timing. If the ASEAN Charter is cheap talk, then one would expect that members would have resorted to that strategy earlier, when the organization was under fire from its Western partners, primarily the US and the EU, in the 1990s.

### Constructivism

Constructivist scholarship on normative change identifies two key sources of the change of the rules and norms embedded in ASEAN: Normative change can either come from within the region, as demand from civil society organizations, or it can come from outside the region in the form of a supply of good governance scripts about legitimate state behavior. It can also come from the regional organization itself, if it has the competence and appropriate enforcement mechanisms. ASEAN as a regional organization has not had an effect on the democratization processes of Southeast Asian states like the Philippines in the 1980s, Indonesia in the 1990s and Thailand. The democratization of these three countries has been primarily brought about by the mobilization of external actors like the US and the European Union in combination with transnational networks of civil society organizations. In turn, the democratization of these states has influenced the formulation of the norms of democratic governance of ASEAN, even if this does not fully explain the adoption of the Charter.

In the first instance, norm entrepreneurs challenge the norms and values embedded in ASEAN as a regional organization. These norm entrepreneurs are most likely to be civil society organizations in individual ASEAN states that transnationalize their issues. Keck and Sikkink (1998) and Risse et al. (1999, 2002) have argued that transnational advocacy networks can be successful in changing collective understandings about what is good and appropriate. Through international campaigns they engage in public persuasion efforts seeking to convince other actors that a given practice constitutes a morally objectionable practice. They do so by exposing seemingly “natural” or “traditional” practices as socially constructed practices that benefit the power interests of particular groups. They thereby open the way to social reconstruction and the public shaming of the group whose interests are served. Through the joint mechanisms of persuasion and mobilization they thereby manage to induce changes among the political power of contending groups and to create new norms (Carpenter 2007; Keck and Sikkink 1998; Risse, Jetschke, and Schmitz 2002; Risse, Ropp, and Sikkink 1999). From this perspective, the normative change indicated by the ASEAN Charter is an outcome of public campaigns on ASEAN.

Little empirical evidence supports a constructivist explanation for the adoption of the ASEAN Charter, which is owed more to the lack of scholarly attention to this subject than to the lack of explanatory power of the theory (for exceptions see: Katsumata 2009, 2010; Manea 2009; Wiessala 2006). There is abundant evidence that campaigns within individual ASEAN states have led to the domestic adoption of legally binding human rights norms (Jetschke 2011). Transnational advocacy networks have focused on ASEAN for some time. Manea (Manea 2009, : 37) traces several transnational networks, consisting of inter-governmental networks (track I), think thank networks (track II) and civil society networks (track III). Since 1994, an informal ASEAN–ISIS Colloquium on Human Rights (AICOHR), a biannual Asia–Europe People’s Forum (February 1996) and a yearly ASEM Informal Seminar on Human Rights (first organized in December 1997) have existed. In 1996, the informal Working Group for Regional Human Rights Mechanisms was founded under the umbrella of the Philippine Ateneo University’s Human Rights Center. The Working Group claims an impact on the ASEAN Charter given its proposal to ASEAN in 2000 of a working document entitled Draft Agreement for the Establishment of the ASEAN Human Rights Commission for its consideration.[[15]](#footnote-15)

The civil society network that arguably provided the greatest input to the draft of the ASEAN Charter, the report by the Eminent Persons Group of 2006, was the ASEAN People’s Assembly (APA), an initiative by the ASEAN Institutes of Strategic and International Studies (ASEAN-ISIS). ISIS is the most important ASEAN think tank network. APA brings together academe from ASEAN member states and civil society organizations to promote people-centered development in the process of ASEAN community building. APA was founded in 2000. APA is headed by two Philippine representatives: Secretary-General Carlos Medina, a long-time human rights lawyer involved in election monitoring and founder of the Working Group for Regional Human Rights Mechanisms, and co-chair Carolina Hernandez, the Director of the Institute for Strategic and International Studies of the Philippines.

A second group is SAPA, the “Solidarity for Asian People’s Advocacy”. SAPA was established in February 2006. In 2006, this group consisted of more than 30 civil society organizations from the “Asian region”. According to SAPA’s web page, the network “was born out of common concerns about how to enhance the effectiveness and impact of civil society advocacy by improving communication, cooperation and coordination among non-governmental organizations (NGOs) operating regionally, in the face of rapidly increasing and multiplying inter-governmental processes and meetings in Asia.” It includes people’s organizations and trade unions engaged in action, advocacy and lobbying at the level of inter-governmental processes and organizations.[[16]](#footnote-16) The concrete influence of these networks on ASEAN as a regional organization is notoriously difficult to trace, however. The establishment of SAPA is definitely too late to have influenced decision-making. Process tracing narratives detailing the influence of each of these organizations on the drafting of the ASEAN Charter are extremely rare, and systematic analyses surveying human rights activities in the region are non-existent.

However, Corinna Krome develops a qualitative measure for the potential impact of civil society organizations on the formulation of the ASEAN Charter. She surveys the accreditation of CSOs, the ASEAN-CSO dialogue and the civil societies’ influence on ASEAN’s codification as an approximate value for overall influence (Krome 2011) and traces the influence through newspaper articles, minutes of CSO-ASEAN meetings and press releases. Her analysis shows that in general CSO activities in ASEAN countries correlate with the respective state of democracy. Those countries that have higher degrees of democracy also reveal a greater degree of CSO participation (Krome 2011). Although ASEAN allows the accreditation of CSOs, the process of accreditation is such that it clearly de-limits the activities of CSOs so that they do not harm member states (Krome 2011). If it comes to the influence of CSOs on the drafting of the ASEAN Charter, she shows that the CSO recommendations concerning human rights and democracy were rejected by the High Level Task Force drafting the Charter.

A second source of normative change, according to constructivist theories and diffusion approaches, lies outside the region, in the form of global scripts on good governance mandating the establishment and institutional design of legitimate states (Finnemore 1996; McNeely 1995; Meyer et al. 1997). According to this literature, the very concept of nation-state does not exist outside a constructed social reality about what a nation-state is comprised of. This presupposes the existence of collective norms on the level of the international system or world society that define and constitute a state. International norms tell us what kind of institutions a legitimate state should have, such as a science bureaucracy (Finnemore 1993). International institutions tell us what states are: territorially defined governance mechanisms that draw on a legal-rational bureaucracy and a monopoly of force. And international institutions tell us what counts as legitimate state behavior, peaceful conflict resolution or humanitarian intervention in states that face a humanitarian crisis or systematically violate human rights.

According to this literature, the world has witnessed a “good governance” revolution. Declarations and conventions prescribing standards of appropriate behavior in the realms of democratic governance and human rights have increased, and their precision has become greater (Simmons 2009). A good example is the concept of “good governance” that has been promoted, most importantly, by the World Bank and other international organizations like the United Nations Development Program (UNDP), the Organization for Economic Cooperation and Development (OECD) and the Asian Development Bank. All of these organizations have developed their own indices to measure “good governance” practices among the countries that receive assistance; as such one can surely speak of a global script of good governance. Good governance refers to effective state institutions guaranteeing the efficient implementation of development programs and structural adjustments prescribed by these organizations, like administrative transparency, efficiency, participation, responsibility, market economies, the rule of law and justice. Where institutions are effective, these organizations speak of good governance institutions.

To what extent has the ASEAN Charter been affected by the emergence of these norms? Can the Charter be considered a response to the rise of a global governance discourse? There is some influence of the concept on ASEAN leaders. For example, in November 2005, ASEAN’s then Secretary-General Ong Keng Yong in his address to the ASEAN-EC Regional Symposium devoted his whole speech to the topic of “good governance”. He argued that ASEAN already “intuitively” practiced good governance, even if ASEAN documents did not explicitly refer to the term. ASEAN integrated private organizations, most importantly the business community, but also civil society organizations like APA and the Working Group on Regional Human Rights Mechanisms. Its consensual decision-making promoted peace and security in the region.[[17]](#footnote-17) Ong Keng Yong’s speech demonstrates vividly how the concept of “good governance” could be made to fit the ASEAN Way. According to Ong Keng Yong there is no discrepancy between ASEAN’s practice and the norms of good governance. While Ong mentions the limited influence of ASEAN as a weakness potentially affecting compliance, he turns this into an asset when he argues that “ASEAN has a built-in advantage in the sense that it is driven by the collective leadership of our heads of state and government.” (para. 26).

Since the concept was promoted at the end of the 1980s, it is unlikely that the ASEAN Charter is an adaption to external normative pressures. In fact, ASEAN’s first reaction to the appearance of what was then only an emerging or developing governance script was offense (see above). In fact, there is strong evidence that these key institutions even considered Asian countries, including Southeast Asian ones as instances of good governance practices. In 1993, the World Bank published an influential study entitled “The East Asian Miracle”, wherein it propounded the development strategy of the Asian Tigers as a successful development model that should be emulated by other states outside of Asia (World Bank 1993). Even when the Asian financial crisis of 1997-98 appeared to shatter the myth of the “miracle” economies, and the IMF was criticizing crony capitalism and corruption among Southeast Asian governments, the World Bank did not fully depart from its evaluation. The World Bank’s chief economist Joseph Stieglitz published a dissenting view regarding the causes of the Asian crisis, in which he pointed his finger at imprudent speculative investment and capital flight as the factors ultimately responsible for the financial crisis. I do not argue here that ASEAN had no reason to modify its governance norms after the Asian financial crisis. However, given the diverging evaluations of key organizational promoters of the governance concept by the IMF and the World Bank, it is unlikely that normative international pressure from these organizations was the main driver for ASEAN reform.

### “Negative Externalities”, ASEAN’s Reputation and the ASEAN Charter

A convincing explanation for the ASEAN Charter that is consistent with the presented evidence about key variables on ASEAN members and ASEAN as a regional organization, focuses on the perception of negative externalities in combination with concerns for ASEAN’s reputation. In economics, “a negative externality occurs when an individual or firm making a decision does not have to pay the full cost of the decision. If a good has a negative externality, then the cost to society is greater than the cost the consumer is paying for it.”[[18]](#footnote-18) Negative externalities are essentially “social costs” that are carried by the society. They are defined by two conditions: First, they affect the environments that other actors are facing and, second, they are not fully compensated for or penalized (Wong 2000: 1). In regional integration, the concept of negative externalities explains accession decisions by states that were previously not part of a regional organization (Mattli 1999). I use the concept here to show why – regardless of their democratic status - it is rational even for states socialized into norms of non-interference and sovereignty to adopt standards for legitimate governance institutions. I also show, however, that the concept of negative externalities accounts for only half the story of the adoption of the ASEAN Charter. It essentially accounts for the emergence of standards for legitimate governance. It does not explain the particular timing and the legally binding character of the Charter. These features are explained by other factors, including the existence of a global governance script and the state of democracy in some member states.

I argue in the following that in the case of ASEAN, the negative externalities produced by the human rights practices of some member states on the domestic conditions of other member states provided an intrinsic motivation for member states as a collective to partially revise ASEAN’s policy. While Myanmar has been a focus of attention, Indonesia’s democratization has produced negative externalities for certain ASEAN members. But these costs were not carried by member states alone. ASEAN as a regional organization carried these costs in terms of reputation. It was widely criticized for not being able to manage the crisis.

In this context, the viability of the ASEAN Way was always dependent on the condition that what was happening in a member state did not affect other countries. Each member state takes care of itself and no one member state is obliged to help the other. However, at the end of the 1990s, this condition was absent. The policy of the Myanmar military junta and Indonesia’s democratization not only affected Thailand, Malaysia, and the Philippines directly – a major factor compelling the Thai government to question the policy of “constructive engagement” at the end of the 1990s – it also negatively impacted on the reputation of ASEAN and therefore all member states..

The issuing of the ASEAN Charter, against this backdrop, needs to be seen in light of Myanmar’s impact on ASEAN as a regional organization, and on member states, during a period when ASEAN’s international reputation was at one of its lowest points.

Perhaps the most striking factor to account for ASEAN’s adoption of the ASEAN Charter is the drop in ASEAN’s perception as a “model” of regional cooperation in its own right at the end of the 1990s. Until 1997, Asia’s “factory” model of regional integration with little institutionalization and its emphasis on sovereignty and non-interference, thrived through East and Southeast Asian countries’ effectiveness in generating sustained economic growth. It was an output oriented legitimation strategy, in which the spectacular growth rates of Asia’s tiger states allowed many commentators to gloss over the authoritarian political systems of many of these states. As mentioned earlier, by the mid-1990s, the very success of East and Southeast Asian economies had made East Asia itself a model to be promoted by international financial institutions (World Bank 1993; Stieglitz 1996).[[19]](#footnote-19)

Yet, this East Asian growth model was deeply challenged by policy crises at the end of the 1990s. The financial crisis of 1997-1998 illustrated the problems with ASEAN’s hitherto successful model of cooperation. The crisis exposed the institutional weakness of Southeast and East Asian regionalization (Martin Jones 2008). The lack of coordinated efforts by governments appeared to deepen the financial crisis (Higgott 1998; Soesatro 1999; Harris 2000; Rüland 2000) – with serious repercussions for political stability. It was widely feared that the withering of Asian states’ main basis of success would “fuel nationalism, undermine regional co-operation, and foster confrontation over long-standing territorial and other disputes,” (Hill 1999: 1). ASEAN proved unable to unify members behind a collective approach to the crisis. Leadership was lacking - and so was a coherent institutional response (Dent 2008: 150ff).

However, the financial crisis was only one factor driving the long awaited institutionalization of ASEAN’s decision-making process. The Asian financial crisis did not determine the adoption of legitimate governance institutions. More important here was the political crisis in East Timor (1999), and the challenges posed by Myanmar, which had joined the organization in 1997. The military junta’s action against Myanmar’s most prominent political prisoner Aung San Suu Kyi invited constant external criticism by the United Nations, the US and the EU. But as we have seen earlier, this had been a constant feature since Myanmar’s application for membership, a feature that ASEAN was able to ignore as long as they were economically successful. What tilted all member states’ preferences in the direction of human rights and democracy, was the negative externalities that the military junta’s decisions were producing for other members and for ASEAN as a regional organization.

The decision of the military junta in Rangoon to suppress the political opposition could not be treated as if it no longer affected other member states. First of all, some members were directly affected: In particular, Thailand increasingly felt the affects of the Burmese military’s operations against its ethnic minorities along the Thai border. In May 1999, 300 Karen rebels fled to Thailand after a clash with the Burmese junta. Army intelligence sources then predicted more violence as Myanmar wanted to suppress the minority rebels ahead of the planned ASEAN meeting in Rangoon. An estimated 100,000 individuals of ethnic minorities had already fled Myanmar in the years before the crackdown, and had sought refuge in neighboring Thailand challenging the latter’s ability to provide humanitarian assistance. In October 1999, Burmese pro-democracy activists occupied the Burmese Embassy in Bangkok and took the Burmese ambassador hostage, leading to a militarized dispute between Thailand and Myanmar. Thailand, which set the pro-democracy activists free and refrained from leveling criminal charges, was accused by Myanmar of meddling in the domestic affairs of Myanmar. It closed all checkpoints along the land and sea border with Thailand, and linked their re-opening to the arrest and prosecution of the dissident students who had occupied the embassy. Although the checkpoints were later re-opened, the bilateral relationship between Thailand and Myanmar remained strained and the border conflict intensified. In Thailand, the closing of the borders marked a turn in the public perception of the Thai-Burmese border disputes. It triggered a nationalist reaction amongst the Thai public, again with negative consequences for Thai domestic politics. The Thai press openly began to put public pressure on the Thai government to end ASEAN’s policy of “constructive engagement”, a policy designed to keep communication lines open with Myanmar and engage it in order to change it (Jetschke 2003; Katanyuu 2006, : 828).

Similar to Myanmar, Indonesia’s Aceh conflict during the country’s democratization negatively affected neighboring countries, especially Malaysia and the Philippines. The Free Aceh Movement (*Gerakan Aceh Merdeka*) has been active in Indonesia since the late 1980s. Under the military dominated regime of President Suharto (1966-1998), these independence struggles were largely contained through military measures. When the Indonesian government under President Habibie announced in January 1999 that East Timor would have the chance to hold a referendum on its independence, and the referendum was finally conducted in August 1999, the independence struggle in Aceh gained a major boost. Wahid gave in to pressure by the military and deployed special forces to the province. Human rights monitors subsequently reported extra-judicial killings and torture, and an increase in civilian victims from the military operations. Several thousand Acehnese fled to Malaysia to seek asylum. While ASEAN members publicly declared that they fully respected Indonesia’s territorial integrity, the negative externalities of the Indonesian government’s decision were hard to bear. In the Philippines, the self-determination movement in Muslim Mindanao took Aceh as a model for seeking independence from the Philippines, in the process threatening its territorial integrity (Jetschke 2011, : 235-238).

Thus, while none of the ASEAN members formally wished to depart from ASEAN’s official position of non-interference, or desired that they themselves be subjected to internal interference, the negative externalities produced by events in Myanmar and Indonesia provided incentives to depart from the ASEAN Way. The Philippines’ and Thailand’s justification for departing from the ASEAN Way is significant in this regard. Both made the point that such policies risked affecting neighbors or the association's standing (Möller 1998, : 1103). Evidence for these common interests also comes from the establishment of the ASEAN ‘Troika’ in 1999. The ASEAN ‘Troika’ was set up during the Third ASEAN Informal Summit in Manila, November 28,1999. Thailand, which suggested its establishment, argued that ASEAN needed an instrument that would allow it to address issues of regional peace and stability more effectively. It is widely considered a major attempt to address issues that were previously regarded domestic, although the activation of the Troika depended on the agreement of all ten member states and therefore seemed to be of little value for conflict resolution (Narine 2002). When the heads of state were asked to explain why they had decided to set up a Troika that would eventually interfere in the domestic affairs of member states, Philippine President Joseph Estrada explained that it was due to developments in Indonesia, whose probable disintegration due to separatist conflicts in Aceh and Papua, would encourage similar separatist rebellions from the Philippines to China (Quiambao 1999).

In sum, by 2001 it had become clear that the ASEAN Way of neglecting human rights violations was no longer viable. The institutionalization of legitimate governance institutions for the regional organization emerged on the agenda. The concept of negative externalities explains the emergence of governance institutions, but neither the timing nor their legally binding character. To explain these events, and therefore the fact that the ASEAN Charter signals a break with ASEAN’s earlier neglect of human rights and democracy promotion, ASEAN’s continued lack of reputation needs to be accounted for.

Elsewhere, I have argued that ASEAN members also adopted the Charter because they realized that without a distinguishing feature differentiating them from other economic regions, they would lose out competitively (Jetschke and Murray 2012 (forthcoming)). ASEAN wanted to present itself to the world community as a meaningful and effective organization. According to Ong Keng Yong, ASEAN’s Secretary-General (2003-2007), ASEAN members themselves felt that “we need to come out with some new creative ideas, to maintain Southeast Asia attractiveness vis-à-vis China and vis-à-vis the emerging giant called India.” (Interview 05-2010 2010) Arguably, other regions are more advanced in regard to the adoption of principles of good governance and human rights. However, these are not ASEAN’s economic competitors. ASEAN’s economic competitors are China and India and it was especially important to outbid China on the perception of the rule of law.

Numerous statements indicate that ASEAN was collectively concerned about its international reputation. For example, during ASEAN’s Ministerial conference in New York in September 2007, Singapore’s Foreign Minister George Yeo stated that “we had to take issue with a member who behaved badly and brought down the reputation of everyone” (as quoted in: Emmerson 2008, : 72). Singapore’s Prime Minister Lee Hsien Long remarked in 2005 that ASEAN could “fall off the radar screen of international companies and investors” (as quoted by Katanyuu 2006, : 838) if it did not comment on ongoing human rights abuses in the region. Malaysia stated that ASEAN must “convince the world” of its stance toward Myanmar in order to enhance ASEAN’s credibility (as quoted by Katanyuu 2006, : 840).

In sum, a strong driver of ASEAN’s adoption of the ASEAN Charter as a legally binding document was the Association’s need to send out a costly signal to the international community demonstrating that it was committed to human rights and the rule of law. Myanmar’s policy was perceived to have badly damaged the reputation of the organization at a time during which the organization was deeply concerned about its continued relevance. It wanted to express its commitment to the principles of human rights and the rule of law.

## Conclusion

In this case study on governance export by ASEAN, I have argued that an increase in references to legitimate governance institutions in ASEAN documents can be observed since 2003. The most significant development in this regard is the adoption of the ASEAN Charter. Despite references to governance concepts, ASEAN has not systematically developed a set of instruments to ensure and promote governance institutions among members. As such, the main factor driving ASEAN’s governance institutions in the future is likely to be the state of democracy in its member states. The case study argued that two additional factors need to be considered to explain the timing and the legally binding character of the ASEAN Charter: negative externalities and member states’ concern for the international reputation of the Association.

While it is unlikely that member states will grant ASEAN more autonomy, there is some chance that AICHR will develop into a proactive body promoting human rights and democracy in member states. This is likely to occur under the same conditions that fostered the establishment of the Charter: continuing human rights violations with consequences for other ASEAN member states (negative externalities) and concerns regarding ASEAN’s relevance.

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2. ARF participants are as November 2010 (in alphabetical order): Australia, Bangladesh, Brunei Darussalam, Cambodia, Canada, China, European Union, India, Indonesia, Japan, Democratic Peoples' Republic of Korea, Republic of Korea, Laos, Malaysia, Myanmar, Mongolia, New Zealand, Pakistan, Papua New Guinea, Philippines, Russian Federation, Singapore, Sri Lanka, Thailand, Timor Leste, United States, Viet Nam. [↑](#footnote-ref-2)
3. This literature frequently refers to ASA as an unsuccessful forerunner of the Association of Southeast Asian Nations (ASEAN), established in 1967, which failed due to the outbreak of a militarized dispute between the Philippines and Malaya and Indonesia and Malaya respectively (konfrontasi) over then British North Borneo (Sabah). The foreign ministers of Malaysia, Indonesia and Thailand did not meet after September 1963 due to their bilateral conflicts, but ASA’s national secretariats continued to exist until ASEAN came into existence. Jorgensen-Dahl claims: “The break in relations between Malaya and the Philippines in September 1963 did not signal the dissolution of the organisation.” : 28 [↑](#footnote-ref-3)
4. According to Sompong Sucharitkul a close advisor of Thai Foreign Minister Thanat Khoman, members looked at the institutional design of the EEC and EFTA as templates. They eventually decided to take over the less ambitious (EFTA) design. Personal communication with author, 16 September 2010. [↑](#footnote-ref-4)
5. Former ASEAN Secretaries-General, Narciso G. Reyes, as quoted by ASEAN Secretariat, URL: [www.aseansec.org/11850.htm](http://www.aseansec.org/11850.htm). Accessed 10 July 2011. [↑](#footnote-ref-5)
6. In the 1970s, more than seven regional organizations established parliamentary assemblies . [↑](#footnote-ref-6)
7. Not much has been written on AIPO, and even the key reference collections of ASEAN, the two “ASEAN Readers” do not cover the organization . For more information, see URL: <http://www.aipo.org/>, last accessed 25 October 2010. [↑](#footnote-ref-7)
8. [www.aseansec.org/11850.htm](http://www.aseansec.org/11850.htm) [↑](#footnote-ref-8)
9. For an overview of ASEAN’s cooperation areas see: URL <http://www.asean.org/contact_us.html>, last accessed 25 October 2010. [↑](#footnote-ref-9)
10. The data was generously provided by Mathis Lohaus and Vera van Hüllen [↑](#footnote-ref-10)
11. “Building strong and lasting links with Asia,” URL: <http://ec.europa.eu/europeaid/where/asia/regional-cooperation/support-regional-integration/asem_en.htm>, last accessed 04 August 2011. [↑](#footnote-ref-11)
12. See the information provided by the EU on its homepage, cf. “Association of Southeast Asian Nations”, URL: <http://eeas.europa.eu/asean/index_en.htm>, accessed 04 August 2011. [↑](#footnote-ref-12)
13. See the description of the European Commission on ASEAN at URL: http://ec.europa.eu/external\_relations/ asean/index\_en.htm, accessed on April 6, 2010. [↑](#footnote-ref-13)
14. Cited quotation from Narine (2002: 168) [↑](#footnote-ref-14)
15. “Working Group”, URL: <http://www.ahrc.org.ph/?page_id=29>, last accessed 01 August 2011. [↑](#footnote-ref-15)
16. “ACSC/SAPA”, URL: <http://www.alternative-regionalisms.org/?page_id=57>, last accessed 01 August 2011. [↑](#footnote-ref-16)
17. “The Role of Good Governance in ASEAN”. Keynote Address by H.E. Ong Keng Yong, Secretary-General of the Association of Southeast Asian Nations at the ASEAN-EC Regional Symposium, Bandar Seri Begawan, 28 November 2005, URL: http://www.asean.org/17924.htm, last accessed 01 August 2011. [↑](#footnote-ref-17)
18. Definition according to the entry on “Negative Externality”, URL: <http://economics.fundamentalfinance.com/negative-externality.php>, last access 04 August 2011. [↑](#footnote-ref-18)
19. See, for example, the Asian Development Bank Working Paper Series on Regional Economic Integration [↑](#footnote-ref-19)