

# Asian Regional Integration Review



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**GIARI**

The Ministry of Education, Culture, Sports, Science, and Technology began in 2007 the “Global COE (Center of Excellence) Program” with the primary aim of developing “creative human resources to lead the world” and “internationally competitive universities” in Japan. The Global Institute for Asian Regional Integration (GIARI) of the Graduate School of Asia-Pacific Studies, Waseda University is one of the twelve sites in “interdisciplinary, combined, and new fields” selected from among numerous applicants throughout the country.

The Global COE program at GIARI has two aims: to develop competent professionals who will contribute to regional cooperation and consolidation, and to build a center for this purpose. The program has three areas of study: (1) political integration and identity; (2) economic integration and sustainability; and (3) social integration and network, and the three areas are organically interconnected. The program is building a theoretical framework for regional governance, allowing Ph.D. candidates to participate in different projects to develop multidimensional and comprehensive perspectives, and has already produced many results in this endeavor. The program also encourages research and other activities to create strong networks with other institutions of higher learning in the region and also to collaborate with government agencies, public organizations, and NGOs in order to build a world-class research center at Waseda University.

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# Asian Regional Integration Review

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## *Editor's Note*

**Tsuneo Akaha**

After the publication, in March 2010, of Volume 3 of the *Asian Regional Integration Review*, the process of Asian regional integration showed notable progress but also hit some difficult barriers. Market-driven regional integration deepened, with intra-regional trade among Asian countries expanding as a proportion of their global trade. The South Korean-US Free Trade Agreement (KORUS FTA) that was concluded in June 2007 was finally approved by US Congress in October 2011 and ratified by South Korea's National Assembly in November 2011. This was followed by Japan's announcement that it was joining the United States, Australia, Malaysia and Peru in the negotiation for the 21<sup>st</sup>-century Trans-Pacific Partnership (TPP), originally concluded in June 2005 by Brunei, Chile, New Zealand, and Singapore. The East Asia Summit (EAS) expanded from its original 16 members that met in Kuala Lumpur in December 2005 to 18 countries with the addition of the United States and Russia at the sixth summit in Bali, Indonesia in November 2011. The post-2008 global financial crisis continued to threaten the financial health of many Asian economies. With Japan's rudderless political system experiencing a succession of six prime ministers in as many years, the nation appeared unable to put an end to its now two-decades-long economic doldrums and lead the regional integration movement. In contrast, China sustained its high economic growth and was poised to further expand its influence in regional integration, although there were visible signs of domestic trouble due to growing wealth gaps among its population and widespread corruption among its political leaders. The Sino-Japanese rivalry for regional leadership and the maritime border disputes between China and its neighbors around the East and the South China Seas posed serious obstacles to the growth of Asian regionalism. The March 11 earthquake and tsunami and the consequent nuclear plant disaster that struck northeast Japan highlighted the importance of regional cooperation in the protection and promotion of human security in Asia. Southeast Asia saw a further strengthening of the ASEAN-centered framework for regional security dialogue and cooperation, while in Northeast Asia the Six-Party Talks, involving North and South Korea, China, Japan, and the United States, failed to find a solution to the nuclear weapons and missile development in North Korea. Moreover, the hurriedly prepared succession of power from Kim Jong-il, who died, reportedly of a heart attack, in December 2011, to his young son, Kim Jong-un, raised serious questions about the future political stability of North Korea and the prospects for Korean reunification.

Regional integration has economic, political, security, and social-cultural dimensions and the articles in this volume touch upon issues in all of them. The analyses by Koga, Larsson, Zhang, Orosa, and Cebulak were selected from among the papers presented at the "Joint Summer

Institute 2011 on Europe-Asia: Comparative Regional Integration,” organized by GIARI (Global Institute for Asian Regional Integration) of Waseda University and Erasmus Mundus-GEM (Globalization, the EU & Multilateralism) PhD School, at Waseda University on August 1-5, 2011. The members of the *Review*’s Editorial Board, Managing Editor and Associate Editor reviewed and commented on the original papers and the authors revised them by incorporating the feedback received from the reviewers and participants in the Summer Institute. The articles by Koga, Larsson, and Orosa focus directly on regional integration issues in Asia, while the articles by Larsson and Cebulak, relate only indirectly to regional integration in the Asian context. All the works represent creative applications by young scholars of theoretical insights and analytical frameworks provided by senior researchers in International Relations, Regional Integration, and International Law Studies. The young scholars analyze the institutionalization of multilateral security dialogue and cooperation in the Association of Southeast Asian Nations (ASEAN) Regional Forum and ASEAN+3 (China, South Korea and Japan); the possibility of China-EU cooperation regarding Iran’s nuclear program; China’s engagement in ASEAN+3; ASEAN’s approach to human rights; and international legal orders and the development of international human rights law.

The volume also includes three book reviews – on changes in national trade policy strategies in the Asia-Pacific, institutions for economic integration in Asia, and the possibility of the break-up of the Atlantic community of Western democracies and recurrence of geopolitical rivalry among them. They offer largely favourable views but also venture to critique the works on regional integration by well-known senior scholars. Thus, the *Review* offers a forum for scholarly dialogue between generations of students of regional integration and between analysts focusing on different regions of the world.

In the Editor’s view, the analyses presented and the works discussed in this issue of the *Review* raise more questions than they answer. The complex and fluid nature of the sometimes cooperative and sometimes competitive relationships among the major Asian powers, the gradual institutionalization of multilateral cooperation in regional political, security, and economic issues and the yet uncertain future of regionalism and regionalization in Asia demand rigorous analyses by students of regional integration, young and old, Asian and non-Asian, and with a variety of disciplinary training. Also required are studies that describe and explain the discernible patterns of cooperation and discord, as well as address normative questions about the measures to be taken by regional leaders if they are to catch up with, if not emulate, the architects of more advanced regional integration schemes in Europe and North America. It is hoped that the *Review* will provide a platform for stimulating such studies.

Finally, the Editor wishes to thank the authors included in this issue for contributing to the deepening of our collective understanding of the promises and challenges of regional integration in Asia, the members of the Editorial Board for offering ideas and encouragement for this academic endeavour, and GIARI for providing the material and moral support to publish this young journal. Lastly but not the least, the Editor also offers his heartfelt thanks to Dr. Christian Wirth, Associate Editor, and the two Editorial Assistants, Ms. Mitsuko Akaha and Ms. Shoko Miyano, for their tireless and timely service in the editorial process.

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# Explaining the Transformation of ASEAN's Security Functions in East Asia: The Cases of ARF and ASEAN+3

Kei Koga

## Abstract

*The Association of Southeast Asian Nations (ASEAN) has been a central institution for fostering East Asian regional integration processes since the 1990s. Despite the general claim that the security role of ASEAN is limited due to its low enforceability of rules and norms, ASEAN has played a key role in regional security issues, namely establishing security-oriented institutions in East Asia, including the ASEAN Regional Forum (ARF) in 1994, ASEAN+3 in 1997, and the East Asia Summit (EAS) in 2005, all of which discuss regional, although not inter-state, traditional security issues. When founded in 1967, ASEAN's institutional purpose was focused on non-security issues in Southeast Asia. Why and how was ASEAN able to undertake such an institutional transformation and gain security functions? It is imperative to answer this question for the future of East Asian security, as it will help clarify ASEAN's institutional behavior in the security field, which has implications not only for its security role in East Asia but also for regional security cooperation. Theoretically testing the punctuated equilibrium model with an ideational approach, this article argues that ASEAN's institutional transformation in the security field is undertaken through two processes. First, changes in the regional or intra-regional balance of power trigger ASEAN's institutional transformation. Second, member states' perceptions of these changes and consensus-building among member states guide ASEAN's transformation. This article conducts two case studies: the process of the establishment of ARF and that of ASEAN+3.*

## 1. Introduction

Institutions change over time. This notion is well accepted, yet there is little consensus in the International Relations (IR) field as to why and how institutions are transformed. Many IR scholars directly and indirectly attempt to explain the phenomenon. Within the rationalist realm, structural- and neo-realists argue that common interests and threats bind states together to form institutions, such as security alliances and other collective security institutions, but that once these interests disappear, institutions are likely to dissolve. Since realists believe that common interests and threats persist as long as the balance of power remains the same, institutional changes will occur when the balance of power is altered by such factors as a relative decline in great powers' national strength and their political and military retrenchment from international affairs. In this sense, even if original common interests or threats disappear, the states could maintain institutions by modifying their original design as long as other common interests or threats remain, or new common interests and threats emerge. However, the realist argument only answers why institutions survive, not how institutions alter their functions and organizational designs.<sup>1</sup>

Institutionalism attempts to explain institutional transformation by arguing that institutions persist because they reduce transaction costs among member states and can adapt to new environments by changing their objectives, although some security institutions may fail to adapt. Providing a clear demarcation on institutional functions to deal with threats and risks, security institutions can transform from threat-oriented coalitions to risk-oriented coalitions. Also, partly due to trans-

action costs, a highly institutionalized coalition is likely to persist, but “Adaptability is by no means assured. In international relations, institutions that were built on principles contradictory to those of a new era may become worse than useless. After 1989, both the Warsaw Pact, and Co-Com—the institution devised by the United States and its allies to deny strategic materials to the Soviet bloc—disappeared.”<sup>2</sup> Yet, this does not explain to what extent these “principles” need to be met in the new era, or under what conditions and through what processes, institutional transformations occur. Other scholars also attempt to explain the *raison d’être* of institutions. For example, Ikenberry argues that institutions are organized in order to maintain the relative power of states that have won a major war. But the argument focuses on major powers, and does not apply to the institutions that are led by small- and medium-sized powers.<sup>3</sup>

Within the ideational realm, social constructivists emphasize the role of ideational factors in international relations; these factors include the formulation of identities and interests through interaction among actors and between actors and structures. While not completely denying the premises held by realists and institutionalists, identities and interests shaped by processes and interactions among actors have established the dominant concepts in international relations today, such as ‘anarchy’ and ‘self-help.’ As both ideas and practices interactively shape social norms, they are widely shared in society and have an effect on actors’ behavior. Unlike neo-realists or institutionalists, however, social constructivists regard international institutions as socially-constructed autonomous actors. Nonetheless, there is diversity among social constructivists, ranging from those who emphasize state identity and “subordinate interest in institutions as such to the roles assumed by state-actors” to those who “privilege norms as shapers of behavior” and “see the world much as peace theorists do when it comes to international cooperation.” There are also those who “regard institutions partly as arenas for designing change and partly as arrangements that bring about change as they alter the perceptions of their members.”<sup>4</sup> Moreover, social constructivists have methodological difficulty operationalizing how identities and interests shape each other. According to the constructivist argument, although both identities and interests are constantly shaped by each other and formulated over time, it is extremely difficult to analyze when and how these interactions occur.<sup>5</sup>

Thus, while constructivist arguments are useful for analyzing why and how security-oriented institutions have overcome several institutional crises, there is minimal literature dealing with the issue of “how.” Thus, while these IR theories shed light on the necessary conditions for institutional transformation by specifying independent variables, none of them can fully explain both why a particular institution transforms from its original design into another and what variables affect this process of institutional transformation.

By focusing on institutional changes of the Association of Southeast Asian Nations (ASEAN), a Third World Security-Oriented Institution (SOI),<sup>6</sup> between 1988 and 1997, this article tests the punctuated equilibrium model of institutional transformation.<sup>7</sup> This model illustrates interactions between structure and agent to explain both causes and processes of institutional transformation: first, at the structural level, changes in the external security environment affect the member states’ expectations for their institution’s utility for their security as the changes foster or hinder the SOI’s functions, and thusly trigger political discussions among member states; and second, at the agent level, internal political discussions define the direction of the SOI’s institutional transformation. In order to clarify what types of environmental changes can trigger institutional transformation and how an institution determines the direction of such transformation, three hypotheses are offered below.

As for the case selection, the evolution of ASEAN in the period of 1988 to 1997 is particularly relevant to this research for two main reasons. First, ASEAN during this period has been well researched; however, this scholarship mainly consists of historical analyses, and there are yet to emerge theoretical explanations of ASEAN’s transformation during this period. Second, Southeast

Asia was prone to the influence of great powers during the Cold War. In this sense, the period of 1988 to 1997 represents a good test case for my hypotheses as shown below.

The first hypothesis is that if members of a security-oriented institution expect the regional or intra-regional balance of power to be altered in the near future, then the institution is more likely to undertake institutional transformation in order to ensure member states' security. This hypothesis has two independent variables for institutional transformation: a change in the regional or intra-regional balance of power, and member states' perceptions of such a change. As realists implicitly suggest, changes in the security environment, which are based on changes in the political and military balance of power, serve to trigger transformations in institutions, as they are likely to alter the common threats and interests. When they find that transforming the institution would increase their security in a new environment, they have more incentives for institutional transformation. In short, in the context of a changing security environment, member states are likely to attempt to increase the utility of the institution.

The second hypothesis is that the nature of the expected changes is likely to lead to a specific type of institutional transformation. Expectations for positive changes are likely to lead to institutional consolidation, expectations for uncertain changes are likely to lead to institutional layering, and anticipated negative changes are likely to lead to changes in institutional objectives and norms. Positive expectations for changes in the regional or intra-regional balance of power and its impact on SOIs promote institutional consolidation, where institutions consolidate rules and norms through such means as joint declarations and treaties. This is because there is little need to drastically alter institutional capacities. Second, when expectations for changes are uncertain, SOIs are likely to undergo institutional layering, where institutions introduce new functions or objectives to supplement the old ones. Since it is unclear whether an existing institution can produce positive feedback for member states' security in an uncertain environment, it is likely to add new functions and hedge against the uncertainty of an emerging environment without displacing old functions. Third, negative expectations for changes are likely to induce institutional displacement, where institutions introduce new norms and displace old ones. Because it is obvious to member states that the institution no longer provides benefits for their security, institutions are likely to be revised through the introduction of new functions and norms. These expectations constitute the first variable to affect the outcome of institutional transformation, and in more concrete terms, the variable will appear as institutional perceptions concerning changes in the security environment.

The third hypothesis is that an SOI's institutional preference shapes its member states' expectations. "Institutional preference" (hereafter also referred to as institutional security preference) refers to the rank-ordering of the given institution's security foci, determined on the basis of a common understanding of institutional capabilities to manage internal and external security problems. Formulation and reformulation of institutional security preference is shaped by the decision-making process that member states undertake within the institution. An "institutional norm entrepreneur," an actor that introduces new institutional concepts, norms, rules or objectives, triggers such formulation and reformulation. Thus, institutional security preference is the second intervening variable to influence member states' expectations and determine the direction of institutional transformation, although it precedes the second hypothesis. In order to identify these institutional security preferences, the variable to be analyzed is the decision-making process triggered by an institutional norm entrepreneur.

This article consists of three parts: first, it analyzes the types of ASEAN transformation in the period between 1988 and 1997, namely the ASEAN Regional Forum (ARF) and ASEAN+3;<sup>8</sup> second, it discusses the process of formulating ARF in 1994 and ASEAN+3 in 1997 by employing a method of process tracing, and it tests three hypotheses for ASEAN's institutional transformation; and third, it will assess the outcome of the analysis and the validity and applicability of the hypotheses.



## 2. Overview: ASEAN's Dual Institutional Layering—ARF and ASEAN+3

The period from 1988 to 1997 witnessed ASEAN's undertaking of institutional layering with the creation of ARF in 1994 and ASEAN+3 in 1997. In fact, there were several developments in ASEAN's function in the fields of politics and economics.

On the political security front, ASEAN's security functions began to develop from the late 1980s; facing changes in the international environment, ASEAN began to include security issues in the ASEAN Ministerial Meeting (AMM) agendas. In 1989, ASEAN went beyond the assessment of the Cambodian issues and jointly assessed the regional political environment, which touched upon the Sino-Soviet Summit held in May 1989.<sup>9</sup> At the 1990 AMM, ASEAN further developed its formal agenda and reviewed the overall international political situation, resulting in ASEAN Foreign Ministers' endorsement to hold the ASEAN Summit meeting, which would decide ASEAN's future direction in the post-Cold War period.<sup>10</sup> Moreover, its political and security assessment became more comprehensive, and the agendas included the security situation in Southeast Asia, international security and disarmament, and regional political and security situations in such areas as Eastern and Central Europe, the Middle East, Lebanon, Iran-Iraq, Afghanistan and Southern Africa. In the 1991 AMM, the security agendas were considered to be institutionalized, as illustrated by the 1991 joint communiqué that touched on the Track 1.5 seminar,<sup>11</sup> "ASEAN and the Asia-Pacific Region: Prospects for Security Cooperation in the 1990s."<sup>12</sup> Although this was not yet within the ASEAN framework, it was apparent that ASEAN began to look for a new security role not only in Southeast Asia but also in the larger region.

Institutionalization of the security agenda officially began in January 1992, when the third ASEAN Summit in Singapore included the agenda "Political and Security Cooperation." ASEAN began to consider security cooperation through enhancing its dialogues among the ASEAN member states as well as with external states.<sup>13</sup> According to the Singapore declaration, ASEAN "could use established fora to promote external dialogues on enhancing security in the region as well as intra-ASEAN dialogues on ASEAN security cooperation" through the ASEAN-Post Ministerial Conference (ASEAN-PMC), although it noted the 1976 Bali Concord, which advocated that security cooperation would be on a non-ASEAN basis.<sup>14</sup> Furthermore, among the ASEAN member states, ASEAN held intra-member dialogue on security cooperation convening foreign and defense ministers at a Special Senior Officials Meeting in Manila in June 1992. The ASEAN PMC included political and security agendas, aiming at mitigating regional uncertainties in the Asia-Pacific region; it also produced "ASEAN Declaration on the South China Sea," calling for restraints of disputing states, albeit in a non-binding form.<sup>15</sup> In this sense, security cooperation fostered by the ASEAN member states became more visible, resulting in ASEAN's endorsement in 1993 of the proposal to hold the ASEAN Regional Forum in Bangkok by inviting senior officials from China, Laos, Papua New Guinea, Russia and Vietnam, in addition to its dialogue partners.<sup>16</sup> With the expansion of its participants, ARF was established in July 1994.

On the economic front, ASEAN created its grouping ASEAN+3 by including Northeast Asian countries, namely China, Japan, and South Korea, in 1997. Already during the 1980s, viewing that economic growth was an imperative factor for their security on the basis of the concept "national and regional resiliency," ASEAN members saw the protectionist tendencies among developed economies, the slowing world economic growth and the decreasing world prices of primary commodities as threats to their development. In 1987, ASEAN decided to further pursue political alignment on international economic negotiations as well as economic integration. This resulted in the joint communiqué of the 1987 ASEAN Manila Summit, which demanded "developed countries to refrain from adopting measures that would hinder the access to markets of commodities," while the Manila Declaration put emphasis on intra-ASEAN economic cooperation, including a reduction of economic barriers among ASEAN member states through the improvement of Prefer-

ential Trading Arrangements (PTAs) to further attract foreign investments.<sup>17</sup>

Despite these concerns, in 1989, Europe began to aim toward a Single European Market, and the United States pursued an American free trade area, including Canada and Mexico. ASEAN became more concerned about the accelerating tendency of “trade protectionism, including new forms of protectionism, the unstable and low commodity prices, heavy debt burden and the drastic aggravation of reversed transfer of financial flows and the persistent monetary instability.”<sup>18</sup> In the Asia-Pacific region, the Asia-Pacific Economic Cooperation (APEC) was established through the initiative of developed states, namely Australia and Japan, and ASEAN’s concern was that such an institution might marginalize the association. Furthermore, after the Uruguay Round negotiations in Brussels failed, the ASEAN Economic Ministers issued the “ASEAN Economic Ministers Declaration on the Uruguay Round” in June 1991 to express their disappointment in its progress.<sup>19</sup>

In this context, ASEAN launched the ASEAN Working Group on the East Asia Economic Group (EAEG) in Kuala Lumpur in July and September 1991, resulting in the EAEG concept paper. The concept of EAEG was discussed in the ASEAN Economic Ministers Meeting (AEM) in October 1991,<sup>20</sup> and the name ‘EAEG’ was changed to the East Asia Economic Caucus (EAEC) while maintaining its original concept.<sup>21</sup> The AEM discussed two objectives of EAEC, which consisted of expanding intra-regional cooperation in East Asia to provide “the necessary collective approach in areas of mutual concern in international and economic fora,” while refraining from becoming “an institutionalized entity” or “a trading bloc.”<sup>22</sup> Thus, ASEAN aimed at expanding its membership to other East Asian states, which were not specified at the time.

The 1992 Singapore Summit officially decided the role of APEC for ASEAN as sustaining the growth and dynamism of the Asia-Pacific region, and the role of EAEC as providing consultations on issues of common concern among East Asian economies; the latter could potentially expand cooperation among the region’s economies, and it created the mechanism of a Joint Consultative Meeting (JCM), which was held in July 1992, to further develop the concept.<sup>23</sup> In 1993, both AMM and AEM discussed EAEC and decided that the ASEAN Secretary General would consult with the prospective members of EAEC, also members of APEC, after which they agreed that the EAEC was a caucus within APEC.<sup>24</sup> The concept of EAEC had, until 1997, been based on the agenda of AMM and AEM, and the first meeting of ASEAN+3 was held in December 1997 at the informal ASEAN Summit in Jakarta.

Thus, on both security and economic fronts, ASEAN turned the ASEAN-PMC into the ARF, and the EAEC into ASEAN+3, respectively. Keeping its chairpersonship in both institutions, the association added these new functions without changing ASEAN’s own institutional form; ASEAN undertook institutional layering. Although their functional foci were different—political security for ARF and economic security for ASEAN+3—both institutions aimed at enhancing regional consultation mechanisms in each field by expanding membership; ASEAN attempted to attain inclusive cooperative security by including states of the Asia-Pacific region in ARF, while ASEAN+3, ASEAN’s politically expanded alignment, limited its membership to only “East Asian” states.

ASEAN also undertook institutional consolidation during the 1990s by including Southeast Asian states such as Vietnam, Laos, Myanmar and Cambodia. The end of the Cold War and the end of Cambodian conflicts created a favorable political and security environment in Southeast Asia. This fostered ASEAN’s institutional momentum to include all Southeast Asian states as members, as had been envisioned by the ASEAN founding fathers in the 1960s. However, if this was the ultimate objective of ASEAN, it would not be necessary for ASEAN to add other security functions, creating cooperative security mechanisms and expanding its political alignment to include non-Southeast Asian states through ARF and ASEAN+3. Thus, the developments from 1988 to 1997 give rise to the questions of why and how ASEAN undertook the institutional layering that it did during the 1990s.

The following section is divided into two parts. One focuses on the creation of ARF, and the



other on ASEAN+3, discussing and analyzing the impact of changes in the regional balance of power at the end of the Cold War, ASEAN's perception of political security and economic security, and ASEAN's internal discussions.

### 3. ARF—Looking Beyond Southeast Asia from 1988 to 1994

#### (1) Trigger: US and Soviet Disengagement and Rise of Regional Powers

In the period between 1988 and 1994, the geostrategic landscape in the Asia-Pacific region was going through a drastic transition mainly due to changes in great power relations, especially the US-Soviet détente and the collapse of the Soviet Union. This security dynamic was put in place after 1985, when Mikhail Gorbachev was elected as General Secretary by the Politburo, the Soviet Union changed its East Asia policy, and the United States began responding to such policy changes despite its cautiousness.

The clear change came after Gorbachev's visit to the United States in October 1987 and the conclusion of the Intermediate-range Nuclear Forces (INF) Treaty in November. While admitting that Soviet military capabilities were increasing, the first US national security strategy report in 1988 mentioned that the US response was not to counter Soviet military strength, but to strengthen its military, economic and political ties with Asian states, especially its allies, and undertake burden-sharing with them.<sup>25</sup> With the four-party agreement made by the United States, the Soviet Union, Afghanistan and Pakistan, including the withdrawal of Soviet forces from Afghanistan in April 1988, President Ronald Reagan decided to visit Moscow, the first visit for any US president. In September 1988, Michael Armacost, Under Secretary of State for Political Affairs, argued that considering the ongoing US-Soviet and Sino-Soviet political détente, relations among major powers in Asia were likely to become "more balanced" despite the remaining fluidity.<sup>26</sup> Thus, in 1987 and 1988 the United States started to relax its containment policy against the Soviet Union and readjust its East Asian strategy.

As the Soviet unilateral disengagement was undertaken, in April 1990, the United States responded by issuing the Department of Defense document, the so-called "East Asian Strategy Initiative (EASI)."<sup>27</sup> According to the report, the US strategic objectives were clearly laid out:

*protecting the United States from attack; supporting our global deterrence policy; preserving our political and economic access; maintaining the balance of power to prevent the rise of any regional hegemony; strengthening the Western orientation of the Asian nations; fostering the growth of democracy and human rights; deterring nuclear proliferation; and ensuring freedom of navigation.*<sup>28</sup>

However, despite its declared commitment to East Asia, it said that the United States needed to restructure its forward deployed force considering the diminishing Soviet and Vietnamese threats as well as decreasing US defense budget.<sup>29</sup> To this end, while recognizing that the rapid and major changes in US policy would likely destabilize the region, it pursued a three-phased policy for military disengagement and requested its allies, especially Japan and South Korea, to play a greater role in securing regional stability.<sup>30</sup> However, in Southeast Asia, the US security posture was not clear. Although the report mentioned ASEAN, it only asserted that the United States focused on the new basing arrangements and on strengthening its security commitment through its "network of bilateral security relationships." In other words, the United States focused on Northeast Asian security, while its policy toward Southeast Asia was more uncertain in the long term.

These effects of Soviet and US military disengagement created a strategic concern for Southeast Asia: a power vacuum, which would be filled by other powers in the region, namely Japan and

China. One regional power rising in East Asia was Japan. By the late 1980s, Japan had already achieved great economic development and been regarded as a world economic superpower. Although Japanese defense capabilities were limited due to constitutional constraints, a self-constrained defense policy that included the defense budget ceiling of one percent of its GDP, and a division of labor under the US-Japan alliance, its defense budget and technology became the most advanced in East Asia with its rapid economic growth. Since the United States made clear that it wanted more burden-sharing for regional security during this period, Asian states began to expect an increase in the political and security role of Japan. Yet, ASEAN member states were constantly concerned about Japan's future military role in East Asia due to the legacy of World War II,<sup>31</sup> and Japan needed to continually assure that it had no intention of becoming a regional military power; its military role had changed gradually after the Gulf War to include performing such tasks as dispatching its Maritime Self-Defense Force for minesweeping missions in 1991. Indeed, when Prime Minister Noboru Takeshita attended the 1987 ASEAN Manila Summit, and Prime Minister Toshiki Kaifu made a speech to ASEAN member states excluding Indonesia in 1991, both leaders reassured that Japan would play a greater political role in East Asia but had no intention to become a military power, as Japan's constitution blocked "the path to military power."<sup>32</sup> Japan's reassurances were gradually acknowledged by ASEAN member states, including Singapore, Indonesia and Malaysia, and alleviated ASEAN's concerns for the time being.<sup>33</sup> However, other Asian states, such as China, had a different attitude despite these reassurances, as illustrated by the fact that Yang Shangkun, former President of the People's Republic of China, opposed the UN Peace Cooperation Bill that enabled Japan to dispatch its Self-Defense Forces overseas.<sup>34</sup>

China and its subsequent behavior generated concerns among its neighbors. With the decline of Soviet political and military influence in East Asia, ASEAN member states were concerned that its military capabilities, which had been aimed at balancing against the Soviet Union, would redirect toward Southeast Asia, especially over the South China Sea. In fact, the 1988 naval clash over the Spratly Islands between China and Vietnam had exacerbated such security concerns. In April 1987, after China accused Vietnam of invading several islands in the South China Sea,<sup>35</sup> China began to send patrol vessels of its People's Liberation Army Navy (PLAN) to the islands and rejected Vietnam's accusations against it,<sup>36</sup> resulting in not only heightened bilateral political and military tensions, but also triggering tensions with other claimants. China rejected the Philippines' claims to the islands,<sup>37</sup> while Malaysia began to reiterate its claims to the territories.<sup>38</sup> Eventually, on March 14, 1988, the Sino-Vietnam naval clash occurred in which six of China's warships sank three Vietnamese freighters, caused one Vietnamese soldier's death and sent 74 others missing.<sup>39</sup> Because several ASEAN member states, namely Brunei, Malaysia and the Philippines, were involved in the Spratly Islands territorial disputes, the overlap of which set off chain reactions in ASEAN member states, this incident alarmed ASEAN as to China's future behavior in Southeast Asia in the context of shifts in the regional balance of power, where the Soviet Union's military and economic support to Vietnam was decreasing.

The US disengagement plan, accelerated by the collapse of the Soviet Union in 1991, also exacerbated ASEAN's concern. Facing this change, the United States published the second EASI in 1992, which situated itself as the "honest broker" and "key regional balancer" and emphasized the necessity of its forward deployed presence to deter and respond to various potential contingencies in East Asia, including the Korean Peninsula.<sup>40</sup> Nevertheless, in Southeast Asia, due to the closure of the Subic Bay facilities and Clark Air Base, the United States decided to shift "from a large, permanent presence at a single complex of bases in the Philippines to a more widely distributed, less fixed, posture,"<sup>41</sup> and thusly, its presence was greatly diluted. The US military reduction was ongoing along with Phase I of the first EASI, and the Department of Defense decided to remove 15,250 personnel from Japan, Korea and the Philippines by 1992, which then represented 10 to 12 percent of the total 135,000-strong personnel in 1990; however, the entire 14,800 US person-

nel located in the Philippines would be relocated by 1993.<sup>42</sup> In other words, it became more likely that the most drastic reduction of US military presence in East Asia would be in Southeast Asia.

In sum, with the improvement of great power relations in East Asia and the possibility of rising regional powers, ASEAN member states clearly recognized the fluid strategic situation in East Asia and attempted to somehow maintain the regional stability in Southeast Asia. Since the loss of the rigid bipolar world order weakened the mutual deterrence effects between the United States and the Soviet Union, and because there was not yet an alternative regional security arrangement to comprehensively manage regional security issues, ASEAN began its attempts to create regional security mechanisms on an issue-by-issue basis. For the South China Sea, Indonesia began to hold a series of informal, non-government level workshops, the “Workshop Series on Managing Potential Conflict in the South China Sea,” inviting ASEAN and non-ASEAN member states to build confidence among claimant states. Despite these efforts, in 1992, China passed domestic legislation regarding its territorial waters, including the Spratly Islands, and ASEAN responded in a collective declaration for the first time to strengthen their commitments to resolving the disputes peacefully and in accordance with the Treaty of Amity and Cooperation (TAC). For withdrawal of US forces from the Philippines, Singapore offered repair and maintenance facilities to the United States so that the US could maintain its military presence in Southeast Asia, albeit on non-permanent basis. As for the potential rise of China and Japan, in order to assure their intentions, ASEAN member states began to consider inclusion of security issues in its PMC agendas in the late 1980s; in addition, Malaysia invited China as a guest to the 1991 AMM and created a consultative relationship with China despite the fact that they were not dialogue partners at the time. In this sense, the expectation of shifts in the regional balance of power in East Asia became the trigger for ASEAN member states to take diplomatic actions to manage regional security issues arising at the end of the Cold War.

## **(2) Institutional Uncertainty over East Asian Security: Layering by ARF**

With the aforementioned external changes in the 1988-94 period, ASEAN had different expectations for its utility in two regions: Southeast Asia and East Asia. The assessment regarding Southeast Asia saw the shift in the intra-regional balance of power in relatively positive terms for the association throughout this period. Several ASEAN member states argued that these changes provided opportunities to realize the Zone of Peace, Freedom and Neutrality (ZOPFAN) and began to consolidate the association by taking an inclusive approach toward membership. After the US-Soviet détente in the late 1980s and the sprouting of positive prospects regarding the Cambodian conflict, ASEAN began to consider expanding its membership. Indeed, the Soviets began to show less interest in being involved in Cambodia and supporting Vietnam, Vietnam announced the withdrawal of 50,000 troops from Cambodia by the end of 1988, and these developments increased the possibility of Cambodia’s political independence although uncertainty still existed in the nation due to internal conflicts.<sup>43</sup> Although ASEAN member states remained skeptical about Vietnam’s announcement of troop withdrawal and asserted the necessity of international verification of such a withdrawal,<sup>44</sup> the Cambodian situation improved. For example, Won Kang Sen, then Singapore’s foreign minister, stated, “A Cambodian settlement is now only a matter of time.”<sup>45</sup> Thus, ASEAN began to undertake institutional consolidation by letting non-ASEAN member states in the region accede to ASEAN declarations and treaties, including ZOPFAN and TAC.

The other assessment, regarding the East Asian region, had a more significant impact on ASEAN’s institutional form. Since most of ASEAN’s official agenda focused on the Cambodian conflict throughout the 1980s, the association’s concerns revolved not around the overall East Asian strategic impact of the US-Soviet détente but around its impact on the Cambodian situation. However, ASEAN’s agenda gradually changed with the shifts in the regional strategic environment, and several ASEAN member states began to assess the prospect of a regional balance of

power in East Asia from the late 1980s. At AMMs, ASEAN states such as Indonesia, Malaysia and Singapore in 1989, and Indonesia and the Philippines in 1990, showed implicit concern over growing regional uncertainty.<sup>46</sup>

In this context, in 1991, all ASEAN member states addressed potential changes in the regional strategic environment, with the only exception being the Philippines, which was preoccupied with the disastrous impact of the eruption of Mount Pinatubo.<sup>47</sup> From the ASEAN members' perspectives, the concept of the Cold War bipolar structure was no longer applicable to their assessment of the regional security situation, as both superpowers began to disengage from the region. At the same time, without any alternative regional security mechanism to manage the perceived appearance of a power vacuum in the region, ASEAN members remained ambivalent toward the strategic balance in East Asia. This concern eventually led the ASEAN Singapore Summit in 1992 to go beyond its traditional institutional agenda: for the first time, ASEAN decided to add the regional security agenda of the ASEAN-PMC. ASEAN member states no longer considered their association's original institutional objectives adequate for maintaining regional stability. Consequently, at the 1992 AMM, ASEAN member states advocated further enhancement of ASEAN's regional security role, although their points of emphasis with regard to such a role were not necessarily congruent.<sup>48</sup>

By the 1993 AMM, ASEAN member states had decided to establish ARF, the first regional security forum in East Asia, on the basis of the ASEAN-PMC meetings. This decision was based on their belief that they needed to alleviate regional uncertainty caused by US disengagement, China's rise, and the increasing salience of regional security issues, including the South China Sea, comprehensively by all regional states. However, ASEAN did not think that ARF would become a dominant security mechanism for maintaining regional security and stability; rather, they believed that ARF had two broad objectives. First, ARF would play a complementary role in existing bilateral security arrangements and multilateral forums.<sup>49</sup> Second, ARF would employ confidence-building measures and preventive diplomacy as its main security functions. This belief was repeatedly confirmed by ASEAN foreign ministers at AMMs in 1993 and 1994.<sup>50</sup> ASEAN had long believed that the behavior of great powers would affect security in Southeast Asia and, therefore, it needed some security mechanisms to assure US commitment to East Asia, to promote better relations among the major regional powers, and to foster defense transparency and maintain channels of communication among them. These objectives were to render the fluid strategic situation in East Asia more predictable.<sup>51</sup> Thus, ASEAN did not view ARF as a military fallback position for them, nor did it utilize the forum for shaping the regional balance of power.<sup>52</sup>

Despite their different security foci, the ASEAN member states gradually forged consensual security perceptions in the period between 1988 and 1994. While they generally assessed the reduction in superpower tensions as positive, their assessment of its impact on intra-regional and regional balances of power differed. At the intra-regional level, ASEAN states perceived more positive impacts since the Soviet Union and Vietnam began to remove their military presence from Cambodia. Against this backdrop, they started to further consolidate ASEAN's institutional form on the basis of ZOPFAN. ASEAN moved from a quasi-exclusive cooperative security framework, which was created by the 1976 Bali Concord, to a full-fledged exclusive cooperative security system, as was envisaged by ASEAN founding fathers. At the regional level, however, the US-Soviet rapprochement and the collapse of the Soviet Union triggered US disengagement from the region despite its pledge of continued security commitment. ASEAN saw these developments as increasing regional strategic uncertainty. In response, ASEAN added a new security function by establishing ARF, an inclusive cooperative security mechanism in East Asia, without altering ASEAN's institutional characteristics. Thus, since ASEAN maintained its initial objective of establishing the Southeast Asian community as valid, the association did not displace its institutional objectives even though the regional security environment had undergone drastic changes.



### **(3) New Institutional Security Preference: ASEAN Centrality**

Facing the security uncertainty caused by the changing regional balance of power, ASEAN added an inclusive cooperative security function in East Asia by establishing ARF. The ASEAN member states were given several strategic choices in the context of US and Soviet disengagement—to develop the regional collective defense, to balance against or bandwagon with rising powers, either Japan or China—but ASEAN took neither of these choices. There were two reasons for this based on ASEAN's institutional security preferences.

The first was ASEAN's institutional security preference to remain a non-military pact. The ASEAN member states did not want to send the wrong signals to non-ASEAN states.<sup>53</sup> This preference echoed concerns the association had expressed in the 1976 Bali Concord. ASEAN was more concerned about the diplomatic and military signals that would be sent if the group had turned into a multilateral defense pact. This was well-illustrated by Singaporean President Goh Chok Tong's statement in 1993 that “any multilateral political and security dialogue would [then] have conjured up images of blocs and ideological conflict.”<sup>54</sup> In this sense, ASEAN maintained its preference to not form a multilateral military pact.

The second institutional security preference was to establish an inclusive cooperative security mechanism in East Asia, which followed the same logic as the ZOPFAN concept. As the concept of ZOPFAN within the ASEAN member states changed over time, the objective of ZOPFAN also changed from establishing regional neutrality by gaining great powers' guarantees to strengthening the principle of non-interference in Southeast Asia by buttressing “national and regional resilience” and preventing outside powers' intervention in regional affairs through diplomatic communications.<sup>55</sup> Although ASEAN well recognized that the key to regional stability was US military involvement,<sup>56</sup> it also required the cooperation of other regional powers to ensure non-interference. From this perspective ASEAN began to invite China and the Soviet Union to the AMM meetings starting in 1991 as consultative partners even though these two countries were not dialogue partners with ASEAN at the time.

ASEAN states were convinced, based on their own experiences dealing with each other, that consultative processes would be a necessary diplomatic tool to ease inter-state tensions.<sup>57</sup> Therefore, it was not difficult for ASEAN members to promote the idea of establishing an inclusive cooperative security mechanism in East Asia. All ASEAN states agreed to encourage political and security dialogue in the region, as illustrated by Filipino Secretary of Foreign Affairs Romulo's statement that “ASEAN's reliance on dialogue and consultation and its gradual, pragmatic approach are now being projected onto a broader platform.”<sup>58</sup> In short, the ZOPFAN concept and TAC provided reference points for ASEAN to evaluate the strategic changes in the region, but the continuity of ASEAN's institutional security preferences informed the association's institutional development.

A significant change was seen in ASEAN's attempt to establish “ASEAN centrality” in a new institutional mechanism in order to prevent outside powers' forceful exercise of political influence and imposition of their rules in the region. By this time ASEAN member states had achieved relative social stability supported by rapid economic development, and relations among Southeast Asian states substantially improved, allowing ASEAN countries to focus more on their external relations. However, as the Tiananmen Incident in 1989 showed, the United States and European countries were beginning to press more actively for democratization and human rights protection in the world. Since ASEAN member states lagged behind in the promotion of democracy and human rights, they were concerned that the West was ready, if necessary, to impose sanctions on those who failed to meet their standards. When President Clinton put “democratic values” as a third priority in creating the ‘Pacific Community’ in 1993,<sup>59</sup> it became more evident that the United States would demand that East Asian states promote democratic values. ASEAN attached im-

portance to a gradual approach and prevention of intervention by outside powers, and was cautious about democracy promotion from outside of ASEAN.

Moreover, the idea of establishing a multilateral security framework in the Asia-Pacific was promoted not by the ASEAN member states but by non-ASEAN states. In the context of the regional major power rapprochement during the late 1980s, many states in the Asia-Pacific region were concerned about the future regional security architecture because there was no multilateral security mechanism in East Asia. In response, three major blueprints for new regional security architecture in East Asia were proposed. First, the idea of a multilateral regional security mechanism was put forth by the Soviet Union in 1986. The proposal was based on Gorbachev's speeches in Vladivostok in July 1986 and Krasnoyarsk in September 1988, which emphasized the establishment of a multilateral mechanism for confidence-building, such as the Pacific Ocean Conference, similar to the CSCE.<sup>60</sup> Although the proposal was intended to show Moscow's more conciliatory posture towards countries in the Asia-Pacific region, it never materialized.

Second, Japanese foreign ministers proposed that the ASEAN-PMC framework be used for security dialogue. This idea was first introduced at the 1988 ASEAN-Japan PMC by Foreign Minister Sosuke Uno, who recommended that the ASEAN-Japan dialogue incorporate security issues to contribute to the peace and stability of the Asia-Pacific region.<sup>61</sup> Japan believed it was necessary to reassure Asian states that it had no intention of using its economic power to become a military power. Reassuring that Japan's definition of "security" referred to non-military means, Uno stated that Japan aimed at "embark[ing] on new forms of contributions in the political and diplomatic fields, with a view to finding solutions to regional conflicts and relaxing tensions."<sup>62</sup> In 1991, Foreign Minister Taro Nakayama built on this idea and proposed a political consultative mechanism on the basis of the ASEAN-PMC, but his idea was that the dialogue would be held with "friendly countries" and differed from "confidence building measures which aim at easing military tensions."<sup>63</sup> In other words, the Japanese idea envisioned a cooperative security mechanism and was not as inclusive as ARF.

Third, Australia proposed the establishment of a CSCE-like mechanism in the Asia-Pacific region, the so-called Conference on Security and Cooperation in Asia (CSCA). While recognizing the differences in the security outlook between Europe and Asia, at the 1990 ASEAN-Australia dialogue, Minister for Foreign Affairs and Trade Gareth Evans proposed the consideration of a phased approach to the creation of CSCA, starting at the sub-regional level through the PMC and then moving to the entire region, employing ASEAN's experiences to spread "the web of cooperation," though he admitted it was too early to map out the process in detail.<sup>64</sup> This idea was supported by Secretary of State for External Affairs of Canada Joe Clark, who stated that the Asia-Pacific region should establish a "consultation and cooperative framework for their own... [in] a part of the world which is marked both by uncommon growth and uncommon tensions."<sup>65</sup> Nevertheless, the proposal proved controversial in the Asia-Pacific region, where the political and security settings differed from those of Europe.<sup>66</sup>

ASEAN, as the sole multilateral, inter-governmental institution in East Asia, needed to respond to these ideas lest it lose its autonomy in regional affairs. While it recognized the need for non-ASEAN regional powers to be committed to regional security, ASEAN was wary that if other powers took a lead to establish a new multilateral framework in the region, it would weaken ASEAN's ability to pursue a "regional solution to regional problems" and be politically marginalized in the region. ASEAN member states were especially concerned about the idea of CSCA because its agenda might include democratization and human rights protection in East Asia on the basis of Western standards. Therefore, ASEAN attempted to modify the ideas being proposed by outside powers. As Japan and Australia were considering a new security framework based on the ASEAN-PMC, ASEAN attempted to take a lead in establishing such an institution. It was in this context that the ASEAN-ISIS and the Track-II network of ASEAN emerged and played important

roles in shaping ASEAN's institutional security preferences.<sup>67</sup>

Facing a number of proposals for new regional security architecture from outside ASEAN, the ASEAN-ISIS proposed in its report "A Time for Initiative," that ASEAN take the initiative for establishing a regional security mechanism. Emphasizing ASEAN's centrality in "whatever processes and mechanisms arise," the ASEAN-ISIS argued that ASEAN's initiative needed to be founded on existing processes and institutions, including the ASEAN-PMC.<sup>68</sup> It specifically called for the creation of a regional security dialogue mechanism, the Conference on Stability and Peace in the Asia Pacific, in which, according to the proposal, a senior officials meeting made up of representatives from ASEAN states and dialogue partners would set the agenda.<sup>69</sup> Another key recommendation was the inclusion of China, the Soviet Union, North Korea and Vietnam for regular participation.<sup>70</sup>

The 1991 AMM joint communiqué called for ASEAN's initiative for establishing regional security cooperation with non-ASEAN states and endorsed other ASEAN member states' initiatives for holding security seminars in the form of ASEAN and the Asia-Pacific Region: Prospects for Security Cooperation in the 1990s in Manila in June and November 1991.<sup>71</sup> Subsequently, the 1992 ASEAN Summit, the first ASEAN Summit in the post-Cold War period, decided to include security issues in ASEAN frameworks, showed its intention to employ "established fora to promote external dialogues on enhancing security in the region," and proposed the enhancement of the ASEAN-PMC.<sup>72</sup> Subsequently, ASEAN accelerated its effort to establish the regional security dialogue. The association created a senior officials meeting for the ASEAN-PMC in 1993, which decided to include China, Russia, Vietnam, Laos and Papua New Guinea. Following, a pre-ARF meeting was held on the occasion of the informal AMM-PMC dinner in July 1993, and the first ARF meeting was held in July 1994.<sup>73</sup>

In summary, as the scope of ASEAN's regional security considerations began to broaden at the end of the Cold War, ASEAN began to be concerned about its institutional *raison d'être* in terms of regional security. The proliferation of proposals for East Asian security architecture led to the emergence of an institutional norm regulator, the ASEAN-ISIS. Respecting both ideas offered from outside of the region and ASEAN's own institutional security preferences, the ASEAN-ISIS eventually provided the direction for ASEAN's institutional transformation: the establishment of an inclusive cooperative security system, ARF. This mechanism would help ASEAN maintain its centrality.

#### **4. ASEAN+3: Formulating "East Asia" from 1988 to 1997**

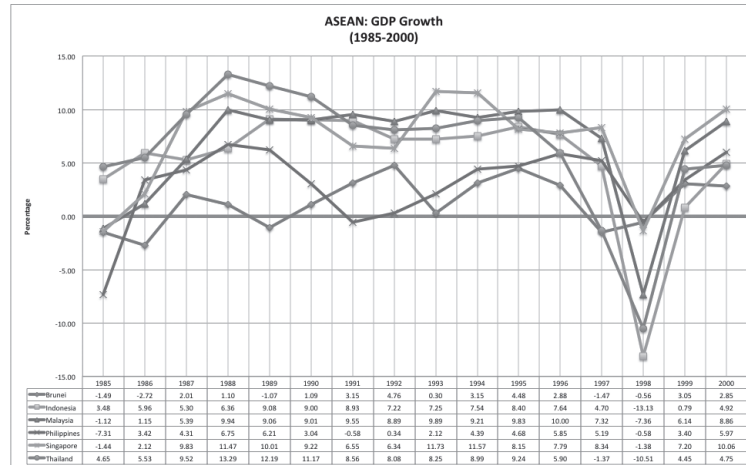
##### **(1) Triggers: Regional Economic Blocs, APEC and US Economic Policy**

The ASEAN member states have seen economic development as a crucial part of their national security since ASEAN incorporated the concept of "national and regional resilience" into its institutional principle through the Bali Concord in 1976. This idea sees domestic political, economic and social stability as imperative to national strength. The approaches illustrated in ASEAN's political coalition in negotiations with such major actors as Japan and Europe during the 1970s led to the creation of the ASEAN-PMC. Thus, for ASEAN member states, international economic issues have been relevant to their own security. As Foreign Minister of Indonesia Ali Alatas stated, ASEAN was "founded on the proposition that there can be neither stable peace nor common security without economic growth and prosperity, and the reverse holds equally true."<sup>74</sup>

In the late 1980s, changes in the balance of political-military power in East Asia affected the Asia-Pacific economic system. During the Cold War, the ASEAN member states had enjoyed their rapid economic growth on the basis of an export-oriented economic model, although they repeatedly expressed their concerns about such world economic issues as recessions, commodity prices

and protectionism throughout the 1980s. As indicated in Figure 1, their GDP growth stagnated in 1985, but the ASEAN member states, excepting the Philippines, achieved high GDP growth rates from 1986 to 1989, ranging from 5 to 14 percent. The ASEAN member states gained much from trade with Western states, especially the United States.

**Figure 1: ASEAN's GDP Growth (1985-1990)**



Source: The World Bank, "GDP Growth (annual %): 1961-2010,"

<http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG> (accessed November 22, 2011).

As the Cold War dissipated in the late 1980s, the world political economic structure began to change. Three changes in the world and regional economic balance affected Southeast Asia: the rise of regional economic blocs in the world, the establishment of APEC, and changes in US economic policy toward East Asia.

First, there was political momentum for regional economic integration among developed states, especially in Europe and North America. Europe, aiming to establish a free trade area among the European Community members, attempted to realize its objective through a vision of the 1957 Treaty of Rome in the late 1980s, which resulted in the 1992 Single European Act that envisioned a single market among its members. Meanwhile, the United States signed a free trade agreement with Canada in 1988 and began negotiating a free trade agreement with Mexico in 1991, the three countries eventually forming the North American Free Trade Area (NAFTA) in 1994. The United States reassured that NAFTA would not become a trading bloc by stating, "[NAFTA's] purpose is to eliminate internal barriers among its participants so as to increase their efficiency, productivity, and growth. Growth will expand markets for Asian traders and investors, thus strengthening, not weakening, trans-Pacific links."<sup>75</sup> However, from the perspective of developing states, the European and North American trade arrangements contained the potential for creating trading blocs. In fact, in late 1990, when the prospects of successful Uruguay Round negotiations on agricultural reforms grew bleak due to US-European Union disagreements, primary commodity producing states, including the ASEAN member states, became concerned about the future impact of regional trade agreements among developed states.

Second, the first inter-governmental economic institution in the Asia-Pacific region, APEC, was established in 1989. Although several forums already existed in the Asia-Pacific region, such as Pacific Trade and Development (PAFTAD), the Pacific Basin Economic Council (PBEC) and the Pacific Economic Cooperation Council (PECC), these were basically non-governmental orga-



nizations.<sup>76</sup> Established through initiatives by Japan and Australia, the APEC forum became the very first multilateral intergovernmental organization in the Asia-Pacific region, with the primary objectives of enhancing economic cooperation and promoting market economy in the region. Although APEC was said to be an informal forum at its inception, it became institutionalized as a formal organization after the first meeting in 1992, establishing a secretariat, expanding its agendas into telecommunications, human resource development, energy, marine resources and tourism, and holding the first summit meeting among the leaders of the member states in 1993.

Third, US economic policy towards the Asia-Pacific region changed in important ways at the end of the Cold War. During the Cold War, the US support for ASEAN member states as well as other East Asian states was based on its view that ASEAN and regional partners could act as a political and military shield against communism in Southeast Asia. To this end, the United States was willing to provide economic support to East Asian states, including the ASEAN member states.<sup>77</sup> Also, the United States explicitly applauded ASEAN's efforts in economic cooperation during the Cold War for being a "model for regional cooperation."<sup>78</sup> However, after the Cold War, with the Soviet threat gone, the United States began to alter its economic policy in three significant ways. First, it linked democratization and human rights protection to international trade negotiations, over labor rights, for example. Second, it emphasized the importance of the APEC forum to implement US economic policies. Third, Washington prioritized economic policy in its foreign policy in order to reduce its burgeoning trade deficit.<sup>79</sup> In 1990, Richard H. Solomon, Assistant Secretary of State for East Asian and Pacific Affairs, stated, "national security is increasingly reckoned in economic terms, [and] the international standing of a state is now less a matter of military might than of scientific and commercial capabilities, of environmental health, of political and social vitality."<sup>80</sup>

In other words, while promoting its democratic and human rights values in the world, the United States also regarded the world economy as the most important issue in the post-Cold War era, and its focus shifted toward the Asia-Pacific region, where the most rapid economic growth was taking place.

Indeed, the United States became more proactive in shaping the regional economic structure in the Asia-Pacific and maintained its political and economic influence. This prioritization is well illustrated in the United States' use of the concept 'Pacific Community.' During the Bush administration, the concept of the 'Pacific Community' was used to "visualize the structure of US engagement in the Pacific," with three components: providing security through the US bilateral alliance network in East Asia; fostering economic integration and sustaining market-oriented growth through APEC; and supporting democratization in East Asia.<sup>81</sup> In 1993, President Clinton further developed this idea into the 'New Pacific Community.' According to his speech made in Japan in July 1993, the core of the New Pacific Community would be the United States and Japan working to promote an open market, trade, and democratization in the region, and APEC would be the key institution for promoting these goals.<sup>82</sup>

For their part, the ASEAN member states were concerned about these changes. First, ASEAN was anxious about the rapid institutionalization of the APEC forum. The 1990 AMM joint communiqué stated the opinion that, "the APEC process should continue to be a loose, exploratory and informal consultative process, that the APEC process should not dilute ASEAN's identity and that it should not be directed towards the establishment of an economic trading bloc."<sup>83</sup> This concern was based on the fact that APEC's institutionalization beyond a loose, informal format would politically and economically marginalize ASEAN in the Asia-Pacific region. Second, while ASEAN had explicitly showed their concern about rising protectionism among developed states since 1980, especially on agricultural goods, the failure of the 1991 Uruguay Round negotiation deepened ASEAN's concern. In November 1991, the ASEAN Economic Ministers Meeting (AEM) produced the "ASEAN Statement on the Uruguay Round at the Asia Pacific Economic Cooperation

Ministerial Meeting,” which expressed its concern regarding the failure of the Uruguay Round negotiation on agricultural goods.<sup>84</sup> Third, the issues of democratization and human rights that the United States and European states prioritized became another concern for several ASEAN member states. Although those issues were never imposed on the ASEAN member states, the countries perceived the political and economic pressures in the international community. For example, then Malaysian Prime Minister Mohamad Mahathir argued in 1991 that ASEAN would not dispute the value of democratic freedom and human rights, but there was more than one definition of democracy and when “human rights are linked to trade, investment, and finance [ASEAN] cannot but view them as added conditionalities and protectionism by other means.”<sup>85</sup>

Thus, the three important changes in the political economic structure in the Asia-Pacific set the stage for ASEAN’s institutional response with respect to the member states’ economic and political security interests, generating such ideas as the East Asian Economic Group (EAEG)/East Asian Economic Caucus (EAEC). Eventually, when the Asian financial crisis began to unfold in mid-1997, the United States demanded a structural reform in the affected states, the bailout was delayed, and the crisis spread in the region; in these conditions, ASEAN’s institutional transformation accelerated, leading to the creation of ASEAN+3.

## **(2) Uncertain Regional Political Economy: Hedging by Institution-Building**

With regard to its economic security, ASEAN’s assessment of changes in the economic structure of the Asia-Pacific region in the period from 1988 to 1997 oscillated between uncertain and negative. This period can be divided into three phases: the first phase from 1988 to 1990, the second from 1991 to 1992, and the third from 1993 to 1997.

In the first phase, the ASEAN member states held uncertain perspectives on world and regional economic trends, and they were relatively sanguine about ASEAN’s utility for their economic security interests. ASEAN had been concerned about world economic trends, including the rising protectionism and the formation of free trade areas among developed states. In fact, from 1988 to 1990, ASEAN countries recognized the deepening international economic interdependence and repeatedly expressed their concerns about the slow progress of the Uruguay Round negotiations and the possibility of a world economic recession affecting their economic growth. This concern was particularly strong in Indonesia and Malaysia.<sup>86</sup> In 1989, Malaysian Foreign Minister Abu Hassan Omar stated that world economic trends were different from the world political scene in the wake of the superpower détente; threats of protectionism were “a major danger to the sustained and stable growth of ASEAN economies”; he continued to say that if the current economic situation should continue, ASEAN member states’ economies would be devastated due to their export-oriented development strategy.<sup>87</sup> Likewise, Thai Foreign Minister Siddhi Savetsila stated that “ASEAN cannot become rattled,” because “global economic adjustments create uncertainties and strain traditional links, where the reality of economic interdependence has become accepted but at the same time has created the enormous challenge of proper management of such interdependence.”<sup>88</sup>

Yet, the ASEAN member states’ assessment of the utility of ASEAN for economic cooperation was rather positive. Since the 1987 Manila Declaration, which set new institutional objectives for economic cooperation, ASEAN also reconfirmed the member states’ commitment to further consolidate intra-regional economic cooperation and collective stances in international negotiations. When the member states generally agreed to enhance economic cooperation in the Asia-Pacific region through APEC, they began to consider whether such an institution would be a political and economic impediment to ASEAN, forging a political alliance to shape the form of APEC.<sup>89</sup> Moreover, Indonesian Foreign Minister Alatas argued that ASEAN had possessed increasingly similar perspectives on the international economic negotiations.<sup>90</sup> In this sense, despite their concerns over the global and regional economic uncertainty, the ASEAN member states ex-

pected that ASEAN's cohesion would lead to a positive outcome, including the GATT Uruguay Round scheduled for December 1991.<sup>91</sup>

In the second phase between 1991 and 1992, however, several ASEAN member states perceived increased uncertainty in the world economy mainly due to the failure of the Uruguay Round negotiations in late 1990. For example, despite ASEAN's continuing efforts to induce a successful outcome of the negotiation and ASEAN's sustained economic growth, Filipino Foreign Minister Raul Manglapus warned that even though the Uruguay Round negotiation continued, it would possibly collapse again.<sup>92</sup> A more serious warning came from Malaysian Prime Minister Mahathir at the 1991 AMM; he expressed his disappointment at the failed outcome of the Uruguay Round and stressed the dire consequences of the world economic trend for the security of developing states: "In the ASEAN experience, we have learnt that both at the national and regional levels, peace and security, democracy and freedom as well as stability are possible and sustainable *only when* the people are free from economic deprivation and have a stake in the national life."<sup>93</sup> Brunei also emphasized the important role that economics plays in security issues.<sup>94</sup> The ASEAN member states argued that economic stability was the most important source of political and social development in Southeast Asia, which was then threatened by the economic policies of developed states. Accordingly, ASEAN expressed in the 1991 AMM joint communiqué its detailed concerns regarding the emergence of regional economic groupings and new conditionalities for development assistance, including human rights considerations.<sup>95</sup>

ASEAN responded to the Uruguay Round's failure with two institutional proposals. One proposal focused on intra-ASEAN economic integration, such as a Thai proposal to strengthen ASEAN's economic integration through the formation of the ASEAN Free Trade Area (AFTA), which had started with the 1987 Manila declaration. The other was Malaysia's proposal for formulating the East Asian Economic Group (EAEG), later called the East Asian Economic Caucus (EAEC), which was said to be not a trading bloc but a regional consulting group.<sup>96</sup> Understanding that the EAEG concept might be seen as a potential trading bloc in East Asia, Alatas stressed that given the rise of regional trading arrangements in other areas of the world and the collapse of the Uruguay Round, the EAEG proposal was "an understandable reaction."<sup>97</sup> Singapore viewed this situation as the outcome of changes in the strategic environment in East Asia: now that the Cold War had ended, the Western powers, whose earlier support had helped ASEAN economies sustain relatively high economic growth, were less interested in supporting ASEAN than they were during the Cold War.<sup>98</sup> Although ASEAN had yet to reach consensus on the EAEG concept, it was taken into consideration.

This increased uncertainty was temporarily mitigated after the 1992 ASEAN summit officially decided to pursue AFTA. Admittedly, the ASEAN member states still considered access to the US and European markets vital for their own economic security and the standstill in the Uruguay Round harmful to ASEAN's economic interests. Nevertheless, by setting its own economic objective in the form of AFTA—to consolidate ASEAN's voice and make ASEAN economically competitive and utilize APEC to foster economic cooperation in the Asia-Pacific region—ASEAN thought that it had attained a diplomatic tool to influence the decisions of GATT. Singaporean Foreign Minister Wong Kan Seng stated that regional economic arrangements, such as AFTA and APEC, were not only means to increase trade and investment, but also "insurance policies" against economic uncertainty.<sup>99</sup> Also, Omar argued that the purpose of the EAEC was to produce a "distinct and united East Asian voice" for the "writing of the new rules for global trade and economic interaction."<sup>100</sup> In this sense, ASEAN saw APEC as the gateway for ASEAN to connect with economies outside the region, EAEC as a regional connection, and AFTA as an intra-regional connection.

The third phase between 1993 and 1997 saw relative stasis in ASEAN's expectations. During this period, ASEAN concentrated on the institutionalization of regional economic frameworks,

such as EAEC, AFTA and the Asia-Europe Meeting (ASEM). Yet, when the 1997 Asian financial crisis came, the institutionalization process of EAEC was accelerated. At the beginning, unlike in 1991, the ASEAN member states believed that they would be able to sustain their economic growth. At the 1997 AEM, the ASEAN economic ministers showed their confidence in maintaining their countries' high growth rates due to "strong economic fundamentals, abundant investment opportunities, high savings ratio and consistent application of sound, market-oriented and outward looking policies."<sup>101</sup> This, however, turned out to not be the case. Facing the economic setbacks that came in 1997, the ASEAN countries discussed the crisis at the occasion of the informal ASEAN Summit that year with the three Northeast Asian countries, Japan, China and South Korea, leading to the formation of the ASEAN+3 framework.

In sum, the period between 1988 and 1997 saw the long process of institutionalization leading to the formation of ASEAN+3. In the late 1980s, ASEAN member states found the political alliance through ASEAN useful in shaping the format of APEC; however, the expectations for ASEAN's institutional utility in producing favorable outcomes in international economic negotiations wavered and the member states' anxieties grew. Accordingly, the association began to hedge against this uncertainty by creating a new regional framework, ASEAN+3.

At this time, ASEAN faced an institutional dilemma. On the one hand, the group considered that its collective stance in the international economic negotiation would not be strong enough to influence the outcome of the Uruguay Round. On the other hand, ASEAN still saw its utility in influencing the decision-making process within the region, as was evident in the establishment of APEC and the consensus, and in cooperation among the ASEAN member states.

In the face of this dilemma, ASEAN undertook institutional transformation: institutional consolidation and layering. ASEAN put forth proposals, including one for AFTA and one for EAEG, to enhance its institutional utility. In this sense, the seeds of the formation of ASEAN+3 were planted in 1992, and the process of institutional transformation up to this point culminated during the 1997 Asian financial crisis.

### **(3) Institutionalizing ASEAN Centrality in Southeast Asia and East Asia**

ASEAN's main collective concern with regard to economic issues during this period was to secure economic growth by maintaining regional autonomy. Its interest in regional autonomy was very evident in the discussions between ASEAN and non-ASEAN countries in the late 1980s on the creation of APEC. Chief among ASEAN's concerns was becoming politically and economically marginalized in the region if APEC were to be led by outside powers. In order to project its influence into APEC, the ASEAN members attempted to reach a common stance toward APEC through internal discussion, and this led to the so-called Kuching Consensus in 1990, aimed at maintaining APEC as an informal and non-institutionalized economic arrangement.<sup>102</sup> The regional powers, especially Australia and Japan, also took ASEAN's concerns into account and jointly decided on the format of the APEC process. While ASEAN members' political alliances had some effects on international economic decision-making processes, they grew anxious over whether the current institutional framework could sustain its effectiveness.

On the other hand, ASEAN's attempts to increase and maintain economic growth faced a severe challenge in late 1990, when the Uruguay Round negotiation failed. Given ASEAN's interest in promoting open markets in agricultural goods and its sustained efforts to negotiate as a united group with developed countries, the Uruguay Round's failure made several ASEAN member states realize that the current institutional framework, including the ASEAN-PMC, was no longer as effective as they had previously thought. This consideration led to two institutional innovations among the ASEAN member states: one focused on the enhancement of ASEAN's economic cooperation and the other on the enhancement of its political leverage in the global setting.



First, several ASEAN member states began to accelerate their cooperative efforts in the economic field. For example, the Philippines proposed an ASEAN Treaty of Economic Cooperation, Indonesia a Common Effective Preferential Tariff (CEPT) scheme on a sector-by-sector basis, and Thailand an ASEAN Free Trade Area (AFTA). Although not all of the proposals were approved at the 1992 ASEAN Summit, all aimed at strengthening ASEAN's economic capabilities, which involved not only sustaining its economic growth but also enhancing its presence in international economic negotiations. In fact, Mahathir stated in 1991, "An ASEAN supported by economic strength will have a stronger voice in international negotiations for fairer trade terms with the developed countries."<sup>103</sup> Since an institutional consensus to strengthen intra-ASEAN economic linkages already existed among the member states, these initiatives were supported by all ASEAN members throughout the 1990s.

Second, Malaysia proposed the concept of EAEG, its membership to be limited to countries in East Asia to increase their political influence in international economic negotiations and thus make possible an expanded political alliance within the region. The Uruguay Round showed that ASEAN countries had not yet attained the goal of enhancing their individual and collective economic capabilities; therefore, the EAEG concept envisaged the inclusion of other states in the political alliance with respect to international economic negotiations. Mahathir stated, "if the whole of East Asia tells Europe that it must open up its markets, Europeans will know that access to the huge Asian market obliges them not to be protectionist."<sup>104</sup> Admittedly, the initial idea of the EAEG was ambiguous; while Mahathir seemingly rejected the idea that the EAEG would become a regional trading bloc, Malaysian Minister of Industry Lim Keng Yaik pointed out that an "Asian trade bloc" could counter the emergence of protectionism and other regional trading blocs.<sup>105</sup> Yet, the ASEAN countries' initial reactions to the proposal were relatively positive; Brunei, Indonesia, the Philippines and Singapore immediately showed their readiness to explore the concept by setting up the Senior Official Meetings (SOM).<sup>106</sup> Subsequently, the ASEAN-ISIS supported the concept and stated that the proposed grouping could "strengthen ASEAN's voice in regional and international economic affairs."<sup>107</sup> The name of EAEG was changed to EAEC, as the original connoted a trading bloc, and it continued to be discussed by the AMM until 1997, when the first informal ASEAN+3 meeting was convened.<sup>108</sup>

As the membership was expected to expand beyond Southeast Asia, the process of the establishment of ASEAN+3 was not straightforward. The initial idea of EAEC was significantly modified through internal discussions as well as discussions with other East Asian countries.

First, the non-ASEAN economic powers, namely the United States and Japan, implicitly opposed or hesitated to support the EAEC idea. While China supported the concept from the beginning,<sup>109</sup> the United States, wanting to make APEC a central institution to foster economic cooperation in the Asia-Pacific region, considered EAEC as a potential rival to APEC and criticized it in the early 1990s. For example, in 1991, US Ambassador to Japan Michael Armacost said that the United States was concerned about the concept because it would "diminish" APEC.<sup>110</sup> Secretary of State James Baker said, "in private, I did my best to kill [EAEC]," implying that the United States put strong pressure on Japan to not support the EAEC concept.<sup>111</sup> In 1992, Assistant Secretary of State for East Asian and Pacific Affairs Richard Solomon cautioned that while AFTA was compatible with GATT, the development of exclusionary groupings would be "very costly for trading partners" and "go against the trend toward Pacific economic interdependence."<sup>112</sup> Japan also hesitated to support the EAEC proposal, as it would likely further provoke the United States in the context of US-Japan trade frictions.

Second, ASEAN's internal debate proved EAEC to be a less clear concept than some had assumed. Since most of the ASEAN member states, such as Thailand and the Philippines, had strong trade relations with the United States, they were not willing to establish an economic group that would exclude the United States. While Singaporean Prime Minister Goh Chok Tong supported

the idea as long as it was “consistent with GATT; did not build trade barriers; and supplemented the work of APEC,”<sup>113</sup> he was concerned that the original EAEC concept would be diluted if it were subsumed by the APEC framework rather than established as an independent framework. Eventually, in the 1993 AMM, the ASEAN foreign ministers agreed that EAEC was “a caucus within APEC.”<sup>114</sup>

Despite these conceptual and political developments, ASEAN gradually shaped the ASEAN+3 framework through two institutional processes. First, ASEAN continued discussion about the realization of EAEC. Especially after assuming its leading role in putting EAEC in place, AEM decided in 1993 to order the Secretary-General of ASEAN to consult with EAEC’s prospective members and prepare a report for further consideration.<sup>115</sup> Through these consultations, ASEAN began to discuss the agenda for economic cooperation with the prospective members of EAEC, and in 1996 ASEAN set an agenda with the specific task of developing a program for the development of small and medium enterprises and human resources. This agenda was also discussed in the first informal ASEAN+3 Summit in 1997.<sup>116</sup> Second, the ASEM process provided ASEAN with a justification for inviting “East Asian” states to discussions with European counterparts. After Goh proposed the Asia-Europe economic meetings in Paris at the occasion of the World Economic Forum in October 1994 and the proposal was approved by both ASEAN and EU in 1995, ASEAN invited Japan, China and South Korea.<sup>117</sup> In fact, when Asian foreign ministers met in Phuket to prepare for the first ASEM meeting in 1996, Mahathir argued that it was “a meeting of the EAEC countries.”<sup>118</sup>

At this time, changes in Washington’s attitude were also helpful in moving these processes along; the United States became less critical of the EAEC concept in the mid-1990s. According to Joan Spero, US Under-Secretary of State for Economic, Business and Agricultural Affairs, the United States would not oppose EAEC “as long as it did not split the Pacific Rim down the middle.”<sup>119</sup> Furthermore, when ASEAN and the EU decided to convene ASEM in 1995, Sandra Kristoff, the US ambassador-designate to APEC, stated that the ASEM summit was not a threat to APEC because APEC had already been firmly consolidated.<sup>120</sup>

Admittedly, the idea of EAEC contradicted ASEAN’s institutional security preference, i.e., regional autonomy. Since the EAEC concept needed to be discussed with non-ASEAN member states,<sup>121</sup> the idea was inevitably influenced by outside powers, a consequence that was seen as compromising ASEAN’s preference. Nonetheless, ASEAN’s autonomy was essentially maintained as it undertook institutional layering rather than having to displace and restructure ASEAN itself. Furthermore, ASEAN attempted to maintain the association’s centrality in regional discussions so that it could ultimately shape the agenda.

When the 1997 Asian financial crisis occurred, ASEAN accelerated not only the institutionalization of EAEC into ASEAN+3 but also the modification of its institutional security preferences, i.e., ASEAN centrality and regional autonomy. While the United States had repeatedly assured the regional economies of its commitment to the Asia-Pacific region and to the institutionalization of APEC during the 1990s, the United States was unwilling to financially bail out Asian member states during the crisis. Regional institutions such as APEC and ASEAN were incapable of alleviating the economic woes facing the regional countries. Instead, the International Monetary Fund, along with the United States, demanded structural reform in the Asian economies, including lower public spending, higher interest rates and a floating exchange rate system, and the United States categorically rejected Japan’s proposal for institutionalizing the Asia Monetary Fund (AMF) to deal with the ongoing crisis.<sup>122</sup> These political pressures from the United States and the IMF convinced ASEAN members that they needed to strengthen their regional autonomy through the establishment of a regional mechanism to deal with a future economic crisis without subjecting themselves to dominance by outside powers. Consequently, while the initial discussion of ASEAN+3 focused on the mechanism for regional financial stability, the group’s agenda expanded

into other fields, including trade and political security, especially after ASEAN+3 study groups, namely the East Asia Vision Group (EAVG) and the East Asia Study Group (EASG), produced recommendations in 2001 and 2002 respectively, which included such issue areas as human security and non-traditional security.<sup>123</sup> Despite the fact that the term “East Asia” was used instead of ASEAN, these groups were ultimately established under the ASEAN+3 framework, and they were not to threaten ASEAN’s centrality, at least in the short term.

## 5. Conclusion

By tracing the process of the establishment of ARF and ASEAN+3, the foregoing analysis illustrated why and how ASEAN’s institutional transformation, namely institutional layering, occurred in the period between 1988 and 1997. The changes in the regional balance of power mainly due to the US-Soviet détente, in addition to the strategic and economic uncertainty in the Asia-Pacific, set the stage for ASEAN member states’ reassessment of regional developments. They reconsidered the institutional utility of ASEAN for their security.

There are differences between ASEAN’s behavior with regard to politico-military security issues and political economic security issues. In the former field, ASEAN perceived a potential power vacuum in Southeast Asia due to US disengagement, and it attempted to fill it by itself. However, ASEAN did not employ the conventional balance-of-power strategy, balancing or bandwagoning. Instead, it created an inclusive cooperative security mechanism, the ARF, by adding a new institutional function to ASEAN in order to secure a reassurance mechanism and expand the channels of communication among the states in the Asia-Pacific. This move stemmed from ASEAN’s institutional security preference, the logic of ZOPFAN, to maintain regional stability. At the same time, since the mechanism would include outside powers, ASEAN forged a new preference to maintain its centrality. In the political economic issues, ASEAN also perceived uncertainty due to the emergence of regional trade blocs, the establishment of APEC, and changes in US economic policy. At this time, ASEAN continued to view its ability to influence the outcomes of international economic negotiations through the ASEAN-PMC as valid, as was shown in the establishment of APEC, but the effectiveness of this method became quite uncertain when the 1990 Uruguay Round negotiation failed. Thus, ASEAN members began their attempts to undertake institutional transformation by creating the EAEG concept to include non-ASEAN member states and thereby enhanced the influence of their political alliance. ASEAN gradually constructed the EAEC framework as an insurance policy, and this led to the establishment of ASEAN+3 when the Asian financial crisis occurred. In order to maintain regional autonomy, as in the formation of the ARF, ASEAN created the ASEAN+3 framework without restructuring itself.

Although the foregoing study of the two cases does not comprehensively test the three hypotheses posited at the outset and there are limits to how far generalizations about the institutional transformation of SOIs can go, the process of the establishment of ARF and ASEAN+3 basically followed the logic behind those hypotheses. That is, the impact of the end of the Cold War on East Asia set the stage and triggered ASEAN’s institutional transformation. ASEAN’s perception of uncertainty prompted the addition of new “security” functions to the institution, here called “institutional layering,” and the institutional security preference, mainly regional autonomy and ASEAN centrality, influenced the direction of institutional transformation. In this sense, the analysis sheds a new, more nuanced light on why and how institutional transformation occurred in the period between 1988 and 1997. It is difficult to explain this process using the current mainstream IR theories, such as neo-realism, institutionalism, and social constructivism.

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## Notes

- <sup>1</sup> For example, see John Mearsheimer, "Back to the Future: Instability in Europe after the Cold War," *International Security*, Vol. 15, No. 4 (Summer 1990), pp. 5-56; Kenneth Waltz, "Structural Realism after the Cold War," *International Security*, Vol. 25, No. 1 (Summer 2000), pp. 5-41.
- <sup>2</sup> Helga Haftendorn, Robert O. Keohane and Celeste A. Wallander, eds., *Imperfect Unions: Security Institutions over Time and Space*, New York: Oxford University Press, 1999, p. 33.
- <sup>3</sup> For examples, see *ibid.*; John Ikenberry, *After Victory: Institutions, Strategic Restraint and the Rebuilding of Order after Major Wars*, New Jersey: Princeton University Press, 2001.
- <sup>4</sup> Peter M. Haas and Ernst B. Haas, "Pragmatic Constructivism and the Study of International Institutions," *Millennium: Journal of International Studies*, Vol. 31, No. 3 (2002), p. 582.
- <sup>5</sup> For an example, Jeffrey Checkel, "The Constructivist Turn in International Relations Theory," *World Politics*, Vol. 50, No. 2 (Jan. 1998), pp. 324-348; Dale Copeland, "The Constructivist Challenge to Structural Realism: A Review Essay," *International Security*, Vol. 25, No. 2 (Autumn 2000), pp. 187-212; Haas and Haas, "Pragmatic Constructivism and the Study of International Institutions," pp. 573-601; John Gerard Ruggie, "What Makes the World Hang Together? Neo-utilitarianism and the Social Constructivist Challenge," *International Organization*, Vol. 52, No. 4 (1998), pp. 855-885; Alexander Wendt, *Social Theory of International Politics*, Cambridge: Cambridge University Press, 1999.
- <sup>6</sup> "Security-oriented institutions" are defined here as multipurpose state-based groups whose original purposes are implicitly derived from the political/military security interests of member states. This article focuses on security-oriented institutions led by small powers.
- <sup>7</sup> See Niles Eldredge, *Reinventing Darwin: The Great Debate at the High Table of Evolutionary Theory*, New York: John Wiley & Sons, 1995; Stephen Krasner, "Review: Approaches to the State: Alternative Conceptions and Historical Dynamics," *Comparative Politics*, Vol. 16, No. 2 (January 1984), pp. 223-246.
- <sup>8</sup> For the official use of the term 'ASEAN+3,' see Takashi Terada, "Constructing an 'East Asian' Concept and Growing Regional Identity: From EAEC to ASEAN+3," *The Pacific Review*, Vol. 16, No. 2 (2003), p. 264.
- <sup>9</sup> ASEAN Secretariat, "Joint Communiqué of the 22<sup>nd</sup> ASEAN Ministerial Meeting, Bandar Seri Begawan, 3-4 July 1989," <http://www.aseansec.org/3670.htm> (accessed July 18, 2011).
- <sup>10</sup> ASEAN Secretariat, "Joint Communiqué of the 23<sup>rd</sup> ASEAN Ministerial Meeting, Jakarta, 24-25 July 1990," <http://www.aseansec.org/3669.htm> (accessed July 18, 2011).
- <sup>11</sup> While Track I refers to official meetings between states, Track II is unofficial and informal meetings, usually consisting of policy-makers as well as academics participating in a private capacity. Track 1.5 refers to an unofficial meeting, but consists of academics and researchers in addition to policy-makers as government officials.
- <sup>12</sup> ASEAN Secretariat, "Joint Communiqué of the Twenty-Fourth ASEAN Ministerial Meeting, Kuala Lumpur, 19-20 July 1991," <http://www.aseansec.org/3668.htm> (accessed July 18, 2011).
- <sup>13</sup> In 1987, ASEAN held the 3<sup>rd</sup> ASEAN Summit in Manila, the Philippines. Although its agenda included political developments, it never included the word "security." See ASEAN Secretariat, "Joint Communiqué of the Third ASEAN Heads of Government Meeting, Manila, 14-15 December 1987," <http://www.aseansec.org/5107.htm> (accessed July 18, 2011); ASEAN Secretariat, "Singapore Declaration of 1992, Singapore, 28 January 1992," <http://www.aseansec.org/5120.htm> (accessed July 18, 2011).
- <sup>14</sup> ASEAN Secretariat, "Singapore Declaration of 1992."
- <sup>15</sup> ASEAN Secretariat, "Joint Communiqué of the Twenty-Sixth ASEAN Ministerial Meeting, Singapore, 23-24 July 1993," <http://www.aseansec.org/3666.htm> (accessed July 18, 2011).
- <sup>16</sup> *Ibid.*
- <sup>17</sup> ASEAN Secretariat, "Joint Communiqué The Third ASEAN Heads of Government Meeting, Manila, 14-15 December 1987," <http://www.aseansec.org/5107.htm> (accessed July 18, 2011); "Manila Declaration, Philippines, 15 December 1987," <http://www.aseansec.org/5117.htm> (accessed July 18, 2011).
- <sup>18</sup> ASEAN Secretariat, "Joint Communiqué of the 23<sup>rd</sup> ASEAN Ministerial Meeting, Jakarta, 24-25 July 1990."
- <sup>19</sup> ASEAN Secretariat, "ASEAN Economic Ministers Declaration on the Uruguay Round, Luxembourg, 1 June 1991," <http://www.aseansec.org/6156.htm> (accessed July 18, 2011).



- 20 "Joint Press Statement, The Twenty-Third Meeting of the ASEAN Economic Ministers, Kuala Lumpur, Malaysia, 7-8 October 1991," in ASEAN Secretariat, *ASEAN Documents Series: 1991-1992, Supplementary Edition*, Jakarta: ASEAN Secretariat, 1992, pp. 31-32.
- 21 ASEAN Secretariat, "Overview," <http://www.asean.org/11491.htm> (accessed July 18, 2011).
- 22 Ibid.
- 23 Ibid.
- 24 ASEAN Secretariat, "Joint Communiqué of the Twenty-Sixth ASEAN Ministerial Meeting, Singapore, 23-24 July 1993"; "Joint Press Statement Twenty-Fifth Meeting of the ASEAN Economic Ministers (AEM) Singapore, 7-8 October 1993," in ASEAN Secretariat, *ASEAN Documents Series 1992-1994: Supplementary Edition*, Jakarta: ASEAN Secretariat, 1994, p. 26.
- 25 President Ronald Reagan, "National Security Strategy of the United States," *Department of State Bulletin*, Vol. 88, No. 2133 (April 1988), p. 24.
- 26 Michael Armacost, "The United States in the Changing Asia of the 1990s," *Department of State Bulletin*, Vol. 88, No. 2138 (September 1988), pp. 10-11.
- 27 US Department of Defense (DoD), *A Strategic Framework for the Asian Pacific Rim: Looking toward the 21<sup>st</sup> Century—Report to Congress (East Asia Strategic Initiative: EASI)*, Washington, DC, April 1990, p. 6.
- 28 Also, the US State Department had similar objectives. See "US Foreign Policy Priorities and FY 1991 Budget Request—Secretary Baker: Prepared Statement before the Senate Foreign Relations Committee, Washington, DC, February 1, 1990," *US Department of State Dispatch*, Vol. 1, No. 1 (September 3, 1990), pp. 1-10.
- 29 DoD, *EASI*, pp. 2-3.
- 30 Ibid., pp. 7-8.
- 31 For example, see Nigel Holloway, "Focus-Japan—Politics: Strong in One Way, Weak in Another," *Far Eastern Economic Review*, Vol. 144, No. 23 (June 8, 1989), p. 87; Rodney Taker, "Diplomacy: No Call to Arms: Takeshita Assures ASEAN that Japan Will Not Become Military Power," *Far Eastern Economic Review*, Vol. 138, No. 53 (December 31, 1987), p. 26.
- 32 Rodney Taker, "No Call to Arms"; Michael Vatikiotis, "Foreign Relations: Kaifu Soothes Fears over Japan's Political Plans: The Gentle Giant," *Far Eastern Economic Review*, Vol. 152, No. 20 (May 16, 1991), p. 11.
- 33 For example, Tommy Koh, Singapore's former ambassador to the UN, recognized Japan's position as prudential, and Indonesian Foreign Minister Ali Alatas said that Japan was acting within its rights. See Vatikiotis, "Kaifu Soothes Fears over Japan's Political Plans," p. 11.
- 34 "Yang Shangkun Warns Japan of 'Emotional Repulsion' over Dispatch of Troops," *Kyodo News Agency*, October 26, 1990 (accessed through Lexis Nexis, July 15, 2011).
- 35 "The Week," *Far Eastern Economic Review*, Vol. 136, No. 18 (April 30, 1987), p. 11.
- 36 "Indochina; Chinese Spokesman Rejects SRV Statement on Spratly Islands," *Xinhua*, June 18, 1987 (accessed through Lexis Nexis, July 15, 2011); Jerry Cushing, "Foreign Relations: Beached Again on Shoals: Sino-Vietnamese Relations Deteriorate over Spratlys," *Far Eastern Economic Review*, Vol. 139, No. 11 (March 17, 1988), p. 23.
- 37 "China Objects to Philippines Claim to Spratlys," *Xinhua*, December 2, 1987 (accessed through Lexis Nexis, July 15, 2011).
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- 39 "Vietnam Gives Further Details of Spratly Incident with China," *BBC Summary of World Broadcasts*, March 18, 1988 (accessed through Lexis Nexis, July 15, 2011); "One Killed, 74 Missing in Spratlys, Says Hanoi," *Sydney Morning Herald*, March 26, 1988 (accessed through Lexis Nexis, July 15, 2011).
- 40 DoD, *A Strategic Framework for the Asian Pacific Rim: Report to Congress (EASI II)*, Washington, DC, 1992, pp. 4-5 and 29.
- 41 Ibid., p. 5.
- 42 Ibid., p. 23.
- 43 ASEAN member states, including Thailand, Malaysia, Indonesia and the Philippines, mentioned the positive aspects of development in Cambodia. See ASEAN Secretariat, *21<sup>st</sup> ASEAN Ministerial Meeting and Post Ministerial Conferences with the Dialogue Partners, Bangkok, 4-9 July 1988*, Jakarta: ASEAN Secretariat, 1988, pp. 7-21.

- 44 ASEAN Secretariat, "Joint Communiqué, Twenty-Second ASEAN Ministerial Meeting, Bandar Seri Begawan, 3-4 July 1989," in ASEAN Secretariat, *ASEAN Documents Series 1988-1989: Supplementary Edition*, Jakarta: ASEAN Secretariat, 1989, p. 19.
- 45 "Opening Statement by H.E. Mr. Wong Kan Seng, Foreign Minister and Minister of Community Development of the Republic of Singapore, at the Twenty-Second ASEAN Ministerial Meeting, Bandar Seri Begawan, 3-4 July 1989," in ASEAN Secretariat, *22<sup>nd</sup> ASEAN Ministerial Meeting and Post Ministerial Conferences with the Dialogue Partners, Bandar Seri Begawan, 3-8 July 1989*, Jakarta: ASEAN Secretariat, 1989, p. 21.
- 46 For ASEAN ministers' assessments during this period, see ASEAN Secretariat, *22<sup>nd</sup> ASEAN Ministerial Meeting*, pp. 12-22; ASEAN Secretariat, *The 23<sup>rd</sup> ASEAN Ministerial Meeting, Jakarta, 24-25 July 1990*, Jakarta: ASEAN Secretariat, 1990, p. 7 and p. 15.
- 47 See ASEAN Secretariat, *The Twenty-Fourth ASEAN Ministerial Meeting and Post Ministerial Conferences with the Dialogue Partners, Kuala Lumpur, 19-24 July 1991*, Jakarta: ASEAN Secretariat, 1991, pp. 9-25.
- 48 ASEAN Secretariat, *The Twenty-Fifth ASEAN Ministerial Meeting and Post Ministerial Conferences with the Dialogue Partners, Manila, 21-26 July 1992*, Jakarta: ASEAN Secretariat, 1992, pp. 11-23.
- 49 "Inaugural Address by H.E. Mr. Goh Chok Tong, Prime Minister of Singapore, at the Twenty-Sixth ASEAN Ministerial Meeting, Singapore, 23 July 1993," in ASEAN Secretariat, *The Twenty-Sixth ASEAN Ministerial Meeting and Post-Ministerial Conferences with the Dialogue Partners, Singapore, 23-28 July, 1993*, Jakarta: ASEAN Secretariat, 1993, p. 9.
- 50 For example, see "Opening Statement by H.E. Squadron Leader Prasong Soonsiri, Minister of Foreign Affairs of Thailand, at the Twenty-Sixth ASEAN Ministerial Meeting, Singapore, 23 July 1993," in ASEAN Secretariat, *The Twenty-Sixth ASEAN Ministerial Meeting*, p. 11; "Opening Statement by H.E. Professor S. Jayakumar, Minister for Foreign Affairs of Singapore, at the Twenty-Seventh ASEAN Ministerial Meeting, Bangkok, Thailand, 22 July 1994," in ASEAN Secretariat, *The Twenty-Seventh ASEAN Ministerial Meeting*, p. 20.
- 51 "Opening Statement by H.E. Professor S. Jayakumar, Minister for Foreign Affairs of Singapore, at the Twenty-Seventh ASEAN Ministerial Meeting, Bangkok, Thailand, 22 July 1994," in ASEAN Secretariat, *The Twenty-Seventh ASEAN Ministerial Meeting*, pp. 20-21.
- 52 Jusuf Wanandi also argued that ASEAN aimed at maintaining the balance of military power in the region in the context of US military disengagement and creating a regional order for the entire Asia-Pacific region. However, it was not clear how the balance of military power in the region could be maintained through ASEAN. Jusuf Wanandi, "Peace and Security in Southeast Asia," *ASEAN-ISIS Meeting, June 2-4, 1991*, Jakarta, 1991, p. 35.
- 53 ASEAN member states, such as Malaysia, Indonesia and Singapore, were especially hesitant to pursue such ideas. See "Superpower Military Presence and the Security of Southeast Asia: Problems, Prospects and Policy Recommendations," Bangkok, May 10-13, 1990, in ASEAN ISIS, *A Time for Initiative: Proposals for the Consideration of the Fourth ASEAN Summit*, Jakarta: ASEAN Institutes of Strategic and International Studies, 1991, pp. 20-21; "Inaugural Address by H.E. Mr. Fidel V. Ramos, President of the Republic of the Philippines, at the Opening Ceremony of the Twenty-Fifth ASEAN Ministerial Meeting, Manila, Philippines, 21-22 July 1992," in ASEAN Secretariat, *The Twenty-Fifth ASEAN Ministerial Meeting*, p. 8.
- 54 "Inaugural Address by H.E. Mr. Goh Chok Tong, Prime Minister of Singapore, at the Twenty-Sixth ASEAN Ministerial Meeting, Singapore, 23 July 1993," in ASEAN Secretariat, *The Twenty-Sixth ASEAN Ministerial Meeting*, p. 9.
- 55 Indonesian Foreign Minister Ali Alatas articulated this by saying that ZOPFAN was "an evolutionary process to promote national and regional resilience and to seek the disentanglement of the region from the contending strategic designs of the great powers." See "Keynote Address by Ali Alatas to the United Nations Regional Disarmament Workshop for Asia and Pacific, in Disarmament," New York: United Nations Department for Disarmament Affairs, 1991, p. 14, cited in Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order*, 2<sup>nd</sup> ed., London: Routledge, 2009, p. 198; "Joint Communiqué, Twenty-First ASEAN Ministerial Meeting, Bangkok, 4-5 July 1988," in ASEAN Secretariat, *ASEAN Documents Series 1988-1989: Supplementary Edition*, Jakarta: ASEAN Secretariat, 1989, pp. 11-12.
- 56 For example, see "Inaugural Address by H.E. Mr. Goh Chok Tong, Prime Minister of Singapore, at

- the Twenty-Sixth ASEAN Ministerial Meeting, Singapore, 23 July 1993,” in ASEAN Secretariat, *The Twenty-Sixth ASEAN Ministerial Meeting*, p. 8.
- 57 “Inaugural Address by His Excellency President Soeharto of the Republic of Indonesia at the Opening Ceremony of the Twenty-Third ASEAN Ministerial Meeting at the State Palace, Jakarta, 24 July 1990,” in ASEAN Secretariat, *The 23<sup>rd</sup> ASEAN Ministerial Meeting*, p. 9.
- 58 “Opening Statement by the Hon. Roberto R. Romulo, Secretary of Foreign Affairs of the Republic of the Philippines, at the Twenty-Seventh ASEAN Ministerial Meeting, Bangkok, Thailand, 22 July 1994,” in ASEAN Secretariat, *The Twenty-Seventh ASEAN Ministerial Meeting*, p. 17.
- 59 “Building a New Pacific Community—President Clinton: Address to Students and Faculty at Waseda University, Tokyo, Japan, July 7, 1993 (opening remarks deleted),” *US Department of State Dispatch*, Vol. 4, No. 28 (July 12, 1993), p. 488.
- 60 Also, in September 1990, Foreign Minister Edward Shevardnadze suggested the creation of a pan-Asia foreign ministers summit meeting to be held in Vladivostok in 1993, while Gorbachev proposed a five-nation forum, consisting of the Soviet Union, the United States, China, Japan and India, to discuss Asia-Pacific security issues. Paul Evans, “Proposal for Confidence-building and Conflict Resolution Mechanisms for the Pacific: The Prospects for Multilateralism,” May 28, 1991, paper presented to the Fifth Asia-Pacific Roundtable on Confidence Building and Conflict Reduction in the Pacific, organized by ASEAN-ISIS, June 2-4, 1991, p. 12.
- 61 “Statement by H.E. Mr. Sosuke Uno, Minister of Foreign Affairs of Japan, at the Meeting between ASEAN and the Dialogue Partners, Bangkok, 7-9 July 1988,” in ASEAN Secretariat, *21<sup>st</sup> ASEAN Ministerial Meeting*, pp. 92-93.
- 62 Ibid.
- 63 “Statement by H.E. Mr. Taro Nakayama, Minister for Foreign Affairs of Japan, at the Meeting between ASEAN and the Dialogue Partners, Kuala Lumpur, 23 July 1991,” in ASEAN Secretariat, *The Twenty-Fourth ASEAN Ministerial Meeting*, p. 70.
- 64 “Statement by The Honorable Senator Gareth Evans, Minister for Foreign Affairs and Trade of Australia, at the ASEAN-Australia Dialogue Session, Jakarta, July 28, 1990,” in ASEAN Secretariat, *The 23<sup>rd</sup> ASEAN Ministerial Meeting*, p. 87.
- 65 “Statement by The Right Honorable Joe Clark, Secretary of State for External Affairs, at the Meeting between ASEAN and the Dialogue Partners, Jakarta, 28 July 1990,” in ASEAN Secretariat, *The 23<sup>rd</sup> ASEAN Ministerial Meeting*, p. 68.
- 66 Also, conceptually, CSCE was founded on “common security,” which stemmed from the concept of deterrence; it was not clear whether the proposed CSCA was based on “common security” or “cooperative security.” See David B. Dewitt, “Common, Comprehensive and Cooperative Security,” *The Pacific Review*, Vol. 7, No. 1 (1994), pp. 1-15; Hiro Katsumata, *ASEAN’s Cooperative Security Enterprise: Norms and Interests in the ASEAN Regional Forum*, New York: Palgrave Macmillan, 2009, pp. 61-63.
- 67 ASEAN-ISIS stands for ASEAN Institute of Strategic and International Studies, which is an association of non-governmental organizations registered with ASEAN and established in 1988. See “ASEAN-ISIS,” <http://www.siiiaonline.org/?q=node/2040> (accessed July 18, 2011).
- 68 ASEAN-ISIS, *A Time for Initiative*, p. 5.
- 69 Ibid.
- 70 Ibid.; “Superpower Military Presence and the Security of Southeast Asia: Problems, Prospects and Policy Recommendations,” Bangkok, May 10-13, 1990, in ASEAN-ISIS, *A Time for Initiative*, pp. 14-19.
- 71 The 1993 ASEAN joint communiqué noted ASEAN-ISIS’s contribution of the idea to develop security cooperation among the ASEAN member states. Also see the 1991 and 1993 ASEAN Ministerial Meeting Joint Communiqués.
- 72 ASEAN Secretariat, “Singapore Declaration of 1992, Singapore, 28 January 1992.”
- 73 Hiro Katsumata, *ASEAN’s Cooperative Security Enterprise*, pp. 68-69.
- 74 “Opening Statement by H.E. Mr. Ali Alatas at the Twenty-Fifth ASEAN Ministerial Meeting, Manila, Philippines 21-22 July 1992,” in ASEAN Secretariat, *The Twenty-Fifth ASEAN Ministerial Meeting*, pp. 20-21.
- 75 “The US and Japan: Global Partners in a Pacific Community—Secretary Baker: Address before the Japan Institute for International Affairs, Tokyo, Japan, November 11, 1991,” *US Department of State Dispatch*, Vol. 2, No. 21 (November 18, 1991), p. 843.
- 76 For details on the ideas and processes of establishing APEC, see Takeshi Terada, “The Origins of Ja-

- pan's APEC Policy: Foreign Minister Takeo Miki's Asia Pacific Policy and Current Implications," *The Pacific Review*, Vol. 11, No. 3 (1998), pp. 337-363.
- 77 For example, in 1986 when President Ronald Reagan visited the AMM, he said he was willing to bring ASEAN's economic issues, such as low commodity prices, the flow of investment and protectionism in the developed states, to the G7 Summit in Tokyo, although no real actions came from the G7 states. However, this stance shifted. "President's Address before ASEAN Ministerial Meeting, May 1, 1986," *Department of State Bulletin*, Vol. 86, No. 2112 (June 1986), p. 15.
  - 78 George Shultz, "ASEAN: A Model for Regional Cooperation," *Department of State Bulletin*, Vol. 87, No. 2124 (July 1987), p. 12.
  - 79 "The Strategic Priorities of American Foreign Policy—Secretary Christopher: Statement before the Senate Foreign Relations Committee, Washington, DC, November 4, 1993," *US Department of State Dispatch*, Vol. 4, No. 47 (November 22, 1993), p. 797.
  - 80 "Asian Security in the 1990s: Integration in Economics, Diversity in Defense—Richard H. Solomon, Assistant Secretary of State for East Asian and Pacific Affairs: Address at the University of California at San Diego, October 30, 1990," *US Department of State Dispatch*, Vol. 1, No. 10 (November 5, 1990), p. 248.
  - 81 James A. Baker III, "America in Asia: Emerging Architecture for a Pacific Community," *Foreign Affairs*, Vol. 70, No. 5 (Winter 1991), pp. 1-18; George Bush, "The U.S. and Asia: Building Democracy and Freedom," *United States Department of State Dispatch*, Vol. 2, No. 46 (November 18, 1991), p. 839; "The US and Japan: Global Partners in a Pacific Community—Secretary Baker: Address before the Japan Institute of International Affairs, Tokyo, Japan, November 11, 1991," *US Department of State Dispatch*, Vol. 2, No. 21 (November 18, 1991), p. 843.
  - 82 "Building a New Pacific Community—President Clinton."
  - 83 ASEAN Secretariat, "Joint Communiqué of the 23<sup>rd</sup> ASEAN Ministerial Meeting, Jakarta, 24-25 July 1990."
  - 84 It is noted that ASEAN recognized that the major powers, such as the United States, the European Commission and Japan showed their commitments to achieving the GATT objective. ASEAN Secretariat, "ASEAN Statement on the Uruguay Round at the Asia Pacific Economic Cooperation Ministerial Meeting, Seoul, 12-14 November 1991," <http://www.asean.org/976.htm> (accessed July 18, 2011).
  - 85 "Inaugural Address by the Honorable Dato' Seri Dr. Mahathir Bin Mohamad, the Prime Minister of Malaysia, at the Opening Ceremony of the Twenty-Fourth ASEAN Ministerial Meeting," in ASEAN Secretariat, *The Twenty-Fourth ASEAN Ministerial Meeting*, p. 8; "Interview/Ali Alatas: Live and Let Live," *Far Eastern Economic Review*, Vol. 153, No. 28 (July 11, 1991), p. 12.
  - 86 See ASEAN Secretariat, *21<sup>st</sup> ASEAN Ministerial Meeting*, p. 15; ASEAN Secretariat, *21<sup>st</sup> ASEAN Ministerial Meeting*, p. 17; ASEAN Secretariat, *21<sup>st</sup> ASEAN Ministerial Meeting*, p. 20.
  - 87 "Opening Statement by H.E. Dato' Haji Abu Hassan Hj Omar, Foreign Minister of Malaysia, at the Twenty-Second ASEAN Ministerial Meeting, Bandar Seri Begawan, 3-4 July 1989," in ASEAN Secretariat, *22<sup>nd</sup> ASEAN Ministerial Meeting*, p. 15.
  - 88 "Opening Statement by H.E. Air Chief Marshal Siddhi Savetsila, Foreign Minister of the Kingdom of Thailand, at the Twenty-Second ASEAN Ministerial Meeting, Bandar Seri Begawan, 3-4 July 1989," in ASEAN Secretariat, *22<sup>nd</sup> ASEAN Ministerial Meeting*, p. 26.
  - 89 At this time, Singapore registered a reservation to forge ASEAN as a political coalition within the APEC framework, while Indonesia and Thailand argued that ASEAN should use existing frameworks and maintain its centrality in order to maintain ASEAN cohesion. ASEAN Secretariat, *22<sup>nd</sup> ASEAN Ministerial Meeting*, pp. 12-26.
  - 90 "Opening Statement by H.E. Mr. Ali Alatas, Foreign Minister of the Republic of Indonesia at the Twenty-Second ASEAN Ministerial Meeting, Bandar Seri Begawan, 3-4 July 1989," in ASEAN Secretariat, *22<sup>nd</sup> ASEAN Ministerial Meeting*, p. 10.
  - 91 For example, Soeharto explicitly argued, "[ASEAN] should help ensure that the present GATT Uruguay Round is brought to a successful conclusion and a balanced outcome"; "Inaugural Address by His Excellency President Soeharto of the Republic of Indonesia at the Opening Ceremony of the Twenty-Third ASEAN Ministerial Meeting at the State Palace, Jakarta, 24 July 1990," in ASEAN Secretariat, *The 23<sup>rd</sup> ASEAN Ministerial Meeting*, p. 8.
  - 92 "Opening Statement by H.E. Mr. Raul S. Manglapus, Secretary of Foreign Affairs of the Philippines, at the Twenty-Fourth ASEAN Ministerial Meeting, Kuala Lumpur, 19 July 1991," in ASEAN Secretariat,



- The Twenty-Fourth ASEAN Ministerial Meeting*, p. 13.
- 93 Emphasis added; “Inaugural Address by the Honorable Dato’ Seri Dr. Mahathir Bin Mohamad, the Prime Minister of Malaysia, at the Opening Ceremony of the Twenty-Fourth ASEAN Ministerial Meeting,” in ASEAN Secretariat, *The Twenty-Fourth ASEAN Ministerial Meeting*, p. 8.
  - 94 “Opening Statement by His Royal Highness Prince Mohamed Bolkiah, Minister of Foreign Affairs of Brunei Darussalam, at the Twenty-Fourth ASEAN Ministerial Meeting, Kuala Lumpur, 19 July 1991,” in ASEAN Secretariat, *The Twenty-Fourth ASEAN Ministerial Meeting*, p. 22.
  - 95 “Joint Communiqué Twenty-Fourth ASEAN Ministerial Meeting, Kuala Lumpur, 19-20 July 1991,” in ASEAN Secretariat, *ASEAN Documents Series 1991-1992: Supplementary Edition*, Jakarta: ASEAN Secretariat, 1992, p. 22.
  - 96 “Inaugural Address by the Honorable Dato’ Seri Dr. Mahathir Bin Mohamad, the Prime Minister of Malaysia, at the Opening Ceremony of the Twenty-Fourth ASEAN Ministerial Meeting,” in ASEAN Secretariat, *The Twenty-Fourth ASEAN Ministerial Meeting*, p. 11. For details, see “(3) Institutionalizing ASEAN Centrality in Southeast Asia and East Asia” in the section “3. ARF—Looking Beyond Southeast Asia from 1988 to 1994” in this article.
  - 97 “Opening Statement by H.E. Mr. Ali Alatas, Minister for Foreign Affairs of the Republic of Indonesia, at the Twenty-Fourth ASEAN Ministerial Meeting, Kuala Lumpur, 19-20 July 1991,” in ASEAN Secretariat, *The Twenty-Fourth ASEAN Ministerial Meeting*, p. 28.
  - 98 ASEAN Secretariat, *The Twenty-Fourth ASEAN Ministerial Meeting*, p. 15.
  - 99 “Opening Statement by H.E. Mr. Wong Kan Seng, Minister for Foreign Affairs of Singapore, at the Twenty-Fifth of [sic] ASEAN Ministerial Meeting, Manila, Philippines, 21-22 July 1992,” in ASEAN Secretariat, *The Twenty-Fifth ASEAN Ministerial Meeting*, p. 10. Also see Hadi Soesastro, “ASEAN and APEC: Do Concentric Circles Work?” *The Pacific Review*, Vol. 8, No. 3 (1995), p. 478.
  - 100 “Opening Statement by H.E. Mr. Ali Alatas, at the Twenty-Fifth of [sic] ASEAN Ministerial Meeting, Manila, Philippines, 21-22 July 1992,” in ASEAN Secretariat, *The Twenty-Fifth ASEAN Ministerial Meeting*, pp. 20-21.
  - 101 “Joint Press Statement: The 29<sup>th</sup> ASEAN Economic Ministers Meeting (AEM), Subang Jaya, Malaysia, 16 October 1997,” in ASEAN Secretariat, *ASEAN Documents Series 1996-1997*, Jakarta: ASEAN Secretariat, 1997, p. 105.
  - 102 Hadi Soesastro, “ASEAN and APEC,” p. 484.
  - 103 “Inaugural Address by the Honorable Dato’ Seri Dr. Mahathir Bin Mohamad, the Prime Minister of Malaysia, at the Opening Ceremony of the Twenty-Fourth ASEAN Ministerial Meeting,” in ASEAN Secretariat, *The Twenty-Fourth ASEAN Ministerial Meeting*, p. 10.
  - 104 Mahathir Mohamad and Shintaro Ishihara, *The Voice of Asia: Two Leaders Discuss the Coming Century*, Tokyo: Kodansha International, 1996, p. 44.
  - 105 Michael Vatikiotis, Anthony Rowley, Doug Tsuruoka and Jae Hoon Shim, “Business Affairs: TRADE 1—Japan Negative about Leading Asian Economic Pact: Building Blocks,” *Far Eastern Economic Review*, Vol. 151, No. 5 (January 31, 1991), p. 32.
  - 106 ASEAN Secretariat, *The Twenty-Fourth ASEAN Ministerial Meeting*, pp. 13-28.
  - 107 ASEAN-ISIS, *A Time for Initiative*, p. 8.
  - 108 Mahathir explained that since the term “group” carried the connotation of a trading bloc, while “caucus” meant “a meeting to discuss things” (which was the initial objective of the concept), ASEAN changed the term from EAEG to EAEC. Mohamad and Ishihara, *The Voice of Asia*, p. 43.
  - 109 Michael Vatikiotis, “ASEAN B: Singapore Solution,” *Far Eastern Economic Review*, Vol. 156, No. 31 (August 5, 1993), p. 11.
  - 110 “Briefing-Business: US Opposes Mahathir over East Asia Group,” *Far Eastern Economic Review*, Vol. 151, No. 11 (March 14, 1991), p. 55.
  - 111 Baker said, “without strong Japanese backing, [EAEC] represented less of a threat to [America’s] economic interests in East Asia,” cited in Terada, “Constructing an ‘East Asian’ Concept,” p. 259.
  - 112 “America and Asian Security in an Era of Geoeconomics—Richard H. Solomon, Assistant Secretary for East Asian and Pacific Affairs, Address before the Pacific Rim Forum, San Diego, California, May 15, 1992,” *US Department of State Dispatch*, Vol. 3, No. 21 (May 25, 1992), p. 414.
  - 113 Vatikiotis, Rowley, Tsuruoka and Shim, “Japan Negative about Leading Asian Economic Pact,” p. 32.
  - 114 ASEAN Secretariat, “Joint Communiqué of the Twenty-Sixth ASEAN Ministerial Meeting, Singapore, 23-24 July 1993.”

- <sup>115</sup> “Joint Press Statement: Twenty-Fourth Meeting of the ASEAN Economic Ministers (AEM), Singapore, 7-8 October 1993,” in ASEAN Secretariat, *ASEAN Documents Series: 1992-1994, Supplementary Edition*, p. 26.
- <sup>116</sup> “The 28th ASEAN Economic Ministers Meeting (AEM), Jakarta, Indonesia, 12 September 1996,” in ASEAN Secretariat, *ASEAN Documents Series: 1996-1997, Supplementary Edition*, Jakarta: ASEAN Secretariat, 1997, p. 102.
- <sup>117</sup> See Richard Stubbs, “ASEAN Plus Three: Emerging East Asian Regionalism?” *Asian Survey*, Vol. 42, No. 3 (May-June 2002), p. 442.
- <sup>118</sup> “Asia-Europe Meeting Preparations: Malaysian Premier Says Phuket Conference Actually East Asia Economic Caucus Meeting,” Kuala Lumpur: RTM Television, February 5, 1996 (accessed through Lexis Nexis, July 15, 2011).
- <sup>119</sup> “ASEAN Meetings Seen as Just Talk by Skeptics,” *New Straits Times* [Kuala Lumpur] July 27, 1996, in Richard Stubbs, “ASEAN Plus Three,” p. 442.
- <sup>120</sup> Irene Ngoo, “Asia-Europe Summit No Threat to Forum, Says US,” *The Straits Times*, August 5, 1995 (accessed through Lexis Nexis, July 15, 2011).
- <sup>121</sup> The potential membership in the initial blueprint of the EAEG concept was said to include the ASEAN member states, Cambodia, Laos, Myanmar, Vietnam, China, Japan, South Korea, Hong Kong and Taiwan, while it excluded all Western states including the United States. Vatikiotis, Rowley, Tsuruoka and Shim, “Japan Negative about Leading Asian Economic Pact,” p. 32.
- <sup>122</sup> For more on the political discussions and maneuvers in East Asia during the Asian Financial Crisis, see Richard Stubbs, “ASEAN Plus Three,” pp. 448-449; Terada, “Constructing an ‘East Asian’ Concept,” p. 265.
- <sup>123</sup> EAVG was established in 1998 right after the first ASEAN+3 Summit in 1997. It consisted of intellectuals from ASEAN member states, China, Japan and South Korea and submitted its final report in 2001. EASG, which was established in 2001 and consisted of government officials, submitted its report in 2002. See East Asia Study Group, *Towards an East Asian Community: Region of Peace, Prosperity and Progress* (East Asia Vision Group Report 2001); East Asia Study Group, *Final Report of the East Asia Study Group*, submitted to ASEAN+3 Summit, Phnom Penh, Cambodia, November 4, 2002.

# The Security Governance of the European Union and China Regarding the Nuclear Program of Iran: Future Security Cooperation?

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## Abstract

*This paper seeks to analyze the foreign policies pursued by the European Union and the People's Republic of China towards the nuclear program of Iran from the perspective of security governance. Due to changes in the international security architecture, where individual states cannot manage nuclear proliferation issues alone, it is argued that the non-traditional perspective of security governance might be useful when viewing contemporary challenges to non-proliferation. It is also argued that security governance as a theoretical model can aid in explaining the policies pursued by the EU and China towards the nuclear program of Iran, where a move towards governance and fragmentation of political authority can be observed. Based upon this analysis, it is lastly discussed what some of the differences between the security governance of the EU and China suggest for possible future security cooperation on nuclear non-proliferation.*

## 1. Introduction

Since the fall of the Soviet Union the nature of nuclear proliferation as a security threat has changed, yet its urgency remains, albeit for somewhat different reasons. The unregulated spread of nuclear knowledge to terrorist groups or countries in need of energy has arguably rendered states unable to manage proliferation challenges alone, and therefore, this article argues that additional perspectives that can supplement the current state-centric approaches should be explored. More precisely, it examines the desirability and feasibility of a security governance approach to enhancing EU-Chinese cooperation regarding Iran's nuclear development, one of the most urgent proliferation challenges today. Having historically been characterized as a strictly traditional and interstate security threat, nuclear proliferation should be viewed as a global security concern with the potential to threaten both European and Chinese stability, for example, through unregulated proliferation or the breakdown of the nuclear non-proliferation treaty.

The case of Iran is considered crucial as Iran is thought to be capable of spreading nuclear development knowledge; in addition, its potential development of nuclear weapons, while being a nuclear non-proliferation treaty member, will undermine the whole nuclear non-proliferation regime. Both the European Union (EU) and China have been involved in diplomatic negotiations with Iran regarding its nuclear program, but arguably have been unsuccessful in reaching a diplomatic solution to the situation. Therefore, cooperation between the EU and China needs to be activated, both to deal with the Iranian nuclear program and to strengthen the current non-proliferation regime.

In view of the recent changes in the security architecture of the international community, this article argues how a non-traditional approach might be beneficial when seeking to manage issues of nuclear proliferation. External governance through foreign policy has become a key tool in managing nuclear proliferation, which is visible, as examined below, in the foreign policies of the EU and China towards the nuclear program of Iran. The perspective of security governance, as an external policy tool and as a means to manage nuclear proliferation challenges, can therefore aid

in explaining and analyzing the policies pursued by the EU and China that, although uneven in scope, suggest areas where further security cooperation is possible.

This article therefore examines and compares the foreign policies pursued by the EU and China towards the Iranian nuclear program from the theoretical perspective of security governance. It is argued that nuclear proliferation has become a trans-regional and global security concern and that the policies of the EU and China can be understood from the perspective of security governance. It is also argued that there are unique opportunities for future security cooperation on issues of nuclear proliferation, such as the sharing of resources and the enforcement of norms, which would also further develop Sino-European relations.

Existing literature on EU foreign relations regarding the nuclear program of Iran is rich and plentiful, consisting of in-depth analysis of past and current relations, the potential for resolving the situation and emphasis on specific policy recommendations for ways forward.<sup>1</sup> Literature on China's foreign relations concerning the Iranian nuclear program is less developed; it focuses mainly on domestic motivations for involvement.<sup>2</sup> Literature discussing cooperation between the EU and China in relation to Iran, however, tends to focus mainly on the EU, either mentioning that China joined negotiations later than the EU but with limited involvement, or focusing on the perspective of EU-China relations in general.

The existence of divergence in EU-China foreign policy actions or views toward Iran, as noted below, and also of convergence in ultimate goals of nuclear non-proliferation in Iran and trans-regional stability, presents Iran as an interesting case for which further non-proliferation security cooperation between the EU and China can be developed. It is in this aspect that the present study attempts to contribute to the existing literature. It suggests areas for further development of EU-Chinese cooperation through the application of the theoretical framework of security governance. The following section will briefly describe the development of Iran's nuclear program since 2002, with an emphasis on the involvement of the EU and China. The theoretical framework will be presented in section three, followed by an analysis of EU and Chinese foreign policy toward Iran in sections four and five. The potential for future security cooperation between the EU and China will be discussed in section six, and section seven will conclude the article.

## **2. The Iranian Nuclear Program**

The recent discussion regarding the Iranian nuclear program arose in 2002 when information surfaced on how Iran had secretly constructed nuclear fuel facilities and failed to declare to the International Atomic Energy Agency (IAEA) under its obligation as a Nuclear Non-Proliferation Treaty (NPT) signatory. Iran's subsequent refusal to sign the Additional Protocol, which would open up for more rigorous and transparent IAEA controls of its nuclear program, caused widespread suspicion concerning Iran's intentions. Openly working towards ensuring nuclear non-proliferation, both the EU and China have stated how the Iranian situation is directly linked to international security and stability. This is evident in the statement by the Council of the European Union, "Iran's nuclear program remains a matter of grave concern for the international community, since if Iran were to acquire a military nuclear capability, this would constitute an unacceptable threat to security, both regional and international,"<sup>3</sup> and also in the urgings of the Chinese Ministry of Foreign Affairs that the peaceful nature of Iran's nuclear program be established.<sup>4</sup>

The EU-3, consisting of Germany, the United Kingdom (UK) and France, as well as Javier Solana, the High Representative for the European Common Foreign and Security Policy (CFSP), assumed the role of main mediators between the EU and Iran in 2003, which resulted in the conclusion of several agreements but yielded few results in the rollback or freeze of the nuclear program in Iran. This led to the imposition of several United Nations Security Council (UNSC) sanctions



on Iran. In 2006, the EU-3 was joined by China, Russia and the US in negotiations with Iran.

The EU-3 can be argued to have pursued diplomatic negotiations with Iran in a rather coercive manner at times, emphasizing threats with timelines for compliance, along with incentives for conformity.<sup>5</sup> In comparison, China has continuously stressed a general but strong commitment to the nuclear non-proliferation regime in its foreign policy, emphasizing how a diplomatic solution to the Iranian situation is preferred, critically referring not only to a possible escalation of the issue into conflict but also to coercive measures involving the UN Security Council.<sup>6</sup> It should be noted, therefore, that the general approach to the nuclear program of Iran differs between the EU and China.

Bilaterally, the EU and China have begun to cooperate in the nuclear non-proliferation field. This initiative has been taken within a larger framework of improved relations covering areas such as trade, global governance and education, and it reflects the beginning of a new phase of friendly Sino-EU relations.<sup>7</sup> As mentioned by the Chinese Ministry of Foreign Affairs, strategic consensus between the two is developing, pointing to the possibility of further development of security cooperation on this matter.<sup>8</sup> However, as is evident in these official statements, EU-China cooperation for the purpose of curbing nuclear proliferation remains fairly underdeveloped and specific steps taken to counter proliferation threats are small.<sup>9</sup> The need for improved relations in this regard is thus clear, as both actors emphasize that no country can achieve peace and security by itself, and nuclear non-proliferation should be seen as a global and trans-regional issue that transcends national and regional borders. As such, it requires a global response.<sup>10</sup>

### **3. Theoretical Perspective**

#### **(1) Security Governance as a Concept**

The current nuclear non-proliferation regime is a mixture of treaties, agreements and understandings, with the nuclear non-proliferation treaty being central to the regime, emphasizing non-proliferation, disarmament and the right to peaceful use of nuclear technology.<sup>11</sup> Due to the character of the regime, debates have been organized so that non-proliferation challenges have been linked to an over-arching global nuclear governance system, dealing not only with issues of proliferation but also with questions of managing nuclear waste or export control measures.<sup>12</sup> The idea of merging the concept of governance with nuclear safety is therefore not novel. However, analyzing foreign policies towards nuclear non-proliferation in the specific case of Iran from the theoretical perspective of security governance remains fairly uncharted territory.

In the vastly different and globalized post-Cold War international security architecture, compared to the situation during the Cold War period, security governance as a theoretical model seeks to offer increased insights into the complex security structures emerging in the contemporary period. It is a concept that has so far been strongly related to the term of good governance from a security perspective, and has been used extensively to explain the external relations of the European Union, focusing on Western values that emphasize human rights, liberal democracy, market economies, and open, pluralistic societies as a means to achieve security.<sup>13</sup>

The theoretical framework organized around the concept of “security governance” can offer an alternative explanation that goes beyond the notion of how the security structure of the international society has moved from bipolarity to multipolarity. The theoretical framework acknowledges instead that there are multiple polarities at play in arranging the diverse interests that exist in international security and that those interests do not necessarily have to be organized around states or in terms of state interests.<sup>14</sup> Accordingly, it offers flexibility in terms of recognizing the different actors involved in the specific issue. In the present case, for example, this encompasses the EU and China as actors in diplomatic negotiations with Iran, while it allows for the accommo-

dation of the role of, for instance, the International Atomic Energy Agency.

In the present analysis, the concept of “security governance” is applied to the external actions of the European Union and China. Although the EU and China are two vastly different actors within the contemporary international system, the EU being a regional institution and China a nation state, security governance can aid in explaining the policies pursued by these two actors, including toward the nuclear program of Iran addressed in this study. This approach is useful in highlighting the fragmentation of security cooperation within the international or regional sphere as a means of managing proliferation challenges, and suggesting how the scope of future security cooperation between the EU and China may be expanded.

Security governance should be seen as a theoretical framework that complements the existing theories of security regimes, security communities and balance of power. While these theories take into account concepts such as international norm adherence, power relations, reciprocity and the importance of the status quo, they do not sufficiently address the recent and ongoing changes in the international security architecture. For example, the existing theories are inadequate to explain how nuclear non-proliferation has become an internationally acknowledged norm that can, and at times does, motivate state and institutional action, or how political authority on security issues can be argued to have moved from centralization to fragmentation.<sup>15</sup> To understand the theoretical implications of the governance perspective and its usefulness in security studies, one must first understand the two concepts from which it is derived: security and governance.

## **(2) Security, Governance and Nuclear Non-proliferation**

Various definitions of security exist today as a result of the concept’s expansion beyond the traditional concept of national security and the phenomenon of military conflict.<sup>16</sup> In terms of nuclear proliferation challenges, globalization has arguably transformed the issue of nuclear non-proliferation into a trans-regional and global security threat that threatens not only individual nation states but also the stability of regions and the entire international society.<sup>17</sup>

Following this line of thought, the problem of nuclear proliferation is generally viewed as a traditional security problem. However, a broader approach might be beneficial in seeking to manage proliferation challenges, as they require policy-making and implementation on a systemic, international and regional basis, in line with a widened security agenda mentioned above. Security from this perspective inevitably includes societal and political dimensions of external governance efforts to prevent the development of situations or conditions conducive to nuclear proliferation threats, such as in the Iranian case to be examined below.

Governance is a fairly recent term in the discourse on international relations. The growing interest in governance in international relations reflects the increasing awareness of the fragmentation of political authority among security actors across different levels of analysis, such as the regional and international levels. Governance refers to the structures and processes through which a social organization steers itself, whether through centralized control or self-regulation.<sup>18</sup> Governance is therefore relevant to nuclear proliferation as it offers a perspective from which to explain the fragmentation of political authority in the management of trans-boundary security threats in the post-Cold War era.

Governance refers to the processes and structures that enable actors to pursue independent needs and interests through the implementation of binding policy decisions in the international environment, which lacks a central political authority.<sup>19</sup> It should be noted, however, that although security governance emphasizes the fragmentation of political authority, it does not ignore the fact that states remain central to security studies. The point of departure is instead the recognition that there has been a move from government to governance, where states increasingly cooperate with other actors in seeking to manage nuclear proliferation.

Governance is differentiated from government along seven main dimensions: geographical

scope, functional scope, distribution of resources, interests, norms, decision-making and policy implementation.<sup>20</sup> In each of these dimensions, government and governance can take a variety of forms along the spectrum from centralization to fragmentation. There are no set standards for the number of dimensions along which a policy-making structure must be fragmented for it to be considered governance rather than government, but the existing literature suggests that a policy trend away from centralization and toward fragmentation is seen as a movement towards security governance. The theoretical model can be used across all levels of analysis, although the present study focuses on the international system and takes into account security architectures of different forms at the international and regional levels.<sup>21</sup>

“Geographical scope” refers to how centralized policy-making arrangements are based upon the state as the sole key actor. Fragmentation, in turn, can take two different forms, downwards and upwards.<sup>22</sup> Downward fragmentation refers to how political authority is moved downwards to regional or local levels and upward fragmentation refers to how authority is relocated to the global or macro-regional level.<sup>23</sup> It should be noted, however, that this does not imply that centralization is moved to another level, but rather that political authority is shared between national governments and international organizations.

“Functional scope” refers to the centralization of policy that views security in a more traditional manner with an emphasis on inter-state military conflict, whereas the security governance perspective recognizes that the international security agenda has been widened to include, for example, social and political dimensions of security; it has also deepened, as it allows for security issues on different levels, such as regional and international.<sup>24</sup> Moreover, when resources used to formulate and implement policies are held or channeled by the government alone, resource distribution is said to be centralized. If, however, resources are dispersed among different actors, including international organizations and other nongovernmental entities that need to cooperate and coordinate to solve policy problems, the focus shifts from government to governance.

Centralization of interests normally refers to a situation in which all expressed opinions or interests are subordinated to the common or main interest of the state. Although states at times are requested to take the opinions from various sectors of society into account, the governance approach takes this demand more seriously than the centralization (i.e., government) approach; the former also acknowledges the diversity of opinions and attempts to establish channels for the expression of these opinions.

In terms of “norms,” centralization emphasizes the promotion of a strong state whereas fragmentation stresses the need for multilateralism when managing regional or international issues. Centralized “decision-making” indicates that decision-making processes are hierarchal and international and sub-national actors are subordinate to nation states. From the governance approach, authority is shared among different sectors of society and decisions are made when agreements are reached—mainly through negotiation, either formally or informally. Lastly, centralized policy implementation tends to be authoritarian in nature and may even be coercive at times, whereas governance is based upon arrangements that are self-enforced and in which compliance is voluntary.

Security governance may be defined as a system of rule that involves the coordinated management and regulation of security issues by multiple and separate authorities, formal and informal arrangements, structured by discourse and norms, and purposefully directed towards particular policy outcomes.<sup>25</sup> Consequently, in the discourse on non-proliferation, the scope of security governance is underpinned by two main assumptions. Firstly, the state is not the only security provider in terms of nuclear non-proliferation; it is one of many participants in a cooperative system. Secondly, issues of nuclear proliferation are trans-boundary and should therefore be seen as a global and trans-regional security problem that encourages states to pursue multilateral and bilateral security strategies, for example through international organizations and in cooperation with

other states.<sup>26</sup> These assumptions undergird the use of “security governance” as a theoretical lens to examine the foreign policies of the EU and China toward Iran’s nuclear program in the present study.

#### **4. The Foreign Policy of the EU toward Iran’s Nuclear Program**

##### **(1) Geographical Scope**

The geographical scope of policy-making of the EU toward Iran’s nuclear program can be argued to be of mainly an upward nature although it has taken a downward character at some points during negotiations. Although the EU has regional institutions in place to deal with nuclear non-proliferation, such as the European Atomic Energy Community (EURATOM), these focus on non-proliferation within the European Union, and are as such not used in the context of foreign policy or external relations.<sup>27</sup> Downward fragmentation is noticeable in the way EU policy towards Iran has sometimes been reinforced on the national level, in addition to the regional and international levels. This is best illustrated by the EU referral of Iran to the UNSC by individual European states and their adoption of policies of trade embargoes on Iran.<sup>28</sup> Additionally, the Union has chosen to involve other state actors, such as the United States and China, in negotiations with Iran.<sup>29</sup>

Upward fragmentation of political authority can be illustrated in the fact that Germany, the United Kingdom and France have engaged with the EU High Representative for the CFSP, Javier Solana, in negotiations with Iran since 2002. These engagements concerned, firstly, a freeze of its clandestine nuclear activity, and later, threats and rewards and timelines for compliance.<sup>30</sup> The EU-3 has also worked closely with the IAEA in the evaluation of Iranian compliance with international standards in nuclear regulation, and with the UNSC both in drafting a referral to the UNSC and in the Security Council’s subsequent passing of a resolution calling for economic sanctions.<sup>31</sup>

There has also been cooperation between the EU-3 and other international institutions in seeking to engage with Iran. World Trade Organization (WTO) membership was offered as a carrot for Iranian compliance in negotiations in 2004.<sup>32</sup> In sum, there has been both upward and downward fragmentation in the diplomatic negotiations between the EU and Iran over the Iranian nuclear program.

##### **(2) Functional Scope**

The EU has for some time recognized the existence of a wide security agenda within the international community. This is particularly visible in its policy which continually emphasizes security and stability from the perspective of good governance. In this context, the EU has pursued the principle of conditionality as a part of its foreign policy, which enables the Union to transfer policy to third countries on the basis of incentives.<sup>33</sup> Through conditionality the EU has sought to establish cooperation agreements through which to manage and induce a standard of preferred behavior and a specific mode of governance with its neighbors in an attempt to create a stable region and counter regional nuclear proliferation.<sup>34</sup> To be brief, the EU has granted economic benefits upon satisfaction of certain EU-proposed conditions. This manner of managing external relations has been regarded as one of the EU’s most successful policies since it came into existence and has generally been viewed as leading to the massive eastward enlargement of 2004, when membership conditionality was exercised.

In a similar manner, the EU has used the export of a certain form of good governance as an instrument to hinder nuclear proliferation in negotiations with Iran over its nuclear program. In those negotiations, the EU has initiated several cooperation and trade agreements as a means of ‘constructive engagement’ with its future neighbor in the Middle East.<sup>35</sup> By offering incentives to

Tehran to induce cooperation with respect to the latter's nuclear program, the EU has sought to steer the development of the Iranian nuclear program.<sup>36</sup>

For example, the EU launched a 'critical dialogue' with Iran in 1993 in areas of shared interest, including the curbing of weapons of mass destruction (WMD).<sup>37</sup> This was followed by the launch of a Trade and Cooperation Agreement (TCA) in the late 1990s.<sup>38</sup> The TCA, containing incentives in the shape of expanded trade and cooperation between the EU and Iran, has since been used at various points during the last decade to encourage Iranian compliance.<sup>39</sup> This would suggest that the EU is exceptionally aware that nuclear non-proliferation can be seen from the perspective of a widened security agenda, and that governance can play a part in the effort to establish security by using a trade and cooperation agreement as a tool of foreign policy to induce compliance on other policy areas, such as security and nuclear non-proliferation.

Furthermore, the widening of the security agenda and the EU's obvious recognition of the need to take a non-traditional approach to achieve regional security have also been evident in the incentives and offers the EU has proposed to Iran. A common assumption towards a nation that pursues a nuclear weapons program is that the nation in question feels a need to counter and balance regional insecurity or potential external threats by acquiring nuclear weapons.<sup>40</sup> The European Union has therefore, in its diplomatic offers towards Iran, attempted to mix economic and material benefits with assurances that the EU will aid Iran in countering regional security concerns.<sup>41</sup> The EU has also attempted to control the spread of nuclear knowledge in Iran. For example, the EU imposed travel bans on Iranian students traveling to Europe to study proliferation-sensitive subjects when it became clear that Iran would not suspend its enrichment activities in 2007.<sup>42</sup> This clearly reflects a European attempt to externally govern Iran along with the outcome and development of its nuclear program.

### **(3) Distribution of Resources**

Over the years, resources used to develop policy recommendations or to shape EU policy toward the Iranian nuclear program have been distributed between different actors and across various sectors of the European security architecture. Resources have not been used on a regional level alone, but have also been at the disposal of individual EU member states as well as non-EU member countries, such as China. Resources have also come from international organizations such as the IAEA and the UN. These actors have collaborated in a multilateral manner to form a somewhat streamlined approach toward Iran emphasizing the common goal of nuclear non-proliferation, and in this process resources have been offered in a package format in an effort to develop a unified approach from the national, regional and international levels.<sup>43</sup> For example, the EU has worked closely with the United States to offer incentives to Iran in return for Iranian compliance. These incentives have been drawn from national sources but offered through a European framework, for example, in the United States granting access to American civil aviation material to Iran.<sup>44</sup> Other resources used include agricultural cooperation, investment in the Iranian telecommunications infrastructure and increased trade. These deals show how multiple actors cooperate by sharing resources at multiple levels.<sup>45</sup>

### **(4) Interests**

In terms of interests, the European approach towards the nuclear program of Iran is quite complex. Although one can argue that there has been a strong move away from the emphasis on the state as the main actor able to incorporate interests into policy (indeed much of the European integration project rests upon this), the EU as a supranational institution by no means translates into a unified European political authority.

It is not uncommon for individual EU member states, when confronting a policy issue, to pursue a national approach, which is in direct conflict with the official stance of the Council of the



European Union. The Iraq dilemma of 2003 highlights this exceedingly well. The EU member states were sharply divided in their approaches, and some countries adopted an approach at odds with the official stance of the EU.<sup>46</sup> Nonetheless, individual member states are often called upon to disregard national gains or interests that might prove harmful to the stability, coherence, strength or security of the Union, as in the case of the Iranian nuclear program. As an example, individual member countries might be called upon to ignore national interests regarding oil in Iran if these interests clash with the foreign policy goals of the Union.

In relation to the nuclear program of Iran, however, the foreign policies pursued by the Union and its individual member states have been more coherent.<sup>47</sup> Many countries within the EU rely upon oil imports from Iran, which complicates the interest dimension.<sup>48</sup> The coherence of policy, however, is also seen in the cooperation between the EU, the IAEA, the UN, the United States, China and Russia. Disagreements on other issues aside, these parties have come together with a common interest in engaging in diplomatic talks with Iran and allowing for more rigorous inspections by the IAEA.<sup>49</sup> The United States, for example, initially pursued a policy of isolation toward Iran and was later convinced by the EU that a policy of engagement was more promising. In this sense, interest has been fragmented to the point at which a common security threat has unified actors who at first pursued different national policies.<sup>50</sup>

## **(5) Norms**

Originating in the work of Duchêne, there has been much discussion on the nature of the EU as a global actor and the extent to which norms guide foreign policy.<sup>51</sup> As a starting point it has been argued by some that the EU has come to represent a normative approach to international politics and related issues, from a uniquely European perspective based upon certain norms and ideas.<sup>52</sup> These norms—inter alia, the preference for negotiations over confrontation, the belief in soft power as a means to exert influence internationally—have in turn been connected to a foundation of the identity of Europe, which then is believed to shape European foreign and security policy.<sup>53</sup> To some extent, these norms can be seen as underlying the negotiations between the EU-3 and Iran, where some argue that a part of the rationale for Europe's involvement in negotiations with Iran in the first place is a desire to prove itself as a capable and responsible security actor on the international stage, able to handle issues of 'high politics,' like proliferation.<sup>54</sup>

Unity in policy since the start of negotiations has in turn reinforced the credibility of EU capability, which further strengthens the notion that regional and international norms constrain national perspectives within Europe. The same trend is also visible in the overall normative stance of the EU towards nuclear non-proliferation in Iran, or in the EU's efforts to manage a crisis with the potential to cause a spiral of proliferation across the Middle East, a situation that would clearly not be in the best interest of either the EU or China.<sup>55</sup>

The EU policy towards Iran also illustrates the Union's normative stance regarding the responsibility to adhere to international and regional agreements. The EU has continuously stated how Iran poses a threat to the nuclear non-proliferation regime.<sup>56</sup> EU security governance vis-à-vis Iran faces the difficult task of regulating or managing issues that go against the Union's normative stance in a manner that will not delegitimize the normative approach. In short, norms must be defended in a normative manner so that their legitimacy is not questioned or undermined.

The EU has tackled this difficult task by de-emphasizing confrontation and stressing diplomacy and negotiations, involving the EU offer of incentives as a carrot for Iran.<sup>57</sup> When this approach has failed, the EU and its partners have internationally condemned Iran's non-compliance, hoping that the ensuing political isolation of Iran will induce the nation to make a rational choice, i.e., cooperation and compliance.<sup>58</sup> This by itself does not necessarily represent a fragmentation of norms regarding nuclear non-proliferation, but it does generate a situation underpinned by the idea that Iranian cooperation would be greatly awarded, and its non-compliance costly, so that all in-

volved parties would hope to create a situation conducive to Iran's cooperation as the most desirable outcome. That is, the development of a shared norm in this process is an aspect of governance rather than centralization.

#### **(6) Decision-making**

Given the lack of a centralized world government, the European Union has established the position on nuclear non-proliferation issues that decisions should be made in collaboration with actors such as the IAEA, the UN and other states.<sup>59</sup> This can be seen, for example, in the case of the EU drafting a referral of Iran's nuclear activities to the United Nations Security Council in 2006, followed by the application of sanctions at a later stage.<sup>60</sup> Again, the EU's commitment to the NPT regime and other international nuclear security regimes serves to highlight this point. Therefore, it can be understood that measures to manage the Iranian case are based on internationally accepted norms that appear primarily in the form of bilateral and multilateral agreements. This has helped further develop and enforce the nuclear non-proliferation regime. As such, the decision-making process can be seen as fragmented because the EU has taken decisions in collaboration with other states and organizations.

The future decision-making process regarding NPT deviants is likely to further demonstrate the fragmentation of authority and the relevance of the governance perspective. It is generally feared that Iran will develop nuclear weapons under the guise of a civilian nuclear program, and at a later stage withdraw from the NPT as North Korea did in 2003.<sup>61</sup> Much of the existing debate on how to handle these deviants has taken place on regional and international levels, as it has been recognized that multilateralism is the best approach to this problem. Regardless of how deviants will be managed in the future, it is highly likely that the policy decision-making process will be handled in a collaborative manner involving state actors, international organizations and regional security actors, leaning towards fragmentation.

#### **(7) Policy Implementation**

European policy implementation regarding the Iranian nuclear program is one of the areas in which fragmentation is particularly evident. The EU has implemented its policy on regional and national levels, yet its constant referral to both the UN and the IAEA smacks of subordination. EU foreign policy has relied heavily upon both the IAEA and the UN for policy implementation, and this has further strengthened and legitimized the NPT regime itself. As an example, in 2010, the European Union reaffirmed its commitment to support UNSC actions and its readiness to collaborate with the other actors involved in the diplomatic negotiations to return to meaningful talks on the nuclear program of Iran.<sup>62</sup> This assurance does not necessarily imply that the EU is unable or unwilling to implement policy by itself; rather, it demonstrates the constant commitment to collaboration as the *modus operandi*.

### **5. The Foreign Policy of China towards Iran's Nuclear Program**

#### **(1) Geographical Scope**

From the security governance perspective, the authority of the government of the People's Republic of China can be seen as being fragmented in mainly an upward fashion in its approach to the nuclear proliferation in Iran. China's political authority in this case has shifted from a centralized state level to a global level, and the country continually stresses its willingness to cooperate with the IAEA and the United Nations, for example through the United Nations Disarmament Commission (UNDC).<sup>63</sup> China has also emphasized its support and full compliance with the NPT, the Comprehensive Nuclear Test Ban Treaty (CTBT), the Convention on the Physical Protection

of Nuclear Materials, the Nuclear Security Summit and the Global Nuclear Energy Partnership, later renamed the International Framework for Nuclear Energy Cooperation (IFNEC).<sup>64</sup>

More specifically and in relation to Iran, upward fragmentation is most visible in China's involvement in diplomatic negotiations towards Iran, where political authority is shared between all actors to engage in talks with Iran and to dissuade Iran from developing a nuclear weapons program. Specifically, China has stated its wish to play a constructive role in these talks, collaborating with all other involved actors, in order to fashion a long-term solution to the Iranian nuclear crisis.<sup>65</sup>

## **(2) Functional Scope**

Generally, China has clearly indicated its belief that states are the main actors in international society, although it also recognizes that the problem of nuclear proliferation requires a global response. It also recognizes that changes in the structures of the international system have given rise to the need of a more comprehensive framework for managing this threat.<sup>66</sup> It should be noted, however, that China has not indicated that the case of Iran represents such a threat.

This outlook stands in stark contrast to the EU policy, which views Iran as a potential threat to the NPT regime. China instead has stressed Iran's right as a state to pursue a civilian nuclear program while also addressing the need for a diplomatic solution to the present situation.<sup>67</sup> Accordingly, China continues to emphasize that the true nature of Iran's nuclear program and its intentions are yet to be confirmed, and until then, China will continue to support Iran's right to nuclear energy. In comparison with the EU's attempts to use a trade and cooperation agreement to induce compliance, which can be seen as a rather pro-active approach, China has instead adopted a passive stance, supporting diplomacy and negotiations without applying pressure on Iran.<sup>68</sup> Therefore, it can be argued that there has been a fragmentation of political authority in terms of the functional scope when it comes to nuclear proliferation issues in general. This is, however, not visible in China's policy in the specific case of the Iranian nuclear program, as Iran's right to a civilian nuclear program is constantly emphasized.

## **(3) Distribution of Resources**

From China's perspective, the mobilization of resources to influence the process of policy decision-making and implementation has been somewhat fragmented, as China has cooperated with all other actors involved in the process when attempting to influence Iran. China has, for example, taken part in the package solution offered to Iran in 2006, as mentioned above. Again, it should be highlighted that the package solution mentions that restrictions on Iran will be lifted if Iran meets the demands of all involved parties; yet, the incentives offered are a result of policies pursued by the EU and the United States, and as such, China has not offered any specific incentives. This indicates that China has adopted a somewhat unclear yet flexible "middle way" policy toward the Iranian nuclear crisis, supporting the efforts of the EU-3 and the US to induce Iranian compliance without proactively contributing Chinese resources to resolve the problem. Thus, there has been an element of fragmentation in terms of resources.

## **(4) Interests**

In addition to preventing spiraling nuclear ambitions in the Middle East, China is also concerned about its energy security, and the import of oil has become an important part of its policy.<sup>69</sup> As observed above, there has been a clear shift in EU policy vis-à-vis the Iranian case away from promoting strong states or state interests toward a more comprehensive regional and international approach. In contrast, Chinese foreign policy is more heavily influenced by national goals or interests, although China also stresses the importance of cooperation in managing Iran's nuclear ambitions. China is keen on promoting further domestic growth by maintaining a stable and cooperative

international environment.<sup>70</sup> Consequently, China has adopted a flexible stance on the Iranian issue on the basis of national interests rather than trans-regional or international interests. Moreover, China seems to be sympathetic toward Iran in terms of sovereign rights to pursue a civilian nuclear program. In contrast, the EU places greater emphasis on Iran's obligations for transparency and cooperation, in line with the NPT, rather than its sovereign rights. Beijing's approach can therefore be seen as a balancing act of maintaining sound economic relations with Iran while not alienating Washington.

From the broader perspective of China's concern with its own global image as a responsible and active actor in trans-regional and international security areas, it becomes apparent that China's involvement in diplomatic negotiations regarding the Iranian nuclear program is guided and influenced by the interests of the state. This implies less fragmentation of political authority along the interest dimension. Although China states that its interests are in line with the interests of international society and those of other countries, including France, the UK, Germany, Russia and the EU, Beijing's behavior shows a clear emphasis on national interests.<sup>71</sup> This is ultimately displayed in China's foreign policy statements concerning the position on policies pursued by the EU-3. For instance, China did not endorse sanctions as a means to control nuclear proliferation, declaring that "Sanctions and pressure can hardly offer fundamental solutions to the issues."<sup>72</sup> Similarly, a statement made by the Chinese delegation at the occasion of the 2011 IAEA Board of Governors meeting showed that China does not necessarily share the views of the other involved actors: "Though there are gaps among the positions of all parties, there will be chances for bridging the differences and enlarging common grounds as long as the negotiation is started."<sup>73</sup>

## **(5) Norms**

Norms underpin Chinese involvement in the diplomatic negotiations with Iran in a crucial manner. China's concern with its global image as a responsible and credible actor is evident in its statements about its compliance with the NPT regime and global norms on nuclear non-proliferation. This shows that there has been a fragmentation of the normative stance of China in terms of nuclear non-proliferation.

It should be noted, however, that China's emphasis on Iran's sovereign right to pursue a civilian nuclear program again indicates less fragmentation than the normative approach adopted by Europe. Chinese foreign policy places significantly less emphasis on the international responsibility of Iran to account for its past clandestine actions in nuclear development. Moreover, China is believed to have played a crucial role in slowing down a UNSC referral of the Iranian case against the wishes of other parties.<sup>74</sup> It is likely that China's action is linked to its determination to protect its national interests.

## **(6) Decision-making**

It is in the decision-making process that the fragmentation of political authority is more clearly visible where China is concerned. Through its foreign policy China has continued to emphasize collaboration between international organizations, individual states and regional security institutions. Decisions on how to proceed in diplomatic negotiations with Iran have been the result of consultation and joint effort by all actors, of which China has been an integral part.

This participation is closely tied to the dimension of interests. As mentioned above, China must carefully balance its interests when involving itself in the difficult international negotiations with Iran. From China's perspective, the most ideal situation would be one in which the EU-3, Russia and the United States were not pitted against an unyielding Iran, as this would likely lead to demands for further UNSC resolutions and pressure on China to adopt a more active and defined stance, which might anger one or more of the actors involved. Accordingly, it is in China's interest to prevent such a situation from occurring in the first place, and this explains its desire for negotia-

tions to continue and for all parties to be involved in the decision-making process. This implies a shift from centralization to fragmentation.<sup>75</sup>

### **(7) Policy Implementation**

Similar to the decision-making process, political authority in policy implementation can be seen to have been fragmented as China continues to cooperate with Russia, the EU-3, the IAEA and the UN in policy implementation, first to verify Iran's intentions and the current stage of nuclear development, and secondly, to prevent nuclear proliferation.<sup>76</sup> It is likely that China's desire to maintain a stable environment for its development has influenced the way Chinese policy implementation regarding nuclear proliferation challenges in Iran has developed.<sup>77</sup> Implementing policy in a multilateral manner rather than bilaterally can also be seen as having enabled China to maintain a flexible "middle way" foreign policy by not siding with either the US or the EU-3, while stressing the importance of diplomacy and negotiations. This stance arguably increases its legitimacy as a responsible international actor, now emerging to engage with the international community.

## **6. Future Security Cooperation between the EU and China**

It is clear that both Beijing and Brussels recognize that nuclear proliferation is a security issue that transcends national borders. Although the two actors' views of Iran's potential role in nuclear proliferation differ, both consider it to be a trans-regional security concern that can be approached differently and are unified in their goal to control proliferation. Within the theoretical framework of security governance, both actors are seen to have moved towards fragmentation of political authority in their attempts to manage this issue, although fragmentation has occurred on a larger scale in the EU than in China. This has some noteworthy implications when we examine future cooperation between the two sides in nuclear non-proliferation.

Having examined the foreign policies of both China and the European Union in relation to Iran's nuclear program, we can say that for both actors political authority has moved away from centralization toward fragmentation. Fragmentation, in turn, has provided opportunities for cooperation over nuclear non-proliferation. Cooperation is possible and has, to some extent, emerged through the fragmentation of political authority in terms of the geographical and functional scope, interests, decision-making and implementation. This becomes most clearly visible perhaps in the decision-making process in which both actors have worked closely together with the United Nations and the IAEA before making decisions on how to proceed with diplomatic negotiations regarding the nuclear program of Iran.

EU-Chinese cooperation can be expanded even further through the sharing of resources, the enforcement of norms and in terms of interests. The sharing of resources shows promise, as the EU is able to provide much-needed economic backing and legitimacy thanks to its strong economic standing. China already wields considerable political power. If these assets could be combined, a strong and robust diplomatic tool would emerge. By drawing on the strengths of both actors, the EU and China would be able to deal more effectively with nations that are considered proliferation risks. A combination of political pressure and strong economic incentives would form a powerful tool within the framework of security governance and would help realize the goals of European and Chinese foreign policies, with respect to Iran as well as other proliferation challenges.

In terms of norms, the EU and China are both in a favorable position to promote and enforce already established ideas on the dangers of nuclear proliferation and the need for proliferation control, albeit for different reasons. The EU possesses high international credibility in terms of its intentions and its commitment to nonproliferation. China repeatedly stresses that it wishes to act



in accordance with norms such as these, to strengthen its role as a responsible actor in international society. This behavior can be seen as an attempt to obtain greater credibility by demonstrating to the international crowd that its intentions are in line with those of the West and with the common good of the international community. Both actors can thus simultaneously enforce existing norms on nuclear proliferation. Of particular importance in this context is the commitment of the two sides to the promotion of the NPT regime, which is clearly in the best interest of both actors.

This dedication is closely linked to the dimension of interests. The EU and China share a common interest in demonstrating their commitment to nonproliferation, although for different reasons. Both actors clearly desire stability and security, but Europe is concerned mainly with showcasing its actor capability whereas China is more interested in displaying its intentions. Cooperation would therefore strengthen the credibility of the EU, as well as its international reputation as a capable actor, while Chinese cooperation would demonstrate transparency and benign intentions.

Cooperation in the nonproliferation field would most likely improve mutual understanding between the EU and China with respect to their foreign policy goals, and for that reason, cooperation over issues of nuclear proliferation should be promoted. Few, if any, of the global security threats in the contemporary world can be solved without the participation and input of China, and a better understanding of China and its foreign policy would therefore be beneficial from the perspective of the European Union. Chinese trans-regional integration and cooperation with Europe would similarly help China integrate further into the international community. China, in turn, is keen to prove its benign intentions and its interest in a stable and secure world while realizing its own potential as a key player. It desires to attain credibility and legitimacy, and a close partnership with the European Union would be helpful in realizing this goal. Future cooperation in the nonproliferation field offers a unique opportunity for both actors to pursue the shared goal of removing security threats, be they threats directly to themselves or to the rest of the world.

## **7. Conclusion**

This article examined the foreign policies of the European Union and the People's Republic of China designed to combat the challenges to nuclear non-proliferation in Iran. It was argued that nuclear proliferation should be seen as a trans-regional and global security threat. The study demonstrated the usefulness of the theoretical framework of security governance in explaining and understanding the policies of the European Union and China. The framework emphasized governance rather than government in terms of the policy structures mobilized for countering nuclear proliferation threats.

In the face of the proliferation threats posed by the nuclear program in Iran, both the EU and China have pursued an approach that can be described as a security governance approach, and this points to unique opportunities for future security cooperation between the parties. Future cooperation is also likely to increase understanding and integration between the EU and China in regards to their respective policies. The present analysis showed that there has been a shift from government to governance in the policy structures of both Chinese and European policies towards Iran, although to different degrees.

Applying a security governance framework to the extensively explored policy field of nuclear non-proliferation is an especially interesting exercise when considering this approach's implications for regional integration. As a general proposition, a governance approach that is less state-centric might aid in advancing the debate on security cooperation for managing nuclear proliferation challenges. The approach points to an opportunity for EU-China cooperation in international secu-

rity more generally as it should encourage a greater sharing of political authority along the dimensions of geographical and functional scope, resources, interests, norms, decision-making and policy implementation. Improved relations in general might in turn promote cooperation and integration in other areas of concern to both actors.

China and the EU will likely find areas in which cooperation is difficult or not even possible. An example of this is the EU's emphasis on Western views of human rights in relation to China's view. However, both actors share and comply with the norms of nuclear non-proliferation. Cooperation based on this broad accord on the issues and norms of non-proliferation could pave the way for the further development of EU-China relations. A governance approach might also be useful for EU-Chinese cooperation in the management of NPT deviants, further strengthening trust, building confidence and enhancing partnership between the two.

We should be mindful, however, of the limitations of the security governance approach. States remain important, central, to issues of national and international security, and there may be a limit to the fragmentation of political authority when it comes to hard-core security issues. Nonetheless, there is much to be explored about the potential utility of the security governance approach. The security governance framework offers a promising venue for cooperation between vastly different actors, such as the EU and China, and facilitates the development of a strategic partnership in important security issue areas, such as trans-regional and global nuclear non-proliferation, where they are bound by common concerns.

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## Notes

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# ASEAN Plus Three (APT) as a Socializing Environment: China's Approach to the Institutionalization of APT

Jiuan Zhang

## Abstract

*In East Asia, several formal and informal regional institutions have been established in the last several decades to promote regional integration. However, it is difficult to identify which is the dominant institution and determine how it is working. ASEAN Plus Three (APT), representing the first institutionalized effort to combine Northeast and Southeast Asia and further promote integration in this institutionally undeveloped region, is central to the regionalist view of international relations.<sup>1</sup> Moreover, China's approach to the establishment of APT and changes in its regional behavior have attracted scholarly attention. This article combines an empirical analysis of China's approach to APT with a theoretical discussion of APT's institutional design in order to illustrate how APT is working as an environment of socialization in the context of regional integration.*

## 1. Introduction

The project of East Asia in the context of 'a world of regions' is relatively new.<sup>2</sup> East Asia lacks a strong conceptual framework whether viewed from inside or outside the region. In East Asia, several formal and informal regional institutions, e.g., ASEAN plus Three (APT) and the East Asian Economic Caucus (EAEC), have been established in the last several decades to promote regionalism. Moreover, since the Association of Southeast Asian Nations (ASEAN) as a sub-regional organization has made great progress in integration in Southeast Asia, several new bodies utilizing the 'ASEAN plus' or 'ASEAN-led' model have been added to the East Asian regional architecture.<sup>3</sup> The ASEAN plus China, Japan and Korea (ASEAN plus Three, or APT) informal meeting in 1997 represented the first institutionalized effort to join Northeast and Southeast Asia and further promote regional development in this institutionally undeveloped region.<sup>4</sup> The APT process is being institutionalized through the evolution of an overlapping, multidimensional model of regional conference diplomacy, which is strengthening links between the states of Northeast and Southeast Asia.<sup>5</sup> Even the ongoing APT process has demonstrated levels of semi-institutionalization in this region.<sup>6</sup> It is still too early to know whether APT will be embedded in the regional architecture of East Asian integration, currently under construction.

The evolution and institutionalization of APT has attracted much scholarly attention in the last several years. Some scholars see the potential of APT as a dominant regional institution for all parties to cooperate and engage in dialogue and joint activities in East Asia.<sup>7</sup> For example, Hu notes, "the most likely course of regional diplomacy and community building that can bring the two giants - China and Japan - together will continue to be the APT process."<sup>8</sup> However, there are many competing ideas about and proposals for the institutional development of this regional project. APT has received many critiques as well. Tang states, for example, "APT has not made very much progress towards becoming a codified institution, and much of the discussion on East Asian integration remains more about vision than about tackling the practical obstacles to realizing this vision."<sup>9</sup> Recently, in reference to various arguments about APT's contribution in East Asia, Foot

has stated, “actual behavior in the 2008 financial crisis suggests that these arguments do not carry the weight that might be attributed to them.”<sup>10</sup> On the other hand, because China’s push for the institutionalization of regional multilateral institutions has been rather uneven, its strong drive towards APT has caught the attention of analysts who support the theory of ‘China threat.’<sup>11</sup> That is, China may use this regional organization to reduce US influence or to gain regional hegemony vis-à-vis other East Asian countries.<sup>12</sup>

Beijing’s enthusiasm toward APT is evident in speeches by successive Chinese premiers, foreign ministers and other senior officials, which show that the Chinese government has taken up APT as ‘the main channel’ in its efforts toward Asian regionalism.<sup>13</sup> As for China’s push for an institutionalized APT, according to Chung, although its success is limited, especially compared to China’s drive for the institutionalization of the Shanghai Cooperation Organization (SCO), China is more active in APT than it is in any other Asian multilateral organization, and it is more active in APT than other members of the group.<sup>14</sup>

There are several competing strands of explanations for China’s approach toward APT. Though we cannot ignore the influence of national interests and the related issues of pragmatism, this article will argue that China’s approach to APT should not be understood as a strategic response, but as a sustained, active and progressive stance. First, domestic pressure and other important unsolved sovereignty-related issues, e.g., the status of Taiwan, compel China to become a more positive and benign regional player.<sup>15</sup> Second, based on these domestic considerations, China has been following a ‘good neighbor policy’ since 1997, emphasizing a strong moral code when dealing with its East Asian neighbors.<sup>16</sup> China’s image as a ‘responsible great power’ is very important for the nation’s continued rise. Third, China’s active engagement in APT seems to be an important part of the nation’s effort to maintain a stable relationship with the US and other allies in the region.<sup>17</sup>

Thus, this article addresses a range of questions centered on the function and position of APT as an institution in order to discuss the organization’s role in the East Asian integration project. The discussion centers on the following questions:

1. How and why does APT work in East Asian regionalism?
2. What does the institutional design of APT reveal about its role?

APT, as a typical ASEAN project of regional multilateral processes, has made great progress toward the institutionalization of cooperation aimed at regional integration. Its role and function can be clarified through a discussion of its institutional design. In this article, APT’s function and role will be explored in four parts. First, a review of the regional integration project in East Asia will be offered, and its theoretical framework discussed; this framework will be employed in the present analysis to explain APT’s socialization capacity, as reflected in its design in the context of China, which has a relatively strong approach to institutionalization. The second part will examine the characteristics of APT as a socializing environment in terms of its institutional design and purpose; these are key elements of this analysis, as the intention of this article is to explore how APT is working based on its interactions with China. In the third part, a case study is employed to further analyze and assess APT’s instrumental efficacy as a socializing environment. Finally, the article discusses the future development of APT and its limitations with respect to the regional integration project.

## **2. The State Socialization Theory and the Study of Institutional Design**

The regional project in East Asia has appeared prominently in regional integration research

over the past decades. East Asia is a region featuring intensified economic interaction and interdependence despite a lack of any common political mandate or institutionalized arrangements for regional integration to bind it. However, the term 'integration' will be used in this research to describe the ongoing regional project in East Asia, especially the region's joint efforts toward building an East Asia Community.<sup>18</sup> Although there are competing explanations for the emergence of the regional project, they all lead to one fundamental question: Why has East Asia enjoyed relative stability and peace in the post-Cold War era?<sup>19</sup> Since the time of the Cold War, which did not always remain cold, as in the examples of the Korean and Vietnam Wars, East Asia was a region of strategic importance featuring competition and confrontation among great powers. Nevertheless, the region has remained relatively stable. This fundamental puzzle has prompted efforts to understand issues of integration in this region, and spurred debates on the role that ASEAN plus projects play. One question, for instance, involves why great powers cooperate around a group of small or medium-sized countries in this region.<sup>20</sup> Discussions on this and other questions can be conducted from the perspective of realism, liberalism or constructivism, and answers can be found partly in great power dynamics and the post-War East Asian state-building process. However, neither a straightforward realist (a clear power structure) nor an exclusively liberalist interpretation (formal and legalized institutionalization) is sufficient to explain the integration process underway. In East Asia, this process coincides with the rise of China, which has puzzled well-established mainstream International Relations (IR) theorists.<sup>21</sup> The competing explanations have focused most of their efforts on the interaction between regional multilateral processes and great powers.

In this regard, China's regional policy behavior, especially its uneven approach to the institutionalization of cooperative regional multilateral processes, has perplexed the academic community.<sup>22</sup> However, there are a few empirical studies that shed light on the institutional aspect of those processes with respect to China's role. Why does China find ASEAN plus projects of regional multilateralism, such as APT, so attractive?<sup>23</sup> According to Checkel, "Sino-ASEAN relations offer a good opportunity to illuminate some of those elements of process and interaction missing in more sweeping accounts of social learning."<sup>24</sup> Here Checkel was describing Sino-ASEAN relations, but his observation is relevant to the present study. ASEAN as an existing institution establishes norms and rules for the region. The ASEAN way, which Acharya describes as a "process of regional interaction and cooperation based on discreteness, informality, consensus building and non-confrontational bargaining styles that stands in contrast to the adversarial posturing, majority vote and other legalistic decision-making procedures in Western multilateral organizations," has been extended to APT through the external relations of ASEAN, and larger states such as China and Japan have been socialized into the ASEAN way although to a very limited degree.<sup>25</sup> Moreover, ASEAN's institutional norms have played a role in disciplining China and other regional powers and affected their identities and interests, and thus helped manage the great powers' behavior in East Asia in regard to regional integration. This argument offers an answer to the theoretical question of why great powers cooperate with ASEAN in this project. However, these scholars, including Nabers, more or less overlook a more interesting theoretical puzzle: in what situation is socialization an achievable goal in the aforementioned interaction process?<sup>26</sup> To begin to answer this question, the following analysis will examine APT as a socializing environment, with a look at its institutional design.

### **(1) State Socialization Theory**

There is no consensus in IR theory on what state socialization is, whom it affects, or how it operates. Until recently, IR scholars have under-theorized the concept of socialization.<sup>27</sup> State socialization can be interpreted differently in different theoretical frameworks.

Morgenthau mentions the socializing effect from his classic *realpolitik* perspective; that is, he discusses shame, shunning and loss of prestige and status as kinds of social punishments for viola-

tion.<sup>28</sup> Neo-realists use the term ‘socialization’ to refer to the homogenization of self-help balancing behavior among security-seeking states interacting under conditions of anarchy.<sup>29</sup> In Waltz’s view, the structure as a set of constraining conditions imposed upon the units of the system acts as a selector by materially rewarding some behaviors and punishing others through a process of competition. As Johnston notes, Waltz uses socialization to describe the homogenization of self-help balancing behavior among security-seeking states interacting under conditions of anarchy.<sup>30</sup> In Ikenberry and Kupchan’s analysis, it is the material power or material inducement that plays an important role in the state socializing process. They depart from Waltz in that they attribute socialization not to anarchy but to hegemony.<sup>31</sup> However, even though some researchers have made great progress in refining the neo-realist approach to state socialization, these scholars’ tendency to favor explanations based on material capabilities or material structures like distribution of power and wealth, rather than effects of non-material factors such as ideas and norms, remains unchanged.<sup>32</sup> Neo-realists do not distinguish the process of socialization from the process of ‘selection and competition.’ That is, realist approaches generally treat institutions as boxes of natural constraints rather than as environments of social interaction. Therefore, it is unclear how the neo-realist logic can explain how social interaction works in changing larger states’ foreign policy behavior in the context of East Asian integration. Also, it is unclear how to define a material power structure in East Asia in terms of the structural realist framework.<sup>33</sup> APT as an informal institution initiated by ASEAN and, to some degree, led by the ASEAN way, lacks the capacity to get great powers such as China and Japan to follow its prescription in promoting the regional project.<sup>34</sup> It is fair to say that the theoretical space remains. Johnston states, “The Asia-Pacific is developing patterns of institutional form and content that can lead to high levels of cooperation even with low-levels of formality and intrusiveness.”<sup>35</sup> Therefore, the effect of non-material factors in the interactions between APT and regional great powers, e.g., China, deserves our attention.

Moreover, institutionalist scholars generally do not focus on socialization due to their micro-economic and game theoretic styles of analysis. In their eyes, material interests are the primary sources of motivation for actors to participate and further cooperate under anarchy. For instance, according to Martin, institutionalists need to show how institutions matter: “we require a finer-grained understanding of the mechanisms through which institutions might exert their effects.”<sup>36</sup> In the analysis of these mechanisms, institutionalists usually assume that the state’s identity and preference are already fixed when participating in the institution, even though states’ interests can be changed through involvement in institutions. As Keohane states, “institutionalists use a structural-functional analysis of the constraints institutions place on actors, and it is to these exogenously given constraints that actors respond in ways influenced by their subjective or cognitive characteristics.”<sup>37</sup> Keohane then holds that the learning process through which a state’s interests can be changed by involvement in institutions ought to be high on the research agenda. However, due to their instrumental and ‘logic of consequences’ thinking, institutionalist analyses of this causal mechanism rarely mention social interactions.

Needless to say, for constructivists, state socialization is a central research topic. In this approach, the first task is to refer to the English School view of international society as an institutionalized normative social order that characterizes the system of states.<sup>38</sup> But due to the English School’s holistic ontology and non-positivist epistemology, the theoretical puzzle concerning the socialization process—when it starts and when it ends—was undiscovered.<sup>39</sup> The constructivists who have succeeded the English School, including scholars such as Wendt, have systematically interpreted how and why socialization occurs. They argue that neo-realists as well as neo-liberals are “under-socialized” in the sense that they pay insufficient attention to the ways in which actors in world politics are socially constructed.<sup>40</sup> Moreover, the sociological turn in IR studies means that scholars pay more attention to social relations’ constructing role in the international arena.<sup>41</sup> They view states as social entities operating in a social environment. States are influenced by their envi-



ronment and also affect the environment in return. According to constructivists, norms are crucial in this interacting process. National interests are constituted by culture and norms. Furthermore, norms shape the goals of states, their perceptions of interests, and the means they use to achieve those goals. Norms are obeyed not because they are enforced, but because they are seen as legitimate.<sup>42</sup> Moreover, in Finnemore's view, "states are socialized to want certain things by the international society... interests are often not the result of external threats or demands by domestic groups. They are shaped by internationally shared norms and values which structure and give meaning to international political life."<sup>43</sup> However, classic constructivists such as Wendt failed to offer a comprehensive view of the micro-process of socialization. As Wendt puts it, "in social (and IR) theory...it is thought to be enough to point to the existence of cultural norms and corresponding behavior without showing how norms get inside actors' heads to motivate actions."<sup>44</sup> Consequently, the internalization of roles and interests was placed at the top of the research agenda of state socialization studies. In this regard, the institution itself does matter in answering the question of why internalization has taken place in East Asia. In Checkel's research, institutions are viewed as promoters or sites of socialization.<sup>45</sup> Furthermore, as Johnston puts it, "the net effect of socialization...will be a function of the characteristics of the environment interacting with the characteristics of the agent in an ongoing tight feedback relationship, mediated by a foreign policy process."<sup>46</sup>

In the present study, if great power management in this integration project in East Asia can be understood from the state socialization perspective, then APT, the regional institution, can be viewed as having functioned as a socializing environment.

## **(2) The Study of Institutional Design**

Acharya notes:

*"Institutions are central to the constructivist view of international relations, and socialization is the core function of institutions. But how do the design features of institutions shape socialization? What types of design features are most conducive to socialization? And conversely, how does having socialization as an objective shape institutional design? Socialization is different from coercion, sanctions, or other types of negative incentives. Hence, different types of institutional designs may offer different potential for the success of socialization."*<sup>47</sup>

The present study will further explore this claim and fill the theoretical gap regarding institutions as a unit of analysis regarding state socialization in the literature on regionalism. We will discuss APT's capacity and limits concerning the promotion of socialization in the East Asian integration project.

The literature is not uniform in identifying the institutional design of an international institution. Different elements are highlighted in Acharya and Johnston, in Johnston and in Foot.<sup>48</sup> Based on these pioneers' work, the following aspects of institutional design<sup>49</sup> will be the focus of the discussion on APT's institutional design: (1) membership (inclusive or exclusive); (2) franchise (how to allocate the authoritativeness of memberships); (3) decision-making rules (e.g., consensus-based as opposed to majority voting); (4) mandate (e.g., brain storming or provision of information as opposed to problem solving); and (5) the autonomy of agents from principals. In addition, institutional purpose, which refers to the considerations behind the founding process of APT, will be noted.

### **3. The Institutional Design of APT**

#### **(1) The Membership Issue**

In order to discuss the membership issue, a brief analysis of APT's origin is necessary. In the 1990s, several attempts were made to strengthen cooperation between Southeast Asian countries and China, Japan and Korea following Mahathir's EAEC proposal, and also to create an East Asian group and foster Asian identity through Asia Europe Meetings (ASEM). However, at that time, ASEAN as a sub-regional organization was having difficulty bringing all ten Southeast Asian countries into one organization, let alone the three Northeast Asian states. Eventually, this could be achieved through high-level diplomacy in the context of ASEM, which had created an atmosphere conducive to open and frank discussion of regional issues among the East Asian countries. In 1997, an East Asia-only regional forum was founded when ASEAN leaders invited their counterparts from China, Japan and South Korea to the second ASEAN informal summit in Kuala Lumpur.<sup>50</sup> The East Asian countries thus began to institutionalize annual leaders' summits and ministerial dialogues through the APT framework during and since the financial crisis. Thus, to some extent, it is the 1997/98 Asian financial crisis that catalyzed the APT process as a credible mechanism that would offer insurance in future crises.<sup>51</sup> However, the APT agenda has gone beyond the financial and monetary issues to include cooperation in a broader range of areas such as food security, agriculture, anti-terrorism and so on. There is evidence to conclude that APT's expanded schedule was due to China's strong support and suggestions.<sup>52</sup>

APT, which includes 13 countries from Northeast and Southeast Asia, is thus an institution for the promotion of regional cooperation. On the one hand, according to constructivists, regions do not exist naturally but are constructed subjectively by human beings. Membership, which distinguishes between self and others, is thus critical in the construction of a region and regional identity. The APT process has laid the foundations to make East Asian identity building possible.<sup>53</sup> On the other hand, the relatively small membership of APT may create an ideal social environment conducive to persuasion, which refers to one of three micro-processes of state socialization.<sup>54</sup> According to Johnston, powerful socialization occurs in small-membership groups based on strong social liking and in-group identity, which increase the persuasiveness of counter-attitudinal messages.<sup>55</sup> Social liking refers to the phenomenon in which "[a]n individual experiences a sense of comfort interacting with others with whom she or he is perceived to share traits."<sup>56</sup> Furthermore, in this regard, a series of renewed bilateral friendship relations around China since the end of the Cold War positively enhanced the socialization process in APT.<sup>57</sup> Additionally, the in-group identity issue deals with the relationships between different levels of identification with the group as well as the group members' appropriate or cooperative behavior within the group.<sup>58</sup> In East Asia, it is fair to argue that membership of the APT framework was not only based on the establishment of ASEM, but also on the EAEC proposal (to be discussed later). Consequently, the highest level of in-group identification, which is reflected in the acceptance of and identification with the concept of 'East Asia,' illustrates APT's advantage in terms of membership issues.<sup>59</sup>

#### **(2) The Franchise of APT**

According to Johnston, the term 'franchise' refers to the allocation of authority among members. It can be allocated evenly, as in the case of the European Union, or unevenly (though legitimately) as in the United Nations Security Council (UNSC).<sup>60</sup> If we turn to examine the institutional franchise of APT, the special character of the authority of ASEAN countries deserves attention, since uneven allocation is an ideal arrangement for those new to socializing. As noted above, with regard to the East Asian integration project, scholars' attention focuses on the ASEAN way and on 'ASEAN plus' regional multilateral projects. It is fair to say that ASEAN is the legitimate driver of APT based on its performance in the sub-regional integration process. Moreover,

the legitimate authority of ASEAN is important in the spreading and internalizing of norms, especially for China as a novice in the regional project. Even though there is no consensus on the question of ASEAN's power, ASEAN has had a clear authoritative role as an institution in APT.<sup>61</sup> However, as long as the notion 'ASEAN plus X' remains, it will signify the nature of emerging East Asian integration and represent ASEAN's sponsorship of regionalism.<sup>62</sup> ASEAN is a group of small and medium-sized countries, and its authoritative role can be attributed to its initiative and the above-mentioned 'ASEAN way.' It is not the first example of small states' initiative in the literature of regionalism.<sup>63</sup> Benelux, which has made great progress in the process of founding the European Union, is a good example in the West.<sup>64</sup> The ongoing process of developing East Asian regionalism tells us another success story in which small and medium-sized states lead a regional project and attract participation from other regional powers, such as China and Japan. In this integration process, ASEAN countries have developed ideas and projects and convinced the larger powers to act in the interest of the whole region, rather than for their narrowly defined national interests. As Hu puts it, "since most initiatives for regional cooperation originated in ASEAN, it has been easier for China and Japan to respond in kind, because the two big powers have less reason to see such initiatives through the prism of their bilateral political relations."<sup>65</sup> The other part of this institutional franchise, closely related to the forthcoming analysis of APT's decision rule, is the so-called 'ASEAN way.' Compared with international institutions such as the UN, EU, WTO and others, APT is distinctive in that its decisions are based on consensus.

### **(3) The Decision-making System**

As an ASEAN-led institution, APT's consensus-based decision-making system is a natural extension of the ASEAN way. Consequently, discussion of the ASEAN way cannot be limited to ASEAN's external relations; ASEAN's internal relations need special attention as well. Jetly, for instance, discusses the advantages of the ASEAN way, which have been noticeable since 1967 thanks to ASEAN's internal power, or rather, the association's conflict management practice. She credits ASEAN's success in conflict management to the dual practices of "reaching consensus through mutual consultations and negotiations and diffusing conflict by deferring controversial issues," among other things.<sup>66</sup> From a constructivist point of view, the ASEAN way refers to a set of norms, attitudes, principles and procedural guidelines for multilateral engagement and conflict management, which has proven useful for East Asian community building. In Acharya's view, "The ASEAN way can help to form a sense of common identity among East Asian countries. The core notion of the ASEAN way rejects legalism and emphasizes socialization and consensus building, which form the nucleus of ASEAN's institution-building strategy in Southeast Asia and the wider Asia-Pacific region."<sup>67</sup>

In regard to decision rules, APT has avoided establishing a central coordinating institution in order to maintain its unity and engage other powers. The consensus-based decision-making system was illustrated and realized through so-called 'conference diplomacy.'<sup>68</sup> Decision-making by consensus refers to a series of meetings for reaching outcomes to which all participants agree. Accordingly, consensus-based decision-making requires implementation by all members. This is because the ASEAN way requires its member states to observe some basic norms, including the principles of agreement and harmony; sensitivity, politeness and agreeability; quiet, private and elitist diplomacy as opposed to public washing of dirty linen; and the principle of being non-legalistic.<sup>69</sup> In practice, as Stubbs mentions, "the ASEAN plus X principle permits member states to opt out of multilateral agreements with the option to rejoin at a later date when domestic circumstances are potentially more favorable...[this] has meant that politically sensitive multilateral agreements have not been derailed by the hesitations of one or more members."<sup>70</sup> To sum up, the advantages of consensus-based decision rules are to unite states at different levels of economic and social development and to generate thought, especially for newcomers such as China.

#### **(4) The Institutional Mandate**

Given APT's consensus-based decision-making, the institutional mandate of APT can be characterized as the promotion of cooperation by discussion and deliberation. As Qin mentions, the difference between the European experience and the ongoing East Asian project is that the former process was characterized by legal treaties while in the latter project, manifestos play an important role.<sup>71</sup> However, this is not to say that the only purpose of APT is to talk. To the contrary, discussions and deliberations have been used to advance regional cooperation on different levels in various issue areas. These concrete measures achieved through the above-mentioned conference-diplomacy require the members' collective implementation. But the implementation of measures differs depending on the issues being discussed. Critics may compare APT to a "talk shop." In the eyes of constructivists, however, especially in terms of the norm proliferation effect, the talk shop function is also worth some attention. Nations gradually become "socialized" to realize the benefits of adopting certain modes of behavior through participation in the consensus-based institution. As processes of communication grow, new proposals and new channels of communication emerge. As Nabers quoted the South Korea government: "The ASEAN+3 governments noted the bright prospects for enhanced interaction and closer linkages in East Asia and recognized the fact that this growing interaction has helped increase opportunities for cooperation and collaboration with each other, thereby strengthening the elements essential for the promotion of peace, stability and prosperity in East Asia and the World."<sup>72</sup>

The consensus-based approach attracts critiques as well.<sup>73</sup> Among the negative comments, which mainly come from neo-realists, is the notion that ASEAN is more concerned with process than problem solving, an ineffectual talk shop masquerading as a potential regional organization. However, as we learn from constructivists' responses, meetings and talks among APT countries on different levels are quite sensible in a region of the world where personal relations are of primary importance.<sup>74</sup>

#### **(5) The Autonomy of Agents within APT**

The last element to be examined is the autonomy of agents. Based on the APT's institutional design discussed above, it can clearly be concluded that APT and the ASEAN way do not exert strong control over autonomous agents in order to uphold the institution's coordination. Theoretically, both constructivists and institutionalists imply that when an issue is narrowly defined, technical, or when the principal is less attentive or relevant, the institution allows for discursive and argumentative processes.<sup>75</sup> In regard to the various issue areas dealt with, functional aspects such as cooperation in the areas of finance, agriculture and the environment occupy nearly all of APT's meeting rooms on different levels. These issue areas, characterized by technical aspects, are not even related to the founding principles of the APT framework, let alone the potential challenges to APT. Rather, those mushrooming common concerns, e.g., SARS and Bird Flu (H5N1), utilized APT as an ideal arena for the exchange of ideas between officials of ASEAN countries and their Northeast Asian colleagues.

To sum up, the small membership of APT with a clear regional identity and organizational concept has set the stage for cooperation on a foundation of social liking and in-group identity. The fact that ASEAN is the core player in APT means that the authoritativeness of messages, or normative teaching, is likely to be high and spread regional norms that will socialize novices. Additionally, consensus-based decision-making procedures and the related talk shop function allow this socializing process to continue working. Even the act of making process is progress in itself, on another level, since the noted productive functional cooperation contributes to a higher likelihood of agent autonomy in this loose cooperative framework.

## 4. The Institutional Purpose of APT

### (1) A Collective Voice of Asia

APT's explicit purposes can be gleaned from its emergence process in the context of East Asia in the early 1990s. The first purpose of importance here is the consolidation of a collective Asian voice, as was previously mentioned. When the first ASEM was prepared in 1995, there was no group linking Northeast and Southeast Asia to represent Asia within the ASEM framework. As Terada reveals, "ASEM forced Northeast and Southeast Asians to meet and to consolidate into the 'Asian' side participants of ASEM."<sup>76</sup> In other words, when ASEM began, APT was employed as the Asian side of the inter-regional meeting, which has ultimately been very helpful in the creation of an APT identity. The aim of creating a collective Asian voice is also reflected in Mahathir's thinking as of 2003 about the future of East Asian integration. At that time, the APT leaders had accepted the recommendation to upgrade the APT to EAS as a further step in the process of establishing an East Asian Community. In his article titled "Building East Asian Community: The Way Forward," Mahathir argued:

*This East Asian Community I speak of must be empowered within our region. Very importantly, we must also be empowered to play our rightful role in the world. Today, we are the most dependent on international trade. Our very lives, our entire future hinges on decisions made in Geneva and Washington and New York. Yet our voice is seldom heard and even more seldom heeded. We carry little weight. We have little clout. We owe it to our people to amplify our voice, to aggregate our weight, to boost our clout... We must seek to contribute to a sense of security and well being on the part of all the countries of East Asia.<sup>77</sup>*

### (2) A Self-help and Support Mechanism

The second purpose of APT might be its function as a self-help and support mechanism. The Asian financial crisis compelled the affected East Asian countries to re-evaluate their place in the world and to review their relationships with other countries within the region. The widespread and open criticism of the International Monetary Fund (IMF) in addition to the World Bank's inefficient rescue and reform measures were well acknowledged through related government and regional news media. For instance, the South Korean government explicitly addressed the necessity of "reforming the international financial architecture, and enhancing self-help and support mechanisms in East Asia through the ASEAN+3 framework."<sup>78</sup> Meanwhile, as Oba argues, "Japan also attempts to promote internationalization of the Yen in order to establish a financial architecture independent from the United States."<sup>79</sup> In other words, not only did the financial crisis represent a shared experience and deepen the recognition of regional interdependency, but it also gave rise to a call for an alternative to the IMF for regional countries.<sup>80</sup>

### (3) A Platform for Northeast Asian Countries

However, another aspect of Mahathir's idea of regionalism cannot be overlooked. In the 1990s, Mahathir's proposal for the East Asian Economic Group (EAEG), later renamed the East Asian Economic Caucus (EAEC), was put forth as an alternative to the then internally divided APEC.<sup>81</sup> Beyond this, the EAEC idea was discussed at a series of ASEAN foreign and economic ministerial meetings between 1991 and 1997.<sup>82</sup> At that time, since 'East Asia' was an ill-defined term, Mahathir's pioneering concept provided an 'Asian-only' alternative to APEC. Mahathir's proposal had a strong anti-US element.<sup>83</sup> Since the putative membership of the EAEC has emerged as APT, the implicit political and ideological connections between EAEC and APT cannot be overlooked. Scholars such as Hook and Stubbs refer to Mahathir's East Asian Economic Grouping as



the immediate precursor of APT based on the ideological and practical connections between them. As noted before, the APT identity, by combining Northeast and Southeast Asia, represents a new concept or perception of East Asia.<sup>84</sup> On the one hand, the APT framework provided an appropriate arena for ASEAN to ask China, Japan and South Korea for help in solving a wide range of issues, reflected in the issue areas covered by the APT agenda.<sup>85</sup> On the other hand, preparatory meetings at the regional and sub-regional (Southeast and Northeast Asia) levels offered a practical platform for the three Northeast Asian countries of China, Japan and South Korea. The well-known long-term rivalry among these three countries, along with a degree of reluctance on the part of Japan and China, are reminders that the Cold War mindset is still of some import. Hence, the platform plays a vital role in maintaining frequent contact between the ASEAN countries and their Northeast Asian counterparts.

## 5. Case Study: China's Interaction with ASEAN plus Three (APT)

From the APT's institutional design and purpose, described above, it can be gathered that it is an institution for socializing regional agents. Now in need of further attention is how the domestic and external conditions of China, as the object of socialization, interact with APT to complete this socialization process. Rising China is a significant factor, not only because of the time frame and external environment of its rise but also because of its mindset as a 'novice' and a *realpolitik* state on the world stage.<sup>86</sup> Since the rise of China coincides with the process of East Asian integration, which is an evolving and rapidly developing process, most Chinese and foreign scholars have linked China's increasingly multilateral posture to China's rise.<sup>87</sup> They believe that China's multilateralism is an important part of its twenty-first century international strategy and contributes to its rise.<sup>88</sup> But China's rise in relative power and its status as a great power in politics and military affairs beg the question as to what makes China wish to align its policy with that of ASEAN.

This section describes the evolution of China's engagement in the East Asian region since the end of the Cold War, and analyzes China's approach towards APT in different periods. Based on the patterns and levels of its involvement, China's approach towards APT will be divided into three major phases.

### (1) Phase One (Early 1990s - 1997/98): Passive Involvement<sup>89</sup>

Since its early years the People's Republic of China's foreign policy behavior has demonstrated a strong preference towards bilateral relations. For instance, in regard to territorial disputes, China has long employed only bilateral negotiations since 1949.<sup>90</sup> Take the South China Sea disputes, for instance. Starting in the early 1990s, China did not agree to hold talks with ASEAN for almost 10 years. China's multilateral foreign policy was mostly preoccupied with the struggle for a permanent position in the United Nations.

During the Cold War, China did not enjoy a sound relationship with Southeast Asian countries. Its regional policy in the 1960s and 1970s of exporting the Maoist ideology, combined with historical border disputes and other sensitive issues, e.g., the overseas Chinese in Southeast Asia, aroused distrust and suspicion between China and Southeast Asian countries.<sup>91</sup> ASEAN as an important regional actor was relatively neglected in the immediate aftermath of the Cold War. Consequently, even in the early 1990s, there was a lack of familiarity with the discourse on regionalism and related ideas; even regionalism scholars were absent in academia in China.<sup>92</sup> Besides, due to China's long-term reluctance to involve itself in multilateral regional institutions, bilateralism still dominated China's mindset until Deng Xiaoping started to rethink China's external strategy. Deng's consideration finally developed into a guideline for China's foreign policy behavior and was expressed by the concept of China as 'a responsible power.'<sup>93</sup> In the meantime, China suffered

diplomatic, economic and military isolation from Western countries after the Tiananmen Incident in June 1989, and China started to understand the vital role that Asian countries played in breaking out of the isolation. The result was a series of diplomatic initiatives in East Asia, led by the establishment of diplomatic relations with Indonesia and Singapore in 1990. In 1991, Foreign Minister Qian Qichen attended the 24<sup>th</sup> ASEAN Foreign Ministers' meeting. This event symbolized the formal start of China's approach towards ASEAN as a regional inter-governmental organization with China becoming one of ASEAN's 'consultation partners.' It was in 1996 that China's status was updated to 'dialogue partner.' Even though APT then existed only as an idea, and China's perception of multilateral institutions largely remained cautious and suspicious, its new mindset prepared the country for its subsequent policy behavior that would demonstrate its warming up to regionalism.<sup>94</sup> There were gradual and incremental changes in China's mindset that paved the way for China's active approach towards APT later. As Ba puts it, "ASEAN gained importance in China's foreign policy reevaluation after Tiananmen, offering attractive investment and trading partners, as well as potential political allies that shared many of Beijing's developmental priorities and sensitivities about external interference."<sup>95</sup> China as a major regional player was gradually being socialized through its passive involvement. It is fair to say that China's identity and interests were changing as the integration process progressed. State identity is always an ongoing accomplishment—not ontologically given. Historically speaking, China's self-perceived identity was not well defined. In the period immediately following 1949, Mao Zedong regarded China as a socialist state in order to build the Sino-Soviet alliance and get official recognition from the socialist camp.<sup>96</sup> Later on, during the Geneva Conference in 1954 and the Bandung Conference in 1955, Mao classified China as a great regional power and a developing country.<sup>97</sup> However, this regional identity only concerned China's responsibility in regional affairs—for instance, Indo-Chinese affairs and Korean Peninsula issues—and was not to identify China as an East Asian or Asian state. Empirical evidence for China's changing identity can be found in China's rare participation in regional multilateral projects since China proposed the Five Principles of Peaceful Co-existence during the Bandung Conference. After opening up in the late 1970s, China dramatically adjusted its policy towards East Asian countries in its efforts to create a stable external environment for its economic take-off. In the meantime, China's awareness of Asia was revived through Deng Xiaoping's efforts. China started to perceive itself as an East Asian country. The Chinese term *diqu* [region] gradually replaced *zhoubian* [neighboring] and became the main discourse in discussions of East Asian or Asian affairs. However, in the 1990s, region or region-related concepts, e.g., regionalism and regionalization, had not yet been upgraded to a unified, national-level guideline.

## **(2) Phase Two (1997/98 - 2005): Active Participation**

The 1997/98 East Asian financial crisis generated a sense of community among Chinese and other East Asian countries. China fully understood the importance of economic interdependence and extended financial support to the neighboring countries affected by the crisis. The APT forum was instituted when the leaders of China, Japan and South Korea met with their counterparts from the ASEAN countries in Kuala Lumpur in December 1997, amidst the financial crisis. Sutter notes, "the 1997/98 financial crisis was a plus for China in that Beijing enhanced its status in the region by eschewing currency devaluation, offering aid, and joining the mainstream ASEAN opinion in seeking mechanisms under ASEAN plus Three and other organizations to regulate the disruptive consequences of economic globalization."<sup>98</sup> Since the APT process was formally institutionalized in 1999, Beijing has always sent its premier (Zhu Rongji from 1999 to 2002 and Wen Jiabao since 2003) to the yearly summit.<sup>99</sup> As Ren points out, China has put forward a number of proposals in various areas almost every year. China was also supportive of the creation of a 10+3 unit within the ASEAN secretariat in December 2003 and provided financial support.<sup>100</sup> In Beijing's view, no regional multilateral approach has greater potential and opportunity than APT in terms of both its

institutional design and its achievements since the informal meeting in 1997.<sup>101</sup> Since it first started participating in the APT process, China has been enthusiastic in promoting East Asian regionalization.<sup>102</sup> China proposed the idea of establishing a China-ASEAN Free Trade Agreement (FTA) at the APT summit in 2000. A year later, leaders from both sides agreed to build the proposed FTA within ten years. This development signifies China's active participation in the APT framework and the regional project. China has taken initiatives to support the APT process.<sup>103</sup>

China's norm-affirming behavior is attributable to its calculation of interests and the above-mentioned domestic pressure during and after the Asian financial crisis. Nevertheless, two points are worth noting. First, China's strong drive to become involved in APT and the regional integration process reflects the socialization of China and its calculation of interests. As shown in China's proposal for the ASEAN FTA, China's behavior has already gone beyond reactive self-help or mutual assistance towards active promotion of regional integration. Second, in terms of China's effort in developing a positive international image and the domestic pressure noted above, it is reasonable to argue that the so-called domestic-realistic considerations strongly rely on regional institutions' feedback and the socialization process.<sup>104</sup> The domestic-realistic consideration in China's foreign policy refers to the argument that China's regional behavior was only designed to enhance social stability and serve domestic interests.<sup>105</sup> Proponents of this view overlook the fact that even to serve domestic concerns, China still relies on positive feedback from its external environment. Third, as reflected in the report of President Jiang Zemin to the 16<sup>th</sup> National Congress of the Communist Party of China, 2002, the region-related concept has been upgraded to a united and national level. The report reads: "We will continue to cement our friendly ties with our neighbors and persist in building a good-neighborly relationship and partnership with them. We will step up regional cooperation and bring our exchanges and cooperation with our surrounding countries to a new height."<sup>106</sup> Put differently, the Chinese central authority treated the terms 'good-neighborly relationship and partnership' and 'regional cooperation' equally. It is fair to argue that China's regional consciousness is clear and definite.<sup>107</sup> That is to say, the socialization model helps explain China's active participation in APT.

### **(3) Phase Three (2005 - present): Towards a New Height**

In 2005, China failed to accomplish its goal of upgrading the original APT to a relatively closed East Asia Summit. According to Sun, "China envisioned a future East Asian Community based on the APT."<sup>108</sup> In other words, China was initially reluctant to support EAS membership of India, Australia and New Zealand. The East Asia Summit (EAS) came into existence in December 2005. To some extent, its establishment diluted the discourse on APT in the East Asian regional project, as there was some confusion regarding which group—APT or an enlarged EAS—would be the main mover in this regionalism process. However, as Assistant Foreign Minister Cui Tiankai argues, "The East Asian cooperative system is one with ASEAN as its core, APT as the main channel, and the EAS as its supplement."<sup>109</sup> That is, the two institutions should coexist and proceed in parallel. On the other hand, this setback served to show China's growing support for the ASEAN-led institutions as well as its shifting multilateralist approach.<sup>110</sup> While China's active approach to APT reflects its acceptance of the norms generated by ASEAN, China's acceptance of the EAS process means that China has already accepted ASEAN's political leverage in the enlarged East Asian framework. China has accepted the open nature of EAS while supporting ASEAN as the driving force for regional integration. As for APT, it has become the major vehicle for East Asian cooperation.<sup>111</sup> Therefore, China's approach towards APT is going to reach a new height in the foreseeable future.

To sum up, the following points can be made. First, China redefined its regional identity during and through its interaction with APT. The outbreak of the Asian financial crisis gave China a great opportunity to promote its positive image in the region and demonstrate its responsibility as

a rising power. Not only did China's gesture show that Northeast Asia and ASEAN were deeply connected, but it also reduced the negative influence of the perception of China as a threat among Southeast Asian countries. China's behavior after joining the APT framework strongly suggests that it has changed its cautious and skeptical attitudes towards regional institutions. Ba remarks, "China is the first non-ASEAN signatory to ASEAN's Treaty of Amity and Cooperation (TAC) in 2003 ... China is the first nuclear power to express the willingness to sign onto ASEAN's South-east Asian Nuclear Weapons Free Zone Treaty."<sup>112</sup> These foreign policy behaviors, combined with China's other ASEAN-related agreements, clearly demonstrate China's political will to promote regional development and its identity as a regional power. First, China's regional identity became entirely clear in Hu Jintao's report to the 17<sup>th</sup> National Congress of the Communist Party of China in 2007. He declared: "we will continue to follow the foreign policy of friendship and partnership, strengthen good-neighborly relations and practical cooperation with them, and energetically engage in regional cooperation in order to jointly create a peaceful, stable regional environment featuring equality, mutual trust and win-win cooperation."<sup>113</sup> Secondly, China has amply demonstrated respect for ASEAN's leading position and accepted the norms that have been generated through the APT process. Further discussions related to China's compliance can be found in China's interactions with APT during the launch of the First East Asia Summit (2004-05) and in the final result of China's proposal.<sup>114</sup> Third, China has changed its approach so that it now fully embraces regional multilateral processes. In other words, China is making efforts to sustain the regional process. As noted, the continuing enlargement of the East Asia Summit membership, including the participation of the United States and Russia in 2011, is partially attributable to China's willingness to accept it.<sup>115</sup> Thus, if we put aside China's potential hegemony within APT, the plausible reasons for its compliance should be generated from APT's institutional design and purpose as an attractive power.<sup>116</sup>

## 6. Conclusion and Issues for Further Discussion

In the discussion of China's regional behavior, APT's institutional design deserves our attention. It becomes evident from the above discussion that APT's socializing role in the East Asian regional integration project can be observed from its institutional design and purpose. Once China entered the APT process, its socialization and further integration with East Asia were accelerated through this multilateral institutional process. This phenomenon suggests that APT's socializing role was derived from its institutional design. Secondly, the process of institutionalization of regional multilateral cooperation aimed at integration as conducted through the ASEAN way clearly suits China's foreign policy thinking. Moreover, China's active participation in the regional project, which coincided with its improved self-perceived regional identity, tells us that China's behavioral change has gone beyond tactical 'charm offensives.' The compliance they have shown and the strong approach they have used towards the institutionalization of APT will not be easily reversed.

However, while it is fair to conclude APT is ideal for the socialization of China, and that China is indeed being socialized in this ongoing process, the limitations of it should not be neglected. On the one hand, China's potential dominance and hegemony within APT and this socializing process have already become a contentious issue. Since China was historically a dominant power in this region, the concept of China as a threat is not a new topic. Within the APT framework, critics of China's behavior mostly concentrated on the country's reservations toward the enlarged EAS and China's bilateral negotiations. As for the EAS-membership debate, critics argue that China will dominate the regional project and challenge the core interests of both the US and ASEAN countries.<sup>117</sup> Moreover, China's potential hegemony may also affect bilateral negotiations.



However, different countries have different concerns. Japan, for instance, is wary of China's strong push to engage ASEAN through the ASEAN plus One model within APT, despite the fact that APT's institutional design is ideal for socializing China. That is, the parallel existence of ASEAN plus One and ASEAN plus Three within APT is already showing its weakness. As for ASEAN as a group of countries, China was a concern due to its potential rivalry with Japan. Additionally, for these signal countries within the ASEAN camp, China may be a threat due to its uneven bilateral connections with different countries. Thus, even though China is being disciplined in an ideal arena and the consensus-based decision-making system denies great powers' ability to control outcomes through majority voting, the institutional design of APT is inadequate to avoid potential hegemonic behavior and other rivalries related to regional leadership.

Secondly, in the case of China, a dilemma emerges when this conceptual framework is applied to sovereignty-related and other 'sensitive issues' such as the South China Sea disputes and the human rights issue. The socializing process described above is challenged when it counters sovereignty-related issues that are closely related to China. As Taiwanese scholars, for instance, keep arguing: "it is the hope of the people of Taiwan that their contributions to the region and neighboring countries will be recognized," because it is still hard for Taiwan to be included in the East Asian regional integration project.<sup>118</sup> Besides, with regard to the South China Sea disputes, both the institutional design of APT and China's redefined regional identity require further tolerance and reassurance from China. But negative voices inside China seem to blur the future outlook of its continued tolerance and compliance.<sup>119</sup> Furthermore, within APT's conference diplomacy framework, it is difficult for China to discuss human right issues with its regional partners, even though the human rights issue is important in the scope of regional integration promotion.

To sum up, as Acharya put it, "Creating and sustaining 'the process' has been more important than the realization of specific or concrete goals such as an economic community or a security community."<sup>120</sup> Therefore, it can be concluded that APT is an ideal socializing environment for the further disciplining of China toward the aim of regional integration.

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## Notes

- <sup>1</sup> The "regionalist view of international relations" here refers to the approach to contemporary international politics with a focus on the study of regions, regionalism and regionalization. Generally, those who take the regionalist view on international relations argue that we are now living in a 'world of regions' and the 21<sup>st</sup> century is a region-building century. Shaun Breslin, Richard Higgott and Peter J.



- Katzenstein are prominent among the scholars with a regionalist view.
- <sup>2</sup> The term 'a world of regions' was coined by Peter J. Katzenstein in *A World of Regions: Asia and Europe in the American Imperium*, Ithaca: Cornell University Press, 2005. Theoretically, there is no clear concept of East Asia. Geographically, however, East Asia refers to a region that encompasses all states from the Sea of Japan in the north to the South China Sea in the south. 'East Asia' in this study draws on the works of Takashi Terada and other East Asian regionalism experts. Terada states, for example, "East Asia means a combination of Northeast and Southeast Asia. Northeast Asia is consisting of Japan, China and South Korea. Southeast Asia exactly refers to those 10 small or medium-sized ASEAN countries," Takashi Terada, "Constructing an 'East Asian' Concept and Growing Regional Identity: From EAEC to ASEAN+3," *Pacific Review*, Vol. 16, No. 2 (June 2003), p. 252; Richard Stubbs, "ASEAN Plus Three: Emerging East Asia Regionalism?" *Asian Survey*, Vol. 42, No. 3 (May/June 2002), pp. 440-455.
  - <sup>3</sup> ASEAN is the region's most enduring intergovernmental organization, established in 1967 by Indonesia, Malaysia, the Philippines, Singapore and Thailand. Brunei joined the grouping in 1984 upon gaining its independence from Britain. Vietnam joined in 1995, Laos and Myanmar in 1997, and Cambodia in 1999, bringing ASEAN's total membership to ten. On the East Asia side, the institutional architecture includes bilateral and sub-regional trade agreements, regional security dialogues (such as the ASEAN Regional Forum and the Six-party Talks), regional economic and business fora (such as the Boao Forum and the Asian Cooperation Dialogue), and regular meetings of East Asian leaders, including ASEAN plus Three and the East Asia Summit. See Richard Weixing Hu, "Building Asia Pacific Regional Architecture: The Challenge of Hybrid Regionalism," the Brookings Institution: Center for Northeast Asian Policy Studies, July 2009, p. 3, available at [http://www.brookings.edu/papers/2009/07\\_asia\\_pacific\\_hu.aspx](http://www.brookings.edu/papers/2009/07_asia_pacific_hu.aspx) (accessed October 3, 2011).
  - <sup>4</sup> The first informal summit of APT convened in December 1997.
  - <sup>5</sup> See Sanae Suzuki, "Chairmanship in ASEAN+3: A Shared Rule of Behavior," *IDE Discussion Paper*, No. 9, Institute of Developing Economies, Japan External Trade Organization, Tokyo, 2004, pp. 3-6.
  - <sup>6</sup> Chien-Peng Chung, "China's Approaches to the Institutionalization of Regional Multilateralism," *Journal of Contemporary China*, Vol. 17, No. 57 (November 2008), pp. 747-764.
  - <sup>7</sup> For an example, see Stubbs, 2002; Shiping Tang, "Leadership in Institution Building: The Case of ASEAN +3," in Bertrand Fort and Douglas Webber, eds., *Regional Integration in East Asia and Europe: Convergence or Divergence?* London: Routledge, 2008, p. 69; and Yunling Zhang, *China and Asian Regionalism*, River Edge: World Scientific Publishing, 2009, p. 32.
  - <sup>8</sup> Richard Weixing Hu, "Building Asia Pacific Regional Architecture: The Challenge of Hybrid Regionalism," the Brookings Institution Center for Northeast Asian Policy Studies, *CNAPS Visiting Fellow Working Paper*, 2009, p. 19, available at [http://www.brookings.edu/~media/Files/rc/papers/2009/07\\_asia\\_pacific\\_hu/07\\_asia\\_pacific\\_hu.pdf](http://www.brookings.edu/~media/Files/rc/papers/2009/07_asia_pacific_hu/07_asia_pacific_hu.pdf) (accessed November 2, 2011).
  - <sup>9</sup> See Tang, 2008.
  - <sup>10</sup> See Rosemary Foot, "The Organizational Dimension," draft paper presented at the seminar on International Society at the Regional Level: The Case of East Asia, Fudan University, Shanghai, China, May 22, 2011; forthcoming in Barry Buzan and Yongjin Zhang, eds., *International Society at the Regional Level: The Case of East Asia*.
  - <sup>11</sup> With regard to China's strong drive for the institutionalization of APT, see Chung, 2008. See also Tiankai Cui's speech at the Second East Asia Investment Forum, Weihai, Shandong Province, China, June 29, 2006, in which he stated, "APT served as a main channel in East Asia region-wide cooperation," available at <http://www.mfa.gov.cn/chn/gxh/zlb/ldzyjh/t265661.htm> (accessed October 3, 2011, in Chinese).
  - <sup>12</sup> With regard to China's drive for regionalism perceived as a threat by the US and China's neighboring states, see Samuel R. Berger, "The US Stake in Greater Asian Integration," *Global Asia*, Vol. 1, No. 1 (2006), p. 126; Michael A. Glosny, "Heading toward a Win-Win Future? Recent Developments in China's Policy towards Southeast Asia," *Asian Security*, Vol. 2, No. 1 (2006), pp. 24-57.
  - <sup>13</sup> Shulong Chu, "The East Asia Summit: Looking for an Identity," *Brookings Northeast Asian Commentary*, No. 6, Washington D.C.: The Brookings Institution, 2007.
  - <sup>14</sup> See Chung, 2008.
  - <sup>15</sup> For an overview of rising China's constraints, see Susan Shirk, *China: Fragile Superpower*, Oxford: Oxford University Press, 2007. On the domestic pressure and its constraints on China's regional be-

- havior, see Xuefeng Sun, "Why Does China Reassure South-East Asia?" *Pacific Focus*, Vol. 24, No. 3 (2009), pp. 308-312. Also note Satoshi Amako, "The Idea of New International Order China is Seeking and East Asia Community," *GIARI Working Paper*, 2007-E-1, pp. 3-4. In his working paper, Amako linked the Chinese slogan "Restoration of the Great Chinese Nation" and "prosperous society," which originated from the 16<sup>th</sup> National Congress of the Communist Party of China, to its changed regional policy.
- <sup>16</sup> Speech by President Jiang Zemin in the 15<sup>th</sup> National Congress of the Chinese Communist Party on September 12, 1997, available at [http://news.xinhuanet.com/ziliao/2003-01/20/content\\_697189.htm](http://news.xinhuanet.com/ziliao/2003-01/20/content_697189.htm) (accessed September 28, 2011). See also Denny Roy, "The Foreign Policy of Great-power China," *Contemporary Southeast Asia*, Vol. 19, No. 2 (1997), pp. 121-135.
  - <sup>17</sup> See Roy, 1997 and Sun, 2009.
  - <sup>18</sup> In terms of an East Asian Community, see East Asian Vision Group, *Towards an East Asian Community*. China has supported the formation of the East Asian Vision Group of academics in 1999, which came up with the above mentioned blueprint report in 2002.
  - <sup>19</sup> After the end of the Cold War, scholars' work on East Asia's prospects without the bipolarity carries more pessimism than optimism. See Richard Betts, "Wealth, Power and Instability: East Asia and the United States after the Cold War," *International Security*, Vol. 18, No. 3 (Winter 1993/94), pp. 34-77; Yaqing Qin and Ling Wei, "Jiegou, jincheng yu quanli de shehuihua - Zhongguo yu Dongya diqu he-zuo" [Structure, Process and Power Socialization: China and East Asian Regional Cooperation], *Shijie Jingji Yu Zhengzhi*, Vol. 3 (2007), pp. 7-15 (in Chinese); Evelyn Goh, "Great Powers and Hierarchical Order in Southeast Asia: Analyzing Regional Security Strategies," *International Security*, Vol. 32, No. 3 (Winter 2007/2008), pp. 113-157; Stein Tønnesson, "What is it that Best Explains the East Asian Peace since 1979? A Call for a Research Agenda," *Asian Perspective*, Vol. 33, No. 1 (January 2009), pp. 111-136.
  - <sup>20</sup> As Goetschel puts it, "In traditional political thought, as reflected by Henri Rousseau or Charles de Montesquieu, the qualification of a state as 'small' in the context of foreign and security policy meant that such a state was perceived as no danger to neighboring states. Small states were seen as fragile creatures in the rough sea of international relations... The concept of small state has always been a relative term. The qualification of a state as small only makes sense in relation to large states. However, the consequences of being large or small were not always just relative." See Laurent Goetschel, "The Foreign and Security Policy Interests of Small States in Today's Europe," in Goetschel, ed., *Small States Inside and Outside the European Union: Interests and Policies*, Boston: Kluwer Academic Publishers, 2010, pp. 13-31. Accordingly, in this article, small states refer to ASEAN countries located in the South-east Asian area.
  - <sup>21</sup> See, for example, Aaron L. Friedberg, "Ripe for Rivalry: Prospects for Peace in a Multipolar Asia," *International Security*, Vol. 18, No. 3 (Winter 1993/94), pp. 5-33; David C. Kang, "Getting Asia Wrong: The Need for New Analytical Frameworks," *International Security*, Vol. 27, No. 4 (Spring 2003), pp. 57-85; David Shambaugh, "China Engages Asia: Reshaping the Regional Order," *International Security*, Vol. 29, No. 3 (Winter 2004/05), pp. 22-35.
  - <sup>22</sup> See Chung, 2008; and Suisheng Zhao, "China's Approaches toward Regional Cooperation in East Asia: Motivations and Calculations," *Journal of Contemporary China*, Vol. 20, No. 68 (2010), pp. 53-67; Taek Goo Kang, "Assessing China's Approach to Regional Multilateral Security Cooperation," *Australian Journal of International Affairs*, Vol. 64, No. 4 (2010), pp. 406-431.
  - <sup>23</sup> In terms of the justification of the study of institutional design, see Amitav Acharya and Alastair Iain Johnston, "Comparing Regional Institutions: An Introduction," in Amitav Acharya and Alastair Iain Johnston, eds., *Crafting Cooperation: Regional International Institutions in Comparative Perspective*, Cambridge: Cambridge University Press, 2007, pp. 1-12.
  - <sup>24</sup> See Jeffrey Checkel, "Why Comply? Social Learning and European Identity Change," *International Organization*, Vol. 55, No. 3 (2001), pp. 553-588.
  - <sup>25</sup> In terms of the ASEAN way, see Amitav Acharya, *Constructing a Security Community in Southeast Asia: The Problem of Regional Order*, London: Routledge, 2001; and Qin and Wei, 2007.
  - <sup>26</sup> See Dirk Nabers, "The Social Construction of International Institutions: The Case of ASEAN+3," *International Relations of Asia-Pacific*, Vol. 3, No. 1 (2003), pp. 113-136.
  - <sup>27</sup> See Kai Alderson, "Making Sense of State Socialization," *Review of International Studies*, Vol. 27, No. 3 (2001), pp. 415-433; and Jeffrey Checkel, "International Institutions and Socialization in Europe: In-

- roduction and Framework,” *International Organization*, Vol. 59, No. 4 (Autumn 2005), pp. 801 - 826.
- 28 See Hans Morgenthau, *Politics among Nations: The Struggle for Power and Peace*, New York: Knopf, 1978.
  - 29 See Kenneth Waltz, *Theory of International Politics*, New York: Random House, 1979.
  - 30 Alastair Iain Johnston, *Social States: China in International Institutions, 1980-2000*, Princeton: Princeton University Press, 2008, p. 3.
  - 31 See G. John Ikenberry and Charles A. Kupchan, “Socialization and Hegemonic Power,” *International Organization*, Vol. 44, No. 3 (Summer 1990), pp. 283-315.
  - 32 For a seminal discussion on socialization from a structural realism perspective, see Cameron G. Thies, “State Socialization and Structural Realism,” *Security Studies*, Vol. 19 (2010), pp. 689-717.
  - 33 See David Shambaugh, “The Evolving Asian System: A New Regional Structure?” paper presented at the conference on East Asian Cooperation and Sino-US Relations, Beijing, China, November 3-4, 2005; cited in Qin and Wei, 2007.
  - 34 On neo-realism’s discussion on ASEAN and the ASEAN way, see Sarah Eaton and Richard Stubbs, “Is ASEAN Powerful? Neo-realist versus Constructivist Approaches to Power in Southeast Asia,” *The Pacific Review*, Vol. 19, No. 2 (June 2006), pp. 135-155.
  - 35 Alastair Iain Johnston, “Socialization in International Institutions: The ASEAN Way and International Relations Theory,” in G. John Ikenberry and Michael Mastanduno, eds., *International Relations Theory and Asia-Pacific*, New York: Columbia University Press, 2003, p. 108.
  - 36 See Lisa L. Martin, “An Institutionalist View: International Institutions and State Strategies,” in T.V. Paul and John A. Hall, eds., *International Order and the Future of World Politics*, Cambridge: Cambridge University Press, 1999, pp. 78-98.
  - 37 See Robert O. Keohane, *After Hegemony*, Princeton: Princeton University Press, 1984.
  - 38 See Hedley Bull, *The Anarchical Society: A Study of Order in World Politics*, New York: Columbia University Press, 1977.
  - 39 See Alderson, 2001 and Checkel, 2005.
  - 40 See Alexander Wendt, *Social Theory of International Relations*, Cambridge: Cambridge University Press, 1999.
  - 41 In terms of constructivism in IR theory, Acharya notes five striking points to distinguish constructivism from other camps of theories. For details, see Amitav Acharya, “Asian Regional Institutions and the Possibilities for Socializing the Behavior of States,” *ADB Working Paper Series on Regional Economic Integration*, No. 82 (June 2011).
  - 42 See Ann Florini, “The Evolution of International Norms,” *International Studies Quarterly*, Vol. 40, No. 3, Special Issue: Evolutionary Paradigms in the Social Sciences (September 1996), pp. 363-389.
  - 43 See Martha Finnemore, *National Interest in International Society*, Ithaca, NY: Cornell University Press, 1996.
  - 44 See Wendt, 1999.
  - 45 See Checkel, 2005.
  - 46 See Johnston, 2008.
  - 47 Acharya, 2011, pp. 20.
  - 48 For details, see Amitav Acharya and Alastair Iain Johnston, “Comparing Regional Institutions: An Introduction,” pp. 1-31; Johnston, 2008; Rosemary Foot’s draft chapter on the Organizational Dimension in Barry Buzan and Yongjin Zhang, eds., *International Society at the Regional Level: The Case of East Asia*, 2011 (forthcoming).
  - 49 On the justification of analyzing institutional design in regionalism project, see Acharya and Johnston, 2007, pp. 1-12.
  - 50 Yasumasa Komori, “Asia’s Institutional Creation and Evolution,” *Asian Perspective*, Vol. 33, No. 3 (2009), pp. 151-182; and Richard Stubbs, “ASEAN Plus Three: Emerging East Asian Regionalism?” *Asian Survey*, Vol. 42, No. 3 (2002), pp. 440-455.
  - 51 The Chiang Main Initiative can be seen as an example in terms of the functional cooperation under the APT framework.
  - 52 As we can see from the Joint Communiqué of the First ASEAN plus Three Ministerial Meeting on Transnational Crime (AMMTC+3) in 2002, it was China that suggested the APT process include regional political and security issues such as combating terrorism and other transnational crime. See Suzuki, 2004, p. 18.

- 53 See Dieter and Higgott quoted in Xiaoming Zhang, "The Rise of China and Community Building in East Asia," *Asian Perspective*, Vol. 30, No. 3 (2006), pp. 129-148; and Stubbs, 2002.
- 54 See, Johnston, 2008, pp. 25-31.
- 55 Ibid., p. 31
- 56 Ibid., p. 81.
- 57 The term 'renewed bilateral friendship relations around China' indicates the restoration of diplomatic ties between China and Indonesia in 1990 and Vietnam in 1991.
- 58 Ibid., p. 74.
- 59 For the process of acceptance of the concept of East Asia in the APT process, see Takashi Terada, "The Birth and Growth of ASEAN+3," in Bertrand Fort and Douglas Webber, eds., *Regional Integration in East Asia and Europe: Convergence or Divergence?* New York: Routledge, 2006, pp. 222-229.
- 60 See Xiaojun Li, "Social Rewards and Socialization Effects: An Alternative Explanation for the Motivation behind China's Participation in International Institutions," *The Chinese Journal of International Politics*, Vol. 3 (2010), pp. 374-377.
- 61 For instance, Leifer is one of these scholars who did not see a lot of value in ASEAN in his work in 1996. See Michael Leifer, "The ASEAN Regional Forum," *Adelphi Paper*, 302, New York: Oxford University Press/Institute for Strategic Studies, 1996.
- 62 See Terada, 2003.
- 63 The concept of small or medium-sized state has always been a relative term. This article does not analyze the quantitative criteria for the qualification of a state as small or medium-sized, but accepts that the consequences of being large or small are not always simply relative.
- 64 I am grateful to the reviewer for suggesting this point. For an overview of small states and the European Union, see Laurent Goetschel, ed., 2010.
- 65 See Hu, 2009.
- 66 See Rajshree Jetly, "Conflict Management Strategies in ASEAN: Perspectives for SAARC," *The Pacific Review*, Vol. 16, No. 1 (2003), pp. 53-76; quoted in Sarah Eaton and Richard Stubbs, "Is ASEAN Powerful? Neo-realist versus Constructivist Approaches to Power in Southeast Asia," *Pacific Review*, Vol. 19, No. 2 (2006), pp. 135-55.
- 67 See Acharya, 2001.
- 68 Sanae Suzuki, "East Asian Cooperation through Conference Diplomacy: Institutional Aspects of the ASEAN Plus Three Framework," *IDE APEC Study Center Working Paper Series*, 03/04 - No.7, APEC Study Center, Institute of Developing Economies, JETRO (March, 2004), p. 30, available at [http://www.ide.go.jp/English/Publish/Download/Apec/pdf/2003\\_07.pdf](http://www.ide.go.jp/English/Publish/Download/Apec/pdf/2003_07.pdf) (accessed November 4, 2011).
- 69 See Soesastro quoted in Hu, 2009.
- 70 See Eaton and Stubbs, 2006.
- 71 See Qin and Wei, 2007.
- 72 See MOFAT quoted in Nabers, 2003.
- 73 In terms of the debate on expanded ASEAN machinery, see David Martin Jones and Michael L.R. Smith, "Making Process, Not Progress: ASEAN and the Evolving East Asian Regional Order," *International Security*, Vol. 32, No.1 (Summer 2007), pp. 148-184; and the correspondence between the authors and Hiro Katsumata, David Martin Jones and Michael L. R. Smith, "ASEAN, Regional Integration and State Sovereignty," *International Security*, Vol. 33, No. 2 (Fall 2008), pp. 182-188.
- 74 See John Ravenhill, *APEC and the Construction of Pacific Rim Regionalism*, Cambridge: Cambridge University Press, 2001.
- 75 See Johnston, 2008.
- 76 Terada, 2006, pp. 223.
- 77 Mohamad Mahathir, "Building an East Asian Community: The Way Forward," *New Strait Times*, August 5, 2003, p. 10.
- 78 See MOFAT, 1999, cited in Nabers, 2003.
- 79 Mie Oba, "Tsuka-kinyu kyoryoku to FTA ni miru Nihon no Higashi-Ajia chiiki keisei senryaku" [Japan's Strategy for Constructing an East Asian Region as Seen Currency-financial Cooperation and FTA], in Yamakage, ed., *Higashi-Ajia chiiki shugi to Nihon gaiko* [East Asian Regionalism and Japan's Diplomacy], 2003, cited in Suzuki, 2004 (in Japanese).
- 80 Terada, 2003; and Nabers, 2003.
- 81 Richard Higgott and Richard Stubbs, "Competing Conceptions of Economic Regionalism: APEC versus



- EAEC in the Asia Pacific,” *Review of International Political Economy*, Vol. 2, No. 3 (Summer 1995), pp. 516-535.
- <sup>82</sup> See Komori, 2009.
- <sup>83</sup> Baogang He, “East Asian Ideas of Regionalism: A Normative Critique,” *Australian Journal of International Affairs*, Vol. 58, No. 1 (2004), pp. 105-125.
- <sup>84</sup> As we learned from Terada’s notes (see Terada, 2003, note No. 5), there is a vivid example regarding the misunderstanding of East Asia among these Southeast Asian countries, which only refers to China, Japan, South Korea, Hong Kong and Taiwan until 1997.
- <sup>85</sup> With regard to the ‘emerging +3 cooperation,’ see Takashi Terada, “ASEAN+3: Becoming More Like a Normal Regionalism?” *GIARI Working Paper*, 2010-E-4, Waseda University, 2010, p. 12.
- <sup>86</sup> Qin argues that the main reason for the absence of Chinese IR theory is the traditional worldview in China, which lacks an awareness of “international-ness.” For details, see Yaqing Qin, “Why is There No Chinese International Relations Theory?” in Amitav Acharya and Barry Buzan, eds., *Non-Western International Relations Theory: Perspectives on and beyond Asia*, London and New York: Routledge, 2010, p. 36.
- <sup>87</sup> See Zhang, 2006; Qin and Wei, 2007.
- <sup>88</sup> As an example, see Shipping Tang and Yunling Zhang, “China’s Regional Strategy,” in David Shambaugh, ed., *Power Shift: China and Asia’s New Dynamics*, Berkeley: University of California Press, 2006, pp. 48-68.; Shambaugh, 2004/05; Qin and Wei, 2007; Xuefeng Sun, “Why Does China Reassure South-East Asia?” *Pacific Focus*, Vol. 24, No. 3 (2009); and Teak Goo Kang, “Assessing China’s Approach to Regional Multilateral Security Cooperation,” *Australian Journal of International Affairs*, Vol. 64, No. 4 (2010), pp. 406-431.
- <sup>89</sup> I borrowed this term from Cheng-Chwee Kuik, “Multilateralism in China’s ASEAN Policy: Its Evolution, Characteristics and Aspiration,” *Contemporary Southeast Asia*, Vol. 27, No. 1 (2005), pp. 102-122.
- <sup>90</sup> For instance, in the early 1990s, China insisted on a bilateral approach and rejected the multilateral solution initiated by ASEAN countries to deal with the South China Sea disputes. See Eric Hyer, “South China Sea Disputes: Implications of China’s Earlier Territorial Settlements,” *Pacific Affairs*, Vol. 68, No. 1 (1995), pp. 34-54.
- <sup>91</sup> Tang and Zhang, 2006.
- <sup>92</sup> Xinning Song, “European ‘Models’ and Their Implications for China: Internal and External Perspectives,” *Review of International Studies*, Vol. 36, No. 3 (2010), pp. 755-775.
- <sup>93</sup> As Hu puts in his work, “Samuel Kim used to call China a regional power with a global strategy before the end of the Cold War. Now after 1989, China really became a global power, but with a more regional focus, especially in East Asia.” See Richard Weixing Hu, “China and East Asian Community Building: Implications and Challenges Ahead,” Washington D.C.: Center for Northeast Asian Policy Studies, Brookings Institution, October 2, 2007, available at [http://www.brookings.edu/events/2007/1002\\_east\\_asia.aspx](http://www.brookings.edu/events/2007/1002_east_asia.aspx) (accessed October 3, 2011).
- <sup>94</sup> China decided to join the regional security forum, Asian Regional Forum (ARF), which was initiated by ASEAN in 1994, and in the sub-regional level, China became involved in Greater Mekong Sub-regional (GMS) Cooperation in the very beginning by cooperating with its neighboring countries.
- <sup>95</sup> Alice D. Ba, “China and ASEAN: Renavigating Relations for a 21<sup>st</sup> Century Asia,” *Asian Survey*, Vol. 43, No. 4 (2003), pp. 522-547.
- <sup>96</sup> Jun Niu, “Mao Zedong wancheng guojia shenfen rentong” [Mao Zedong’s Accomplishment of China’s Identity], *Huanqiu Shiye* [Global View], Vol. 321 (October 2010), available at <http://www.globalreview.cn/ReadNews.asp?NewsID=22680> (accessed November 3, 2011, in Chinese).
- <sup>97</sup> Ibid.
- <sup>98</sup> Robert Sutter, “China’s Recent Approach to Asia: Seeking Long Term Gains,” *NBR Analysis* (March 2002).
- <sup>99</sup> Xiao Ren, “Between Adapting and Shaping: China’s Role in Asian Regional Cooperation,” *Journal of Contemporary China*, Vol. 18, No. 59 (2009), p. 310.
- <sup>100</sup> The 10+3 unit within the ASEAN Secretariat is an organizational body to further strengthen and coordinate ASEAN Plus Three cooperation; see Ren, 2009, p. 311.
- <sup>101</sup> See Chu, 2007.
- <sup>102</sup> Tiejun Zhang, “China and East Asian Community,” *Global Review*, No. 3 (2005), pp. 19-33, available at [http://www.siis.org.cn/en/luntan\\_view\\_en.aspx?id=200503](http://www.siis.org.cn/en/luntan_view_en.aspx?id=200503) (accessed November 16, 2011). Besides,



Sutter argues that “since the crisis, China has been by far the most active outside power in Southeast Asia, using summit meetings, anniversary celebrations, friendship treaties and bilateral and multilateral occasions and arrangements to build Chinese influence.” Robert G. Sutter, *States and East Asia: Dynamics and Implications*, Lanham: Rowan and Littlefield, 2003, p. 213.

<sup>103</sup> For details, see Ren, 2009.

<sup>104</sup> On the good image of rising China, the underlying Chinese logic is that an understanding of China and its benign intensions will make the Asian actors change their perceived interests and behavior in a direction that is favorable to China. Cited from Mikael Weissmann, “The South China Sea Conflict and Sino-ASEAN Relations: A Study in Conflict Prevention and Peace Building,” *Asian Perspective*, Vol. 34, No. 3 (2010), p. 59.

<sup>105</sup> See Sun, 2010, pp. 310-312.

<sup>106</sup> Full text of Jiang Zemin’s report to the 16<sup>th</sup> Party Congress, November 8, 2002, available at <http://english.cpc.people.com.cn/66101/6433209.html> (accessed November 4, 2011).

<sup>107</sup> Xintian Yu, “Zhongguo peiyu Dongya rentong de sikao” [On China’s Efforts toward the Building Process of an East Asian Regional Identity], *Dangdai Yatai* [Contemporary Asia], Vol. 3 (2008), p. 23 (in Chinese).

<sup>108</sup> Xuefeng Sun, “The Efficiency of China’s Multilateral Policies in East Asia (1997–2007),” *International Relations of Asia-Pacific*, Vol. 11, No. 3 (2010), p. 524.

<sup>109</sup> Tiankai Cui’s speech at the Second East Asia Investment Forum, Weihai, Shangdong Province, July 29, 2006, cited in Ren, 2009, p. 318.

<sup>110</sup> See Qin and Wei, 2007.

<sup>111</sup> Zhang, 2009.

<sup>112</sup> Ba, 2003.

<sup>113</sup> Full text of Hu Jintao’s report to the 17<sup>th</sup> Party Congress, October 25, 2007, available at <http://english.cpc.people.com.cn/66102/6290205.html> (accessed November 4, 2011).

<sup>114</sup> See Qin and Wei, 2007; Sun, 2010.

<sup>115</sup> Both Russia and the United States joined the EAS in December 2011.

<sup>116</sup> The other regional players employed Japan as a key balancer towards China’s potential preponderant power. In the same vein, it is Japanese scholars that hold the point that China is going to realize its hegemony in an exclusive and small group, like APT (10+3). See Terada, 2010; and Yoshihide Soeya, “An East Asian Community and Japan-China Relations,” *East Asia Forum*, May 17, 2010, available at <http://www.eastasiaforum.org/2010/05/17/an-east-asian-community-and-japan-china-relations/> (accessed November 4, 2011).

<sup>117</sup> Sun, 2010, pp. 524-526.

<sup>118</sup> For more on the voice of Taiwanese scholars on regional issues, see “Regional Economic Architecture: Post Global Economic Crisis,” *ISIS Focus*, No. 4 (2011), available at [http://isis.org.my/files/ISIS\\_FOCUS\\_INDEX\\_2011/ISIS\\_Focus\\_4/IF\\_4-A3\\_2011.pdf](http://isis.org.my/files/ISIS_FOCUS_INDEX_2011/ISIS_Focus_4/IF_4-A3_2011.pdf) (accessed November 4, 2011).

<sup>119</sup> The South China Sea dispute is clearly closely related to China’s sovereignty issue. Chinese scholars, Zhongying Pang and Lexiong Ni, for instance, repeatedly argued in newspapers that resorting to force would be China’s only choice. See Zhongying Pang, “Nanhai wenti xu zhunbei fei waijiao shoudun” [We Need Non-diplomatic Solutions for Dealing with the South China Sea Issue], *Dongfang Zaobao* [Dong Fang Daily], July 25, 2011, available at <http://www.dfdaily.com/html/51/2011/7/15/631530.shtml> (accessed November 4, 2011, in Chinese). On September 27, 2011, the official international newspaper *Global Times* published a series of articles and comments focused on using force to solve the South China Sea dispute. These views were shared by a group of Chinese scholars.

<sup>120</sup> Amitav Acharya, “Ideas, Identity and Institution Building: From the ‘ASEAN’ way to the ‘Asia-Pacific way’?” *The Pacific Review*, Vol. 10, No. 3 (1997), p. 324.

# ASEAN Integration in Human Rights: Problems and Prospects for Legalization and Institutionalization

Theoben Jerdan C. Orosa

## Abstract

*This article discusses the efforts of Southeast Asian countries to address human rights issues at the regional level through the Association of Southeast Asian Nations (ASEAN). It seeks to elucidate the position taken by the ASEAN member states and their representatives towards the design of the ASEAN Intergovernmental Commission on Human Rights (AICHR)—the regional body tasked with a non-adjudicative function of assessing and addressing human rights issues in ASEAN. Tracing the discourse from differing viewpoints, this article identifies an evolutionary path down which ASEAN states are pursuing integration in human rights issues through a realist-rationalist perspective. Individual state interests are taken into account in legalization or in the crafting of textual commitments, in institutionalization or in the design of the regional body, and in the granting of powers and functions. The critical lynchpin of the negotiation process is the non-coercive nature of the human rights body. Non-intervention and the lack of a coercive mechanism, embodying the so-called “ASEAN Way,” are principles that have been institutionalized in the ASEAN Charter and in AICHR. They have become foundational principles in the crafting of a regional body tasked to uphold a standard of conduct for states over individuals. This article theorizes that ASEAN Member States, through state actors, integrate for their perceived self-interest to avoid the high costs of external pressures and to meet internal demands, and they seek to minimize sovereignty costs by the non-empowerment of the regional authority. Legalization, in this case the regionalization of human rights, becomes an instrumental issue in negotiations. On this background, this article seeks to understand the compromises and negotiations together with the hesitations, the mix of which results in a quasi-functional, quasi-intergovernmental body within AICHR. This article concludes that, despite the seeming incongruence between a human rights body and its non-coercive nature, there is a positive trend of addressing Southeast Asian human rights issues through a regional body in ASEAN. The creation of an AICHR precludes ASEAN from retreating from advancing human rights issues on the regional level. The realist-rationalist consensus to grant an evolutionary mandate for AICHR brightens the prospects for future efforts to integrate human rights promotion and protection in the region.*

## 1. Introduction

States, state institutions and their representatives are generally protective of their rights, both domestically and internationally. Human rights are, in a general legal sense, limitations on governmental intrusion, administration and coercion. Legalization is the process of adopting codes of conduct and mechanisms to enforce obligations. For countries with cultures and histories as varied as those of the members of the Association of Southeast Asian Nations (ASEAN), what human rights-related issues are being raised through regional integration? Are state actors, as main players in regional integration, of the same view as non-state actors in allowing the evolution of ASEAN toward a *rights*-based organization, rather than a solely *rules*-based one, through the ASEAN Intergovernmental Commission on Human Rights (AICHR)? Is this change serious or is it mere

“window-dressing”? This article addresses this issue in an exploratory way, by tracing the evolution and forward movement of ASEAN in human rights legalization—the process of creating binding obligations—and in institutionalization—the process of delegating certain human rights issues-related powers and functions to a regional authority.

The next section discusses human rights in the context of regional integration. It will be followed in Section Three by a “thick description” of ASEAN’s consolidated move toward a rules-based system and the beginnings of a rights-based regime through the AICHR. Rules-based systems impose obligations through precise standards as overseen by a neutral third party or agency (whether a supranational or coordinating body).<sup>1</sup> Rights-based regimes have a more progressive step in that there is recognition of “duty-bearers” and “rights-holders” and there is a responsibility on the part of the duty-bearer to act or not act in accordance with the right invoke by the holder.<sup>2</sup> Section Four explains this shift through a rationalist-realist framework. Section Five applies some of the theoretical insights of the rationalist-realist approach to actual cases that are presented before the AICHR or the Commission, and explores issues related to the AICHR’s existence. The last section gives some initial conclusions based on this exploratory study.

This article will show that ASEAN has come far from its 1967 design and has allowed some institutional evolution. Nascent events have led ASEAN to show some spillover effects in its ASEAN Community Blueprints. Legalization of a constitutionalist nature has been creeping in and taken root to some extent in the ASEAN Charter. These developments have had varying effects on the human rights regime in the region, AICHR being one of the most important institutional manifestations of this process.

Some preliminary questions that may be asked regarding the nature of AICHR and its functions would be: How powerful is AICHR? Will it be a supranational body and reflect domestic preferences at the regional level? How much of the AICHR is informed by national state preferences and how much authority is delegated by ASEAN member states to the Commission?

The Terms of Reference of AICHR (TOR)<sup>3</sup> were issued pursuant to Article 14 of the ASEAN Charter which (1) established the ASEAN Human Rights Body (AHRB) and (2) had operational powers to be determined “in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting.”<sup>4</sup>

As will be discussed in Section Three, AICHR has been given the gargantuan task of “upholding the right of the peoples of ASEAN to live in peace, dignity and prosperity” on the regional level, but with the caveat that AICHR shall remain within the ambit of ASEAN principles. Such principles include the principles of respect for independence, sovereignty, equality, territorial integrity and national identity; non-interference in internal affairs; and respect for the right of every member state to be without external interference. These are also codified in the TOR in Article 2.1, with the principles of international human rights law following in Article 2.2. The latter principles constitute limitations for AICHR. However, there is a residual notion that aside from those limitations, AICHR can make constructive determination of its activities. This would allow for some room for AICHR to reinterpret its role.

As for the composition of AICHR, Article 5 of the TOR provides that AICHR shall have ten members who act as representatives of their states. They will each serve a term of three years with eligibility for reappointment for another term.<sup>5</sup> Each representative shall be appointed by its respective government and may be replaced at the government’s discretion.<sup>6</sup>

Regarding the power to decide cases or render policy decisions, there are no actual provisions, but the principle of consultation and consensus that the ASEAN Charter codified in Article 20 has been reiterated for AICHR in Article 6.1 of the TOR.

Given that the design lacks a coercive mechanism, has appointed members, and makes its decisions based on consensus, it seems there is some form of institutionalization, though it is one that has been derived from compromise.<sup>7</sup> This is a point of contention that ASEAN scholars and

observers are keen to see. This article will discuss some of these points of contention from a neutral perspective, viewing objective realities as they merge with ideational constructs towards the protection of human rights in Southeast Asia.

## 2. Human Rights and Regional Integration

East Asia is a newcomer in regional integration in human rights. After the decades-long debate on “Asian Values” and the subsequent international affirmation of the universality of human rights in Vienna in 1993, Asian states, led by Singapore and Malaysia, were adamant on a relativistic approach.<sup>8</sup> Regional human rights regimes existed in most continents but not in Asia.<sup>9</sup> Regime building or the creation of those “sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area of international relations”<sup>10</sup> depends on rule-making where norms are made explicit and authorities that impose them are recognized. In the global setting, the United Nations (UN) was clearly constructed with a leaning towards the protection of the rights of people to a certain basic code of conduct from states and their leadership through the evolving notion of international law.<sup>11</sup> Institutions like the International Court of Justice (ICJ) followed and other relevant agencies were established to uphold the Universal Declaration of Human Rights—eventually a rallying post for many people in repressive regimes.<sup>12</sup>

As regional structures were formed it was observed that they, too, were reflecting the global structure for respecting human rights norms and for creating institutions that upheld them. David Forsythe argues that from the beginning of forming the European region—the prime model of regional integration—in the 1940s, European governments made it clear that the promotion and protection of civil and political rights lay at the core of the regionalization agenda.<sup>13</sup> At the outset it must be pointed out, as Forsythe noted, that the commitment of national governments makes it possible to build a genuinely effective regional system.<sup>14</sup> There was a conscious desire for the European governments to institutionalize human rights protection as it was embodied in the Council of Europe’s European Convention on Human Rights and Fundamental Freedoms, which was approved in 1950 and took effect in 1953. This convention put prime emphasis on fundamental civil and political rights. Later, the same set of governments would turn their attention to labor rights and social policies, culminating in the 1961 Social Charter, revised in 2005. Also, a system was set up for a regional review mechanism with regard to national court decisions on human rights through the European Court of Human Rights (ECHR). On the other side of the Atlantic Ocean, the western hemisphere saw the formation of the Organization of American States with human rights programs, a human rights commission, a regional court system and their own regional conventions on human rights such as The American Declaration on the Rights and Duties of Man (1948) and the Inter American Convention on Human Rights (1969).<sup>15</sup> In Africa, the Organization of African Unity (1961) and the much celebrated African Charter on Human and Peoples’ Rights (1981), aka the Banjul Charter, which was a reaction to the repressive regimes of the likes of Idi Amin in Uganda and Jean-Bedel Bokassa’s “Empire” of Central Africa, endorsed a holistic approach to civil and political rights including the positive mandate to enforce economic and social rights.<sup>16</sup>

In Asia, the lack of a regional human rights mechanism has befuddled integrationist scholars<sup>17</sup> and been bemoaned by scholars from within the region.<sup>18</sup> In the compilation entitled *The East Asian Challenge for Human Rights*, various scholars from the region (both Northeast and Southeast Asia) discuss the prime topics and substantive challenges of human rights issues during the height of the so-called “Asian Values” debate.<sup>19</sup> Tatsuo Inoue, a University of Tokyo professor of law, argues, for example, that Asian Values proponents who denounced a “West-centric” misperception of Asia ironically used “Western language” such as the use of state sovereignty to deny



human rights. Furthermore, Inoue argues that by deconstructing the discourse and the socio-cultural philosophies, it would seem that there is neither an individualist West nor a communitarian Asia.<sup>20</sup> Jack Donnelly, a well-known international human rights scholar, argues against the developmental perspective that has held a significant place in the Asian Values human rights debate and maintains that there is no clear-cut demarcation of the “relatively universal” nature of human rights.<sup>21</sup> Many other scholars, including Amartya Sen, submitted their contributions assessing the arguments of the proponents of Asian Values who reason that human rights exist in Asian history and philosophies.<sup>22</sup> The topics in those discussions reflect the general topics of the issue: substantive discrepancies on the heuristics and meaning of human rights as well as cultural relativism in opposition to a universal perspective. For regional integration scholars, however, the discussion on institutionalization remains barren.

Still, a nascent regional institutionalization in East Asia has given some semblance of concretization for human rights advocates in the region, as well as a focal point for discussion and further studies—the so-called “theoretical puzzle” of ASEAN’s foray into a human rights mechanism in AICHR. Let us briefly recall the antecedent facts.

Before Cambodia, Myanmar, Laos and Vietnam (CMLV countries) joined ASEAN, the original six member countries had been discussing a regional human rights system through their “Track One” and “Track Two” channels; discussions occurred both at the official level (albeit minutely) and in their academic and civil society counterparts (more at length), culminating in the ASEAN-ISIS (Institute of Strategic and International Studies) Colloquium on Human Rights, or AICOHR, a Track Two institution that has been gathering responses from ASEAN civil society for 15 years on the issue of human rights definition and proposed institutionalization.

Responding to the 1993 Vienna Convention, where there was an affirmation of the universality of human rights by an overwhelming majority of states in the world (with some Asian states abstaining), the Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights (Bangkok Declaration) was signed on April 7, 1993. It recognized “the need to explore the possibilities of establishing regional arrangements for the promotion and protection of human rights in Asia.”<sup>23</sup> Afterwards, with the inclusion of the new members in ASEAN, the discussion on a regional human rights mechanism took a back seat.

Negotiations on a regional human rights mechanism were once again raised during the drafting of the ASEAN Charter in 2005. The ASEAN Charter was signed in 2007 and finally put into effect on November 14, 2008 when the last member state ratified the document; entry into force occurred a month later. On the occasion of the 15<sup>th</sup> ASEAN Summit in Thailand, the Cha-Am Hua Hin Declaration on the Intergovernmental Commission on Human Rights was signed on October 23, 2009. The Cha-Am Hua Hin Declaration had at its heart the expression of support for a regional human rights mechanism and for institutionalizing an intergovernmental body. Article 14 of the ASEAN Charter called for the establishment of an “ASEAN Human Rights Body” which would later be called the ASEAN Intergovernmental Commission on Human Rights, or AICHR. Guaranteeing “full support and provision of adequate resources by ASEAN Member States,”<sup>24</sup> as well as emphasizing “the importance of the AICHR as a historic milestone in ASEAN community-building process, and as a vehicle for progressive social development and justice, the full realization of human dignity and the attainment of a higher quality of life for ASEAN peoples,”<sup>25</sup> the Cha-Am Hua Hin Declaration expressed “confidence that ASEAN cooperation on human rights will continue to evolve and develop so that the AICHR will be the overarching institution responsible for the promotion and protection of human rights in ASEAN.”<sup>26</sup> With this Declaration, the ASEAN Charter sought to empower the AICHR as the functional institution for cooperation in human rights issues. More importantly, this Declaration explicitly recognized a consensus for allowing the institution to *evolve* and *develop*—an evolutionary approach to a regional human rights mechanism for ASEAN.



The Terms of Reference (TOR), promulgated to give the AICHR its mandate as well as limitations, is therefore subject to evolutionary principles. Ironically, the term evokes a feeling of natural selection but it begs the question of who shall decide what characteristics should remain and which should evolve. The answer is there in the Cha-Am Hua Hin Declaration, which states that the “TOR of the AICHR shall be reviewed every five years after its entry into force to strengthen the mandate and functions of the AICHR in order to further develop mechanisms on both the protection and promotion of human rights,”<sup>27</sup> and that this “review and subsequent reviews shall be undertaken by the ASEAN Foreign Ministers Meeting.”<sup>28</sup>

### **3. An Evolving ASEAN Approach to Human Rights**

ASEAN has seen its share of legalization in economic areas as it conducts binding trade agreements with China, Japan, Australia, New Zealand and other countries. It has standing security arrangements, especially on the nuclear weapon free zone. However, legalization in human rights would seem quite a challenge given that some ASEAN states, e.g., Singapore and Malaysia, were strong opponents of universal human rights in the 1990s.<sup>29</sup> But this all seemingly changed with the promulgation of the ASEAN Charter in 2007 and its institution in 2008. Hard legalization may be happening alongside some multifunctional institutionalization.

Human rights, as understood in international law, is not a flexible standard. There are certain minimum standards of conduct that a rights holder can invoke against a duty bearer. This is the rights-based approach, sought by international human rights law from the Universal Declaration of Human Rights to the more binding covenants, and sought after by NGOs and rights-based organizations. There are certain norms in the protection of human life and liberty that are not subject to state derogation, compromise or policy. Terry Collingsworth pointed out that the major challenge to the institutionalization of human rights has been the development of enforcement mechanisms.<sup>30</sup> In ASEAN, therefore, we have to ask, what kind of legalization and institutionalization are we seeing, or is it another form of evolution of a constructively flexible system serving rationalist interests? Amitav Acharya, in trying to define Asian regionalism, gave as a prime example the existence of ASEAN. Quoting Kahler, he pointed out, “Given the short and less-than useful lives of many regional organizations in the developing world, ASEAN is unusual, not only for its longevity, but also for its flexibility in serving the purposes of its members.”<sup>31</sup>

Indonesia, Malaysia, the Philippines, Singapore and Thailand founded ASEAN in 1967 with many “purposes,” none of which directly addressed human rights. ASEAN’s first principles included those regarding the acceleration of economic growth, with an eye towards common social progress and cultural development in the region while also recognizing “equality and partnership.” Thus, early on it was already a purpose of ASEAN to cooperate for common gains. It was also anticipated that ASEAN would promote regional peace and stability. In pursuit of this purpose, ASEAN was to adhere to the rule of law as well as the principles of the United Nations Charter. This provision was important, though it was rarely, if not never, invoked. It was also envisaged that ASEAN would create a mutually beneficial environment for assistance on matters of common interest in economic, social, cultural, technical, scientific and administrative fields. ASEAN members were expected to extend mutual assistance in training and research facilities issues in the educational, professional, technical and administrative spheres, and to help facilitate common education and analysis of methods for a greater utilization of agriculture and industries, expansion of trade, the raising of living standards, and the management of issues in international commodity trade, transportation and communications facilities. ASEAN was also meant to have an educational purpose: the promotion of Southeast Asian Studies. It was already envisioned that ASEAN would play an intermediary role; it would maintain close and beneficial cooperation with existing interna-

tional and regional organizations with similar aims and purposes, and explore all avenues for even closer member cooperation.<sup>32</sup>

None of those purposes explicitly envisioned the creation of a human rights regime. Except for a reference to adherence to the UN Charter, the association's stated goals are far from the European model where a human rights regime was initially sought. It may be argued that ASEAN began as a security-seeking network that, later on, as they faced common challenges such as the Asian 1997 financial crisis, evolved towards a more cooperative economic regime as envisioned in the ASEAN Community Blueprint. It must be noted, however, that the founding principles of ASEAN were inherently statist and designed to respect internal politics. Thus, as Li-ann Thio wrote in 1999, "Human rights have not figured prominently on the agenda of the nine-member [now ten] Association for Southeast Asian States (ASEAN) since its inception in 1967. Rather, *the pursuit of regional security and cooperative measures for promoting trade and economic development* have been paramount ASEAN objectives."<sup>33</sup> These trade and security issues were relatively easy to discuss, and later on, a well-known ambassador and professor from Singapore, Tommy Koh, who was part of the Eminent Persons Group (EPG) that drafted the ASEAN Charter would remark: "There was no issue that took up more of our time, no issue as controversial and which divided the ASEAN family so deeply as human rights."<sup>34</sup>

Carolina G. Hernandez, a known scholar on ASEAN regional integration, noted that ASEAN was in a great reformative and institutionalization process in the late 1990s and early 2000s that strayed far from the original 1967 loose association.<sup>35</sup> This culminated in the crafting of a regional charter in 2007. Hernandez argued:

*regionalism or the process of bringing regional cooperation to a higher plane, increasing economic interdependence and promoting integration with region-wide institutions that are ideally rules-based is evident in the increasing movement of the Association of Southeast Asian Nations (ASEAN) from economic cooperation towards greater economic integration, enhanced political and security cooperation and greater socio-cultural cooperation.*<sup>36</sup>

Several textual commitments, for example, the ASEAN Vision 2020 (1997), the Hanoi Plan of Action (HPA, 1998-2004), the Bali Concord II (October 2003), the Vientiane Action Programme (VAP, November 2004), as well as the development and adoption of an ASEAN Charter (2005-2007) show how ASEAN has been in a constant state of evolution towards a more recognizable rules-based regionalization.

True enough, in a decision in July 2011, no less than the International Court of Justice (ICJ) held that ASEAN, having declared itself a juridical person under the ASEAN Charter, should have a more competent personality to resolve the Thai-Cambodia dispute submitted to it for adjudication.<sup>37</sup> This recognition was monumental for ASEAN as a regional organization in the legal sphere, and at the same time, it validated the vision of "Track Two" proponents who conceived of modernizing and improving the functions of ASEAN to "be *forward-looking* and *people-centered*."<sup>38</sup>

ASEAN's norms and principles as determined by the past and embodied in the charter, however, may not completely address the new ideas and institutions needed to strengthen ASEAN and enable it to achieve its goal of an ASEAN Community resting on three pillars: Political, Economic and Socio-cultural Communities. One of the more crucial narratives for ASEAN was recognized in the discussion of the principles agreed upon during the crafting of the ASEAN Charter at the 11<sup>th</sup> Summit in Kuala Lumpur on December 12, 2005. It was conceived that ASEAN, in the normative sense, should be headed towards the building of a *people-centered* community, which necessitates coming to an agreement with regional norms and institutions—foremost of which would be human rights.

Christine Bell, an international legal scholar working on peace treaties, argued that peace

treaties are quite fond of utilizing “constructive ambiguities” to keep parties talking.<sup>39</sup> There are some portions of peace treaties that are left vague and overly broad, subject to multiple interpretations by parties, so as to keep the dialogue between parties alive. This may eventually cause a problem, but keeping the parties at the table is better than not having them talk at all. This logic runs parallel to that of flexible engagement in ASEAN. ASEAN began as a peace treaty and the Bangkok Declaration of 1967 is amplified by the lasting Treaty of Amity and Cooperation in Southeast Asia (TACSEA), which has so far peacefully engaged other countries in the region as well as in the Asia-Pacific. The ASEAN Charter is imbued with the same spirit, judging by its provisions on peace and nuclear weapon free zone declarations echoing the old treaty on the same issue.

In its latest textual commitment, the ASEAN Charter, human rights were not effectuated or institutionalized in the same manner as a clear textual enumeration. Arguably, the ASEAN Charter shows more institutional characteristics through organizations like the AHRB than in its previous incarnation in the Bangkok Declaration. Despite having human rights protection as one of its purposes—one would also see a few potential dangers here—while it may be over-reading the textual commitment, a close look at the ASEAN Charter’s Purposes would reveal a pattern in the prioritization of the association’s goals. The first purpose is a reflection of the actual 1967 Bangkok Declaration of creating a security community to envelop a tightening economic cooperative system.<sup>40</sup> In the 2007 reincarnation, although the purposes of “alleviation of poverty” and “narrow[ing] the development gap” took precedence over “promot[ing] and protect[ing] human rights and fundamental freedoms,” the view that the purpose of ASEAN is to build a security community (without collective defense) has received a literal prioritization in the purposes.<sup>41</sup> ASEAN’s second purpose has become one of solidifying this enveloped protection by pointing out that the association was meant to “enhance regional resilience,” and the method of this resiliency enhancement is cooperative action in all aspects of life—security, political, economic and socio-cultural.<sup>42</sup> It should not be surprising either that the first of the charter’s principles is “respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States.”<sup>43</sup> Following this principle are several others: (1) “collective responsibility in enhancing regional peace, security [...]”;<sup>44</sup> (2) renunciation of aggression and of the threat or use of force or other actions (provided that they are inconsistent with international law—hinting at the use of legal standards to justify the use of force);<sup>45</sup> (3) reliance on peaceful settlement of disputes<sup>46</sup>—which could be read in different lights including harmonization with the principle of non-interference<sup>47</sup> and consultative consensus.<sup>48</sup> Toward the middle of the list, following the principle on good governance, is the promulgation of the principle of “respect” for fundamental freedoms and the promotion and protection of human rights including social justice.<sup>49</sup>

These provisions and principles were part of the forward-looking principles that Track Two proponents foresaw for ASEAN. But how far did the actual charter go in institutionalizing human rights in the region? What kinds of mechanisms were set into place?

The ASEAN Charter was a work of compromise and one that was meant to protect the interests of the state in maintaining complete control over its domain. Delegation to a regional authority remains a strong proposition without a correlative policy. In the 2007 ASEAN Charter there are pronouncements in favor of human rights, but there is no mention of actual institutions that would enforce or protect human rights. The matter was left for further study by a body that is to be constituted; this was the promise of something that is long overdue. Many scholars have mourned this non-existence of an official regional human rights mechanism in ASEAN and have used ASEAN as an example of bodies that may claim exceptions to the universality of human rights.<sup>50</sup> It may be perceived as an act to curtail the sovereignty costs that come with delegating authority to a supra-national body that can later render judgment against the member states. This rationalist action was clear despite the early liberal efforts to promote human rights through regional integration in the

wake of the 1993 World Conference on Human Rights in Vienna, Austria. After the Vienna Conference, the then six-member ASEAN (Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand) stated in no ambiguous terms their position on crafting a regional integration system for human rights protection in the region in a joint communiqué at the 26<sup>th</sup> ASEAN Ministerial Meeting in Singapore, July 23-24, 1993. Towards the first half of the 1990s, a human rights system in the region was a central issue. Termsak Chalermpananupap, special assistant to the secretary-general of ASEAN, wrote that ASEAN has moved in strides towards regional integration particularly in human rights despite the setbacks from 1995, when ASEAN's membership expanded to include Vietnam in 1995, Lao PDR and Myanmar in 1997 and Cambodia in 1999; this growth increased "political diversity," and thus, the problem of norm creation.<sup>51</sup> Termsak Chalermpananupap argued that the ASEAN Charter responded to the calls for human rights protection and promotion by incorporating relevant provisions on human rights protection and the setting up of the AHRB.<sup>52</sup>

This may be a pale comparison to the draft proposals that aimed for a fully functional institution with full powers over member states, which called for, among other things, the creation of an "ASEAN Court of Justice (ACJ)."<sup>53</sup> However, this was arguably another ASEAN way of harmonizing towards inclusivity. As Herman Joseph Kraft noted:

*the main point of contention in the human rights debate in Southeast Asia is less about the validity of the specific rights that are found in international human rights instruments as it is about the question of jurisdiction. ASEAN's insistence on a fairly extensive interpretation of how the principle of non-interference should apply has led to incongruity in how issues related to human rights are addressed by the ASEAN member-states.*<sup>54</sup>

The drafters envisioned a very flexible constitution. Rather than waiting for a similar Bill of Rights through amendments, the ASEAN Charter delegated the task of defining human rights to the AHRB, the same body constituted of representatives who may be replaced should the member states deem them replaceable.

The ASEAN approach to human rights is not through a strong institution. The ASEAN Charter, in general and on the issue of human rights, is definitely not "hard law," which, as described by Kenneth W. Abbott and Duncan Snidal, would possess two elements: (1) legally binding obligations that are *precise* and (2) a *delegated authority* to interpret and implement the law.<sup>55</sup>

"Hard law," as opposed to "soft law," is a set of well-defined and specific obligations that are enforced by a regional or international body.<sup>56</sup> This body is tasked, or powers are "delegated" to this institution, to decide whether an obligation exists and to enforce the same set of obligations.

Authority delegation to AIHCR is very limited despite the purposes of the creation of a body tasked to promote and protect human rights on the regional level.

Realists may have seen the institutionalization of ASEAN in a purely Deutschian perspective of community building for security purposes to contain the threat of communism and create a peaceful region.<sup>57</sup> Rationalists would point out that the sovereignty costs of coercion were absent in ASEAN in the 1970s due to the fact that the regional agreement was meant to be inclusive; this suggested that the then newly-formed Malaysia would not hesitate to join together with another newly formed state of Singapore. True enough, Southeast Asia became a hotbed for conflict between communist ideologies and liberal democratic perspectives. In 'rights' jargon, the conflict would erupt between group or collective rights and individualistic rights; between those who may see human rights as necessary in governance and those who see prioritization, where human rights may be considered a state policy, as subject to national interests, depending on how those interests are defined and redefined.

It has been observed that international politics is increasingly being legalized in many areas



around the world.<sup>58</sup> The world is increasingly rules-based and the call for legalization is in itself a process that requires the common drafting by parties to the agreement. ASEAN is no longer an exception. What used to be a rather non-legal, non-judicial entity decided to adopt a codified instrument promulgated in 2007 and ratified in 2008 by all the member states, demonstrating its juridical personality. ASEAN (re-) established first principles, created goals and shared visions, with a plan of action contingent on subsequent institutions, and it validated itself as a “rules-based” organization. But to what extent is the charter a binding instrument? More importantly, to what standard is it bound?

The ASEAN Charter has no specific obligations enumerated in it and provides for the adoption of international human rights law to the extent that they observe regional particularities. More importantly, the institution was set up to be collegiate or council-like in nature with veto power for every member state; as such, decision-making, by default, requires the consensus of all members. But these are lynchpin principles that, it seems, cannot be traded for a regional enforcement mechanism that would pry open the right of member states to make decisions without external interference. These principles created a peace that was to be the only true claim to success for ASEAN.

One of the ways to create peace and stability in the ASEAN region has been through its consensus-based decision-making and collegiality. Human rights through legalization and the crafting of norms out of a desire to create a particular regime—one that is rules-based, in which (1) individual rights are observed, (2) limitations for state prerogatives are defined, and (3) credible commitments are established—would be tantamount to the legalization of high politics. One of the elements of legalization, of crafting “hard law,” is to make the law as precise as possible by defining obligations and delegating an authority to an institution. This would entail that states give up their power to determine what is legal and what is not to a regional body. International human rights law as well as related treaties and principles aim to “protect and promote the rights of individuals from state interference and state negligence.”<sup>59</sup> The crafting of the ASEAN Charter was never seen in this light, that is, as a pursuit of the desire to curtail the state’s dominion over its territory or sovereignty, much less its power over domestic politics. Synthesizing these premises, ASEAN regional human rights normalization could have both a positive and negative impact on international human rights enforcement in the region. AICHR in the international human rights regime could serve as a “buffer” that could either support and protect the regional enforcement of human rights or create a protective shield that would serve as another block to the extension of international human rights practice into the national arena.<sup>60</sup>

#### 4. Theorizing AICHR

How do we explain ASEAN’s weak delegation of authority towards the AICHR? One formula that may prove to be applicable is the liberal intergovernmentalist model by Andrew Moravcsik.<sup>61</sup> According to Moravcsik, a three-step process would show how the two-level game at the domestic and inter-state levels results in institutional design. The first two stages refer to state preference formation and the engagement of other states in strategic interaction. This framework was initially conceived to explain the integration in Europe, but given its flexibility to focus on the three stages of policy making—national preference formation, inter-state bargaining and institutional design—it may help explain the AICHR. The AICHR, from a rationalist perspective, is a bargain between the member countries and to an extent some external influences (e.g., donors and ODA funders) who may seek to see a human rights regime in the region.

National preference formation relies on certain exogenous variables such as ideational (ideological, to some extent), commercial (economic) and republican (governmental structure), as well as other variables that make liberal attitudes possible. Yet, coupled with realist and institutionalist



factors, the first stage would create state preferences subject to strategic interaction. In the case of the AICHR, ASEAN admittedly is a smorgasbord of countries with ideologies, cultures and governmental leanings ranging from socialist to liberal democracies, strong states to weak states, human rights friendly countries to “Asian Values” advocates, Buddhist or Muslim to Christian countries, creating divisions within ASEAN in terms of human rights appreciation. These factors all came into play as the ASEAN members strove towards a systemic outcome—the regional institution of the AICHR. The worthwhile endeavor from the intergovernmental perspective is to consider how these preferences were expressed and bargained for/against/with in the regional discussions that drafted and would subsequently revise the Terms of Reference (TOR).

The second phase of inter-state bargaining results in compromises. The AICHR is a compromise among ASEAN countries as well as a path-dependent recognition of previous principles of non-interference and consensus. Hard legalization was taken off the table and instead a very soft and flexible model was chosen. Abbott, in recounting what happened between the United States and Mexico when NAFTA was under discussion, pointed out that the “divergent discount rates” potentially enjoyed by states and private actors may cause states to opt out of hard legalization. As in that and other cases, even human rights sponsoring countries like the United States may choose not to bargain on human rights and instead retain flexibility “so that it could pursue trade and security issues.”<sup>62</sup>

The third phase is in the “grand bargains” that happen at the regional level, resulting in either regional policies or regional institutions. As demonstrated earlier, ASEAN governments designed an institution without “teeth” to prevent “biting.” Further, as Bounkeut Sangsornak pointed out, ASEAN member countries had a hard time coming up with a regional bargain because they had differences in state preferences and there was a nominal equality among the state representatives without any asymmetrical interdependence that would push some to dominate others.<sup>63</sup> Thus, the compromise relied on non-legalization and institutionalization disallowing intervention. The substantive agreement was that there would be no substantive discussion—only procedures—and these procedures would be drafted by the state representatives, contingent on the subsequent ratification of the state, and the procedures would allow some room for particularities and veto exit mechanisms.

The AICHR’s institutional design reflects the choice to *not* delegate prosecutorial powers or judicial powers over the Commission. But, this is not necessarily permanent. The TOR is subject to review every five years and, depending on how the AICHR performs and how ASEAN countries accept its actions, the choice to delegate more mandates may actually be desired.

The institution of an enforcement mechanism at the regional level is a premise for the coercive effect of regional laws. Every law must be enforced. The most basic definition of law is that it is a sovereign command backed by sanction.<sup>64</sup> ASEAN remains a region with a different way of settling things—settlements are made as consensually as possible.<sup>65</sup> This is one of the “grand bargains” that was struck by ASEAN through the AICHR.

## **5. From Theory to Application**

### **(1) “No Teeth, No Biting”**

Europe has had significant experience in human rights regionalization —from its early attempts at the European Commission to the later, more solid institutionalization of the European Court of Human Rights. This development has taken half a century of evolution. ASEAN institutionalization is an experience of barely half a decade. Obviously, there is no regional court system designed for ASEAN. The AICHR is far from the ECHR or the Inter-American version. It seems, with the view of maintaining peace in the region, the ASEAN Human Rights Body (AHRB) would

be without “teeth” so that there could be no “biting.” Even the roadmap envisioned by Viti Muntarbhorn, an advocate of a strong human rights regime in the region, invoked international law and compliance mechanisms, but at the same time settled for monitoring. As Muntarbhorn wrote, “The rise of acceptance of international human rights depicts the need for a regional human rights regime where the functional role of institutions shall be to seek the monitoring as well as regional regime norm making.”<sup>66</sup>

But even if an ASEAN Human Rights Body<sup>67</sup> were to be instituted under the ASEAN Charter, its powers would be greatly limited as admitted by Termsak Chalermpanupap, who writes:

*This is one key aspect that needs emphatic clarification. The AHRB will be an organ inside the organizational structure of ASEAN; the direct mandate for its establishment is in Article 14 which is part of ASEAN Charter’s Chapter IV: Organs. As such, the AHRB is never intended to be any “independent watchdog.” To moan on the AHRB’s “lack of teeth” is to bark up the wrong tree. Like all other ASEAN organs or bodies, the AHRB shall operate through consultation and consensus, with firm respect for sovereign equality of all Member States. Good points can be made and constructive actions can be agreed upon in friendly discussion and persuasion. No “biting” is ever required. ASEAN would not have come this far if its Member States want to bite one another with sharp teeth just to get things done their own way.*<sup>68</sup>

Creative thinking such as constructive interpretation of the ASEAN Summit as a quasi-judicial organ does not easily settle ASEAN’s weak institutionalization of a human rights system.<sup>69</sup> Non-governmental efforts in the design of a regional human rights institution should be recognized, if only to serve the logic of a people-centered community. What the foregoing shows is that in ASEAN, there has been no serious movement (in terms of creating hard law) in favor of regional human rights legislation. Perhaps ASEAN states see a hard law approach to human rights as too “risky.” As one scholar pointed out, “Legalization’s value as a commitment device implies that future exchanges in policy would be more costly; given the possibility of unexpected shocks and overall environmental uncertainty (particularly high in certain issue-areas), governments may view legalization as too risky, despite its substantial benefits.”<sup>70</sup>

## **(2) Inter-state Bargaining**

Four members of ASEAN have national human rights institutions (NHRIs) set up on the national or federal level: Indonesia (1993) known by its acronym Komnas HAM; Malaysia’s SUHAKAM (2000); the Philippines’ Commission on Human Rights, or CHR (1987); and Thailand’s Khamakarn Sit (2001). Such institutions theoretically provide monitoring for key checks and balances against abuse of power. It may be theorized that NHRIs could serve as the focal point of preference formation on the local level. However, this may not necessarily be the case. In the Philippines, for example, the CHR has very limited power—mere fact-finding and recommendatory authority. The regional affairs are well within other branches’ authority, and at the regional level, the NHRI has little say in foreign policy issues like coordination. It seems that to observe national preference formation, classical institutions of government in the executive and legislative branches remain the focal points; thus, state actors that produce foreign policy remain the prime movers. Malaysia’s SUHAKAM, Thailand’s Khamakarn Sit and the Komnas Ham are very much in the same situation. They do not have substantive policy powers to enforce their own policies except those related to monitoring and recommendation.

From the rationalist intergovernmentalist perspective, nation-state preference formation takes precedence in regional policymaking except in instances where there is asymmetrical interdependence among the state members.<sup>71</sup> If these national or domestic institutions (e.g., National Human

Rights Commissions or NHRIs, domestic foreign policy agencies, etc.) had ample leverage at the national level, then theoretically these domestic policies or preferences would go up in the regional level when the players and actors discuss their grand bargains. However, it may be observed that there is a disparity between the ASEAN countries' formation of policy preferences. More so, institutions like the NHRIs, existing in only four countries, have such limited authority and functions that it bears noting how they do not possess an influential voice in the national state preference formation. To recall the first principles, collegiate intergovernmental meaning-making is the dominant method used in ASEAN. Because everyone is needed, the ASEAN principle of consensus requires universal agreement, and every state is encouraged to participate in the talks, no matter how their preferences are formed—even if they are formed largely from the top without much regard to the voices from below or to grassroots civil society. The NHRIs' lack of substantial power keeps the national policy preference formation within the branches mostly tasked with foreign policy.

If states come up with regional human rights policy in line with their state interests, how are they then consolidating these interests with their neighbors? Ryan Goodman and Derek Jinks argue that coercion, persuasion and acculturation may take place out of the desire to influence state behavior.<sup>72</sup> This forms part of the position taken by acculturation theorists that propose how states may choose to form regional mechanisms out of the process of absorbing some of the cultural characteristics of their neighbors. This does not take into account the factor of some states influencing other states' norms. In the search for influence in integration of norms, one may be hard pressed to focus on the individual contributions of members. However, nominal membership alone does not determine influence in the institutionalization processes in ASEAN. Some states are more equal than others—and this is as true in the economic sphere as it is in the political and legal spheres. Some states have dominance and moral ascendancy, which they use to influence others. For example, in 2010, the relatively more senior ASEAN members Indonesia, Thailand, Malaysia, Singapore and the Philippines had a combined gross domestic product (GDP) of \$1.6 trillion, which was ten times more than the combined GDP of Vietnam, Myanmar, Brunei, Cambodia and Laos with only \$160 billion.<sup>73</sup> Acculturation theorists would not see this as an issue given that ASEAN is funded equally by all members with consideration for the least developed contributor but the distinctive imbalance in economies suggests that there could be influence in foreign policy making. Should acculturation theorists look at regional integration, perhaps they may see some congruence with the realist and rationalist perspective considering that ASEAN's closest neighbor is China—a country with a different perspective on human rights issues. Unfortunately, this article cannot discuss the external influence present in ASEAN. But it is theorized that external factors also provide strong impetus for the “puzzle” in ASEAN's human rights integration. However, it may be hypothesized that some ASEAN states have economic influence over others that may serve as a bargaining tool in influencing other states over a perceived policy—even without the other states actually internalizing the regional policy.

The problem of institutionalization is secondary to the problem of norm standardization. One of the drafters of the ASEAN Charter to establish an ASEAN human rights body noted: “The High Level Task Force (HLTF) intensely deliberated at length on this issue. It was not because of any disagreement over the creation and protection of human rights within ASEAN but over the different views on the concept of human rights.”<sup>74</sup> The element of *obligation* or the setting up of legal obligations in legalization should come easily for human rights as there are prevailing international human rights norms as well as multilaterally agreed upon covenants, treaties, frameworks and agreements that cover the gamut of human rights norms. But as Bounkeut Sangsomak noted above, there are differences in interpretations. Singapore, Malaysia and for some time Indonesia, stood opposite the Philippines and Thailand when it came to civil and political rights, with the latter two seen as closer to the “West” and the United States.<sup>75</sup> The Philippines and Thailand were

viewed as being weak when it came to socio-economic rights due to their increasing social inequality.<sup>76</sup> These varying interpretations are state-based and grounded on many particularities that have once been brought up as ingredients for regional particularization.

There should be a focus on mechanism-making as opposed to meaning-making or heuristic discussion. Standardization of regional norms incorporating as well as adopting prevailing international human rights legalization remains a problem in ASEAN as evidenced by the proceedings of the ASEAN Institutes of Strategic and International Studies (ASEAN-ISIS) Colloquium on Human Rights (AICOHR), which have included numerous conferences and dialogues on the specific issue of human rights definition and redefinition in the region through consultative deliberation. For more than a decade and a half, the AICOHR has been gathering the views of scholars, eminent persons, non-state actors, non-governmental organizations, government representatives, regional leaders and many key actors in regional integration to identify a regional, shared appreciation and definition of human rights. In the 2009 AICOHR conference organized by ISDS Philippines for the ASEAN-ISIS, academics and advocates who attended stepped up their deliberations to include a study on how ASEAN governments could be pressed to establish a stronger and more independent regional human rights body (as the one that had been institutionalized was insufficient).

Jack Donnelly argued before that there is a stark difference between possession and enforcement of human rights and that states cannot merely hand down these rights as a matter of due political concession.<sup>77</sup> In the international legal sphere it may be said that *implementation*, or the lack thereof, is the graveyard of human rights. The distinction between possession and enforcement clarifies one important problem in human rights discourse today: the role of states in human rights protection, as well as their responsibilities. The recognition of rights is not merely the relationship between the state and individuals. Enforcement largely depends on the capacity and willingness of states, through their governments; therefore, the degree and effect of implementation of international human rights depends on what brings about the states' capacities and willingness. State construction of human rights norms and its commitment of resources also become independent variables in the recognition of human rights. Particularism in the region waned after the Asian financial crisis of 1997. As Muntarbhorn speculated, it was the Asian miracle that gave birth to the argument concerning "Asian Values" consisting of "deference to authority, strong government, diligence and the primordial concerns of the community over the individual."<sup>78</sup> Consequently, it was partly the Asian financial crisis that dealt a blow against the calls for particularization.<sup>79</sup>

### (3) Going beyond Ideas

In the discourse on regional norm diffusion in Southeast Asia, human rights fall flat into the "first wave" that, according to Acharya, speaks to a "moral cosmopolitanism" propagating the doctrines of the "universal." When the first six ASEAN member countries agreed to the 1993 joint communiqué, human rights was already qualified in the region. Even in 1993, after accepting the Declaration at Vienna, ASEAN ministers "placed the question of universal observance and promotion of human rights *within the context of* international cooperation."<sup>80</sup> They "agreed that ASEAN should coordinate a *common approach* on human rights and actively participate and contribute to the application, promotion and protection of human rights."<sup>81</sup> More poignantly, in that joint communiqué, it was "stressed that *development* is an inalienable right and that the 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."<sup>82</sup> It seems ASEAN ministers were quite sensitive to the conditionalities imposed on ASEAN countries when receiving overseas development assistance (ODA). According to Katherine Hernandez, since the "London Summit in July 1991, the OECD sought to promote human rights and democracy through official development assistance, i.e., by making respect for human rights and democracy promotion as conditions for the extension of ODA."<sup>83</sup> This was seen by the civil societies of ASEAN as



a potential pathway to engage ASEAN officials in issues on environment, democracy, and more importantly, human rights.<sup>84</sup> The efforts of civil societies and concerned scholars and human rights advocates were not heard enough, as exemplified by the failure to incorporate into the ASEAN Charter such an important institution as the ASEAN Court of Justice, which could rule on human rights issues against the states. This failure to incorporate even runs counter to a proposal of the Asian Human Rights Commission (drafted in Hong Kong, promulgated in Korea) to have “an independent commission or a court to be established to enforce the Convention.”<sup>85</sup> It was clear that state actors recognized and named representatives who would represent not just the state, but more importantly, the foreign policies of their principals. This goes against the principles of human rights regime building from a constructivist perspective.

Human rights regime building, from the constructivist perspective, is about norm creation and acceptance. Human behavior is determined by the dominant social, cultural and historical norms of the time. State behavior, in a parallel manner, forms the identity of, and acculturates state actors who operate in a given society—regional or international.<sup>86</sup> States enter into treaties to create binding obligations not only because they see common interests but also common values and norms. States find it easier to “internalize” norms through this socialization process. Ryan Goodman and Derek Jinks have been arguing that the process of internalization of international law into national behavior happens through “legal socialization.” Their view belongs with the ideational group of thinking which posits a challenge to the rationalist thought, in which “interest-based theories” took state interests as given, and “idea-based” theories took state interests as constructs, which are influenced by ideas.<sup>87</sup> Harold Hongju Koh has noted that scholars of the ideational school and acculturation theory believe that nations will yield to rules not because they calculate their way through it and would in turn benefit from these calculations by maintaining or expanding their interests, but because “repeated habit of obedience” within a particular social (in this case, regional) setting “socializes them and remakes their interests so that they come to value rule compliance.”<sup>88</sup> For Acharya, “Norm diffusion is more rapid when [...] systemic norm [...] resonates with historically constructed domestic norms.”<sup>89</sup> Koh further believes that this acculturation is really “an intermediate way between coercion and persuasion.”<sup>90</sup>

This is an interesting hypothesis that connects systems analysis with the historical deconstruction of domestic norms. To understand how norms filter through in a region, one needs to understand how compatible the systemic norm is with the constructed domestic norm. This presumes that one can easily delineate the two. This is not easy given that the task of coming to terms with existing international norms on human rights as mandated by the Universal Declaration on Human Rights (1948)<sup>91</sup> and the relevant covenants forming the body now known as International Human Rights Law, which evolved in different paths after the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social Rights (ICESR), were split during the “two worlds” debate.<sup>92</sup> But notwithstanding the lack of legal backing, certain actions have been present in ASEAN, as Muntarbhorn observed, which shows how certain human rights are protected in the region, such as the right of refugees, despite the lack of formal ratification of international legal instruments, such as the 1951 UN Convention on Refugees and its related protocol.<sup>93</sup>

In fact, three outstanding “soft laws” have been produced in the region without prodding from external or international organizations: (1) Declaration on the Elimination of Violence Against Women in the ASEAN Region, Jakarta, June 13, 2004; (2) ASEAN Declaration Against Trafficking in Persons Particularly Women and Children, Vientiane, November 29, 2004; and (3) ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, Cebu, Philippines, January 13, 2007. These declarations focus on three areas of concern to protect the vulnerable and have come to fruition in cooperative practices. They propagate doctrines that ASEAN governments seem to have envisioned protecting. The fact that these declarations were adopted in the



region without a regional institution tasked to define human rights for the region or to incorporate prevailing international human rights law definitions showed that state prerogatives to define human rights protection could actually happen in ASEAN prior to the ASEAN Charter. The spotlight then is cast on the AICHR as the body tasked with monitoring human rights issues in ASEAN. The AICHR's few steps forward would be very important for regional integration in human rights. How the AICHR would resolve or propose to resolve the first cases brought before its august body will tell us much about the path for human rights protection in ASEAN.

#### **(4) The Task Ahead**

It is clear, due to the vagueness of its mandate and the consequent "evolution" process it will undergo after the first review of its performance at the ASEAN Foreign Ministers Conference in 2015, that the AICHR will be put to the test. Its institutional design, lacking any coercive measures, will have to be used creatively to produce effective changes or remedies for human rights violations. It will also have to take on the gargantuan task of harmonizing prevailing international human rights law with the regional particularities that ASEAN member states seem to want to protect. Every case would be a hard one for resolution, and in the words of famous jurist Justice Oliver Wendell Holmes Jr., "great cases like hard cases make bad law."<sup>94</sup>

There are many cases awaiting study as well as resolution for the AICHR. One of the major problems is Myanmar. The change in leadership towards a more democratic system, with elections held in 2010 and Aung San Suu Kyi, the opposition leader, finally released, seemed to relax the perceivably repressive regime. As Myanmar seeks chairmanship of ASEAN in 2014, the nation's first challenge would be in respecting institutions of ASEAN, like the AICHR. Myanmar has been the centerpiece of present day non-democratic governance resulting in massive violations of human rights (from freedom of participation in government to freedom of assembly) as perceived by many developed states and recognized by some more prominent ASEAN scholars. An ASEAN country would of course have to follow suit and face their own "skeletons in the closet." Based on even the barest of the TOR powers—such as Article 4.10 on the power to "obtain information from ASEAN Member States on the promotion and protection of human rights," Myanmar is a test case for the AICHR. Much speculation and literature have been devoted to this and the AICHR will have to be creative in dealing with the Myanmar Junta.<sup>95</sup> The Thai AICHR representative has called for "open doors" in Burma and yet expressed concern that Myanmar may not heed any calls for openness.<sup>96</sup> This will be a challenge for the AICHR.

Another case raised before the AICHR concerns the Philippines. Filipino international lawyer Harry Roque sent a letter of petition to the AICHR raising the issue of the Maguindanao massacre in November 2009 involving the political killings of 58 individuals, elected officials and press corps members. It was reported that the Committee to Protect Journalists (CPJ), a New York based civil rights group, has denounced this massacre as the single deadliest event from 1990 to 2010.<sup>97</sup> The lawyer expressed the hope that the AICHR would bring the issue to light by invoking the AICHR's monitoring powers.<sup>98</sup> Mindanao has been a hotbed of conflict between the separatist Islamic fundamentalists in the region and the government in Manila. One of the more controversial incidents in the region involved the clash of political dynasties and the killings of many individuals. Roque argues for the victims of the killings, siding that the Philippine government is not acting on the case, and he continues to raise the issue at the regional level. As of this writing, the case remains pending. The AICHR's actions on this issue would have regional repercussions as the case may be considered a sensitive political issue and represent a possible violation of the non-interference provision.

The latest concern raised before the AICHR came from the members of the "Bersih 2.0" movement in Malaysia, which was a replication of the 2007 Bersih (or "clean elections" in Bahasa) rally that denounced electoral officers who were allegedly overstaying in power and, as some of

the Bersih protesters believed, perpetrating electoral fraud.<sup>99</sup> The rally consisted of a violent dispersion of protesters, resulting in severe injuries that were purported to be human rights violations. The 2011 Bersih movement drew tens of thousands of protestors to the streets of Kuala Lumpur demanding reform of the electoral system. For several years, elections were perceived to be mired with irregularities designed to protect the ruling coalition. The protests were generally peaceful but government officers met the demonstration with massive force and arrests of thousands of protestors. It has been reported that the police used clubs, water cannons and tear gas to crush the protests.<sup>100</sup> Similar to the case of the “red shirt movement” in Thailand, which served as the colloquial term for the United Front for Democracy Against Dictatorship (UDD) calling for changes in the then military-led Thai government in 2007, the Malaysian Bersih movement began as no more than a call for electoral reform and became larger. In the Malaysian case, the brutal tactics used by the police angered many civilians, and the regional network of human rights activists in Southeast Asia mobilized their lobbying forces and brought the issue before the AICHR commissioners. In an open letter to the chairperson of the AICHR, several civil rights groups from Malaysia, Thailand and the Philippines petitioned for the AICHR intervention in Malaysian electoral issues and called on the AICHR: (1) to “address and respond to this appalling situation of human rights in Malaysia as a matter of urgency, as consistent with its mandate”; (2) to “urge the government of Malaysia to stop further arrests of campaigners and supporters of the 9 July [2011] rally and to release immediately all those being detained”; and (3) to “recommend the government to allow Malaysian citizens to assemble peacefully on 9 July and let their electoral reform demands be heard.”<sup>101</sup>

This is another serious challenge for the AICHR. The TOR seems to lack the power and mandate to proceed with any injunction relief but not to make findings and recommendations. Whether AICHR representatives can do this is, without question, under the TOR. Whether AICHR representatives would be willing to vote on this is another issue.

Civil society and people’s participation in ASEAN regional integration have been quite important in pushing for issues and at the same time suffered dismissal by the authorities.<sup>102</sup> Much can be said about empowering civil society and encouraging Track Two participation in the AICHR processes. A strong network exists among the regional non-state actors. The evolution of the institutions proffered above rests on how non-state actors would see its powers best invoked. Amitav Acharya conducted an extensive study on how regional interaction in Southeast Asia is apparently shifting from “traditional elite-centric regional socialization” towards a “participatory regionalism” due to the forces of democratization in the Philippines, Thailand and Indonesia. This observation reflects the possibility of greater openness for civil society in the region.<sup>103</sup>

These cases as premises will test the resolve of AICHR representatives as well as the institution that is the AICHR. As declared above, the principles of non-interference and consensuality that limit the AICHR will not simply be revised, as they form part of the hard bargain that also maintains ASEAN. To maintain a relatively low sovereignty cost, ASEAN states have kept the regional authority’s body without strong enforcement capabilities. But this bargain was struck and the price could be negotiated thereafter. From the rationalist perspective, this was a strategic tool meant to appease internal politics and at the same time be used for external baiting.

## 6. Conclusion

Regional integration in the Association of Southeast Asia (ASEAN) has been producing “ASEAN Law” for years now. Trade agreements and weapons free zone treaties have been reduced to codified documents, and with the ASEAN Charter in 2007, it seems that ASEAN integration has resulted in constitutional legalization. On human rights, ASEAN has taken a big step with the creation of the ASEAN Intergovernmental Commission on Human Rights (AICHR). This pro-

cess of integration, however, does not conform to explanations derived from functionalist theories of regional integration. The functionalist notion of an institutional form following the agreed upon functions of a regional institution is seemingly incongruent with the process of institutionalization in the AICHR. As discussed and argued in this article, there is a rationalist milieu that frames legalization and institutionalization in ASEAN. From the constitutionalist perspective, the drafting and promulgation of the ASEAN Charter brought with it a “new ASEAN” with the promise of an evolving “constitutionalization” process that can (and should) take into consideration international human rights law. The lack of an enforcement mechanism in the region and the constitutionalization of voluntary compliance, however, make regional enforcement dependent on the “common interests” of individual member states. This bolsters the realist-rationalist perspective on the primacy of state actions, and the main players of influence are state actors—as depicted by the choice of appointment as well as removal of representatives in the AICHR. National preference formation and inter-state bargaining have resulted in the creation of textual commitments; yet, these texts may be seen as mere narratives, or even principles, but not as the kind of legalization that would evoke a Hartian notion of a command by a sovereign backed by compliance mechanisms. Delegation of not just monitoring but enforcement powers to a regional authority remains very limited. The “ASEAN Way” of consensus-based policies and regional agreements clearly lacks the compliance mechanism or the threat of enforcement, but ironically, it is also its most cohesive ingredient as compared with other previous Southeast Asian regional designs.

The AICHR can grow in other ways than through the constitutionalization of coercive mechanisms in ASEAN. Further studies are warranted on a number of issues: the kind of mechanisms that are to be put in place to create a body of well-respected individuals—respected (and listened to) by both state and non-state actors; the kind of threshold issues that are within the limits for bargaining; and of course the issue of the harmonization of human rights standards as well as the primordial problem of defining human rights for the region.

Realist and rationalist states have at their heart two things: (1) the survival of the state and (2) the survival of their people and their leaders. The dynamics of state survival depend on national security issues which conflict with some human rights issues that protect minority groups and the individual. When they come to the regional table for cooperative and integrative talks, rationalist states use bargaining methods that are derivatives of certain pressures from influential units in the domestic sphere. In realist and rationalist states that depend on authoritarian rule, and for those whose problems are related to political legitimacy, it may be quite obvious that it is more difficult to yield authority to a regional body. As explained in this article, the sovereignty cost may be too high. However, these states also seek to play a bargain with the domestic pressures by relegating the issue to a regional body, making for greater legitimacy and to a large extent even incentivizing external players to offer ODAs.

ASEAN has allowed a human rights body to come into existence. It is without “teeth,” however, to ensure “no biting.” This is problematic for those who may seek the constitutionalization of coercive mechanisms. On the positive side, ASEAN actors, especially state actors, have made it clear through textual declarations that this is merely evolutionary. There will come a period of review, 2015 at the earliest, when the AICHR may be imbued with greater enforcement capabilities. By way of formality and power determination, state actors are in a position to determine the AICHR’s potentialities and thus there may be some leveraging or negotiations in the middle of the review of its powers. This is a crucial stage in which networks of civil society players seeking a greater role for the AICHR can be vigilant and insist on evolution towards greater arbitration and mediation capability. Realists may be able to explain the dynamics of the two-level bargaining game that ASEAN member states encounter in the liberal intergovernmentalist model of regional bargaining. Human rights, however, may not necessarily be the “big bargain” for some countries whose main goal in joining ASEAN is purely economic.

This article explored how far ASEAN has come from its 1967 design and how a functional organization seeking to protect human rights has evolved into an institution. However, this institution is severely limited by the fact that its mandate comes from rationalist and seemingly hesitant realist states. But despite their realist prism, ASEAN states have made a commitment to allow human rights issues on the regional level. Legalization has taken hold to some extent in a constitutionalist nature in the ASEAN Charter. Subsequent declarations strengthen ASEAN's resolve. These have had varying effects on the human rights regime in the region and studies on this area are well worth pursuing. Very peculiar institutions exist in this regional architecture, and the AICHR is one such institution. How much of the AICHR is left with national state preference and how much authority is delegated to it by the member states of ASEAN will determine its future expansion.

This study is exploratory and its findings are preliminary. Nonetheless, it has been useful in accounting for the evolutionary nature of the AICHR in the context of state-level norm building and inter-state bargaining. The actions that would be taken by the sitting AICHR members in cases brought before them would give the AICHR a more refined character. How state actors would react to the way the AICHR might treat those cases would then define how the AICHR functions. It would be quite interesting to see how the AICHR itself will function as a realist organism, defending its existence and expanding its own powers and functions in accordance with its own interests.

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## Notes

- <sup>1</sup> My concept of legalization and rules-based systems can be attributed to Kenneth W. Abbott, Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter and Duncan Snidal, "The Concept of Legalization," *International Organization*, Vol. 54, No. 3 (Summer 2000), pp. 401-419.
- <sup>2</sup> Beth Simmons, "Civil Rights in International Law: Compliance with Aspects of an 'International Bill of Rights'," *Indiana Journal of Global Legal Studies*, Vol. 16, No. 2 (2009), p. 413; Alec Stone Sweet, "Constitutionalism, Legal Pluralism and International Regimes," *Indiana Journal of Global Legal Studies*, Vol. 16, No. 2 (2009), p. 621.
- <sup>3</sup> Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights [hereafter Terms of Reference], October 2009, available at the ASEAN Secretariat website, <http://www.asean.org/publications/TOR-of-AICHR.pdf> (accessed November 7, 2011). The Terms of Reference has become the source of mandate for the AICHR and defines its powers, functions, composition and some preliminary rules for procedures.
- <sup>4</sup> ASEAN Charter, Article 14, signed November 20, 2007, entered into force December 14, 2008, available at ASEAN Secretariat website, <http://www.aseansec.org/21069.pdf> (accessed November 7, 2011).
- <sup>5</sup> Terms of Reference, Article 5.7.
- <sup>6</sup> *Ibid.*, Articles 5.2 and 5.6.
- <sup>7</sup> Hsien-Li Tan, *The ASEAN Intergovernmental Commission on Human Rights: Institutionalizing Human Rights in Southeast Asia*, Cambridge: Cambridge University Press, 2011, pp. 139-176.
- <sup>8</sup> Donald K. Emmerson, "Singapore and the 'Asian Values' Debate," *Journal of Democracy*, Vol. 6, No. 4 (October 1995), pp. 95-105; Scott L. Goodroad, "The Challenge of Free Speech: Asian Values v. Unfettered Free Speech: An Analysis of Singapore and Malaysia in the New Global Order," *Indiana International and Comparative Law Review*, Vol. 9, No. 2 (1998-1999), p. 259; on what happened to the "Asian Values" debate, see Mark R. Thompson, "Whatever Happened to 'Asian Values'?" *Journal of Democracy*, Vol. 12, No. 4 (October 2001), pp. 154-165. Thompson points out that the 1997 Asian financial crisis dealt a demoralizing blow to the Asian values argument by removing the jocular positive



- argument for relativism—economic growth in the region.
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  - <sup>10</sup> For the concept of regimes I refer to Stephen D. Krasner, “Structural Causes and Regime Consequences: Regimes as Intervening Variables,” in Stephen D. Krasner, ed., *International Regimes*, New York: Cornell University Press, 1983, pp. 1-2.
  - <sup>11</sup> Hersch Lauterpacht, *The Function of Law in the International Community*, New York: Oxford University Press, 1<sup>st</sup> ed., 2011 reprint. On the practice of states and the development of an international law doctrine, pp. 62-64; on the positivistic nature of international law and the “completeness” of it, pp. 68-73; and on the distinction between political and international legal disputes, pp. 161-171.
  - <sup>12</sup> Beth A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics*, Cambridge, MA: Harvard University Press, 2009.
  - <sup>13</sup> Mark Janis, Richard Kay and Anthony Bradley, *European Human Rights Law*, New York: Oxford University Press, 1995, p. 3; cited in David P. Forsythe, *Human Rights in International Relations*, 2<sup>nd</sup> ed., Cambridge: Cambridge University Press, 2009, p. 122.
  - <sup>14</sup> *Ibid.*, p. 149.
  - <sup>15</sup> David P. Forsythe, “Human Rights, the United States and the Organization of American States,” *Human Rights Quarterly*, Vol. 13, No. 2 (Spring 1991), pp. 66-68; Edward L. Cleary, *The Struggle for Human Rights in Latin America*, Westport, CT: Praeger, 1997 (provides an optimistic account of the Latin American human rights regionalism); Scott Davidson, *The Inter-American Human Rights System*, Aldershot: Dartmouth University Press, 1997 (gives a more legal analysis of the evolution of the American regional human rights system); and Tom Farer, “The Rise of the Inter-American Human Rights Regime: No Longer a Unicorn, Not Yet an Ox,” *Human Rights Quarterly*, Vol. 19, No. 3 (August 1997), pp. 510-546 (gives a more general and concise overview of the regional development of human rights protection through institutionalization).
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  - <sup>17</sup> Burns H. Weston, Robin Ann Lukes and Kelly M. Hnatt, “Regional Human Rights Regimes: A Comparison and Appraisal,” *Vanderbilt Journal of Transnational Law*, Vol. 20, No. 4 (1987), p. 585.
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  - <sup>19</sup> Joanne R. Bauer and Daniel A. Bell, eds., *The East Asian Challenge for Human Rights*, Cambridge: Cambridge University Press, 1999.
  - <sup>20</sup> Tatsuo Inoue, “Liberal Democracy and Asian Orientalism,” in Bauer and Bell, eds., pp. 27-59. Another critique of the “Asian Values” divide is offered in Amartya Sen, *Human Rights and ‘Asian Values’*, 16<sup>th</sup> Morgenthau Memorial Lecture on Ethics and Foreign Policy, New York: Carnegie Council on Ethics and International Affairs, 1997.
  - <sup>21</sup> Jack Donnelly, “Human Rights and Asian Values: A Defense of ‘Western’ Universalism,” in Bauer and Bell, eds., pp. 60-87.
  - <sup>22</sup> Sen, *Human Rights and ‘Asian Values.’*
  - <sup>23</sup> Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights (Bangkok Declaration), signed April 7, 1993, A/CONF.157/ASRM/8A/ CONF.157/PC/59, 7 April 1993, par. 26.
  - <sup>24</sup> Article 5, Cha-am Hua Hin Declaration on the Intergovernmental Commission on Human Rights, 15<sup>th</sup> ASEAN Summit, Thailand, October 23, 2009.
  - <sup>25</sup> Cha-am Hua Hin Declaration on the Intergovernmental Commission on Human Rights, Article 4.
  - <sup>26</sup> *Ibid.*, Article 8.
  - <sup>27</sup> *Ibid.*, Article 7 (a).
  - <sup>28</sup> *Ibid.*, Article 7 (b).
  - <sup>29</sup> Diane K. Mauzy, “The Human Rights and ‘Asian Values’ Debate in Southeast Asia: Trying to Clarify the Key Issues,” *The Pacific Review*, Vol. 10, No. 2 (1997), pp. 210-236.
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  - <sup>31</sup> Amitav Acharya, “How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism,” *International Organization*, Vol. 58, No. 2 (Spring 2004), p. 241 (citing Miles Kahler, “Institution Building in the Pacific,” in Andrew Mack and John Ravenhill, eds., *Pacific*



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- 32 Bangkok Declaration, Bangkok, Thailand, August 8, 1967.
  - 33 Li-ann Thio, "Implementing Human Rights in ASEAN Countries: 'Promises to Keep and Miles to Go Before I Sleep'," *Yale Human Rights & Development Law Journal*, Vol. 2 (1999), pp. 1-86 (emphasis added).
  - 34 Tommy Koh, a Singaporean professor and ambassador who was part of the Eminent Persons Group (EPG) that drafted the ASEAN Charter, in a speech before the Seventh Workshop on an ASEAN Human Rights Mechanism, June 12–13, 2008 in Singapore where he talked about their experiences drafting the ASEAN Charter before representatives of ASEAN countries. This is now an oft-quoted statement in many articles and publications.
  - 35 Carolina G. Hernandez, "Institution Building through an ASEAN Charter," paper presented at the 8th Europe-East Asia Think Tank Dialogue "Strengthening Regional and Inter-Regional Cooperation in Responding to Rising Extremism and Resurging Nationalism," co-organized by the Konrad Adenauer Stiftung, Institute for Strategic and Development Studies and the European Institute of Asian Studies, Berlin, Germany, October 29–November 3, 2006; as revised and published in Carolina G. Hernandez, "Institution Building through an ASEAN Charter," Manila: Panorama, September 10, 2007.
  - 36 Ibid.
  - 37 Request for the Interpretation of the Judgment of 15 June 1962 in the Case Concerning the *Temple of Preah Vihear* (Cambodia v. Thailand), International Court of Justice, Decision dated July 18, 2011, <http://www.icj-cij.org/docket/files/151/16564.pdf> (accessed November 7, 2011).
  - 38 Ibid., p. 16 (emphasis added).
  - 39 Christine Bell, *Peace Agreements and Human Rights*, Oxford: Oxford University Press, 2000.
  - 40 Bangkok Declaration, also known as *The ASEAN Declaration*, Bangkok, Thailand, August 8, 1967, <http://www.asean.org/1212.htm> (accessed July 17, 2011).
  - 41 The first purpose mandates ASEAN "to maintain and enhance peace, security and stability and further strengthen peace-oriented values in the region" (ASEAN Charter, Chapter 1, Article [1]).
  - 42 ASEAN Charter, Article 1 (2).
  - 43 ASEAN Charter, Article 2 (1).
  - 44 ASEAN Charter, Article 2 (2) (b).
  - 45 ASEAN Charter, Article 2 (2) (c).
  - 46 ASEAN Charter, Article 2 (2) (d).
  - 47 ASEAN Charter, Article 2 (2) (e).
  - 48 ASEAN Charter, Article 2 (2) (g).
  - 49 ASEAN Charter, Article 2 (2) (i).
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  - 52 Ibid.
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  - 55 Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," *International Organization*, Vol. 54, No. 3 (Summer 2000), pp. 421-456.
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  - 57 See Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order*, 2<sup>nd</sup> ed., New York: Routledge, 2009.
  - 58 Judith L. Goldstein, Miles Kahler, Robert O. Keohane and Anne-Marie Slaughter, eds., *Legalization and World Politics*, Boston, MA: MIT Press, 2001.

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- 64 John Austin, *Lectures on Jurisprudence*, London: John Murray, 1880.
- 65 A good introduction and overview of Southeast Asian states and ASEAN is provided in Rodolfo C. Severino, Elspeth Thompson and Mark Hong, eds., *Southeast Asia in a New Era: Ten Countries, One Region in ASEAN*, Singapore: ISEAS, 2010.
- 66 See Vitit Muntarbhorn, "A Roadmap for an ASEAN Human Rights Mechanism," <http://www.fnf.org.ph/liberallibrary/roadmap-for-asean-human-rights.htm> (accessed May 17, 2011).
- 67 As Termsak Chalermmpalanupap noted, "There is still no official name for the body to promote and protect human rights in ASEAN. Article 14 of the ASEAN Charter just refers to 'an ASEAN human rights body' with the understanding that the official name will be determined along with the terms of reference by the AMM. So far, the following have been mentioned as possible choices: ASEAN Human Rights Mechanism (too passive and mechanical); ASEAN Human Rights Body (because it is now well-known); ASEAN Human Rights Commission (it conveys some mission by experts); ASEAN Human Rights Council (it gives the impression of being a policy decision-making entity); ASEAN Human Rights Consultative Council (no policy decision-making, just consultations); ASEAN Human Rights Forum (just a venue for discussion), etc. For ease of reference in this article, the ASEAN human rights body shall be referred to as the AHRB."
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- 69 See Dianne A. Desierto, "ASEAN's Constitutionalization of International Law: Challenges to Evolution under the New ASEAN Charter," paper presented at the "Non-State Actors" panel of the International Law Association (ILA), British Branch Conference on Compliance, Oxford Brookes University, April 15-16, 2010, pp. 19-20, <http://ssrn.com/abstract=1712831> (accessed February 5, 2011), on the ASEAN Summit as a "quasi-judicial oversight" organ.
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- 80 Joint Communiqué at the 26<sup>th</sup> ASEAN Ministerial Meeting (AMM) in Singapore, July 23-24, 1993 (emphasis added).
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- 85 Asian Human Rights Commission, *Asian Human Rights Charter [AHRC], A People's Charter*, 1998, p. 27, <http://material.ahrchk.net/charter/pdf/charter-final-cover.pdf> (accessed February 5, 2011). The AHRC also recognized the need to include individuals and corporations in the coverage of potential violators, not merely state institutions.
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# Relations between Legal Orders in Postnational Law: Constitutionalism, Pluralism and the Role of Human Rights

Pola Cebulak

## Abstract

*In the period since the end of the Cold War, the different layers of law in the international arena have become more interlinked and interwoven.<sup>1</sup> This shift might suggest a development towards a legal “melting pot” involving an increased cross-application of judicial norms stemming from different legal orders. In fact, judges are more and more often faced with cases involving legal provisions that are foreign to their legal orders. Hans Kelsen pointed out that “the power of state is no mystical force concealed behind the state or its law; it is only the effectiveness of the national legal order.”<sup>2</sup> Hence, for instance, the Court of Justice of the EU has taken an active role in ensuring the effet utile of European law. This article discusses possible theoretical perspectives on the interactions between various legal orders in the international arena. The opposition between the dualist and monist conceptions provides a necessary basis for presenting their beyond-state-level counterparts—constitutionalism and pluralism. To introduce structural clarity into one’s view of those interactions, one can simplify and present two main opposing conceptual “camps” of the debate. However, the line does not in fact lie exactly at the level of differentiating the relations between legal orders within or beyond the state. One could use both the monist and dualist theories to explain the hierarchy of transnational legal orders while applying constitutionalism and pluralism on the purely national level. This simplification will be allowed here for two reasons: first, the national level is not the focus of this analysis; second, for a better understanding it is necessary to present the theories from their respective perspectives. The monist and dualist approaches seek to explain the interactions between norms stemming from different legal orders within the state, whereas constitutionalism and pluralism developed in the international context. As such, it appears necessary to differentiate between the European and the global levels. The key aspect of a pluralistic architecture of interactions between different legal orders in the international arena is the activation of judges; such a setup opens for them more possibilities for inspiration and support and thereby multiplies the possible ways of legitimizing their choices. Judges are working within a hybrid of national, regional and international legal norms that can be described as postnational law. Accepting the lack of a normative hierarchy on the global scene of postnational law involves judges taking on a greater role as actors ‘bargaining’ and shaping the interactions between legal orders.*

## 1. Introduction

The process of globalization has increasingly linked national and international law. It has created the need for new approaches to develop, capable of dealing with interactions among legal orders on the international arena.<sup>3</sup> This growth calls for a replacement of the traditional understanding of interactions between separate and independent legal orders with a more integrated system.<sup>4</sup> Nico Krisch developed the concept of postnational law that explains the solid interwovenness between national and international law.<sup>5</sup> Factors tied to the concept’s development include increased cross-border flows of services, goods and capital, as well as the process of deforma-



tion of international relations expressed in a shift from “government” to “governance” and a dispersion of sources of authority away from the national state both vertically (due to internationalization and communitization) and horizontally (involving private actors).<sup>6</sup> As a result of such shifts, the clear line of distinction between national and international law no longer exists. Academics have been using the term ‘postnational’ when describing recent developments in identity building, politics and governance.<sup>7</sup> It denotes a general decoupling of political processes from the nation state that is also applicable in the legal context today.<sup>8</sup>

Whatever the reasons and methods of implementation, harmonization of legal norms is the reality not only within the EU but also on a global scale. Legal integration does not take place in a vacuum, but usually proceeds hand in hand with economic and political integration. Traditionally, legal positivists have advocated for purity and completeness of law that would allow the “science of norms.”<sup>9</sup> Hans Kelsen explains the source of validity of a legal norm with the image of a pyramid of norms. On the top is the *Grundnorm* that confers validity upon the descending norms in the system. The validity of the basic norm is a precondition for the validity of all other norms in the legal order.<sup>10</sup> Hence, legal scholars often look for some order and hierarchy at the international level to secure the rule of law. This article will demonstrate that non-hierarchical visions of interactions between legal orders may also provide a fruitful ground for judicial dialogue that contributes to regional legal integration. Such a pluralistic structure of different courts competing for ultimate authority can be illustrated by the example of the European human rights regime, which is at the same time invoked as an example of regional cooperation.

Since the end of the Cold War, different layers of law in the international arena have become more interlinked and interwoven.<sup>11</sup> This shift might suggest a development towards a legal “melting pot” involving an increased cross-application of judicial norms stemming from different legal orders. In fact, judges are increasingly faced with cases involving legal provisions that are foreign to their own legal orders. Hans Kelsen pointed out that “the power of state is no mystical force concealed behind the state or its law; it is only the effectiveness of the national legal order.”<sup>12</sup> Hence, such moves have been made as the Court of Justice of the European Union’s (CJEU) more active role in ensuring the *effet utile* of European law.

This article discusses possible theoretical perspectives on the interactions between various legal orders in the international arena. The opposition between dualist and monist conceptions provides a necessary basis for presenting their beyond-state-level counterparts—constitutionalism and pluralism. To clearly view the structure of those interactions, a simplified presentation of the two main opposing conceptual “camps” of the debate appears to be justified. However, the differentiation is not actually as clear as to warrant the application of monism and dualism only to relations between legal orders within the state, and of constitutionalism and pluralism to those beyond the national context. One could use both the monist and dualist theories to explain the hierarchy of transnational legal orders while applying constitutionalism and pluralism on the purely national level. In this article, this simplification is justified for two reasons. First, the national level is not the focus of this analysis. Second, the presentation of the theories in their original context promises a better understanding of the argument presented in this study. The monist and dualist approaches seek to explain the interactions between norms stemming from different legal orders within the state, whereas the constitutionalist and pluralist visions are developed in the international context. Within the latter category it is necessary to differentiate between the European and the global levels. To do this, it is appropriate to incorporate those respective starting points and present the theories in their original contexts.

First, the theories of monism and dualism provide the necessary basis for assessing the relationships between different legal orders. Apart from presenting their most important features, the article also identifies their relevance in the current architecture of international law. Secondly, the article discusses constitutionalism and pluralism in the European context. It presents, with an ad-

equate theoretical background, widely discussed aspects of European integration, including attempts to adopt a formal constitution for the European Union (EU), and relations between the national constitutional courts, the CJEU and the European Court of Human Rights (ECtHR). Thirdly, the article addresses the constitutionalism-pluralism debate on the global level, where the differences between approaches become wider. While constitutionalists call for a sort of global constitutional order, the pluralist camp views the heterarchy of norms as a welcome reality. Also on the global level, a pluralistic legal architecture creates structural possibilities for judges to engage in a dialogue shaping the relations among legal orders.

## **2. Monism and Dualism**

In order to address the constitutionalism-pluralism debate in an appropriate context, it is essential to explain the historical roots of the two theories. Each has its origin in the initial debate concerning the relationship between national and international law. There are two main theoretical conceptions of this relationship.

### **(1) Monism**

The monist theory conceives national and international norms as forming part of the same pyramid of legal norms. In fact, it abolishes the distinctions among legal orders in the international arena and affirms the unity of internal and international legal orders.<sup>13</sup> Internal law and international law address the same subjects and apply to the same judicial situations.<sup>14</sup> The subject of the law is an individual who, according to the monist theory, can also have a claim based directly on international law if the invoked norm has direct effect. If the international norm stands in contradiction to the national one, a judge is faced with the question of the hierarchy of norms within this one single pyramid. This question can be answered either in favor of national law or in favor of international law.

### **(2) Dualism**

The alternative conception to the monist vision of one single pyramid encompassing all norms is the dualist theory. It sees two separate pyramids of norms coexisting in juxtaposition to one another.<sup>15</sup> The underlying consideration is that they have different addressees, national law applying primarily to individuals and international norms being aimed at states.<sup>16</sup> As each of the legal orders constitutes an autonomous whole, they do not purport to have any effect on each other.<sup>17</sup> In principle, an individual can never rely on norms of international law in his claim unless international norms have been transposed by the national legislator. The fact that the content of a ratified international agreement has a double existence—within the internal and international legal order—stands, on the conceptual level, in no contradiction to the clear distinction between the two pyramids. The crucial consequence of a dualist understanding of the relationship between national and international legal systems is that there is no possibility of a conflict of norms. Operating under the assumption of self-sufficient legal entities that address different subject matters, the question about the hierarchy of norms does not even arise. The two systems can only relate to each other by referring to rules of the other system.<sup>18</sup> Kelsen criticized this conceptual framework by pointing out the incoherency of claiming absolute independence of the sources of validity of international and national law while they in fact rely on the will of the same national legislative authority.<sup>19</sup>

### **(3) The Relevance of the Monism-Dualism Debate**

The recent trends in the doctrinal debate about the interactions between national and international legal orders do not actually favor either of the two classical theories, but rather move to-

wards new paths. Monism and dualism have recently been described as outdated due to the changes in the political and social context,<sup>20</sup> and even as “intellectual zombies of another time... [that] should be laid to rest, or deconstructed.”<sup>21</sup> The problem seems to be that “any given constitution does not set up a normative universum anymore, but is, rather, an element in a normative pluriversum.”<sup>22</sup> In the academic debate, monism and dualism have been *de facto* replaced by constitutionalism and pluralism.<sup>23</sup> These new paths are expected to provide a better explanation for the current legal reality within the EU and beyond. The differentiated approaches of the CJEU towards national law of the Member States, on the one hand, and international law on the other, appear paradoxical under a monistic assumption.<sup>24</sup> At the same time, dualism fails to explain the relevance of a direct effect of norms stemming from different legal orders, as the effect of the norm would be established within a particular legal order on the basis of its content.<sup>25</sup> Hence, there arises a need to explore different theoretical approaches that would shift the focus to the equality and mutual respect of the respective legal orders and focus more on the content of the norms.<sup>26</sup>

However, the views that the theories of monism and dualism are absolutely outdated seem to be premature, as they still remain valid reference points for the relationship between national and international law and are reflected as such in national constitutions. Article 59 of the German Grundgesetz can serve as an example of a clear dualist stance of a constitutional lawmaker. This understanding has been affirmed by the German Federal Constitutional Court referring to “two distinct legal circles.”<sup>27</sup>

The distinction between the monistic and dualistic visions can still make a valuable contribution to the understanding of the architecture of postnational law. The key issue is a differentiation between notions of ‘validity’ of norms, their ‘direct effect’ and ‘supremacy.’ A monist vision of the relationship between European and international law means that international norms enjoy automatic validity within the EU legal order. It does not, however, involve their direct invocability by individuals in front of a court or a higher position in the hierarchy of norms within the EU legal system.<sup>28</sup> Consequently, monism and dualism, although overtaken in the process of evolution of general, overarching theories concerning the interactions of international legal orders, can remain useful tools relating to the ‘validity’ of international norms in other legal orders.<sup>29</sup> The question of validity is just one illustration of the lasting value of monist-dualist theories as a point of reference when describing the relations between legal orders. Significant parallels between the monist-dualist and constitutionalism-pluralism debates are undeniable. They prove that the current debates are built on foundations laid down previously and are not based on an absolute dismissal of monistic and dualistic views of interactions between legal orders.

### 3. The Constitutionalism-Pluralism Debate in the European Context

Having sketched out the main lines of arguments of the monist and dualist conceptions, we will now turn to the interactions between legal orders beyond the state.

Attempting to explain the main division of camps in the debate, one may say that the constitutional vision of the relationship among legal orders implies a hierarchy of norms, whereas the pluralist one revolves around a heterarchy of legal orders. There are numerous variations and disagreements within these two conceptual camps. One of the main differentiating factors is whether the debate is carried out in the European or the global context. It is mainly the different reality of integration that furnishes divergent arguments for each theoretical perspective. In spite of significant structural parallels, a separate presentation of the theoretical frameworks developed for the EU and the global context seems justified.

## (1) European Constitutionalism

Constitutionalism denotes “the commitment on the part of any given community to be governed by constitutional rules and principles.”<sup>30</sup> It comes back to a Kelsenian notion of an empowering norm that identifies norms created under, and therefore belonging to, a particular legal system.<sup>31</sup>

The notion of ‘constitution’ involves a “hierarchical ordering of legal norms according to their pedigree to a specific legal order with specific (and fixed) content, such as parliamentary-type institutions or specific individual rights.”<sup>32</sup> Constitution has often been described as two-dimensional. The formal dimension encompasses the increased legal validity of the constitution expressed by procedural qualifications for the amendment procedure or inclusion in the written constitution. The essential element of the substantial notion of constitution is its primacy within a legal order.<sup>33</sup> However, this hierarchy can also be seen as imposing the higher position of the constitution in respect to regular legislation from an internal point of view of a legal order, though not necessarily the highest position in the bigger picture, which includes other interrelated legal orders.<sup>34</sup>

In the European context, the supranational character of the European Community (EC) inspired the endeavor to develop a formalized constitution for the Union that has been mainstream not only in academic legal discourse but also in political practice.<sup>35</sup> There were a few crucial points in the history of the attempts to introduce a constitution-oriented reform of the Treaties.<sup>36</sup> In 1984, a proposal for a European constitution drafted by Altiero Spinelli was adopted by the European Parliament but rejected by the Member States.<sup>37</sup> Then, in 1994, the Institutional Affairs Committee adopted the Herman Report, which was another failure.<sup>38</sup> In the Treaty of Nice signed in 2001, a consensus on the key issues was not reached, so the issues were further addressed in the Laeken Declaration.<sup>39</sup> Finally, there was the convention presided over by Valéry Giscard d’Estaing that worked out a draft of the Constitutional Treaty.<sup>40</sup> Despite all of these failed attempts to provide the EU with a formal constitutional framework, the efforts have always resulted in important substantive reform of the Union.<sup>41</sup> The single European Act in 1986, the Treaty of Maastricht in 1993, the Treaty of Amsterdam in 1999 and the recent Treaty of Lisbon in 2009 were all adopted following a failed constitutional attempt.

In order to analyze the conceptions of this possible framework it is necessary to note that, historically, the initial understanding of the role of constitutionalism in Europe focused on the limitation of public powers.<sup>42</sup> As C.H. McIlwain puts it, “‘Constitutional limitations,’ if not the most important part of our constitutionalism, are beyond doubt the most ancient.”<sup>43</sup> In the 17<sup>th</sup> century the constitutional framework was used to limit royal prerogatives and government. Also, the Bill of Rights passed in 1689 illustrates this rule-of-law dimension of constitutionalism, focused on subjecting the executive branch to limits provided by the law. The concept of constitution as the foundation of an entire system of government emerged in the period following the French and American revolutions in the 18<sup>th</sup> century.<sup>44</sup> The 19<sup>th</sup> century, though rich in development in the field of legal theory, was still marked by indecisiveness in respect to its limitations and foundational models. It was only in the course of the last century that the foundational model linked to a written constitution established itself as the common understanding of constitutionalism.<sup>45</sup>

The general understanding of the concept of constitution can be described as a “legal instrument with the specific authority to establish, organize and define the government of a state on the basis of the rule of law.”<sup>46</sup> However, it seems quite clear that constitutionalism as it was developed for a Member State is subject to adjustments when applied beyond the national level. As national constitutions differ and reflect different economic or social models, the European level requires respective adaptations to do justice to the *sui generis* character of the EU. The original modernist Westphalian constitutionalism operated under the assumption of exclusivity of peoples, territories and jurisdictions.<sup>47</sup> Yet, in the post-Westphalian context this assumption loses ground, as in the European architecture, which consists of national and supranational levels, and is prone to over-

laps.<sup>48</sup> Hence constitutional models adapted to the specificities of the EU as compared to both states and international organizations have been discussed. Ingolf Pernice advocates for a ‘multi-level constitutionalism.’ This concept focuses on “the correlation of national and European law from the perspective of both states and citizens.”<sup>49</sup> It views the national and European levels of government both operating as elements of one system whose purpose is to serve the same citizens. This vision involves an assumption that can be traced back to Rousseau’s social contract, namely that the citizens are the constituent, the origin of public authority.<sup>50</sup>

Two points that highlight the attractiveness of multilevel constitutionalism should be underlined. The first aspect is its postnational orientation. Multilevel constitutionalism strives to establish the original and basic relationship between people and public authority on national, subnational and supranational levels.<sup>51</sup> It is not limited either to a specific territory or to a legal order, but encompasses power-sharing among interrelated levels of public authority.<sup>52</sup> Further, it is not based upon the existence of a state; it is open to other political units.<sup>53</sup> The second point to be stressed is the fact that even though Ingolf Pernice uses the notion of “levels,” the term does not imply a hierarchy among the legal orders within the multilevel constitution.<sup>54</sup> As both national and European law originate in a direct line from the citizens, they can function as autonomous legal orders with a functional but not hierarchical relationship.<sup>55</sup> Even though the terminology might be misleading, there is in fact only “functional primacy, based upon mutual consideration, recognition and cooperation between the courts.”<sup>56</sup> Such a theoretical openness of multilevel constitutionalism might also be viewed with a critical eye. Different angles of criticism of the theory presented by Ingolf Pernice are conceivable. As it takes into account the current pluralist reality within the EU, it might be considered that it goes too far and in fact amounts to acceptance of this pluralistic model; this view questions the constitutionalist appeal of providing *order* to the plurality of legal systems. If the citizens are the constituent, then how can judicial dialogue legitimately resolve the conflict of competencies between legal orders? This question takes us to another critical remark about constitutionalism on the EU level, being whether there is enough democracy on the EU level to legitimize the construction of an autonomous legal order originating in a direct line from the citizens without the intermediary of the national state, which is the usual route in cases of international organizations. An answer to this possible critique on the democratic deficit of the EU can be easily imagined. The steps taken in the Treaty of Lisbon to improve the transparency and democratic legitimacy of the EU need to be noted.<sup>57</sup> The EU citizenship is enshrined in the Treaties and aimed at developing an EU identity in parallel to the national one.<sup>58</sup> Second, there is the reorganization of the Treaties: the EU Treaty contains the common values, general objectives and principles, and the Treaty on the Functioning of the European Union (TFUE) establishes the more detailed provisions on specific rights, competencies and policies.<sup>59</sup> However, there are still aspects of this organization that are surprising from the constitutionalist point of view, for instance, the fact that Common Foreign and Security Policy (CFSP) still remains in the TFEU. Further, there are reforms contributing to this development, such as the introduction of public sessions of the Council when acting in legislative capacity, new powers of European Parliament, especially the co-decision procedure as the “ordinary legislative procedure,” or new responsibilities of national parliaments, especially the “early warning system” foreseen in Article 12 TEU.<sup>60</sup> In spite of those improvements, the democratic legitimation of the EU remains questionable. There also exists some serious opposition to the idea of constructing a direct legitimacy connection between individuals and the EU under its current legal framework.<sup>61</sup> Hence the acceptance of its existence might be premature.

Another major point of criticism is that the constitutionalist vision tends to stick to the limitational model that is the historically older understanding of constitution when applying it on the supranational level.<sup>62</sup>

Due to European diversity of constitutional visions, legal systems and political structures, it was easier to use the limitational model of constitutionalism as a basis for the European constitu-



tional project.<sup>63</sup> This is understandable, as the limitational model focuses on the limitation of state powers, thus involving mainly negative obligations towards the citizens. Therefore, it seems to be less demanding while carrying a promise to strengthen legal security. Nonetheless, there was a reason for the evolution towards the foundational model on the national level. Nowadays the greatest appeal of constitutionalism is not the limitation of state powers, but democratic legitimation and the rule of law. Hence, by minimizing its demands, constitutionalism might be deprived of its biggest advantage—providing a means for the construction of a European democratic legal order as we know it from the nation states, based on the rule of law and legitimation of state powers.

## **(2) European Pluralism**

On the other hand, there is the “pluralist camp” which assumes that actors operating in the system are expected to adopt a perspective internal to the entity of which they are a part.<sup>64</sup> They should remain faithful to the narrative developed from that internal perspective, which can be national, domain-specific or European, but at the same time be informed of other legal orders existing in the “outside world.”<sup>65</sup> Hence the crucial aspect of pluralism as a theoretical approach, as defined by Maduro, is promoting internal action informed by external perception and knowledge of the system.<sup>66</sup>

Pluralism claims to be based rather on an analysis of existing situations.<sup>67</sup> It is not opposed to the normative aspirations of constitutionalists, but rather, to their allegedly wishful thinking.<sup>68</sup> It observes “different norms and actors competing for ultimate authority; and since they lack a common legal frame of reference, they compete to a large extent, through politics rather than legal argument.”<sup>69</sup>

Pluralism is better at reflecting our current reality in the EU, as one should not disregard the pluralism of constitutional jurisdictions in the European sphere.<sup>70</sup> However, this statement leads us to one of the main questions about pluralism—is it merely a descriptive theory, or is it also a normative theory?<sup>71</sup> One of the strongest criticisms of pluralism is, in the words of Martti Koskenniemi, that it limits itself to legitimizing the existing situation, becoming a mere apology.<sup>72</sup> Pluralism can be seen as a theory built upon a clash between constitutional courts of different legal orders, which represents an exceptional case mainly concerning the judges wrestling for their authority. Here, pluralism provides a non-legal answer to a legal question of conflict of norms. However, there are at least two possible answers to that criticism. First, the theory of pluralism should not be limited to the legal order dimension, but regarded as applying also to the institutional dimension, the constituent power dimension and the societal and political community dimension.<sup>73</sup> Such a broad horizon is essential for weighing the virtues of pluralism. Next, conflicts of high constitutional principles are exceptional cases that go beyond pure application of the law. They involve far more legal diplomacy and comity.<sup>74</sup> Therefore, there is a need for a theory that also applies beyond the legal dimension.

There are two dimensions of constitutional pluralism as a normative theory. First, there is “a normative value in having an accurate understanding of the world.”<sup>75</sup> Regarding the legal setup in national constitutions, constitutional pluralism has actually always been inherent to the structure of the EU.<sup>76</sup> As it reflects the reality not only in the relation between CJEU and the national constitutional courts, but also in their approaches towards international law, there is the added value of acknowledging a pluralistic architecture of reciprocal relations. Furthermore, constitutional pluralism involves “wishful thinking” to a significant extent, which might serve as a practical indicator for its normative appeal. It calls for an informed dialogue led by mutual trust as it may provide a better environment for resolving problems of high constitutional principles.<sup>77</sup> The prerequisite for this constructive discourse is a lack of hierarchy among the disputants.<sup>78</sup>

Still, the concern about the possible destructive effects of a theory that has a focus on the “disorder of orders”<sup>79</sup> as well as a strong explanatory dimension remains.<sup>80</sup> Probably in view of that

concern, along with the reality of tighter integration within the EU, the term “constitutional pluralism” has been used frequently in the European context. It “recognizes that European legal order inaugurated by the Treaty of Rome has developed beyond the traditional confines of inter-national law and now makes its own independent constitutional claims.”<sup>81</sup> These claims are placed in parallel with the existing claims of the Member States. This theoretical approach dismisses the view of a hierarchical pyramid of different legal orders beyond the state. By contrast, it embraces the horizontal and heterarchical relationship between national and European legal orders.<sup>82</sup>

The debate between pluralists and constitutionalists inevitably comes back to the question of the ultimate legal authority discussed earlier in the dualist-monist context. Kelsen rightly links this question to the source of legal authority. Many efforts have been made to identify this authority. First, there is the traditional constitutional conceptual framework; it acknowledges the supremacy of the constitution because it is legitimized by the people, or the constituents.<sup>83</sup> Following this logic, such legitimacy based on “we the people” can hardly be affirmed yet at the EU level, let alone in regard to international law. In a postnational order another explanation is necessary. The second approach, inspired by theories developed for the national level, is one traditionally endorsed by the CJEU that can be described as “monist legalism.”<sup>84</sup> The Court asserts that the source of the ultimate authority of European law is its effective and uniform application.<sup>85</sup> The third vision of the foundation of constitutional authority in Europe focuses on principles. The basic constitutional principles (such as the rule of law, democracy and human rights) represent the grammar of the *dialogue des juges* and the basis to reconceive constitutional practice on various levels.<sup>86</sup> The Court has been trying to give this approach a positivist anchor by deriving common principles from the common constitutional traditions of the Member States.<sup>87</sup> The key factor is that the basis provided by these principles allows a non-hierarchical dialogue. The more judges share an understanding of basic principles, the more effective the dialogue becomes.

The principle-centered vision is in line with the CJEU jurisprudence placing the “general principles of EU law” at the top of the ladder of normative sources of European law.<sup>88</sup> The Court has been establishing those principles through a process of cross-fertilization with the national and international levels.<sup>89</sup> However, it is exactly this process of establishing common principles that might cause concern in view of the separation of powers. The general principles of EU law, which shall be accepted as the source of EU’s law authority, are, in fact, judge-made principles. This concern is mitigated by the jurisprudential practice of the CJEU that takes into account the common constitutional traditions of the Member States as one of the sources of the general principles of EU law. In principle, such a recourse to common constitutional traditions does not require that the practice in question constitute a uniform tendency in the Member States. Rather, it requires the Court to make decisions based upon a comparative analysis, “which must take due account, in particular, not only of the aims and tasks of the European Union but also of the special nature of European integration and of EU law.”<sup>90</sup> However, in practice the CJEU accepts new principles mainly if a convergence between national legal systems already exists; otherwise it is careful in adopting an “EU-wide” solution.<sup>91</sup>

The attractiveness of the constitutionalist view of the international legal arena lies in its ambition to provide a framework for legal interactions that would use categories known from domestic legal orders. This is appealing especially as history shows that at the national level, constitutionalism has been successful in ensuring the legitimacy of domestic governments. Further, one of the most frequently discussed problems of supranational and international legal orders is their democratic deficit resulting in weaker legitimacy.<sup>92</sup> The observed progress towards reaching an agreement on basic fundamental rights and in the institutionalization beyond the state yields hope.<sup>93</sup> Yet, the primary expectation of states when they participate in international cooperation is that it should accommodate their diversity. In that respect, pluralism enables them to avoid the difficulties inherent in the constitutionalist approach based on the majority as it embraces plurality.<sup>94</sup> Pluralism also

provides a positive answer to the heatedly discussed question of the fragmentation of international law.<sup>95</sup> Nico Krisch advances three main arguments in favor of the pluralist approach: its capacity for adaptation, provision of a space for contestation and usefulness in building checks and balances in the postnational order.<sup>96</sup>

The European human rights regime can serve as an illustration of a successful application of the pluralistic approach.<sup>97</sup> The main actors involved in guaranteeing the protection of human rights in Europe are the national constitutional courts, the CJEU and the European Court of Human Rights (ECtHR). There is no hierarchically ordered system of human rights protection that would clearly indicate the ultimate supremacy of legal norms of national constitutions, or of the general principles of EU law or the European Convention on Human Rights (ECHR).<sup>98</sup> In principle, each of these three involved judicial actors asserts its ultimate authority.<sup>99</sup> The German Federal Constitutional Court can serve as an example for such an approach. In its *Görgülü* judgment it asserted that the ECHR has the same rank as a regular federal statute.<sup>100</sup> As long as the legislation allows room for maneuver, the German courts are obliged to follow an interpretation that is in compliance with the ECHR.<sup>101</sup> However, that principle reaches its limit when, for instance, due to a change in the factual situation, compliance with a judgment of the ECtHR comes to stand in contradiction to German statute or Constitution, namely to fundamental rights of third parties.<sup>102</sup>

This tone is very similar to the one adopted by the German Constitutional Court with respect to EU law.<sup>103</sup> It started out skeptical with the *Solange I*<sup>104</sup> judgment, but was practically reversed in the *Solange II* in the following statement:

*As long as the European Communities, in particular European Court case law, generally ensure effective protection of fundamental rights as against the sovereign powers of the Communities which is to be regarded as substantially similar to the protection of fundamental rights required unconditionally by the Constitution, and in so far as they generally safe-guard the essential content of fundamental rights, the Federal Constitutional Court will no longer exercise its jurisdiction to decide on the applicability of secondary Community legislation cited as the legal basis for any acts of German courts or authorities within the sovereign jurisdiction of the Federal Republic of Germany, and it will no longer review such legislation by the standard of the fundamental rights contained in the Basic Law.*<sup>105</sup>

In the *Maastricht* decision, the Federal Constitutional Court underlined its relationship of cooperation with the CJEU and the fact that it would only become active again should the Court in Luxembourg depart from the established standard of fundamental rights.<sup>106</sup>

There are apparent parallels with the relationship established between the CJEU and ECtHR by the *Bosphorus* judgment that has been founded on the assumption of “equivalent protection.”<sup>107</sup> However, this dialogue also experienced a rough start. In the *Matthews* judgments, the CJEU and ECtHR reached different results.<sup>108</sup> In the judgment of the ECtHR, the violation of the Convention was based on primary EC law, over which the Court of Justice had, in principle, no jurisdiction, and was concluded by Member States by means of international treaties. Hence the court could have traced the responsibility back to the Member State in question.<sup>109</sup> However, since then the logic has been one of a “division of labor” along the lines of the field of application of the respective legal orders.<sup>110</sup> Hence the Court in Strasbourg has declared numerous cases concerning EU measures inadmissible.<sup>111</sup> Apart from the jurisprudential dialogue in cases like *Bosphorus*, there are also regular meetings between judges from Luxembourg and Strasbourg that contribute to the convergence and harmony of the relationship between the two courts.<sup>112</sup> Also in view of the upcoming accession of the EU to the ECHR, the two courts are determined to engage in a constructive dialogue in order to ensure “quality and coherence of the case-law on the protection of fundamental rights in Europe.”<sup>113</sup>

Cooperation between the CJEU and ECtHR illustrates how little importance can be attached to the formal setting of legal orders. The Court in Strasbourg has developed its jurisprudence gradually in order to keep costs low for the Member States.<sup>114</sup> In summary, it started with the “lowest common denominator” and slowly raised the threshold for the standard of human rights protection by using an evolutionary approach to the convention as a “living instrument.”<sup>115</sup> This might be regarded as necessary in view of the inherent need for the ECtHR to establish its authority through acceptance of its jurisprudence by the Member States of the Council of Europe.<sup>116</sup> However, the CJEU has a stronger enforcement apparatus at its disposal and far less concerns about the implementation of judgments. In spite of this different formal setting within the respective legal order, the courts have adopted an approach based on mutual accommodation and judicial dialogue. It is not a one-way street but a mutual process of accommodation that can be influenced not only by judicial counterparts, but also by political actors or polity changes.<sup>117</sup>

Undoubtedly there are divergences in perception regarding the interactions between legal orders among the national constitutional courts, the Court of Justice in Luxembourg and the Court of Human Rights in Strasbourg. These divergences might be fundamental in nature, but they do not seem to be visible on the surface. The reality of the judicial dialogue between the courts in Europe proves to be rather harmonious.<sup>118</sup>

Due to these divergent perceptions, the relations among the international courts are in fact not hierarchical. They are self-contained jurisdictions that are not bound by their own precedents or *a fortiori* by those of other judicial bodies.<sup>119</sup> Even the relationships between national constitutional courts and the CJEU within the supranational pillar are much more complex and nuanced than a clear primacy.<sup>120</sup> As a result, the political weight and public legitimacy of the actors involved can influence the direction of the legal development in a particular domain.<sup>121</sup> It is the lack of established hierarchy that provides the basis for openness and responsiveness in the judicial dialogue.

It is the pluralist vision that allows an assessment of the current reality within the EU. It provides the tools for explaining the apparent contradiction between the principled assertion of ultimate jurisdiction by both national constitutional courts and the CJEU on one end, and on the other, the overall smooth cooperation in practice that leads to greater convergence between European jurisdictions.

#### **4. Constitutionalism and Pluralism on the Global Level**

Taking the debate about constitutionalism and pluralism to the next level—the global one—does not necessarily imply an entirely different arsenal of arguments. In fact, as the EU is also an international organization, most of the arguments invoked in the European debate can be transposed to fit the discussion about relations among legal orders on the international arena. The arguments might, however, possess different persuasive power stemming from factual differences between the varying degree of European and international integration and accordingly the stage of development of the respective legal orders.<sup>122</sup> On the global level, lawyers are confronted with a wide diversity of approaches towards international law and law in general.

An additional difficulty is that the national, regional and global legal orders are becoming more closely interrelated and built upon each other. From the national perspective of the Member States, the “classical dual relationship international law/national law, is gradually becoming replaced by a new triangular relationship, international law/EU law/national law.”<sup>123</sup> Therefore, taking the discussion to the global level means considering all those legal orders together. The number and scope of domains of purely national law is shrinking dramatically. Simultaneously, the interactions among legal orders are growing and national law becomes only one of the possible sources of authority.<sup>124</sup> In these circumstances, the overarching term “postnational law” seems more ap-



appropriate.<sup>125</sup>

### (1) Constitutionalism on the Global Level

In order to illustrate the different shades within the constitutionalist vision of international legal order, it suffices to mention the views of a few renowned authors within this debate. Jürgen Habermas is a good starting point, as he provides a constitutional vision of international legal order from a more philosophical perspective. The multiplication of international organizations on the one hand and the loss of competences on the national level on the other lead to a lack of legitimacy.<sup>126</sup> The advocates of the constitutionalization of international law are faced with the immense challenge of setting up a structure of the global community that would ensure the “chain of legitimacy.”<sup>127</sup> Nonetheless, when developing Kant’s early vision of global society constitution one has to distinguish between the constitutionalization of international law and the creation of a world republic.<sup>128</sup> The vision of Habermas is rather one of an “*entstaatlichte Weltverfassung*,” a global constitution beyond the state.<sup>129</sup> It involves a global organization at the top of the pyramid that ensures peace and respect of human rights.<sup>130</sup> In respect to those basic elements, the legislation of this world organization would have a binding force. However, it would be limited to those particular issues by a principle similar to the subsidiarity principle and the principle of limited competences already known from the EU structure. A key issue within this world organization would be equal representation that could limit even the strongest actors from resorting to force.<sup>131</sup> Equal representation can only be ensured through strong regional cooperation. A large part of sectoral cooperation would be organized on the transnational level.<sup>132</sup> The world organization coexists and interacts with transnational ones. In regard to the problem of legitimacy, Habermas describes two ways of construing it on the international level.<sup>133</sup> On the global level, one has to look beyond the linear relationship between citizens and state power. Global citizens can elect democratically legitimized state powers that will then constitute the global community entrusted with peace and human rights protection. However, there is also the second way of construing the legitimacy chain: from national citizens to national state powers and then through a regional or transnational regime. The transnational regime is responsible within the international community for “internal affairs,” including areas such as energy, environment, finance and economy, in which there is little flexibility of national interests.<sup>134</sup>

Habermas’ vision can be perceived as a normative one, reaching far into the future and of rather limited applicability to the current situation of the international legal order. Yet, it provides a necessary understanding of the underlying virtues of constitutionalism on the international level.

Erika de Wet views the international legal order as a “co-existence of national, regional and sectoral (functional) constitutional orders that complement one another in order to constitute an embryonic international constitutional order.”<sup>135</sup> In view of an increasingly integrated international legal order, this co-existence and interaction amount to a *Verfassungskonglomerat* (constitutional conglomerate).<sup>136</sup> The three main elements of this emerging global constitutional order are the international community, an international value system and rudimentary structures for its enforcement. The international community is composed of regional communities, e.g., the EU or the African Union, and sectoral ones, e.g., the World Trade Organization (WTO) for trade or the United Nations (UN) for peace and security.<sup>137</sup> The steppingstone to its development was the adoption of the UN Charter that constitutes the “key connecting factor.”<sup>138</sup> It has been further strengthened by the jurisprudence of the International Court of Justice (ICJ), for example, with the introduction of a category of State obligations towards the international community as a whole.<sup>139</sup> The international values are norms with a strong ethical underpinning, which have either been integrated into written law by the States or have acquired a special status by States’ practice and are enforced within a variety of structures.<sup>140</sup> Those would be mainly human rights norms for creating a common



core across different regimes that could lead to mitigation of normative inter-regime conflicts.<sup>141</sup>

Erika de Wet includes the common use of constitutional language in the foundational treaties of international organizations like the UN, WTO and World Health Organization (WHO) as a “symptom” of constitutionalization.<sup>142</sup> However, this could merely be proof of the popularity of the constitutional model in the process of founding international organizations; one can hardly read more into that linguistic development. What seems inconsistent about Erika de Wet’s approach is the fact that she seems to acknowledge the reality of constitutional pluralism on the EU level, but then argues the case of an emerging constitutional order on a global scale.<sup>143</sup> If at the European level there already exists a plurality of legal orders, in spite of the tighter integration and larger overlapping of common values, then this experience seems to subvert the global constitutional aspirations. Moreover, de Wet supports her vision of a “constitutional conglomerate” by placing it in line with the *Solange* judgments of the *Bundesverfassungsgericht*.<sup>144</sup> Even though the German Constitutional Court in its judgments did not check the EU measures for their conformity with the German *Grundgesetz*,<sup>145</sup> it did refuse to hand out its ultimate jurisdiction.<sup>146</sup> However, in the process of constitutionalization of international law, international values actually form a superior hierarchical layer that would surpass the review power of national or European courts, not as a matter of choice, but of principle.

Other authors go even further in identifying the constitutionalist tendencies within the international legal order. Alfred Verdross and Bruno Simma have put the UN Charter in the spotlight as a possible future global constitution. The underlying rationale is reflected in St. Augustine’s maxim: “*in necessariis unitas, in dubiis libertas, in omnibus caritas*” (unity in essential matters, freedom in non-essential ones, charity in everything).<sup>147</sup> Bardo Fassbender developed further the vision of the UN Charter as the constitution of the international community.<sup>148</sup> He demonstrates that the norms of the Charter possess a constitutional quality.<sup>149</sup> However, this is merely proof of their constitutional rank within their respective legal orders, or of the popularity of the constitutional model in the process of founding international organizations, but cannot be explained by tools of positivist rhetoric. Even if certain norms disclose constitutional qualities, they do not possess constitutional rank unless they are set in positive international law.<sup>150</sup> Notwithstanding the interesting question of language choice made by the legislator, drawing further conclusions only from the way certain articles are formulated involves the risk of “objectivising” personal politico-moral preferences.<sup>151</sup> Even though some basic principles such as a mandatory protection of human rights might seem worth imposing on the whole global community, they do not become international law unless positive international law supports it.<sup>152</sup> This logic flows from the foundations of a positivist understanding of the law. Further, an approach affirming the UN Charter as the global constitution might be accused of being utopian.<sup>153</sup>

An example of a perhaps less ambitious but more flexible vision of a constitutional framework may be the “multilevel constitutionalism” that Ingolf Pernice also advocates on the international level. It views the different levels of government operating as elements of one system whose purpose is to serve the same citizens.<sup>154</sup> The virtues and possible criticisms are analogous to those expressed in view of this theory when applied to the EU level. The postnational orientation enables the multilevel constitutionalism to reflect the current dynamic of interactions between legal orders in the international arena. The multilevel construction is built upon the democratic fundament of citizens as the constituent. This provides a response to the knotty question of the legitimacy of international law.

However, the stability of this construction, especially on the global level, appears to be doubtful in view of the lacking democratic foundations, particularly the common *demos*.<sup>155</sup> A purely legal challenge to a construction of global constitutionalism can be derived from a positivist perspective. In a Kelsenian understanding, every legal order has two layers of norms: the positive norms and the presumed fundamental norm (*Grundnorm*).<sup>156</sup> The empowering norm classifies the

norms as belonging to a particular legal order. In the case of international law this basic norm governing the creation of positive norms seems to be unclear.<sup>157</sup> Article 38 of the ICJ Statute is often cited as a broadly accepted statement of sources, although it is not designated as such by any positive norms of international law that create source-law. Under these circumstances it appears difficult to construct a constitutional structure of international law that would have a legitimating potential similar to its domestic counterpart.<sup>158</sup>

## **(2) Pluralism on the Global Level**

An alternative view on the global architecture of postnational law is provided by pluralism. Similar to the approach presented on the EU level, pluralism involves a heterarchical conception of international law interrelated with national and European law. It assumes the existence of multiple and conflicting normative orders.<sup>159</sup>

Such heterarchy might lead to contradictory orders and thusly seem “far from ideal” to many.<sup>160</sup> Therefore, the search for a softer approach promising some coherence as constitutional pluralism did on the EU level seems understandable. A solution could be to use the judicial dialogue as a guarantee for a certain degree of coherence and grounds for the legitimacy of supranational adjudication.<sup>161</sup> The preliminary assumption of such an effective dialogue is that there exist different viewpoints that do share a common ground of understanding.<sup>162</sup> Further, judicial dialogue leading to an outcome suited for all the actors involved requires that those actors lack complete authority over each other, act on the basis of mutual recognition and respect, enjoy equal opportunity to participate and continue the dialogue over time.<sup>163</sup>

The first difficulty in applying this theory to the global context arises at the point of shared values or common principles. A common understanding of basic constitutional principles can exist to a certain extent in the European context; this is due to a shared historical and cultural past and the complimentary jurisdictions of various courts involved.<sup>164</sup> However, the perception of constitutional values and fundamental rights on the global level is very diverse, and this diversity makes it very difficult to assume the existence of globally shared values today. Another difficulty is the lack of an adequate judicial counterpart for the CJEU within global structures like the UN. Judicial dialogue involves a series of subsequent references in cases raising similar problems.<sup>165</sup> This cannot be the case for the relationship between EU and UN law. Further, the EU is not even a member of the United Nations, as membership is open only to states, according to Article 4 of the UN Charter.<sup>166</sup> Nonetheless, the Court of Justice does acknowledge the obligation of the EU to implement the Security Council’s resolutions.<sup>167</sup> It has incorporated them into the European legal order and thereby expanded the Court’s jurisdiction at the cost of limiting the competence of the Member States.<sup>168</sup> The Court has also interpreted the resolutions rather broadly with the aim of ensuring their effectiveness.<sup>169</sup> Even though this approach has been significantly altered by the *Kadi* judgment,<sup>170</sup> it can illustrate a possibility of mutual recognition in spite of the lack of a judicial counterpart, and without binding legal provisions establishing a hierarchy of legal orders.

The significant divergences in the institutional setup and legal cultures on the international scene influence the persuasive power of the conciliatory approach to relations among legal orders on the global scale. An approach identifying some “glue” that guarantees a certain degree of coherency is much harder to defend internationally than it is in the European context. On the global level, it is rather pluralism in its “pure” understanding that seems to better reflect the reality.<sup>171</sup>

Still, this finding does not necessarily imply that the idea of global fundamental rights as basic principles has to be abandoned. Benjamin Gregg explains a possible approach to establishing human rights as universal norms.<sup>172</sup> The starting point is the assumption that human rights are a social construction and thus do not enjoy universal validity *ex officio*.<sup>173</sup> They are first established only locally as norms of “thick” normative content, representing a certain degree of concreteness and precision.<sup>174</sup> Then, through a watering-down process, they become more generalizable, “thinner”

norms.<sup>175</sup> Through that process they can obtain universal validity, embraced eventually (at the end of the process) and contingently.<sup>176</sup> This approach not only elaborates on a possibility of establishing global human rights norms through a deliberative process within a pluralistic structure of postnational law; it also takes into account the societal fragmentation that is the reality, especially in the global context. The pluralistic vision of interactions between legal orders takes the societal fragmentation to the institutional level.<sup>177</sup>

Following this approach, there exists no common point of reference that would rule on normative conflicts between legal orders. They are to be solved through convergence happening “naturally,” through mutual accommodation, or perhaps not at all.<sup>178</sup>

## 5. Conclusion

Undoubtedly, there exist apparent similarities between monism and constitutionalism, and between dualism and pluralism. Constitutionalists, just as monists, aim to introduce a hierarchy governing the applicability of certain legal norms in conflict cases. Pluralism and dualism share the emphasis on separate and distinct legal orders.<sup>179</sup> However, the constitutionalist and pluralist approaches go beyond their monist and dualist predecessors as they are tailored to suit more complex interplays within the structure of postnational law. An important difference between monism and constitutionalism is the fact that the former approach settles a conflict between an EU and an international legal norm on the basis of a formal hierarchy, whereas the latter approach focuses on the constitutional or lower status of the particular norm.<sup>180</sup> Further, there are approaches within the constitutional “camp” that do not necessarily involve systemic integration. Those “softer” constitutional visions stand in contradiction to the monistic vision of an integrated order.<sup>181</sup>

Moreover, constitutionalism and pluralism are more suited for the current complex situation in the international arena, as they pay more attention to the equality and mutual respect of different legal orders in the international arena.<sup>182</sup> The newer approaches appear to be more content-based than the older ones. Both constitutionalism and pluralism tackle the deficits in terms of rule of law at the international level in times when international decisions take effect upon individuals.<sup>183</sup>

Looking at the differences between the constitutionalist and pluralist approaches on the European and global levels, it is clear that the differences result mostly in distinct realities of integration. In the European context the constitutionalist claims seem to be further-reaching and there were even attempts to formalize those claims with a Constitutional Treaty. However, the reality of the judicial dialogue between European courts involves competing claims for ultimate jurisdiction. The influential stream of pluralism—constitutional pluralism—is, rather, a “softer” version of the heterarchy.

On the international level a constitutionalist vision appears as rather idealistic. It would involve either assuming some relatively unitary postnational “people” as the constituent, or significantly loosening democratic legitimacy by founding it on national democratic deliberations.<sup>184</sup> It is also significantly harder to identify the body of common principles that unify the international community. Hence, on the international level, a rather “strong” pluralism seems to provide a better fit.<sup>185</sup>

The theoretical alternative to constitutionalism as a theory to explain the relations between norms stemming from different legal orders is pluralism. The key aspect is that a pluralistic architecture of the interactions of different legal orders on the international arena opens more possibilities for judges to find inspiration and support for their choices. It multiplies the possible ways of legitimizing their choices. Accepting the lack of a normative hierarchy on the global scene of postnational law implies that judges assume a greater role and are activated as actors ‘bargaining’ and shaping the interactions between legal orders.

The example of the European human rights regime shows how the lack of an established hierarchy can bring judges to assert their ultimate authority within their respective legal orders while engaging in an informed dialogue with their counterparts. This in turn contributes to the establishment of common principles. The CJEU has developed the protection of human rights within the EU legal order in a dialogue with national constitutional courts. It has asserted the status of human rights as the “very foundations of the Community.”<sup>186</sup> The judicial dialogue between the CJEU and ECtHR in addition to regular meetings between judges have served as substantial preparation for the EU’s upcoming accession to the ECHR.

In conclusion, judicial dialogue among courts stemming from different legal orders in a pluralistic architecture of international law can be perceived as a factor contributing to a growing union of legal orders, and hence, to the enhancement of regional integration.

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- <sup>113</sup> Joint communication of Presidents Costa and Skouris, 24.01.2011, p. 3, available at [http://curia.europa.eu/jcms/upload/docs/application/pdf/2011-02/cedh\\_cjue\\_english.pdf](http://curia.europa.eu/jcms/upload/docs/application/pdf/2011-02/cedh_cjue_english.pdf) (accessed July 1, 2011).
- <sup>114</sup> Nico Krisch, "The Open Architecture of European Human Rights Law," p. 28.
- <sup>115</sup> Ibid.
- <sup>116</sup> Ibid., p. 20.
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- <sup>118</sup> Ibid., p. 15.
- <sup>119</sup> Daniel Terris, Cesare P.R. Romane and Leigh Swigart, *The International Judge: An Introduction to the Men and Women Who Decide the World's Cases*, Lebanon, NH: Brandeis University Press, 2007, p. 120.
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- <sup>124</sup> Michael Zürn, "The State in the Post-National Constellation: Societal Denationalization and Multi-level Governance," *ARENA Working Papers*, WP 99/35, available at [http://www.sv.uio.no/arena/english/research/publications/arena-publications/workingpapers/working-papers1999/wp99\\_35.htm](http://www.sv.uio.no/arena/english/research/publications/arena-publications/workingpapers/working-papers1999/wp99_35.htm) (accessed May 3, 2011).
- <sup>125</sup> Krisch, *Beyond Constitutionalism*, p. 5 et seq.
- <sup>126</sup> Jürgen Habermas, "Konstitutionalisierung des Völkerrechts und die Legitimationsprobleme der verfassten Weltgesellschaft," in Winfried Brugger, Ulfrid Neumann and Stephan Kirste, eds., *Rechtsphilosophie im 21. Jahrhundert*, Frankfurt am Main: Suhrkamp, 2008, p. 362.
- <sup>127</sup> Ibid.
- <sup>128</sup> Ibid., p. 361.
- <sup>129</sup> Ibid., p. 369.
- <sup>130</sup> Ibid., p. 363.
- <sup>131</sup> Ibid., p. 366.
- <sup>132</sup> Ibid., pp. 364-365.
- <sup>133</sup> Ibid., p. 365.
- <sup>134</sup> Ibid.
- <sup>135</sup> Erika De Wet, "The International Constitutional Order," *International and Comparative Law Quarterly*, Vol. 55, No. 1 (2006), p. 75.
- <sup>136</sup> Ibid., p. 53.
- <sup>137</sup> Ibid., p. 56.
- <sup>138</sup> Ibid., p. 54.
- <sup>139</sup> *The Barcelona Traction, Light and Power Company, Limited (Belgium v Spain), Second phase, ICJ Judgment*, 5.02.1970, Reports 1970, p. 3; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Advisory Opinion, 09.07.2004, Reports 2004, p. 136.
- <sup>140</sup> Erika De Wet, "The International Constitutional Order," *International and Comparative Law Quarterly*, Vol. 55, No. 1 (2006), p. 57.
- <sup>141</sup> Wessel, "Reconsidering the Relationship between International and EU Law," p. 14.
- <sup>142</sup> Ibid., p. 53.
- <sup>143</sup> Ibid., p. 52.
- <sup>144</sup> Ibid., p. 75.
- <sup>145</sup> "Fundamental Law," as Germans call their federal constitution.
- <sup>146</sup> BVerfGE 89,155, 12.10.1993; BVerfGE 73, 339, 22.10.1996.
- <sup>147</sup> Simma, "The Contribution of Alfred Verdross to the Theory of International Law," p. 11.
- <sup>148</sup> Bardo Fassbender, *UN Security Council Reform and the Right of Veto: A Constitutional Perspective*, The Hague: Kluwer Law International, 1998.
- <sup>149</sup> E.g., system of governance, definition of membership, hierarchy of norms, special amendment procedures in *ibid.*, Chapter 4, pp. 89-108.
- <sup>150</sup> Kammerhoffer, "Hans Kelsen's Place in International Legal Theory," p. 151; Jürgen Habermas, *Konsti-*

- tionalisierung des Völkerrechts und die Legitimationsprobleme der verfassten Weltgesellschaft, 2008, p. 151.
- <sup>151</sup> Ibid.; similarly, Jeremy Waldron writes, “[a view] is most persuasive to the modern commentator when the judge’s conscience, if indulged, would point to a conclusion that the commentator regards as morally congenial” (Waldron, “Do Judges Reason Morally?” in Grant Huscroft, *Expounding the Constitution: Essays in the Constitutional Theory*, Cambridge: Cambridge University Press, 2008, p. 56).
- <sup>152</sup> Kammerhoffer, “Hans Kelsen’s Place in International Legal Theory,” p. 151.
- <sup>153</sup> Martti Koskenniemi, *From Apology to Utopia*, Helsinki: Finnish Lawyers’ Publishing Company, 1989, p. 480.
- <sup>154</sup> Ingolf Pernice, “The Global Dimension of Multilevel Constitutionalism: A Legal Response to the Challenges of Globalisation,” *Walter Hallstein Institut für Europäisches Verfassungsrecht, WHI Paper 9/08*, p. 16, available at <http://www.whi-berlin.eu/documents/whi-paper0908.pdf> (accessed November 10, 2011).
- <sup>155</sup> Krisch, *Beyond Constitutionalism*, p. 55.
- <sup>156</sup> Kammerhoffer, “Hans Kelsen’s Place in International Legal Theory,” p. 150.
- <sup>157</sup> Ibid., p. 150-151.
- <sup>158</sup> Krisch, *Beyond Constitutionalism*, p. 39.
- <sup>159</sup> George Letsas, *Harmonic Law: The Case against Pluralism and Dialogue*, 2011, p. 3839, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1872366](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1872366) (accessed July 4, 2011).
- <sup>160</sup> Ibid., p. 1.
- <sup>161</sup> Aida Torrez Pérez, *Conflicts of Rights in the European Union (Theory of Supranational Adjudication)*, Oxford: Oxford University Press, 2009, p. 110 et seq.
- <sup>162</sup> Ibid., pp. 118-123; Miguel Póiares Maduro, “Interpreting European Law: Judicial Adjudication in a Context of Constitutional Pluralism,” *European Journal of Legal Studies*, Vol. 1, No. 2 (2007), pp. 6, 19, available at <http://www.ejls.eu/2/25UK.pdf> (accessed July 4, 2011).
- <sup>163</sup> Torrez Pérez, *Conflicts of Rights in the European Union*, pp. 123-130.
- <sup>164</sup> Ibid., pp. 121-122.
- <sup>165</sup> Ibid., p. 139.
- <sup>166</sup> The UNGA upgraded its observer status by the Resolution A/RES/65/276, 03.05.2011, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/529/10/PDF/N1052910.pdf?OpenElement> (accessed July 4, 2011).
- <sup>167</sup> E.g., joined cases C-402/05 P and C-415/05 P, *Kadi*, 03.09.2008, para.293: “Observance of the undertakings given in the context of the United Nations is required [...] in the sphere of the maintenance of international peace and security when the Community gives effect, by means of the adoption of Community measures taken on the basis of Articles 60 EC and 301 EC, to resolutions adopted by the Security Council under Chapter VII of the Charter of the United Nations.”
- <sup>168</sup> E.g., C-124/95, *Centro-Com*, 14.01.1997; for further examples: Nikolaos Lavranos, “Concurrence of Jurisdiction between the ECJ and Other International Courts and Tribunals,” *EUSA Ninth Biennial International Conference*, Austin, March 31-April 2, 2005, p. 24, available at <http://aei.pitt.edu/3016/> (accessed July 4, 2011).
- <sup>169</sup> E.g., Case C-177/95, *Ebony*, 27.02.1997; Case C-84/95, *Bosphorus*, 30.07.1996.
- <sup>170</sup> Joined cases C-402/05 P and C-415/05 P, *Kadi*, 03.09.2008.
- <sup>171</sup> Krisch, “The Case for Pluralism in Postnational Law,” p. 2.
- <sup>172</sup> Benjamin Gregg, “Anti-Imperialism: Generating Universal Human Rights out of Local Norms,” *Ratio Juris*, Vol. 23, No. 3 (2010), pp. 289-310.
- <sup>173</sup> Ibid., p. 292.
- <sup>174</sup> Ibid., pp. 292, 296.
- <sup>175</sup> Ibid.
- <sup>176</sup> Ibid.
- <sup>177</sup> Krisch, *Beyond Constitutionalism*, p. 69.
- <sup>178</sup> Ibid.
- <sup>179</sup> Gráinne De Búrca, “The EU, the European Court of Justice and the International Legal Order after *Kadi*,” *Harvard International Law Journal*, Vol. 1, No. 51 (2010), p. 31.
- <sup>180</sup> Wessel, “Reconsidering the Relationship between International and EU Law,” p. 12.
- <sup>181</sup> De Búrca, “The EU, the European Court of Justice and the International Legal Order after *Kadi*,” p. 32.

<sup>182</sup> Wessel, “Reconsidering the Relationship between International and EU Law,” p. 17.

<sup>183</sup> Ibid.

<sup>184</sup> Krisch, “The Case for Pluralism in Postnational Law,” p. 20.

<sup>185</sup> Notions “soft” and “strong” pluralism are used in De Búrca, “The EU, the European Court of Justice and the International Legal Order after Kadi,” p. 32.

<sup>186</sup> Joined Cases C-402/05 P and C-415/05 P, para. 5.



**Vinod K. Aggarwal and Seungjoo Lee, eds., *Trade Policy in the Asia-Pacific: The Role of Ideas, Interests and Domestic Institutions*, New York: Springer, 2011.**

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## **1. Introduction**

Since the 1990s, free trade agreements (FTAs) have become a global trend largely due to the impasse of the GATT Uruguay Round. The number of bilateral and regional FTAs has dramatically increased, especially in East Asia. Around the turn of the century, East Asian countries started to explore the possibility of FTAs in the Asia-Pacific region. Christopher Dent (2003) has called the sudden proliferation of regional bilateral free trade agreements “one of the most important recent developments in the Asia-Pacific regional political economy.”<sup>1</sup>

Currently, East Asian countries are pursuing greater formal economic institutionalization, linking existing and creating new bilateral and minilateral FTAs. The ASEAN+3 group, including the ASEAN members and Japan, China and South Korea, has been having regular meetings, and the East Asia Summit (EAS) brings together an additional three countries, India, Australia and New Zealand, with the United States and Russia joining the summit in 2011. The United States did not promote trade liberalization within the Asia Pacific Economic Cooperation (APEC) framework in the late 1990s but began to advance a Free Trade Area of the Asia Pacific (FTAAP) under the auspices of APEC in 2005. Currently, the United States is aggressively advancing the Trans-Pacific Strategic Economic Partnership (TPP), which would weave a web of bilateral trade agreements among Asia-Pacific countries.

In the 1980s and 1990s, studies of East Asia focused on the growth of economic relations, the networking role of firms and ethnic groups, disputes among major states, and the role of ideas. At the start of the new century, a number of scholars started to engage in research about East Asian regionalism. Some of them analyzed the development of East Asian regionalism with a focus on structural changes in the global environment, such as the end of the Cold War, the Asian financial crisis of 1997-98, and the growing Sino-Japanese rivalry.<sup>2</sup> Others emphasized that East Asian countries' trade policies and strategies toward America were a reaction to the global proliferation of bilateral trade agreements in the aftermath of the failure of the Doha Development Agenda (DDA) of the World Trade Organization (WTO). For instance, Vinod K. Aggarwal and Shujiro Urata explained why countries pursued regional trade strategies instead of unilateral or multilateral ones.<sup>3</sup> These studies offered explanations for the growing trend toward FTAs; however, their analyses of the East Asian region tended to highlight the national interests of the countries involved, while paying little attention to domestic factors.

The main objective of *Trade Policy in the Asia-Pacific: The Role of Ideas, Interests and Domestic Institutions* is to investigate the changing East Asian trade policies and American strategies paying particular attention to domestic factors. The book explains domestic trade policymaking processes by examining how contingent shocks and critical junctures have affected coalition politics among different veto holders within and outside the government. The examination is conducted from theoretical, institutional and empirical perspectives. It focuses on ideas, interests and institutions to explain different types of configurations of domestic actors and factors. The book contains detailed case analyses of the domestic political economy of FTAs in five countries: China,

Japan, South Korea, the United States and Singapore.

## **2. Theoretical Framework**

In Chapter 1, Aggarwal and Lee develop the theoretical framework for the book. According to the editors, East Asian countries have formulated different trade strategies in terms of partners, geographical locations, the range of items covered, and the nature of trade strategies. They raise two general questions: (1) why do East Asian countries vary in their specific choices of trade strategies; and (2) how have the trade strategies of key countries in the Asia-Pacific evolved over time? To answer these questions, Aggarwal and Lee introduce four distinctive types of trade strategy constellation and three explanatory variables as key to the formation of trade strategies. The first type of trade strategy constellation is the continuation of the status quo where no changes in existing trade strategy take place. The second type of constellation is characterized by preference for FTAs with few regional partners, limited coverage and weak liberalization. The third type shows a balanced approach in terms of partners, their geographical location, and the sequence of agreements concluded. According to the editors, while countries with the third type of trade policy constellation generally pursue comprehensive FTAs with a strong liberal orientation, they sometimes try to incorporate a protectionist element into certain FTAs depending on their partner countries and their own domestic political situation. Countries with the fourth type of constellation attempt to conclude FTAs with as many countries as possible in the form of regional or trans-regional partners.

The editors then introduce three key variables in the formation of new trade strategies. The first variable includes perceptions and ideas. Perceptions and ideas held by major domestic players are important because they help policymakers and other players identify and interpret the nature of external changes, which suggests that the choice of a specific trade strategy is not an automatic response to external changes. The second variable is interests. It is crucial to analyze how major actors with reconfigured interests coalesce around a new trade strategy. The third variable involves domestic institutional features related to trade strategies. To examine cross-national variation in domestic institutions, Aggarwal and Lee focus on the veto points, the formal policymaking structure, and the presence of organized interest groups. They argue that the logical paths that East Asian countries may take in changing their trade policy can be explored using the analytical framework distilled from the interaction of ideas, interests and institutions.

## **3. Case Studies**

The following chapters offer five detailed case studies of the domestic political economies of China, Japan, South Korea, the United States and Singapore with respect to FTAs. Each case study uses the common analytical framework mentioned above. The chapters, structured similarly for easy comparison, describe how and why these countries varied in their choices of trade strategies, and also delve into the political and economic factors that drive changes in the trade policies.

In Chapter 2, Ming Wan analyzes the evolution of Chinese regional trade policies. He argues that China has taken a state-centric approach to regional free trade agreements. Wan shows that various schools of reformers and conservatives, who viewed regional cooperation as vital to China's strategic interest, took the initiative in China's dramatic shift towards regionalism in 2000. Wan also discusses potential losers, i.e., domestic groups that suffer or fear losses due to trade liberalization. According to Wan, while the potential losers in FTAs are not well organized, the Chinese government is sympathetic to the plight of losers, and sectoral conflicts are not fully de-

veloped in the making of foreign economic policy. Without being hampered by severe domestic conflicts between winners and losers, the Chinese government has been able to pursue strategic regional trade policies from the perspective of national interests.

In Chapter 3, Ellis Krauss and Megumi Naoi focus on the Japanese domestic policymaking process. They mention that Japan began to diversify its trade strategy as it aspired to distance itself from traditional reliance on its bilateral relationship with the United States, although Japan was traditionally more interested in multilateralism than regionalism. Even though Japan has been sticking to multilateralism or open regionalism and opposing the global trend toward FTAs, domestic and external structural changes, such as its then decade-long recession and the emergence of the North American Free Trade Agreement (NAFTA), caused the Japanese Ministry of Economy, Trade and Industry (METI) to adopt a new trade policy idea favoring FTAs in the beginning of the new century.<sup>4</sup> The authors argue that institutional arrangements, coalition among key domestic players, and their pattern of interaction combined to shape Japan's FTA policy. They also explain the complex process of domestic politics. According to Krauss and Naoi, the pattern of political coalition has become complicated as voters' articulation of interests and preferences about trade policy has become ambivalent. Many previous studies noted the simple dichotomy of conflicting interests between the agricultural sector and the manufacturing sector, but the authors argue that such a simple view is misleading, as there are different ideas about trade liberalization within each sector.

In Chapter 4, Sang-young Rhyu explains how South Korea's foreign economic policy has evolved from multilateralism to regionalism and bilateralism. Rhyu mentions that changes in Korea's trade structure as well as the security order surrounding the Korean peninsula contributed to this policy change. Though shifts in the external environment, such as the Asian financial crisis, broadly provided a policy environment for Korea's regional and FTA policies, Rhyu argues, the appearance of the Kim Dae-jung government played a vital role. The Kim government chose East Asian regionalism to overcome the financial crisis and facilitate domestic economic reform. To aggressively pursue bilateral FTAs, the government established the Office of the Minister for Trade under the Ministry of Foreign Affairs and Trade and put it in charge of trade negotiations and overall foreign economic policy. Rhyu uses the concept of hegemony to explain why Korea could conclude an FTA with the United States, but not with Japan, pointing out that Korea initiated FTA negotiations with the United States as a way to revitalize and consolidate the bilateral security relationship.

In Chapter 5, Amy Searight asserts that although the United States has been an active player in designing regional frameworks in East Asia, the main thrust of US policy toward East Asia generally remains reactive. For this reason, the US-led hub-and-spokes system of alliances in the region has not fundamentally changed. The United States has not opposed the establishment of the East Asia Summit (EAS) but adopted a two-track approach in responding to East Asian regionalism. First, the United States seeks to revitalize the initiative toward a Free Trade Area of the Asia-Pacific (FTAAP). Second, the United States has started negotiations with such countries as Singapore, Chile, New Zealand and Brunei to create the Trans-Pacific Partnership (TPP). Searight argues that the US conclusion of the FTA with South Korea could serve as a building block for a trans-Pacific network of FTAs and a broader APEC-wide trade agreement.

In Chapter 6, Lai To Lee and Yi Hooi Ren argue that the proliferation of FTAs in Europe and North America pushed Singapore to search for alternatives to multilateralism. Its frustration with ASEAN, which had been reluctant to embrace full-scale trade liberalization in the aftermath of the Asian financial crisis, further solidified Singapore's determination to pursue alternative strategies, resulting in multiple FTAs. According to the authors, Singapore believes that FTAs are building blocks toward regional and multilateral trade liberalization. Examining the formulation of Singapore's FTA strategy, they found a well-coordinated policymaking process. As the government is

relatively free from societal pressures due to Singapore's state-led economy, Lee and Ren observe, the prime minister and his cabinet played a critical role in guiding Singapore's bilateral and regional trade policymaking. Lee and Ren contend that to establish itself as a hub in East Asia, Singapore has implemented an "omni-directional" FTA strategy. Singapore has been consistent in negotiating FTAs with WTO-plus provisions in terms of issue scope. For these reasons, the authors conclude that Singapore offers a model FTA case for other East Asian countries.

#### **4. Key Findings**

Following the discussion of the theoretical framework and the case studies, Aggarwal and Lee outline the key findings. They argue that existing explanations fall short of illuminating the deeper domestic micro-foundations of the formulation of each country's regional and trans-regional strategies. Therefore, they suggest the need to examine the way in which ideas and interests interact with each other within the context of domestic institutions, locate the systematic sources of each country's trade strategy, and shed light on the important differences among their policies.

With four distinctive types of trade strategy constellation and explanatory variables, Aggarwal and Lee explain how the policies of East Asian countries and the United States have evolved. According to the editors, China took the second path, where modest or limited changes were expected. They analyzed the outcome of this path as well as the role of ideas in the interactions between key players' interests and policymaking institutions, concluding that political leadership played a crucial role in adopting new ideas in China. While external factors prompted China to change its trade strategies, the magnitude of the change was quite limited due to the Chinese government's steady control over the trade policymaking process.

In the third type, in which substantial changes are likely, the nature of competition between traditional key players and new players and institutional re-formulation combine to shape trade strategies. In the case of Japan, according to the editors, ideational changes did not bring in new players. Instead, traditional key players were inspired by ideational changes and redefined their interests. In the case of Korea, the emergence of new ideas and institutional changes related to trade policymaking contributed to a shift in the delicate political balance between traditional players and new players in favor of the latter. In the case of the United States, its policy changed from the pursuit of multilateralism to the active pursuit of bilateral FTAs, but it was not easy for Washington to overcome domestic opposition to the conclusion of FTAs.

The fourth type of trade strategy constellation leads us to expect fundamental changes in trade strategies. Along this path, new players are less likely to face political resistance to fundamental changes in trade strategies as serious as politically entrenched groups are. In the case of Singapore, the government and private firms with substantial stakes in new trade strategies were in a relatively good position to formulate new trade strategies. The absence of serious domestic resistance provided the political backdrop for Singapore's initiatives toward FTAs, which marked a fundamental break from its traditional trade strategies.

#### **5. Conclusion**

This newly published book is highly informative and well organized with useful information on the domestic context of each country's regional and trans-regional strategy formulation. The analytical framework focusing on the interaction of ideas, interests and institutions helps us examine the logical and theoretical paths that East Asian countries and the United States have taken in their trade policy changes. The framework also effectively explains how and why these countries

have varied in their choices of trade strategies.

There is, however, a point for further development. Although the analytical framework adopted by the authors of this book gives us an understanding of domestic trade policymaking in each country, it seems overly simplistic to capture the domestic political systems and policymaking processes in each country. East Asian countries and the United States have different backgrounds in terms of political systems and principles. The political systems of East Asian countries include democracies, presidential systems and parliamentary systems, and there are variations even among countries with the same political system. For instance, even though Japan and Thailand both have a parliamentary system, the power and resources of the prime ministers in each country are totally different. To examine how each country formulates its regional and trans-regional strategies, it is necessary to deeply consider each country's political system to grasp the context in which interests, ideas and institutions interact and influence the development of regional and trans-regional trade policy strategies.

The proliferation of FTAs began only a decade ago in East Asia, so it is crucial to examine the trade policies of Asia-Pacific countries. An important factor in the evolution of trade policy in the Asia-Pacific is the changing view of trade liberalization among the countries concerned. This book clearly explains the roles of domestic players. It also offers a useful theoretical and conceptual framework for analyzing regionalism in the Asia-Pacific with respect to the role of domestic factors and the cases of specific countries. This book should prove highly useful to scholars, policymakers and students who are interested in contemporary Asia-Pacific and East Asian regionalism.

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## Notes

- <sup>1</sup> Christopher M. Dent, "Networking the Region? The Emergence and Impact of Asia-Pacific Bilateral Free Trade Agreement Projects," *The Pacific Review*, Vol. 16, No. 1 (2003), pp. 1-28.
- <sup>2</sup> Mireya Solis, Barbara Stallings and Saori Katada, *Competitive Regionalism: FTA Diffusion in the Pacific Rim*, New York: Palgrave Macmillan, 2009.
- <sup>3</sup> Vinod K. Aggarwal and Shujiro Urata, *Bilateral Trade Agreements in the Asia-Pacific: Origins, Evolution and Implications*, New York: Routledge, 2006.
- <sup>4</sup> The White Paper on International Trade in Japan in 2000 (Ministry of Economy, Trade and Industry, *White Paper on International Trade-Japan*, Tokyo: Nikkei-Insatsu, 2000) expressed Japan's interest in FTA policy, but the White Paper in 1999 (Ministry of Economy, Trade and Industry, *White Paper on International Trade-Japan*, Tokyo: Nikkei Insatsu, 2000) did not show any interest in this issue.



## ***Institutions for Regional Integration: Toward an Asian Economic Community, Manila: Asian Development Bank, 2010.***

**Jeet Bahadur Sapkota**

### **1. Introduction**

*Institutions for Regional Integration: Toward an Asian Economic Community* is a solid contribution to Asian regional integration literature. The book is the third outcome of the joint study on Asian regional integration by the Asian Development Bank (ADB) and Asian Development Bank Institute (ADBI). This study explores the institutional framework of regional integration in Asia, analyzes the reasons for rather weak institutions despite the dense institutional network in the region, and offers theoretical and policy guidance for effective institution building to achieve the goal of building an Asian community. This study is founded on its two predecessors. The first, *Emerging Asian Regionalism: A Partnership for Shared Prosperity*, published in 2008, placed emphasis on the enhancement of regional connectivity to boost production networks and trade, and identified an institutional base to be strengthened for Asian integration. Similarly, the second study, *Infrastructure for a Seamless Asia*, published by the ADB and ADBI in 2009, explored the importance and possibility of building physical institutions and infrastructure networks across borders for overall regional growth.

Although Asia is integrating rapidly in terms of trade and investment, with well-established regional production networks and supply chains, a healthy movement of people and so on, integration itself is without the leadership of a grand scheme for creating a single market. Rather, Asian integration is the spontaneous outcome of market forces and national policy initiatives. Thus, the book under review rightly outlines four main policy challenges for Asian regionalism. The first challenge is to strengthen current rapid and steady economic growth in some countries and sub-regions that are vulnerable to external shocks, as the 2008-09 financial crisis demonstrated. The current framework of economic cooperation, which is largely uneven between countries, does not include effective implementation. The second challenge is to broaden the integration process, which is primarily concentrated in East Asia today. Although trade between India and the People's Republic of China (PRC) is growing, other South Asian countries are lagging behind in this process. Unlike in East Asia, where intra-regional trade is about 60% in parts and components, the intra-regional trade in South and Central Asia and the Pacific is extremely low. Therefore, extending the benefits of integration to these sub-regions is one of the major challenges in the region. As the third challenge, the book identifies the deepening of the current integration process in Asia. For instance, there is much to be done to remove trade barriers in goods and services, ease the movement of people, and develop deeper and wider financial markets. Deepening the integration process also means reducing poverty and income gaps within and among the countries in the region—also a major challenge in this diverse region. Finally, how to move the regional and global integration processes forward in tandem is the fourth big challenge in Asian regionalism. The book states, “Since Asia is highly integrated globally as well as regionally, it is crucial that measures to cement the region's integration complement rather than jeopardize its links with the rest of the world” (p. 4).

The above challenges cannot be met by market-led or bottom-up integration, and thus, the book points out the importance of effective institutions for Asian integration. It assesses the progress of regionalism and offers comprehensive recommendations to strengthen existing institutions

and to design new ones.

## **2. Progress of Regionalism**

Chapter two provides updates on the progress of Asian integration since 2008. The chapter acknowledges the deepening integration in production in East Asia; however, it shows the bitter fact that other sectors and some sub-regions are less integrated. For instance, “the networks of production facilities established in many East Asian countries in industries such as electronics, automobiles, and machinery—‘Factory Asia’—have tied economies together through trade and FDI. However, regional integration in other functional areas such as final goods, services, labor and financial markets has lagged behind” (p. 83). The chapter also highlights the low level of financial integration, despite its increasing trend. South and Central Asia and the Pacific are lagging behind in the integration process, compared to East Asia. The chapter emphasizes the growing need for regional physical infrastructure that creates and strengthens economic corridors and generates considerable benefits for the regional economy.

Although Asian countries are very active in liberalizing trade and investment through FTAs, with the number of FTAs growing from 42 in 1999 to 195 by January 2010, more than half of bilateral trade agreements (BTAs) involve a partner outside of Asia and the Pacific. In general, large countries have more FTAs with countries outside of the region, whereas smaller countries are more inclined to form partnerships within their sub-region. To strengthen regional macroeconomic and financial cooperation, a number of regional initiatives have emerged, such as: the Economic Review and Policy Dialogue (ERPD), under the ASEAN+3 framework; developing bond market in Asia; the Credit Guarantee and Investment Facility (CGIF); and the Chiang Mai Initiatives (CMI), to address short-term liquidity problems and supplement existing international financial arrangements in the event of an emergency. Some progress can be seen in the collective provision of regional public goods (RPGs), particularly in the areas of environment, health, communicable diseases, security and education.

## **3. Designing Effective Regional Institutions**

The third chapter explores the issue of designing effective regional institutions in Asia. It starts with the claim that Institutions for Regional Integration (IRIs) in Asia should help consolidate, deepen and widen the process of regional integration, and it acknowledges the difficulty of creating and reforming regional institutions. The chapter considers three drivers of institution building over time: the possible linkage between economic and security issues; feedback mechanisms from economic integration that can reinforce regional institutions; and competition and complementarities of global, regional and sub-regional institutions.

The chapter identifies key elements of institutional design and proposes a mechanism to measure institutional effectiveness. These key elements include decision rules that ensure cooperative bargain, a commitment mechanism that serves to preserve bargains and discourage defection, and membership rules that can deepen and widen regional institutions. The chapter concludes that effective institutions are vital for the consolidation, deepening and widening of economic integration.

#### **4. Anatomy of Existing Institutions, Regional Comparison and Recommendations**

Chapter four provides comprehensive observations about Asia's institutional architecture, and Chapter five compares Asian regionalism with other regions. The aim of these two chapters is to offer concrete recommendations for strengthening institutions for regional integration that can contribute to building an Asian economic community. The important observations offered about regional architecture in these chapters are: (1) Asian regional integration approach is pragmatic and flexible that has many paths and variable speed; despite the numerous merits of the flexible approach, more effective and powerful institutions for regional integration are essential to face growing challenges and seize opportunities; (2) Asia has firmly established institutions for regional integration but they are in the early stages of development; therefore, strengthening the existing institutions, rather than creating new ones, is the foremost challenge; (3) Asia is diverse in every aspect—in stages of economic development, political systems, socio-cultural norms, etc.—making the institutions for regional integration widely divergent in its sub-regions, sectors and issues; therefore, harmonization of institutions is a big challenge; (4) many Asian countries are more integrated globally than regionally; so, the regional architecture of Asia should follow the principle of open regionalism that strengthens global governance as well; and (5) although economic integration is the primary force of Asian integration, there is a growing need for deepening political and security cooperation; only institutional architecture that combines economic, social and political agendas can build overall regional strength and confidence.

The book then offers some valuable recommendations to strengthen institutions for regional integration in Asia. Although open regionalism is not a new prescription for Asia, the book puts more emphasis on this aspect. It is stated in the book that “[t]his is an effective way of ensuring that measures to cement Asian integration also foster the region's links with the global economy” (p. 204). Based on its own survey of opinion leaders, the study recommends transparency as an urgent need. On the one hand, it advises urgent improvement of governing principles and decision-making structures of institutions. On the other hand, it emphasizes wider and deeper involvement of civil society members who support the goals of regional integration.

More specifically, the book recommends strengthening and rationalizing overarching institutions with effective and autonomous secretaries that have adequate financial and human resources and strong surveillance powers. It also suggests developing functional institutions, particularly in the areas of financial cooperation, cross-border transports, health, disaster management and student exchanges. Finally, the book advocates the establishment of new pan-Asian institutions and the strengthening of existing ones. ADB and the Economic and Social Commission for Asia and the Pacific (ESCAP) can play an effective facilitating role in this aspect. Some of the new institutions suggested are a Pan-Asian Infrastructure Forum (PAIF), an Asian Monetary Fund (AMF), an Asian Legal Advisory Council (ALAC), and several regional public goods forums (RPGFs). To achieve these goals, the book concludes, Asia needs strong political leadership, sufficient financial resources, and a sound knowledge community.

#### **5. Conclusion**

This book is a must-read as a resource for those who are interested in economic integration in Asia and the Pacific. It not only explains and evaluates existing institutions for regional integration in the region, but also examines and argues the need for institutional innovation and reform that is essential for achieving the overarching goal of creating an Asian economic community.

The book is clearly written and freely accessible on the internet. It simplifies complex data and will appeal to both policy makers and academics. The policy recommendations it offers are

useful for high-level decision makers. The information and ideas it provides are reliable, as they come from a team of authors including ADB staff, scholars and advisers to regional policy makers in several countries in Asia, Europe and North America. Thus, the book is highly recommended to anyone involved in the field of Asian regional integration.

**Charles A. Kupchan, *How Enemies Become Friends: The Sources of Stable Peace*, Princeton: Princeton University Press, 2010.**

**Christian Wirth**

This book explores the possibility of the breaking of the Atlantic community of Western democracies and recurrence of geopolitical rivalry among them, discussing the conditions for the peaceful transition of power in the international system as a more overarching theme. The author was motivated to write the book by his two-fold concern over the ongoing diffusion of power in the international system and the growing divide between the United States and Europe, which became apparent in the late 1990s and reached a critical point with the United States' invasion of Iraq in 2003.

At the outset, Kupchan refers to the Iroquois Confederation, the Concert of Europe and the transition from Pax Britannica to Pax Americana as evidence for the possibility of both the existence of stable peace, defined as a grouping of nations among which war is eliminated as a legitimate tool of statecraft, and the peaceful transition of power between states. While this assertion refutes the validity of the power transition theory, and more generally, the realist paradigm of international relations, Kupchan's second argument that democracy is not necessary and economic interdependence only marginal for the promotion of peace also challenges the liberal paradigm.

With these claims, the book firmly plants itself in the predominantly North American discourse on international relations. By referring to the Association of Southeast Asian Nations (ASEAN), and to relations between China and Japan, Greece and Turkey, the author makes the important point that his study of stable peace is of practical importance to contemporary world politics. Its contribution should therefore be assessed in two dimensions: first, for its theoretical and empirical insights which further the study of international relations, and second, for the relevance of the discipline of international relations in the analysis of contemporary problems in world politics.

Setting out to explore how existing zones of peace can be preserved and how stable peace among great powers can be achieved, Kupchan discusses two puzzles. First, through what pathway do states settle outstanding grievances, dampen geopolitical competition and succeed in constructing a zone of peace? In other words, what is the sequential process through which enemies become friends? Second, under what circumstances do zones of stable peace form and what causal conditions enable stable peace to emerge and endure?

The author finds that stable peace 'breaks out' and develops in a four-phased process. Reconciliation begins with an act of *unilateral accommodation*: a state confronted with multiple threats seeks to remove one of the sources of its insecurity by exercising strategic restraint and making concessions to an adversary. These constitute peace offerings and signal benign intent. In phase two, practicing *reciprocal restraint*, the states in question trade concessions, thereby cautiously stepping away from rivalry. In the third phase, *social integration* between the partner states is deepened through transactions between the parties. This happens through more extensive contacts among government officials, private sector elites and ordinary citizens. This process of positive socialization benefits from interest groups that gain from closer relations and lobby for the further reduction of economic and political barriers. In the fourth and final phase, *new narratives and identities are generated*. Through elite statements, popular culture and political symbolism such as charters, flags and anthems, new domestic discourses alter the states' mutual perceptions as they change their identities.



For this sequential process to happen, Kupchan identifies three necessary conditions: institutionalized restraint, compatible social orders and cultural commonality. First, he finds that states that accept restraints on their power at home are most likely to practice strategic restraint in the conduct of their foreign relations. This helps reassure potential partners by communicating benign intentions. Therefore, he sees the practice of strategic restraint most pronounced in liberal democracies that are characterized by the rule of law, electoral accountability and the distribution of power among separate institutions. As non-democratic states, too, often exhibit some kinds of practices which restrain the exercise of power, he asserts that regime type alone is not sufficient in determining the suitability for pursuing stable peace. Second, as states involved in the building of zones of peace interact with greater frequency and intensity, the compatibility of their social orders becomes increasingly important. This is because in cases of incompatibility, integration will have a greater potential of upsetting existing distributions of power among social classes and different ethnic and racial groups, and will challenge organizing principles of economic production and commercial activity. Third, cultural commonality is important; this term is understood as the similarity of interlinked networks of practices and symbols primarily based on ethnicity, race and religion. People who see themselves as ethnically or religiously incompatible can eventually come to see themselves as belonging to the same group. However, previously existing similarities greatly facilitate the generation of narratives of compatibility. With regard to that last point, Kupchan notes that it refers to an enabling but insufficient factor, as states sharing a common heritage are often bitter rivals.

The main part of the book consists of historical cases that serve as evidence for the emergence of stable zones of peace in three basic forms: rapprochement, security communities and unions. Rapprochement, as the most rudimentary form of stable peace, takes place when long-standing adversaries stand down from armed rivalry, agree to solve their disputes amicably, and ultimately develop mutual expectations of peaceful coexistence. Security communities represent a more evolved form of stable peace in that a grouping of two or more states institutionalize a set of rules and norms to peacefully manage their relations. This is separate from a union, which is the most mature form of stable peace whereby a group of two or more states become merged into a single political entity, and thereby minimize or even eliminate the geopolitical consequences of pre-existing borders.

Kupchan goes on to examine successful and unsuccessful cases for each of the three forms of stable peace. In order to generate findings which illuminate the various phases and conditions at play, he reviews cases covering a considerable range of regime types, social orders and cultures: From the Swiss Confederation between 1291 and 1848; the Iroquois Confederation of 1450-1777; European international relations in the 19<sup>th</sup> and 20<sup>th</sup> centuries; the United States themselves and their relations with Great Britain at the turn to the 20<sup>th</sup> Century; the European Community, 1949-1963; and the Association of Southeast Asian Nations from the 1960s to the United Arab Emirates from 1971 onwards. Because Kupchan clearly departs from realism in the qualification of what is understood as stable peace, he excludes instances of militarized 'cold peace', threat-specific and therefore relatively short-lived alliances, and 'artificial peace' through military defeat and occupation. As a consequence, neither the United States' post-war reconciliation with Germany and Japan nor Franco-German rapprochement is discussed.

The theoretical foundations of the book can be found in the concept of an international society that was originally proposed by Hedley Bull.<sup>1</sup> The methodologically eclectic approach of the study suggests an evolution of the international system from a world of Hobbesian anarchy towards the construction of Deutschian security communities. In order to build bridges across theoretical divides, as it is his stated intention, Kupchan attempts a realist-constructivist synthesis to explain initial reconciliation, and a liberalist-constructivist synthesis to explain the existence of durable peace between states.

In order to achieve stable peace, ultimately, new and non-conflicting narratives of national identity need to prevail. Studies of security communities have been struggling with the task of explaining how this can be made to happen. While pioneers such as Karl Deutsch (and his collaborators) and Ernst Haas focused respectively on the material measurement of transactions and the proliferation of functional institutions, more recent scholarship, exemplified by Emanuel Adler and Michael Barnett, offer an improved description of the mechanisms of socialization that are at play in changing actors' understandings of social reality.<sup>2</sup> Still, systematic and generalizable descriptions of circumstances and factors that promote positive socialization among states, particularly in early phases, have proven difficult. This is why this book's suggestion of a four-phased pathway towards stable peace is significant.

Kupchan conceives the initial phase of unilateral accommodation as the classical case of a security or prisoner's dilemma between two unitary actors, a situation that appears in its idealized form in a Cold War movie featuring the confrontation between two nuclear missile submarines, one Soviet and one United States, in the North Atlantic. In this understanding, what Andrew Kydd termed 'costly signalling,' that is, the communication of benign intent by unilateral concession, is the crucial beginning of a process of mutual reassurance through reciprocal restraint leading to the building of strong channels of communication, and with it, the onset of social integration.<sup>3</sup> Thus, the second phase of reciprocal restraint is likewise understood as a bargaining between two unitary actors, such as that described in Charles Osgood's Graduated and Reciprocated Initiatives in Tension-reduction (GRIT) strategy.<sup>4</sup>

The problem with this solution to the collective action problem is, as Ken Booth and Nicholas Wheeler have shown, first, states are not unitary actors. Second, even if they were, they would be heavily influenced by the international structure of which they understood themselves to be a part. Third, there exists no objective understanding of what constitutes costly signals. US decision-makers perceived the unilateral Soviet withdrawal from Austria in 1955 as a plot, and the Central Intelligence Agency Deputy Director Robert Gates (later to become Secretary of Defense under the presidents George W. Bush and Barack Obama) interpreted Gorbachev's concessions in the form of withdrawal from Afghanistan and the acceptance of a highly intrusive verification regime for the Intermediate Nuclear Forces Treaty in fall 1987 as just a strategy to gain breathing space before heating up competition again. These facts demonstrate that the recognition of an action as a signal of benign intent depends on the general political climate.<sup>5</sup> In other words, an international actor that is not trusted and is thus the target of a phenomenon that social theory describes as 'othering,' will most likely not be trusted by its adversary even if it performs an act that may be extremely costly and conciliatory from its point of view. This problem, which is rooted in fear, is compounded by the fact that successful mutual accommodation and reciprocal restraint necessitate not only a favorable international environment but also a stable domestic political context. In this regard, the diplomatic bargaining between what may be one of the few governments that comes close to being a unitary actor, North Korea, and the United States in the 1993/94 and 2002 nuclear crises, serves as a case in point for the shortcoming of the realist-constructivist synthesis in explaining initial reconciliation. In times of rapid social and political change, when political parties jockeying for legitimacy and national governments, whether democratic or authoritarian, are impeded by the polarization of views on the future of their societies, the stable pursuit of accommodating policies towards a (former) enemy is unlikely. On the one hand, in an adversarial relationship, the need to resist and defend against threats posed by the enemy may be one of the few policy items on which competing political interests may be able to agree. This may help generate unity and raise support through nationalist discourses. On the other hand, the investment of bureaucratic and political capital in an endeavor of reconciliation with uncertain and only long-term benefits becomes meaningless in the face of political struggle over immediate and pressing problems.

The question remains: what makes politicians understand the need for policy change and willingness to make friends with their former adversaries and embark on reciprocal accommodation in the first place? Rather than following a rigid sequential pattern, it may be more useful to start from the end result, that is, the replacement of narratives of enmity by narratives of amity. This makes sense even for the phases of unilateral accommodation and reciprocal accommodation because in an environment characterized by strong confrontational rhetoric and military deterrence, leaders may rarely be willing or able to embark on paths towards reconciliation. Thus, changes in political discourses need to happen from the beginning. Therefore, processes of societal integration, even if starting from a very low base, are also crucial from early on.

In other words, the main question becomes: what domestic and international power and knowledge structures enable or hinder the generation of new narratives? The answer to this puzzle entails the analysis of what Kupchan seeks to understand by the identification of three causal conditions for stable peace: institutional restraint, compatible social orders and cultural commonality. Each of these three conditions is linked to one of the phases. It remains difficult, however, to connect them logically to one another. As Kupchan admits, all of them need to be qualified. Therefore, the conditions lose most of their analytical value. Moreover, with regard to the compatibility of social orders and cultural commonality, the process of social integration can easily be misunderstood because reconciliation with the former ‘other,’ as the motto of European Integration ‘Unity in Diversity’ highlights, means embracing and accepting differences rather than erasing them through absorption or assimilation. The assertion that successful security communities tend to be culturally homogeneous is a finding that is made only *after* stable peace has firmly been established. As contemporary societies in the union of the United States and the security community of Europe show, the compatibility of social orders and cultural homogeneity is a very relative and subjective term. In addition to these zones of stable peace being homogeneous to *some* degree, more importantly, they are *imagined* to be so through emphasis of the differences to areas outside the zones of peace.

When discussing the role of direct contact among societal groups and government agencies as part of the process of societal integration, Kupchan does open the black box of the state somewhat. The key to understanding the prospects for narrative generation and identity change, however, lie more in the capacity of adaptation of domestic and international power and knowledge structures, as they are institutionalized in the form of political systems and international treaties. Here, Kupchan is certainly right in pointing out that political systems, which allow for gradual change through the free discussion of new ideas and the democratic election of leaders, may be more amenable to reconciliation. Whether democracies are generally better equipped to effectively handle the domestic political challenges that accompany practices of strategic restraint, however, is questionable. Especially under circumstances of uncertainty about future developments, electorates tend to seek strong political leadership, and concessions towards a former enemy are hardly ever perceived as attributes of strong leadership.

The reference to the distribution of political power within states and societies, discussed under the somewhat misleading heading of the condition of “compatible social orders,” points to the core of the problem: how do these power structures inhibit or enable the generation of narratives of amity? This aspect—as a result of the work’s ontological base in the concept of international society and the excessively cautious application of post-positivist methodology—remains underdeveloped. This shortcoming becomes most apparent in the depiction of historical examples of the formation of zones of stable peace that sometimes suffers from the danger of historical positivism and over-simplification.

The supporting case studies are taken from a wide range of socio-economic and social-cultural backgrounds dating back to when modern nation-states did not exist either in North America or in Europe. This way of implicitly assuming the unchanging nature of political communities entails

the neglect of some of the most important features of contemporary international politics. Problematizing modernity and thereby 'unfreezing' the state is imperative if the proposed framework is to be applicable to the 21<sup>st</sup> century, as the author clearly implies. This is even more the case with regard to the study of areas characterized by states that have not developed to fit the Westphalian ideal, and also to those that seem to move away from it. In this regard, there is an interesting and rich body of literature to tap into.<sup>6</sup>

The main contribution of the book lies in the five principal arguments for the conduct of foreign policy that it puts forward: first, engagement with adversaries is not appeasement but diplomacy; second, democracy is not a necessary condition for stable peace; third, the onset of stable peace is about politics, not economics; fourth, compatible social orders are a key facilitator of stable peace, while incompatible social orders are a key inhibitor; and fifth, cultural commonality plays an important role in determining the potential for and the durability of stable peace.

These general "policy recommendations" refute the paradigms of realism and liberalism and constitute a valuable piece of scholarship that is able to advance the theoretical and policy-oriented debate within the mainstream discourse on international relations, a discourse which remains most popular in the United States and in several 'great power' capitals. The fact that Kupchan draws upon an impressive range of historical examples makes his study convincing to audiences who, within the standard discourse, rely on similar historical analyses to underpin their theories of power transition and diffusion.

When *How Enemies Become Friends: The Sources of Stable Peace* is assessed against existing scholarship on regionalism, both in the European 'Western' context, and in areas such as East Asia that are distinct in their economic and political backgrounds, the theoretical and empirical benchmark becomes higher. Considering the enormous recent scholarship on regional integration, the informed reader is left with the impression that Kupchan has deliberately written this impressive piece of work for audiences that are reluctant to accept more sociologically informed studies, as he limited himself to the eclectic and systematic reformulation of conventional theoretical approaches, thereby distancing himself from the edge of research on regionalism. The absence of substantial discussion of the groundbreaking work on regionalism in Southeast Asia, such as that by Amitav Acharya, or the reconciliation between Ireland and the United Kingdom on which Bill McSweeney's approach to the formation of security communities draws, means that Kupchan's work, despite its impressive and well-structured analysis, remains too confined to the classical discourse in the discipline of international relations to significantly advance theoretical and empirical scholarship on regionalism and security cooperation in contemporary world politics.<sup>7</sup> However, to the believers of international anarchy and a world prone to armed conflict, the message is clear: durable peace among states is not the exception but the rule.

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## Notes

- <sup>1</sup> Hedley Bull, *The Anarchical Society: A Study of Order in World Politics*, London: Macmillan Press, 1977.
- <sup>2</sup> Emanuel Adler and Michael Barnett, eds, *Security Communities*, Cambridge: Cambridge University Press, 1998.
- <sup>3</sup> Andrew Kydd, "Game Theory and the Spiral Model," *World Politics* Vol. 49, No. 3 (April 1997), pp. 371-400.
- <sup>4</sup> Charles E. Osgood, *An Alternative to War and Surrender*, Urbana, IL: University of Illinois Press, 1962.

- <sup>5</sup> Ken Booth and Nicholas J. Wheeler, *The Security Dilemma: Fear, Cooperation and Trust in World Politics*, Basingstoke: Palgrave Macmillan, 2008.
- <sup>6</sup> Anthony Giddens, *The Nation-State and Violence*, Cambridge: Polity Press, 1985; Manuel Castells, *End of Millennium*, Malden, MA: Blackwell Publishers, 1998; John G. Ruggie, "Territoriality and Beyond: Problematizing Modernity in International Relations," *International Organization*, Vol. 47, No. 1 (1993), pp. 139-174; Charles Tilly, *The Politics of Collective Violence*, Cambridge: Cambridge University Press, 2003.
- <sup>7</sup> Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order*, 2<sup>nd</sup> ed., New York: Routledge, 2009; Bill McSweeney, *Security, Identity and Interests: A Sociology of International Relations*, Cambridge: Cambridge University Press, 1999.







## Waseda University Global COE Program Global Institute for Asian Regional Integration

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