The London School of Economics and Political Science

The development of the ASEAN Charter: Origins and norm codification

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Abstract

The thesis studies the development of the ASEAN Charter with the aim to understand its origins, the needs to codify implicit principles to explicit norms, and norm contestation in the process of drafting the Charter with special reference to Chapter VIII Dispute Settlement Mechanism and Article 14 Human Rights Body. Chapter VIII bestows ASEAN officials such as the Secretary-General with increased authority in mediation while Article 14 prescribes the establishment of concrete and binding regional human rights mechanism. Both constitute unprecedented practices since non-involvement of ASEAN in Members' unresolved disputes and minimal institutionalism used to be adhered to strictly. The thesis explains why some norms are codified and strengthened while some are weakened in the context of ASEAN's lifeworld, a shared understanding and common cultural background. Moreover, the concept of artificial lifeworld created by non-state actors when the existing lifeworld lacks normative space for newer norm is also explored. ASEAN is treated as a social context where negotiation takes place and the condition inducing to the use of arguments is analyzed. Having access to Records of the HLTF Meetings, the thesis sheds light on the drafting process which used to remain behind the closed door.

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List of Acronyms

ACC	ASEAN Coordinating Council
AEM	ASEAN Economic Ministers
AHRB	ASEAN Human Rights Body
AICHR	ASEAN Intergovernmental Commission on Human Rights
AICOHR	ASEAN-ISIS Colloquium on Human Rights
AIPA	ASEAN Inter-Parliamentary Assembly
AIPO	ASEAN Inter-Parliamentary Organization
AMCC	ASEAN Ministerial Coordinating Council
AMM	ASEAN Ministerial Meetings
ASC	ASEAN Standing Committee
ASCCO	ASEAN Political-Security Community
ASEAN	Association of Southeast Asian Nations
ASEAN-ISIS	ASEAN Institute of Strategic and International Studies
ASEC	ASEAN Secretariat
ASEM	Asia-Europe Meeting
CLMV	Cambodia, Laos, Myanmar, Vietnam
CPR	Committee of Permanent Representatives
EPG	Eminent Persons Group on the ASEAN Charter
HLP	High Level Panel
HLTF/HLTF-AC	High Level Task Force on the Drafting of the ASEAN Charter
HLTF-EI	High Level Task Force on ASEAN Economic Integration
IAMM	Informal ASEAN Ministerial Meeting

ICJ   International Court of Justice

NGO   Non-Governmental Organization

NHRI   National Human Rights Institution

PMC   Post-Ministerial Conference

SEATO   Southeast Asia Treaty Organization

SEOM   Senior Economic Officials Meeting

SOM   Senior Official Meeting

TAC   Treaty of Amity and Cooperation

TOR   Terms of Reference

UN   United Nations

ZOPFAN   Zone of Peace, Freedom and Neutrality

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Chapter 1

Overview of the research project

1.1 Introduction

The purpose of the thesis is to explore the development of the ASEAN Charter which introduces a departure from some of the former norms and practices ASEAN (the Association of Southeast Asian Nations) used to stand by. It aims to understand how the codification of norms in the Charter reflects upon the core norms in the ASEAN Way and set different standards of behaviour for ASEAN members in the future. The thesis thus posits that the core norms in the ASEAN Way (as instrumental parts in a shared lifeworld of ASEAN) undergo the process of norm contestation in the form of arguing and bargaining during the development of the ASEAN Charter which must be tested against a social setting, and may result in change of norms and/or practices prescribed by the Charter.

After discussing in detail the conceptual framework, background of ASEAN as a social setting and rules of the game in drafting the text, the thesis examines two very distinctive propositions in the ASEAN Charter which are the increased authority of ASEAN officials in settlement of disputes and the establishment of ASEAN Human Rights Body. Both are unprecedented in the sense that ASEAN generally prefers non-involvement in unresolved bilateral conflict between members and the countries have religiously adhered to

minimal institutionalism. ASEAN is governed by a set of core norms embedded in its diplomatic and security culture, sometimes known as the ASEAN Way. However, some core norms matter more than others. Some can be watered down, became weaker, less essential. Some are stronger when facing contestations, and therefore still remain. The drafting process of the ASEAN Charter also involves norm contestation where actors argue or bargain their way through.

According to Finnemore (1996), norms are shared expectations about behaviour held by a community of actors. Kratochwill (1989) sees norms as standards of behaviour defined in terms of rights and obligations. ASEAN norms refer to both shared expectations and standards of appropriateness about ASEAN members' behaviour. The norms of non-interference, non-intervention, and pacific settlement of disputes are formally embedded in a number of ASEAN documents, i.e. the ASEAN Declaration, the Treaty of Amity and Cooperation in Southeast Asia, and the Declaration of ASEAN Concord. Some of the norms are unwritten but equally essential to interstate relations among member countries such as adherence to informal, quiet diplomacy and mutual respect and tolerance.

While state-centric concept of security (by the strict adherence to the concept of non-intervention and state sovereignty) is uphold, the Charter also prescribes that ASEAN become a rule-based, people-oriented

community enhanced by more concrete mechanism in pacific settlement of disputes and human rights promotion and protection. Before the Charter and a few Declarations leading towards the drafting of the Charter, no ASEAN documents have challenged the core norms of non-involvement of ASEAN to address unresolved bilateral conflict between members or explicitly codified human rights. The Charter is therefore an important source to study recent norms development, contestation, and codification in ASEAN.

1.2 Research Questions

The central research question will include:

- How have the ASEAN core norms manifested in the ASEAN Way been affected through the process of norm contestation in the development of the ASEAN Charter?

- Does the social setting of ASEAN allow for the use of arguments?

1.3 Context of the study and its significance

During the creation of several short-lived regional architectures and the birth of ASEAN in the 60s, there was a lack of scholarly interest from within the region especially in situating the studies within theoretical

framework. The works were not "theoretically self-conscious" (Huxley 1996, 207) although they largely adopted realist assumptions in their arguments. For example, Michael Leifer's (2005) valuable contributions on the region. In the 80s, the focus of the study shifted towards intra-regional cooperation and how to manage conflicts within the region (Jorgensen-Dahl 1982). This was in part due to ASEAN's success in opposing Vietnam's occupation of Cambodia in international arena such as the United Nations.

The realist tradition was apparent at least until the Cold War ended where we saw more theoretical pluralism in the study of Southeast Asia. The works of the past two decades are also more theoretically informed, attempting to test various international relations theories – constructivism being the most popular – on Southeast Asia and its regional organization (Busse 1999; Eaton and Stubbs 2006; Narine 2006; Peou 2002; Tan 2006). The development of the region in general and ASEAN in particular as a theoretical testing ground demonstrated the scholars' preoccupations with security in the study of Southeast Asia. Several concepts related to security were applied to and tested against the region's affairs. These include "security complex" (Buzan 1988), "security community" (Acharya 1991; 2009b; Simon 1988), "security regime" (Wiseman 1992), cooperative security and balance of power (Emmers 2003; Leifer 1999). However, this exercise was not entirely confined to the realist realm of dominance. Taking the regional norms and identity building process into account received much

attention as means to a more complete explanation of Southeast Asian affairs (Acharya 2006). Social communication in the form of negotiation is the valuable source for constructivist studies since it supplies the foundation where intersubjective reality exists. This is where actors reach consensus of constructing meaning for a contested norm. Constructivism is, after all, the view that the manner in which the material world shapes and is shaped by human action and interaction depends on dynamic normative and epistemic interpretations of the material world (Adler 1997, 322). While the thesis benefits from the literature of norm studies and social constructivism, it constitutes a distinct contribution to the area of regional norm building as well as Southeast Asian Studies through a detailed analysis of an important development in the region, attempting to study it systematically. Moreover, the thesis benefits from primary source of records of all the Meetings of the drafters throughout the process. The records were kept at the ASEAN Secretariat and the access was not granted prior to this study.

Since the ASEAN Charter was ratified fully in December 2008, there have been few attempts to study the development and contribution of the Charter, not to mention its normative value. Studies relevant to the formulation of the ASEAN Charter are limited. 'The Making of the ASEAN Charter' (Koh, Manalo & Woon, 2009) is a useful source, but is "a record of the impressions of the drafting process by members of the High Level Task Force." It is collective memoirs by those involved in the process. There is an

academic void of theoretically-informed work on the development of the ASEAN Charter and its normative reflection on the current core norms.

The thesis intends to fill that gap. The drafting of the ASEAN Charter from January to October 2007 was in a relatively closed space. There were some interactions with academics, other delegations and civil society, but their influences were limited and the text was kept confidential until after the signing. Moreover, the Summary Recordings of the Meetings were also classified and kept at the ASEAN Secretariat in Jakarta. Only the end result of the negotiation was disclosed at that time. Fortunately, my request to access the Records for the study was approved by the Head Political Officer who used to preside over the drafting. The documents still cannot leave the Secretariat, but I was allowed to incorporate relevant parts into the research. The thesis therefore aims to clarify the formulation process of the Charter with special regard to provisions dealing with increased authority of ASEAN officials in settlement of disputes and the establishment of ASEAN Human Rights Body through those new materials as well.

1.4 Overview of theoretical framework and methodology[1]

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[1] Regarding constructivism, the section benefits partly from the summary in 'theoretical framework' in Kasira Cheeppensook, 'The ASEAN Way on Human Security', MPhil thesis in International Relations, University of Cambridge, 2006.

Dealing with norms change, the thesis is situated within social constructivism in international relations, bearing in mind that constructivism's importance and its added value for the study of International Relations lie mainly in its emphasis on the ontological reality of intersubjective knowledge and on the epistemological and methodological implications of this reality (Adler 1997, 322-323). The thesis leans towards the critical strand of social constructivism, problematizing power (while the conventional strand is more analytically neutral to the distribution of power) in the relations as well as the role of actors regarding change. Although the importance of norms is not ignored by rationalist approaches, constructivism allows for a deeper understanding of norms in shaping states' behaviours by explaining the constitutive effect of norms or how norms create identities, define and redefine interests (Katzenstein 1996; Finnemore 1996). When the constructivist analysis starts, some reality has already been made and is taken as given (Zehfuss 2002). It then proceeds to examine the change in that 'social reality'. Constructivists also stress the importance of shared practice deriving from social interaction. The international system is seen as socially constructed through practices, in particular diplomatic practices (Guzzini 2000, 169), which constitute an important element of our subject of interest. The social environment does not only shape actors' identities and interests, but it is also shaped by actors within that environment (Wendt 1994; 1998). Using rationalist approaches would be less useful in studying ASEAN since

they assume interests as a given. This could prevent the meaningful study of the change deriving from the states' interactions (Wendt 1992). The core norms in the ASEAN Way are internalized in ASEAN member countries, but this does not mean that it is fixed and unchangeable from the constructivist point of view.

Although the literature concerning norms diffusion and socialization is robust (Finnemore 1993; 1996; Finnemore and Sikkink 1998; Katzenstein 1996; Keck and Sikkink 1998; Klotz 1995; Kratockwill 1989; Risse, Ropp, and Sikkink 1999) with different focus on external actors vis-à-vis domestic ones and various case studies, there are few academic attempts (Acharya 2009a; Johnston 2003; Katsumata 2003; Katzenstein 1997) to study the norm dynamics in Southeast Asia in general and ASEAN in particular comparing to the European continent and the European Union (Checkel 2001; 2003; 2004; 2007; Christiansen, Jørgensen, and Wiener 2001; Hopf 2002; Risse 2004). The thesis strives to contribute to the body of knowledge of norm codification in the ASEAN context.

Emphasizing agency, Acharya (2009a) focuses on the role of norm takers that he regards as more important. The external norms will have to undergo modifications by the local norm-takers who will build congruence between the local and external norms. He terms this process "constitutive localization". He also argues that the role of norm-takers is important to the

study of norms dynamics and should not be portrayed as passive. ASEAN members are definitely not passive norm takers since there were debates regarding new and controversial norms such as human rights since the 90s. Johnston (2003) also contributed to the understanding of the normative environment that can facilitate actors' persuasion by proposing the four 'ideal combinations' that should be present in the social environments. These are

1) the actor is highly cognitively motivated to analyze counterattitudinal information (e.g. a very novel or potentially threatening environment);

2) the persuader is a highly authoritative member of a small, intimate, high effect in-group to which the persuadee also belongs or wants to belong;

3) the actor has few prior, ingrained attitudes that are inconsistent with the counterattitudinal message;

4) the agent is relatively autonomous from principal (e.g. when issue is technical or issue is ignored by principal).

Similar suggestions of the conditions facilitating persuasion were also present in the norm dynamics study in the European setting:

1) the target of the socialization attempt is in a novel and uncertain environment and thus cognitively motivated to analyze new information;

2) the target has few prior, ingrained beliefs that are inconsistent with the socializing agency's message;

3) the socializing agency/individuals is an authoritative member of the in-group to which the target belongs or wants to belong;

4) the socializing agency/individual does not lecture or demand, but, instead, acts out principles of serious deliberative argument; and

5) the agency/target interaction occurs in less politicized and more insulated, in-camera settings. (Checkel 2007a)

The literature on ASEAN negotiation cultures (Antolik 1990; Ba 2009a; Koh, Manolo, and Woon 2009; Severino 2006; Thambipillai and Saravanamuttu 1985) are also useful for exploring the negotiating style which fosters and preserves the core norms in the ASEAN Way. ASEAN is more familiar with the "high context" negotiating style. Cohen (1991) suggests that in non-Western cultures, group interests define individual needs. "Face" or one's standing in the eyes of the group must be preserved. Personal relationships are key to the negotiation and must be cultivated before there can be any frank discussions. States then begin with establishing basic

principles, preferring to work on details later, once personal relationships are solidified. In the case of ASEAN Charter formulation, personal relationships are highly important. They even nicknamed one another; for example, "the King of Footnotes", or "the King of Questions" (Pibulsonggram 2009, 90). This is opposite to "low context" cultures in Western countries where individualism is strong. Straight talk is admired. Face does not carry the same importance as in a high-context culture. The provision or articles formalized will also be more detailed than those negotiated in the high context cultures. The thesis bears in mind that ASEAN's negotiating style informs the drafting process of the ASEAN Charter. The conceptual framework regarding mode of communication (arguing and bargaining) as well as the norm robustness will be discussed more in Chapter 2 when we turn to explore in detail the theoretical framework underpinning the thesis.

There have been attempts to propose constructivist methodology by combining a number of social methodologies such as process tracing, discourse analysis, and counterfactuals as well as contextualizing the phenomenon. (Klotz and Lynch 2007; Lupovici 2009; Pouliot 2007) Recognizing the intrinsic interpretative and historical nature of constructivism, the thesis looks at numerous sources of primary data such as ASEAN official documents, declarations, agreements, reports from summits and ministerial meetings. It benefits in particular from difficult-to-access primary sources, i.e. Summary Records of the HLTF Meetings. Instrumental is

the ASEAN Charter and multiple versions of its drafts, including the minutes of the drafting panel's meetings and issues tabled by the panels' assistants. Relevant memoirs, interviews, speeches, and news articles are also used. Elite interviewing is given importance as crucial to constructivist studies (Tansey 2007). Defining elite members as those who decide on or influence policy making process, I managed to secure interviews of some HLTF members, their alternates, and an ASEAN Secretariat official who represented Secretary-General Ong Keng Yong at the Meeting. I also interviewed the officials relevant to the ASEAN Charter provision on authority of ASEAN in mediation such as Secretary-General Surin Pitsuwan and a high level government official. The questions asked are mostly open-ended to enable comfortability in answering some sensitive issues. Most interviews took the form of (guided) conversations. I took great pleasure interviewing them bearing in mind that there was only one occasion for each interview considering their busy schedules – one interview even occurred at the back of the car while the interviewee was rushing to another meeting. Some of the elite interviewees asked to remain anonymous but granted permission to be quoted in the examination thesis. The interviews are off the record, meaning there was no taping allowed, (although notes were permitted). I would omit their names in the version deposited in the public domain as per their requests. I would also include the nationality of the interviewee provided that the said interviewee allowed it.

1.5 Structure of thesis

The contents of the thesis are divided into seven chapters – an introduction, a conceptual framework, a background chapter setting up the organization as a social context, an analysis of the drafting process and its 'rule of the game', in-depth examination of the two provisions that are virtually unprecedented in ASEAN interstate conduct and how they reflect upon the core norms of ASEAN, and the conclusion.

Chapter 2 deals with the conceptual framework for the study in detail. It draws on social constructivism and Habermasian concept of lifeworld in order to constitute understanding for shared concepts among the negotiators. It begins by outlining how rationalist accounts treat norms with a special reference to legalization to demonstrate its inadequacy in explaining the outcome of the Charter negotiation. It will then contextualize the thesis in social constructivism with brief accounts of constructivist scholarship concerning the region with special reference to the critical strand of social constructivism. Varying degree of norm robustness which contributes to the need to formulate tacit rules into explicit ones will be addressed. The chapter then proceeds to explore arguing and bargaining, showing that the concepts are not mutually exclusive before further distinguishing both to facilitate the conceptual operationalisation. Borrowing

from Habermasian insights, the concept of lifeworld will be employed to enrich the conceptual analysis of arguing and bargaining.

Chapter 3 will provide the background on ASEAN as a social and normative context in which the ASEAN Charter was negotiated. It explores regional cooperation in Southeast Asia prior to ASEAN in detail, starting from the 1950s during the Cold War. This will also shed light to how the governing core norms that came to be embedded in ASEAN have been developed and tested through time. Through the creation and demise of regional organizations prior to ASEAN, a set of norms also evolved. It will then examine the core norms constituting the ASEAN Way in detail as well as trace some contestations over the core norms prior to the drafting of the ASEAN Charter. The chapter establishes the ASEAN Way as the most manifested part of a shared lifeworld in ASEAN.

Chapter 4 answers why ASEAN leaders agree to transform what used to be implicit principles into explicit rules. It deals with the need to codify governing core norms in ASEAN in written form. The 'rules of the game', how the drafters went about drafting the Charter under common understanding of expected behaviour, is then laid out. Last but not least, the role of non-state actors as norm entrepreneurs interacting with the existing lifeworld, creating an artificial lifeworld as a way to provide and extend the normative space, will be addressed.

Chapter 5 examines Chapter VIII Settlement of Disputes of the ASEAN Charter. It begins by exploring peaceful settlement of conflict in ASEAN then proceeds to dispute settlement mechanisms in ASEAN. Both existing dispute settlement mechanisms in economic area and political area are analyzed. The formulation of Chapter VIII of the ASEAN Charter is then examined and the setting that arguments will prevail tested. The case of Cambodian-Thai dispute is analysed in order to demonstrate increased authority of ASEAN in dispute settlement, which was different from before.

Chapter 6 focuses on the codification of human rights as a norm in the ASEAN Charter and the controversy around establishing an ASEAN Human Rights Body. It starts by exploring human rights development in Post-Cold War Southeast Asia in order to provide a backdrop for the analysis. Interactions with international norm are also examined. It then explains the 1997 economic crisis as a window of opportunity for human centric values to gain a firmer ground in the region. The development of human rights mechanism in ASEAN is traced and the formulation of Article 14 analysed. The social setting that arguments will prevail is also tested.

Chapter 7 summarises key findings throughout the work referring back to the research questions set at the beginning of this project. It emphasizes the contribution made to the body of literature on norm studies as well as

Southeast Asian and in particular ASEAN studies. Further avenues for future

research will also be briefly explored.

Chapter 2

Arguing, bargaining, and norm codification

2.1 Introduction

This chapter aims to establish an analytical framework to study how ASEAN's diplomatic and security norms have been contested through the drafting process until they were finally codified (and therefore legitimized) in the ASEAN Charter. In order to account for the process by which particular outcomes – the reinforcement of norms that ASEAN members consensually deemed essential to an effective and successful operation of the organization – occur, it is important to look at how contested norms were dealt with during the negotiation of key provisions. The final Charter stands as a milestone in ASEAN's cooperation, the most concrete attempt to formally codify diplomatic norms in ASEAN so that all members must follow them 'as a rule'. However, little is known of how norms and principles were included in or dismissed from the text.

The normative contestation process is mainly associated with arguing and bargaining about what should be included in the Charter during the drafting process. Clearly conceptualizing arguing and bargaining can provide insights to how the two main provisions in the Charter come to look like they do now. Norms that have undergone exhaustive debates characterized by equal access to the discourse by all members and still managed to be codified

in the Charter were normally more robust. They should be able to weather further contestations in the future better than those imposed (or omitted) by power where bargaining was the preferred mode of communication. Robust norms put in place through reason-based argumentation usually signify 'true' internalization rather than adaptive behaviour.

In negotiating a particular provision, actors aim at changing others' position while seeking to protect their own or reaching mutual understanding while preparing to also change their former position. It can be said roughly that they bargain in the former cases and argue in the latter; however, these two types of social decision-making procedures are not mutually exclusive in real-world political negotiations. Actors engaged in bargaining often argue to justify their position. We need to pay attention to not only *whether* actors justify their positions, but also *for what reasons*. Therefore, conceptualizing arguing and bargaining does not only entail the difference between the two but also the difference between arguing for one's own interests (which is only rhetorical) and arguing for better understanding of the 'right' course of action. Bargaining must also be distinguished further as this chapter will later clarify.

Formulating the ASEAN Charter can be seen as transforming some of the formerly tacit rules and norms in ASEAN into explicit ones. In other words, it is the process of hard law making. The need to formally encode the norms

into written documents is the starting point of the ASEAN Charter and must be analysed in order to provide a complete picture of the development of the Charter. Thus, the framework that would be useful to the study must deal with 1) why actors choose to resolve commonly perceived problems in the way they do (in this case, creating a legally binding instrument which goes against former practices) and 2) why actors choose to justify their arguments in particular ways during the creation of said instrument (when do they see that they should opt for different types of arguing and/or bargaining?)

Since creating the ASEAN Charter is, after all, law-making with high costs for all actors involved, rationalist accounts are relatively insufficient in explaining the negotiating outcome. In particular, neoliberal institutionalists argue that the most difficult area to achieve cooperation is when actors prefer cooperation but are still reluctant to sacrifice unilateral gain (in this case, to be free from binding legal obligations). When states enter agreements despite its costliness from a rationalist's viewpoint, they may perceive other gains in terms of increased reputation as norm-subscribers. Their cumulative action could emerge out of a long process of norm socialization. To the extent that rationalism often downplays independent explanatory power of norms and their influence on state actions, constructivism provides a more satisfactory approach in explaining norms evolution in ASEAN through the ASEAN Charter formulation. Problematizing power relations and the role of actors constituting change, critical social

constructivism thus provides a guiding theoretical framework for the study. The thesis still benefits from the foundation of social constructivism, but leans towards the critical strand in the analysis of the ASEAN Charter development.

The thesis takes ASEAN as a social setting where the negotiation leading towards the Charter took place. The negotiators shared collective norms and experiences in ASEAN diplomacy which provided common background for them. In explaining this backdrop or shared normative understandings, the dissertation benefits from Habermasian concept of lifeworld. The analytical framework thus takes that arguing and bargaining existing against culturally transmitted stock background knowledge conceptualized in Habermasian 'lifeworld' provides an insight into the process of norms and rules legitimization and codification in the critical constructivist framework which holds that norms are inherently contested. It will then proceed to test whether arguments prevail in a particular setting.

2.2 Norms and law-making: the rationalist VS constructivist account

2.21 The rationalists

Rationalist perspectives which emphasize utility-maximization are most exemplified by neorealism and neoliberalism. While strategic

preferences can be influenced, the actors' interests remain fixed. Structural

realists, including neorealist institutionalists, often see that norms have very

little impact on states on their own: they possess no independent

explanatory power. Based on the self-interested calculation of great powers,

they are only a reflection of the distribution of power in the international

system or the hegemons' national interests/values. The norms are usually

positioned as the intervening variables or intermediate variables between

the interests and outcomes in world politics (Mearsheimer 1994-5, 7; Krasner

1983; 1985; 1993). The norms are seen to reflect, rather than shape, a

strategic reality determined by the great powers' decisions (Desch 1998).

Norms are not constitutive of the interests during the process of interaction.

March and Olsen (1998, 949) terms this the "logic of expected

consequences". Based on a model of utility maximization, actors choose

options that best serve their (material) objectives and interests. Only

obligations that are created through consent and contracts based calculated

consequential advantage are recognized. Therefore, norms play very little

role in influencing those decision-makings.

Neoliberal institutionalists give more weight to the role of norms on

state behaviour albeit in the regulatory, and not constitutive, sense

(Goldstein and Keohane 1993; Keohane 1984; 1989). The state will be willing

to follow a norm if its interests are furthered or there are sanctions involved.

This is also the case for its perception of hard law making where the costs

and benefits are weighed. Hard law reduces transaction costs of subsequent interactions, strengthens the credibility of commitments, reduces the possibility of cheating and resolves problems of incomplete contracting (Abbott and Snidal 2000). At the same time, hard law constrains sovereignty and autonomy as a result of legal obligations of rules. Therefore, in creating hard law, the benefits must outweigh the cost in neoliberal views. It cannot really explain the case where it seems that costs outweigh benefits, and fails to capture legalization and norm codification as a social process whereby actors attempt to coordinate their actions while realizing that their interests are fluctuant in order to reach mutual understanding.

In a rationalist account, a norm change might as well result from the changes in great powers' interests or the costs and benefits calculation. Rationalists see that communication - the exchange of information - can be in an actor's interest, depending on his/her bargaining position. It can lead to the restructuring of the preference order. However, communication is not used to build trust about the authenticity or honesty of the speaker. To signify that the speaker really means what he/she says, it must be accompanied by signs like promises or threats (Fearon 1997). This leaves a void when the audience is convinced of the speaker's arguments despite the lack of tangible signals. Rationalists are particularly lacking when it comes to the case where a state still chooses to follow a norm even if it cannot gain any material benefits. The rationalists also minimize the role of other "norms

entrepreneurs", such as non-governmental organizations in proposing, sustaining, and circulating certain norms among state actors.

Viewing the ASEAN Charter through a rationalist lens, it can be argued that the Charter either originated from the members' desire to constrain and control one another, or that the benefits of having a hard law in place must enormously outweigh the costs. However, that might not be the case given that ASEAN member countries have always guarded their sovereignty, avoiding binding legal agreements and resisting the involvement of the regional organization in members' affairs. Nonetheless, the Charter was created despite the cost.

Moreover, in a rationalist tenet, state preferences are formed domestically prior to the international negotiation and are quite fixed (Moravcsik 1998). After the interstate bargaining where all preferences are brought to the table returns results, the institutional choices are then made to seal the outcome. Preferences formation; therefore, is independent of the negotiation process (Checkel 2001, 556; Risse 2000, 20). The state identity is also relatively unaffected. Material considerations are the most salient sources of the preferences, outweighing normative considerations. However, preferences can actually be affected by the interactions during the negotiation. Along the same line, the source of preferences should be treated more sophisticatedly by recognizing other important non-material

factors such as the desire to portray a good image by keeping previous commitments. This leaves us to look elsewhere for an alternative tenet to account for norms evolution and its effects on negotiating outcomes.

2.22 The constructivists

Social constructivists (Kratochwil 1984; Onuf 1989; Wendt 1992; 1999; Zehfuss 2002) have criticized neorealist and neoliberalist assumptions on norms and provided a more satisfactory approach to the study of state behaviour by recognizing changes in state identities and interests. There are no fixed or given preferences formed independently of the interaction or communication process (Bozdağlıoğlu 2003; Checkel 2001; Chernoff 2008, 68; Schmidt 2010). Material structures are given meaning by the social context through which they are interpreted (Jupille et al. 2003). The explanatory power of norms is given more importance than in the rationalist camp. Their status can vary from intervening variables to independent variables in explaining state behaviour. The social constructivists, to again employ the distinction introduced by March and Olsen (1998, 949), follow the "logic of appropriateness", which is different from means-ends calculations or the logic of expected consequences employed by rational-choice analysts. The reason for following a norm is not purely to maximize one's own interests, but involves the perception of others and the ideational value attached to an action: is it the right thing to do in a given

circumstance? Rules and norms are intersubjective and sustained through interaction among actors. Norms are also inextricably linked with actors' identities. They define the identities, and the resulting constitutive effects will specify what actions will cause relevant others to recognize a particular identity (Jepperson et al. 1996). The social structures and the agents are mutually constitutive.

Constructivists treat law-making as a social process which cannot be reduced to mere cost-benefits analysis. The process itself is taken into account because law is perceived to be generated based on shared values and normative understandings. This normative dimension is not entirely overlooked by neoliberals, but they tend to focus more on the outcomes and effects and not the process (Finnemore and Toope 2001).

Although it is situated in the reflectivist camp, constructivism is argued to be occupying the middle ground between the rationalists and other reflectivists such as postmodernists because it does not reject causal explanation or the "science" (Björkdahl 2002; Checkel 1998). However, some social constructivists prioritize "the logic of interpretation" over "the logic of explanation" and abandon the search for the "real causes" (Campbell 1992). Others still see the causal explanation as instrumental to the meaningful constitution of social reality (Checkel 1999; Laffey and Weldes 1997). Scholars focusing on tracing the causal mechanisms are known as modernist

or conventional constructivists (Hopf 1998; Ruggie 1998). They distinguish the ideas literature from the constructivist approaches. They do not want ideational arguments to replace structural and interest-based accounts. If anything, the ideational arguments should only supplement them. In some cases, i.e. when studying the domestic effects of norms, structural accounts are still more preferable (Checkel 1997b).

Critical constructivism chides the positivist element in conventional constructivism, seeing that it is unable to criticize the boundaries of its own understanding. Alienation and domination exist in power relationships, and critical constructivism seeks to unmask that. Conventional constructivism does not take its own role in producing change or constituting social entities that they study into account, and remain analytically neutral on the issue of power relations (Hopf 1998, 185). Critical constructivism therefore has reservations against the scientific methods popular with conventional constructivists such as process tracing. Instead, it turns to focus on the role of communication and power relations in a certain social setting.

The more conventional constructivism tries to discover the causal mechanisms, the more it loses the possibility of maintaining the ontological openness that its interpretivist method can afford (Hopf 1998, 197). As a matter of fact, some who employ process tracing and see its benefits also warn against "losing sight of the big picture" and support process tracers to

embrace more pluralism in their works (Checkel 2007a; 2007b). The thesis proposes to take the interpretivist turn seriously which starts from the idea of meaningful action, the nature of studying a set of socially constructed reality that requires an interpretation of an already interpreted world (Schutz 1962). The intersubjectivity between several actors participating in a communicative process is essential to understand how they finally manage to reach a consensus.

Social communications have significant effects on social relations, and the relationship among acting, communication, and rationality is critical for constructivists (Adler 2006, 102). Dissatisfied with the emphasis only on instrumental rationality, they advance the notion of practical or communicative rationality. It is tied in with communicative action theory where actors engage in validity proving of their claims to either pursue their interests or to convince the other party. This is where Habermasian legacy can contribute to a constructivist account of the development of the ASEAN Charter.

2.3 Constructivism in Southeast Asian Studies

Up to the 1990s, academic works on the region were not "theoretically self-conscious" (Huxley 1996, 207). They are even considered "atheoretical" (Acharya and Stubbs 2006, 126), although realist assumptions

permeated the attempts to study Southeast Asia.[2] Realist accounts of the region were dominant in the study until the end of the Cold War where other international relations theory proliferated and challenged the realist hegemony in the discipline. Also influenced by emerging and seemingly sustained cooperative arrangements in the region such as the launch of the ASEAN Regional Forum (ARF) and the Asia Pacific Economic Cooperation (APEC) forum, the works of the past two decades are more theoretically diverse, attempting to test various international relations theories – constructivism being the crowd favourite – on Southeast Asia and its regional organization (Acharya 2000, 2009a; Busse 1999; Eaton and Stubbs 2006; Haacke 2005a; Higgott 1994; Narine 2006). Still, for some (Buzan and Segal 1994; Friedberg 1993-94), realism is the most promising candidate in the studies.

ASEAN according to realist and neo-realist perspective is toothless since institutions are deemed unable to overcome prevailing patterns of anarchy in the global world system (Goldschagg 2007, 12). Outcomes within institutions merely reflect the workings of power or threat balances (Waltz 1979; Walt 1986). In a rather pessimistic view, ASEAN is deemed a prime example of powerless 'imitation community' (Jones and Smith 2001; 2002):

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[2] Leifer's works (1996; 2000) demonstrate the importance of balance of power in foreign policy considerations which can be associated to the realist strand of international relations theory (Peou 2002). However, his works were also seen to contain English School assumptions (Acharya 2009a; Haacke 2005b).

ASEAN is neither a security nor an economic community, either in being or in prospect. It is, in fact, an imitation community (comparable to a fake state whose insecure and illegitimate leaders, ensconced through bogus elections or military coups, wield unrestrained power over those whom they rule). Such insecurity translated to a regional level produces a rhetorical and institutional shell. The shell delivers declarations, holds ministerial meetings, and even supports a secretariat, but beyond the flatulent musings of aging autocrats or postmodern constructivists pontificating in Track Two fora nothing of substance eventuates (Jones and Smith 2001, 285).

ASEAN's future was deemed bleak in its security functions according to this tenet. ASEAN as a regional institution is perceived to play a minor role in determining regional order (Buzan and Segal 1994; Dibb 1995). Downplaying the role of norms in a 'realist institutionalist' conception, Khoo (2004, 43) states that 'ASEAN is best explained as an institution that has locked its members into a vicious pattern of negative interaction. The emergent patterns of interaction are corroding ASEAN…'. Unfortunately, it is not clear in Khoo's view what constitutes 'negative interaction' apart from his argument that ASEAN member states tend to employ extra-regional dispute settlement mechanism. However, this neither supports his claim that norms do not play any role when there are disputes nor the contention that constructivism does not recognize 'negative' norms. Social constructivism especially the critical strand maintains that the actors give values to the norms in a setting, and treats norms as more flexible than a fixed concept (Wiener and Puetter 2009).

Other 'realist-based' theory such as He's 'institutional realism' (2006) sees ASEAN in a more positive light regarding managing security affairs in the region – unlike Khoo's (2004) 'realist institutionalism'. Still not fully recognizing the importance of the role norms can play, ASEAN is neither a facilitating mechanism for cooperation nor a constitutive means for common identity, but a balancing tool for its member states against both internal and external security threats (He 2006, 189). ASEAN states rely on institutions to engage in the regional balance of power. He (2006, 191) sees that neorealism cannot explain policy orientations of ASEAN states after the Cold War. There was no sign of balancing against the United States, an extra-regional super power, or China, a regional great power.

Neoliberals and neoliberal institutionalists also take more optimistic view when it comes to cooperation in ASEAN. ASEAN has potential in managing intra-mural conflicts and plays a part in maintaining regional stability and order (Broinowski 1982; Jorgensen-Dahl 1982, 1990; Simon 1982). However, most liberal theories of cooperation assume background conditions, such as a shared liberal-democratic domestic environment and a relatively high degree of mutual economic interdependence for closer cooperation to succeed. These conditions have never been marked features of ASEAN (Acharya 2009a). Among scholars who are dissatisfied with employing rationalism to explain the region, Peou (2002, 120) sees that neoliberalism lacks the empirical content necessary to "prove itself worthy of

recognition". This is also the case for neoliberal institutionalism because the emergence and consolidation of ASEAN took place with fairly low levels of intra-mural transactions and interdependence (Acharya 2000, 199). Rother (2012, 52) sees that the Asian financial crisis of 1997 also serves as evidence that institutionalist interpretations are lacking. Little institutional building helped ASEAN cooperate on the problem since until the 1997 crisis ASEAN was still operating on an ad-hoc basis. The lack of empirical evidence from the neoliberalist side made constructivism a more prominent competitor vis-à-vis realism. Some; nonetheless, maintain that theoretical pluralism is desirable and "Southeast Asian Studies need not be dominated by either realism or constructivism" (Acharya and Stubbs 2006).

To be sure, constructivism in Southeast Asian studies is not without criticism. Tsuyoshi Kawasaki (2009) challenges the constructivist approach, characterizing it as romantic and intellectually naïve. In his view, the ARF which is the most institutionalized forum in ASEAN can best be seen as serving the members states' interests and most usefully analysed through what he terms a 'rationalist institutionalist' lens. Jones and Smith (2007) claim that the empirical facts suggest that ASEAN was 'making process, not progress'. Yet some scholars studying the region propose English school as 'distinct approach to understanding IR" (Narine 2006) while others (Alagappa 1998; Roberts 2011) prefer to apply the regional security complex theory developed by Buzan and Wæver (2003) to Southeast Asia. This only

demonstrates that Southeast Asian Studies in general and ASEAN studies in particular are far from being dominated by any homogenized theoretical tenet.

Lee Jones' work (2012) attempts to explain ASEAN and intervention within the region from the perspective of political economy, aiming to "transcend the dominant realist-constructivist debate on ASEAN" (2) and demonstrate that the principle of non-interference is not as sacrosanct as one might think. Non-interference can be invoked and discarded by powerful social groups in the state to defend their particular interests. He argues that the principle of non-interference is applied in a much more flexible way on the ground and cites examples such as East Timor and Cambodia pre- and post-Cold War. ASEAN's involvement in intra-regional conflicts was also studied by Alagappa (1993) who highlights ASEAN's successful intervention in the Cambodian conflict. Jones contends that constructivists have "incentive to minimize evidence of norm violation" (2012, 5) in order to prove that norms matter.

However, norm deviation does not mean abandonment of the norm. Rather, it is a test of said norm (Acharya 2009a). Certain norms might come out weaker or stronger after the process of contestation, but it also depends on the perception of member states in a community to determine its validity. Viewing the influence of norm from political economy standpoint might

overlook cases where actors follow, invoke or discard norms regardless of material interests, but from other reasons such as reputation. Non-interference in mainly considered intra-mural norm in ASEAN's diplomatic and security culture (Haacke 2003), to be employed mainly among members in the organization. When ASEAN 'intervened' in the case of Cambodia during the Cold War, neither Cambodia nor Vietnam was a member of ASEAN. Alice D. Ba (2005) also made similar arguments when she replied to Khoo (2004). Moreover, Ba argues that there are exceptions to rules even in wider context such as when the cases involve military aggression or self defense. ASEAN's response to Vietnam's actions in Cambodia is complicated by questions about aggression and about Vietnam as a non-ASEAN member whose intentions were furthermore made suspect by its past statements and actions toward ASEAN (Ba 2005, 258). It can be seen that the organization is acting on a security issue in the region and not on a particular member. If the power of norms is just an 'excuse' for constructivists to highlight its importance, the norm that is viewed to be often violated would not be incorporated readily when ASEAN members created a legally-binding instrument which codifies norms they deemed salient and valid in the form of the ASEAN Charter.

Social constructivism provides welcome value-added insights to the explanation of various phenomena in the region by emphasizing the role of ideational forces on state behaviour. After constructivism gained ground as a

theoretical approach in the 1990s, scholars have come to study the culture, ideas, and values guiding Southeast Asian interstate relations among other interests. Constructivism challenges uncritical acceptance of the balance of power system posited by realist and neo-realist scholars as the basis of Asian regional order by giving greater play to the possibility of change and transformation driven by socialization (Acharya 2008, 72). The development of the Asian values, often grouped together as the ASEAN Way when dealing specifically with the regional organization, and the regional identity are taken into account in the analysis (Acharya 1997, 2000, 2009a, 2009b; Haacke 2005a). Earlier in the 1980s, scholars have paid attention to the impact of norms on states' behaviour (Davies 2013) despite the fact that they did not bandwagon under constructivist umbrella. Donald Weatherbee (1987, 1227) highlights the established norms of intra-ASEAN behaviour similar to what is known as the ASEAN Way today. Buszynski (1987, 765) analyses ASEAN's behaviour regarding Vietnam issue, stressing the importance of dialogue and how ASEAN would want to instill values related to democracy such as inclusive election in Cambodia. Constructivism then bolsters the traditional understanding of norms, treating the power and influence of norms in a more sophisticated manner (Davies 2013).

In studying Southeast Asian interstate norms, scholars tend to explore the region's history (Stubbs 2008). This reinforces Wendt's argument that "history matters", and a constructivist account cannot be devoid of this

aspect. An appropriate mode of interstate relations practiced among actors in any normative space has usually gone through the test time and again to see whether it still worked. If it could not properly function, then it would be revised or replaced. ASEAN was labeled by some scholars as norm entrepreneur, norm brewery (Katsumata 2006), norm guardian (Stubbs 2008, 455) by constructivists who emphasize the role of ASEAN in managing, producing and reproducing regional norms.

Most constructivist accounts of the region are of the conventional strand (Acharya 2000; 2009a; Johnston 1999; 2003). Acharya (2009a) explores norms and socialisation in ASEAN and suggests that ASEAN is a nascent security community. Norms are important because they are intimately linked with the creation and maintenance of specific national, and regional, identities (Davies 2013, 211). Social communities, ASEAN included, rely on norms of behaviour which prescribe and proscribe legitimate and illegitimate conduct (Acharya 2009a). Busse (1999) argues along this line when he studies how norms influence the construction and endurance of Southeast Asian security by providing code of conduct for the interaction of member states as well as a set of working guidelines which set out the procedure by which the organization would manage problems such as conflicts.

Saravanamuttu (2010, 5) suggests that Acharya's work still falls within the broad sphere of state-centric constructivism, more or less in keeping with Wendtian theory. He argues for dialogic interaction between civil society and state as a way to represent competing views and missions stemming from interests and identities of both state and non-state actors, framing the research agenda in a more critical approach (1999). Drawing from Cox (1981), humans are not only followers of given structures, but they also create them. Critical constructivism also concerns with a continuing process of historical change (Hwang 2006, 247) and recognizes that the person who studies the subject cannot claim to be objective, standing apart from the topic. Although the constructivist literature on the region is quite robust as outlined above, works with critical strand are quite sparse. Tan (2006) expresses concerns that constructivist accounts of the region might be too "essentialist" due to its state-centrism à-la-Wendt. He sees that this is partly due to the uncritical emulation of rationalist constructivist perspectives in International Relations Theory. Acharya and Stubbs (2006) contend that it is not necessarily the case that being social scientific means analysing only the role of the state and being deterministic about norms. States (or more often, individuals acting in the capacity of the states) are given primary focus as units of analysis, but constructivists are also interested in the roles of other non-state actors such as international non-governmental organizations in proposing new norms or questioning existing ones. The thesis will primarily employ an interpretive

method in order to avoid causal determinism. To the extent that the analysis problematizes power relations, it leans towards critical constructivism. Social constructivist account of ASEAN in a critical strand is still not common, and the thesis proposes to fill this intellectual and academic space in Southeast Asian studies.

Hopf (1998) contends that the critical strand focuses more on interrogating and unmasking power relationships unlike conventional constructivists. Conventional constructivists have conceded that their approach might ignore the participatory character of social science in the construction of social reality (Wendt 2005, 211-214; Checkel 2007a, 59-61). It might have uncritically reified allegedly fixed norms and identities (Checkel 2007a, 66-67). Simmerl (2011) thus argues that critical constructivism can be a way out of the dilemma. According to Simmerl (2011, 5), "critical constructivism invigorates the basic strengths of constructivism by incorporating three aspects of post-structuralist discourse theory: focus on language and communication; emphasis on discursive structures; and awareness for power relations in process of construction".

Critical constructivism understands language and discourse as producing social reality. It departs from the logic of causal explanation of conventional constructivism and applies interpretative methods instead (Simmerl 2011, 5). Social facts depend on a constructed consensus about

meaning. A critical constructivist research on norms thus maintains, "the quality of norms is what actors make of it" (Wiener and Puetter 2009). Furthermore, norm contestation in a necessary component in raising the level of acceptance of norms (Wiener and Puetter 2009, 7). While conventional constructivism focus on the structuring power of norms and their influence on state behaviour (Katzenstein 1996; Risse, Ropp and Sikkink 1999), critical constructivism focus on the meaning of norms as constituted by and constitutive of the use (Reus-Smit 2003; Weldes and Saco 1996). As cited in Wiener and Puetter (2009, 8), Wiener (2004) sees that critical constructivism's "interest in relation to norms enhances the understanding of how intersubjectivity plays out in (interactive) international relations based on normative structures that entail meaning which is actually in use". In an ASEAN context, employ a conventional constructivist framework might help us find out whether a specific norm influence policy outcome, but critical constructivism can help us discover the change evolving from the interaction and the power structure within the social setting that the actors make decisions. The venue where the interactions occur is conducive to establishing social recognition of a contested norm and social learning remains a process involving the participating elites within the environment of an international organization (Wiener and Puetter 2009). This leads us to look at the negotiation as the source to study norms codification within a specific social setting, with the mode of arguing and/or bargaining also takes

place as a means to reach the constructed consensus of the norm's meaning. The contestation nature of norms which is a critical constructivist assumption implies that there is an ongoing process of norm interpretation within a social context. Wiener and Puetter (2009, 9) also sees that "the meaning attached to a norm is likely to differ according to respective experience with norm-use". This is where Jones' criticism on how constructivism misinterprets deviation from the norm of non-intervention also overlooks. Norms undergo process of contestation within a framework of shared understanding (conceptualized in Habermasian 'lifeworld' which will be further elaborated below in *2.6 arguing and bargaining in multilateral negotiations*), implying new contestation which could lead to change in meaning or implementation when the situation arises. Actors neither merely 'follow norms', adhering to 'norm-governed' behaviour as conventional constructivist account suggests, nor do they have a fixed set of interests they must comply to in a political economic sense since interests are also socially constructed (Weldes 1996). Critical constructivism, by problematizing power relations and take the quality of norms as inherently contested, could capture the dynamism of interaction among states trying out norms validity claims.

2.4 Role identity

One of the main contributions of constructivism is the notion that state identity fundamentally shapes state preferences and actions (Finnemore and Sikkink 2001, 398). Wendt (1992, 1994) emphasizes international environment as important factor in shaping state identities. For Wendt (1999), identities' roots can be found in an actor's self-understandings as well as the recognition of other actors. Identity is constituted by views "held by the Self and held by the Other" (1999, 224). This idea was in accordance with Holsti's (1970). Attempting to incorporate the concept of role into the analysis of foreign policy, Holsti sees that "national role conceptions are also related to, or buttressed by, the role prescriptions coming from the external environment" (1970, 246).

Wendt (1999) discusses four kinds of identities: personal or corporate; type; role; and collective:

1) Personal or corporate identities are constituted by "the self-organizing, homeostatic structures that make actors distinct entities" (Wendt 1999, 224-225). The construction of this identity in personal actors involves a sense of personal Self. Its construction in corporate actors also requires a sense of group Self through the formation of a joint narrative of selves (Behravesh 2011; Wendt 1994). Corporate identity thus refers to "the

intrinsic, self-organizing qualities that constitute actor individuality" (Wendt 1994, 385).

2) Type identities are social categories of states that share some characteristics, such as regime types or forms of state (Wendt 1999, 226). Type identities are influenced by international social structure since the perception of the international society can change over time. For example, colonized states and absolute monarchical states might be viewed as less legitimate forms of state nowadays. International values might dictate democracy as more desirable than authoritarianism. States can have multiple type identities, be it democratic, capitalist, Asian.

3) Role identities are social – the product of dyadic relationships among countries and exist in relation to others (Finnemore and Sikkink 2001, 399). They rest on shared expectations (Wendt 1999, 27). Wendt defines role identity as "a set of meanings that an actor attributes to itself while taking the perspective of others, that is, as a social object" (1994, 385). While roles are structural positions, role-identities are subjective self-understandings (which also include additional intersubjective dimension by how others view them in a social structure) (Wendt 1999, 259). In Wendt's approach, roles and identities are co-constitutive (Nabers 2011, 82). Identities supply roles with meaning, as it is the intersubjective representation of the role that is called role identity. States may be friends or rivals. States might view one

another as political entities enjoying equal positions or they might view themselves as leaders of the group. The officials they send into negotiations either view themselves as national delegates who must represent national interests or act as neutral mediator/chairperson depending on the social structure. In Track II diplomacy; for instance, the officials are less strict in following the national standpoint and are more open to new norms since they view one other as acting in unofficial capacity.

4) Collective identity leads to the identification of Self with Other through blurring the distinction between them - Self is viewed as Other. Collective identity is a distinct combination of role and type identities, one with the causal power to induce actors to define the welfare of the Other as part of that of the Self, to be altruistic (Wendt 1999, 229).

Aggestam (1999) conceptualizes role identities as "mutual responsiveness and compatibility of interest". Following Deutsch (1957), she argues that high level of interaction between states encourage the development of a growing 'we-feeling' and common 'role-identity'. There will be themes of 'role conception' that actors employ when they speak of duties, commitments or responsibilities such as mediators, leaders, collaborators etc. In this sense, role-identity extends beyond national perception to include collective perception of a group of actors. The thesis employs Wendt's conceptualization of role identity, emphasizing a social product born out of

relationships among countries, but with Hopf's (1998, 184) distinction between conventional and critical constructivism: "… conventional constructivists wish to treat… identities as possible causes of action. Critical theory… claims an interest in change, and a capacity to foster change, that no conventional constructivist could make".

2.5 Norms, rules, and institutions

2.51 Norm definition

There has never been a shortage of norm definitions provided by scholars interested in the subject. There are generally three strands of norm definitions. First, a norm is conceptualized as a standard of behaviour defined in terms of rights and obligations (Axelrod 1986; Keohane 1984; Krasner 1983; Raymond 1997) or as collective expectations among actors with a given identity (Jepperson et al. 1996; Katzenstein 1996). More specifically, norms are considered as

> spontaneously evolving, as social practice; consciously promoted, as political strategies to further specific interests; deliberately negotiated, as a mechanism for conflict management; or as a combination, mixing these three types (Katzenstein 1996, 21).

Second, the aspect of sanction is emphasized. Violating norms often entails punishments (Axelrod 1986). Punishments might not always come in

forms of collective military or economic sanctions imposed on the country that deviates from the norm. Norm violations entail disapproval from other countries in that particular community. They might imply that the violator's action destroy its own reputation and/or the community's [3] (ALTSEAN Burma 2005). Third, norms and rules are practically used interchangeably, sometimes until finer distinctions are made (Kratochwil 1989). The norms can operate as rules, obligatory or otherwise, that prescribe the appropriate behaviour of an actor and proscribe the opposite (Philpott 2001). Goertz (2003) maintains that principles, norms, rules, and decision-making procedures can be treated as the same since they all have similar basic logical form: syllogism. Rules are, after all, variants of the basic concept of a norm. Similarly, Thomson (1993) argues that a norm is a norm only that "as a rule" states engage in practices considered as normal. This illustrates that generally scholars do not find problem in using norms as rules or vice-versa.

However, rules and norms are not exactly the same even though they have a coordinating function. Kratochwil (1989, 10) especially noted that all rules are norms or they can become norms over time, but not all norms

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[3] This was demonstrated in the case where Burma decided to relinquish its turn at the ASEAN Chairmanship in order to pay more attention to its much criticized democratization process. A civil society organization called the Asean Inter-Parliamentary Caucus on Myanmar (AIPMC) played an important part in disseminating the information within the region. The charge was followed up by ASEAN foreign ministers who communicate with Burma at the ASEAN Ministerial Meeting in the Laotian capital on July 26, 2005 that this might not be a good time for Burma to accept the ASEAN Chairmanship. The Foreign Ministers then issued a statement that Burma informed them that it was not yet ready to take on the Chairmanship (even though Burma was enthusiastic before in renovating the conference site and was expecting some economic boost the Summit would bring to the city. The ASEAN Regional Forum (ARF) also demanded that the Junta eased political restrictions in Burma (See ALTSEAN Burma 2005).

exhibit rule-like characteristics. Rules are applicable generally. Human action is rule-governed because it only "becomes understandable against the background of norms embodied in conventions and rules which give meaning to action" (Kratochwil 1989, 11). Thus, Rules also have norms element even though some of the norms might not be rules. However, Kratochwil does not clearly define what he means by 'rule-like characteristics'. Seeing that Kratochwil draws no clear distinction between the two categories, Zehfuss (2002, 98) does not treat these concepts as separate.

In an attempt to "craft analytical tools to study institutional change", Ostrom and Basurto (2011) distinguish norms from rules (see also Crawford and Ostrom 2005). Norms are "prescriptions about actions or outcomes that are not focused primarily on short-term material payoffs to self… While norms can emerge entirely internal to an individual, most norms are acquired in the context of a community in which the individual frequently interacts" (Ostrom and Basurto 2011, 322).

Rules, on the other hand, are "linguistic statements containing prescriptions similar to norms, but rules carry an additional, assigned sanction if forbidden actions are taken and observed by a monitor" (Ostrom and Basurto 2011, 322; Commons 1924). For rules to exist, any particular situation must be linked to a rule-making situation and some kind of monitoring and sanctioning must exist (Crawford and Ostrom 2005; Basurto

et al., 2009). This departs from Axelrod (1986) who sees that norms also entail aspects of sanctions. Nonetheless, Ostrom and Basurto (2011) emphasizes the 'monitoring' aspect as well for rules to exist.

Although it might be useful analytically to consider that norms and rules are not exactly the same, the thesis recognizes that for ASEAN, norms and rules are actually interchangeable and follow the "norms as rules" strand of norm definition. This means that in ASEAN, especially through the ratified ASEAN Charter, members cannot opt out from the norms incorporated in the legally binding instrument such as the Charter. These are their obligations as members to the organization. To the extent that the norms that are codified in the ASEAN Charter are of general applicability, they can be regarded as rules. Even though none of the provisions specify concrete punishments in case of breach, non-compliance, or violation of the Charter, the Charter still states measures for non-compliance guided by norm of sovereignty. Thus, the aspect of 'monitoring and sanctioning' is intact. The Charter gives the Secretary-General the authority to monitor state compliance with ASEAN agreements and report this to the ASEAN Summit. The Secretary-General can 'monitor the compliance with the findings, recommendations or decisions resulting from an ASEAN dispute mechanism, and submit a report to the ASEAN Summit' (ASEAN 2008). The ASEAN leaders then collectively determine whether the breach has occurred and if so, what action should be taken (ASEAN 2008; Collins 2013, 34).

2.52 Norm robustness

The core norms become "practical" when they are common in everyday interstate practices and interactions within the community. They are the best solutions tested by various circumstances during the organisation's life. However, their robustness varies. Legro (1997, 34-35) suggests three criteria to measure the robustness of the norms: specificity, durability, and concordance.

Specificity concerns with the simplicity and clarity of what can or cannot be done. If a norm is clear enough, one need not argue about the content or question its operationalisation before following it. Therefore, on norms that are clear, actors need not engage in truth-seeking behaviour. Durability denotes how long the rules have been in effect and how they weather challenges to their prohibitions. Concordance refers to how widely accepted the rules are in diplomatic discussions and treaties (that is, the degree of intersubjective agreement). Special conditions put in place regarding a norm's acceptance, then, can diminish its robustness. These criteria are useful in judging the varying degree of robustness of norms when they are questioned from time to time. Less robust norms are more likely to be discarded. Where the norms are most robust, violations are not even considered. This can also explain the survival of some core norms in the bargaining process of the Charter. Pro-norms behaviour can be expected

where the norms are more robust since the states do not have to stop to consider their validity before following them.

Due to the non-materialistic nature of norms, the influence of norms can be studied by analysing the norm-induced pattern of behaviour (Björkdahl 2002, 13). Justification for a decision, discussion in order to reach a consensus (often on agreements about the legitimate norms), and a number of micro-socialisation processes, i.e., persuasion, all leave trails of communication that can be studied. History of prohibitions and the related agents' reactions to norm violations are also relevant to the study of norm development. Public efforts to reaffirm a norm can contribute to norm robustness if the norm in question is evolving (Legro 1997, 35). The state behaviour in questioning the norms and providing reasons for sustaining or bypassing them in the negotiation process of the Charter is illuminating to the study of norm legitimization.

2.53 Tacit and explicit rules

As long as the degree of norm robustness is high and the interacting parties share a common background, the rules serving as solutions need not be explicitly formulated, as they are implicitly understood (Kratochwil 1989, 78). In a regional setting where members share a common background, a number of rules go without saying. Rules operating in a certain social setting are a mixture of both implicit and explicit understandings. The tacit or

unspoken rules normally emerge out of settled practices among the members. Helping coordinate interdependent choices among parties, the tacit norms function relatively well based on mutual expectations of the actors. The norms that are foreign to the region generally face difficulties before being explicitly formulated; therefore, they often remain in the background until there are circumstances or actors that question their validity. Under the contestation, they might be either weakened or codified as explicit rules. If the norms weather challenges well and go on to become robust norms after the codification, they will recur constantly. Norm subscribers reiterate them from one negotiated text to another to ensure that they will still be firmly in place.

The emergence of the Charter suggests that an explicit formulation of these formerly tacit rules is needed. With respect to the Charter, ASEAN states intend that it be a binding regional pact that serves 'as a legal and institutional framework of ASEAN to support the realisation of its goals and objectives' through the codification of 'all ASEAN norms, rules, and values' (ASEAN 2005a; Tan 2011). The ASEAN Charter will 'make ASEAN a more rules-based organization… supplemented by a new culture of adherence to rules' and 'grow the culture of taking our obligation seriously' (Koh, Woon, Tan and Chan 2007). Although ASEAN has traditionally been functioning on 'soft institutionalism' which means accepting collective values that are least legally binding (Acharta 2009a, Chanto 2003, 46), the creation of the ASEAN

Charter implies willingness to be collectively bound by the legal instrument. If ASEAN still embraces soft institutionalism, the process would still be in a form of dialogue or unbinding statement rather than a signed, ratified, legally binding Charter.

Formality or formalization of rules provides several advantages. According to Kratochwil (1989, 78-9), "explicit rules allow for greater precision and they may enable actors to break out of a deadlock over the choice between equally desirable ways of cooperating". Communications about tacit understandings become necessary when they are violated or when there are doubts, whenever there may be ambiguity of interpretation or practice. In such situation, actors may either deny the existence of tacit rules and hence any potential violation of a rule, or acknowledge a rule but argue that it was not applicable or that their deviant behaviour should be excused on specific grounds (Zehfuss 2002, 99). For example, non-interference might be questioned or there might be norm-deviant behaviour, but this in turn raised the needs for communications and to reconsider the norm validity and therefore, the need to formulate explicit rules. If members in a community deem the norm outdated, it would not be codified into explicit rules in the form of a provision in the ASEAN Charter. In the ASEAN case, implicit norms/rules are codified into explicit norms/rules when they are ratified by all member countries in legally binding instrument. The act put the norm in a legal framework, with 'monitoring and sanctioning' mechanism

in place. Hence, the norm-deviating behaviour will now be more difficult. The 'sanction' might not be as 'hard' as the punishment in other regional organizations, with expulsion and suspension or fines, but we have to bear in mind that ASEAN normative environment also constitute the drafters' decisions until they rest the ultimatum with the leaders' Summit. It took ASEAN almost ten years after its establishment to formulate its first legally binding treaty - the Treaty of Amity and Cooperation in Southeast Asia. Although several norms have been embedded there, it lacks 'monitoring and sanctioning' aspect unlike the ASEAN Charter.

Apart from the differences in history or culture, other conditions which make an explicit formulation necessary according to Kratochwil (1989, 79) include 1) the imprecision of tacit rules; 2) the compelling character of the coordination; and 3) the solution (based on precedents) is likely to engender further debate. In other words, explicit norms or rules are more robust than implicit ones, and less robust norms or rules with less precision will often invoke the need to be codified explicitly more than robust ones (Kratochwil 1989, 78-79). During the transition to become explicit norms, they are also vulnerable to being discarded. The decision to discard some norms and keep others, again, might be influenced by a set of shared norms providing common background for the negotiators or even material gains (Thakur 2006, 279). The extent to which norms factor in actors' choices

would become clearer when we look at norms' roles in the first-, second-, and third-party contexts.

2.54 Norms in the first-, second-, and third-party contexts

Referring to Franck (1968), Kratochwil (1989, 34-35) clarifies the first-, second-, and third-party contexts (or laws) where norms can influence the actors' choices. The first party context is characterized by the issuance of commands (which may or may not have generalized character). If they are situation-specific, then they are imperatives or commands. These are issued by one party to the other(s). The second-party context is characterized by "strategic" behaviour among the parties, i.e., by the recognition of interdependence of decision-making, and – in many circumstances – the existence of "mixed motives", or even the perception of common interest. In the second-party context, rules and norms can, but need not, figure prominently in the actors' choices since the bargaining between them might include coercive moves. The third-party context covers the cases in which a third party applies preexisting rules to a given controversy in order either to mediate or settle the issues authoritatively.

Franck distinguishes the three by the number of the parties involved, but Kratochwil (1989, 36) sees that it is more appropriate to distinguish them according to the type of guidance these rules and norms provide in the reasoning process. Thus, it is not necessarily the case that the numbers of

parties must correspond to the types of contexts. Barkun (1968) suggests that the recognized norms can function as "implicit" third parties; therefore, the presence of actual individuals may not be necessary for a third-party context. In the case of bilateral bargaining, parties which have agreed to let their decisions be directed by recognized norms can be considered as achieving the third-party context. In the same way, the second-party context need not refer to the situation where there are only two actors bargaining.

The coercive moves in the second-party context are similar to the (situation-specific) threats, but they are not exactly imperatives or commands in the first-party context because they lack the imposed character. "Breaking the other(s)' will" in order to arrive at a decision was necessary in the second-party context. However, norms can still play a role in this context by governing the choices of actors when they face various possibilities arising from pending decisions. They do not, after all, have to follow the commands without any choice as in the first-party context. In other words, strategic action can be rule-governed and can sometimes lead to rule-guided behaviour. As coercion is still an option, the actors have no obligation to exhibit norm-guided behaviour 'as a rule' in this context.

Norms will be playing the most significant role in the third-party context where parties look to settle the controversies by referring to established norms and the practices derived from them. Kratochwil (1989)

also proposes other normative criteria for a third-party context: the parties must grant to each other equal standing and forgo attacks – either verbal or physical – aimed at breaking each other's will; they will therefore have to argue "the merits" of their case and, in doing so, their argument must be cast in terms of universalizable rules. Kratochwil's criteria for a third-party context are very similar to the conditions presupposing a Habermasian communicative process, which means that norms will factor the most in actors' decisions if power recedes into the background.

2.55 Norm diffusion

The norm diffusion literature in constructivist IR is quite massive. The literature can be grouped according to the emphasis on the factors most relevant to normative change. First, a number of studies focus on the universality of the "good" norms in question which should be learned by local actors and the role of transnational non-state actors in promoting them (Finnemore 1993; Keck and Sikkink 1998; Klotz 1995a; Nadelmann 1990; Price 1988; Risse, Ropp, and Sikkink 1999). The actors in the process of norm socialization are relatively passive while the role of transnational norm promoter is highlighted. This kind of literature focusing on the international system level is termed the "first wave" in the norm literature (Acharya 2009b, 9). Second, some studies referred to as the the "second wave" (Acharya 2009b, 11; Cortell and Davis, Jr. 2000, 66) are more concerned with domestic

structures and agents in inducing normative change when faced with international norms (Checkel 1997b; Cortell and Davis, Jr. 1996; Gurowitz 1999; Klotz 1995b; Risse-Kappen 1994). International norm entrepreneurs have to find domestic partners in the target state in order to make change possible. Domestic political processes are important in second wave norm studies because they condition access to information and political arena and thus prioritize some actors over others. However, this perspective can still be static since it emphasizes the historically-derived factors that facilitate or impede local actors learning international norms. Therefore, it cannot shed light on how local actors reconstruct ideas to make them fit their circumstances. This is similar to historical institutionalism (Collier and Collier 1991; Gourevitch 1999; Pierson and Skocpol 2002): actors constrained by their prior actions find themselves in the self-reinforcing feedback process where particular patterns may recur (termed path dependence). Normative change is thus the result of custom or tradition, leaving little space for voluntary acts on the part of local actors.

Dissatisfied with static perspectives of the role of local actors, some studies focus instead on the autonomy of "norm takers" (Acharya 2009b). The second wave norm literature suggests that norm acceptance will be high if there is congruence between external and internal beliefs; however, it does not see that the local actors can also reinterpret the external norm. The role of local actors in reinterpreting, reconstructing, and legitimizing the ideas by

making them fit their current shared ideas and circumstances is – according to this approach – more important than external norms entrepreneurs' socializing role. The process whereby local actors attempt to build the congruence between the local norms and external ones is termed "constitutive localization" (Acharya 2009b, 14). Failed constitutive localization may result in resistance or rejection of external norms.

Constitutive localization departs from the first and second wave conceptualization of norm diffusion mainly in two ways. Firstly, it emphasizes the active construction of foreign ideas on the part of local actors. They are not "trapped" in their previous commitments and actions; therefore, actors consciously reinterpret and reconstruct norms. Secondly, local actors are not seen as novices who should be inducted into the norms of a given community since it is not the case that international norms are seen as morally superior than regional/local norms. Rather than focusing only on external norm promoters, the thesis will draw on the concept of empowering local agents and the importance of "cognitive prior" in conditioning actors' receptivity to new norms. The cognitive prior is derived from cultural norms, historical patterns of interstate interactions, ideas, or institutionalized norms. In negotiating the ASEAN Charter, the drafters did not only deal with traditional diplomatic norms in the region but also external norms struggling to be institutionalized. Norm diffusion is most relevant to the study when we look at how the drafters argued or bargained contested norm in a social

setting, especially if the norm in question used to be perceived as foreign. If a norm is successfully 'localized' prior to the negotiation, it will be less controversial and can be more easily codified. The social setting, i.e. an international institution or forum where actors operate is then crucial as a normative context conditioning the negotiation process and norm diffusion.

2.56 International institution as social setting and norm entrepreneurs

Institutions are often defined as related closely to norms and rules by both neo-liberal institutionalists and constructivists, the former often emphasizes the prescriptive role of institutions. For Goertz (2003), institutions are structures of norms. An institution is, as a matter of fact, its norms and rules. Ostrom (1991) also sees institutions as sets of working rules that are used to determine who is eligible to make decisions in some arena, what actions are allowed or constrained, and what procedures must be followed, *inter alia*. March and Olsen (1998) maintains that an institution is a relatively large collection of practices and rules defining appropriate behaviour of specific groups of actors in specific situations. Kratochwil and Ruggie (1986) see that institutions entail convergence of actors' expectations. The interactions among actors within an institution can demonstrate how norms and ideas shape actors' decisions even when other considerations, i.e., perceived common interests, are present. However, institutions do not generate discourse in quasi-automatic fashion but should rather be

understood as mechanisms fostering trust, stabilizing expectations among participants, offering shared normative background understandings and procedural mechanisms which allow for normative co-ordination action plans (Goodin 1996).

Although institutionalists study how rules and norms can constrain state behaviour, they are still divided regarding the extent to which social interactions can change states' interests, identities and preferences. The preferences of the actors are fixed, rendering the social context in which the actors operate undertheorized. For contractual institutionalists, institutions are rarely treated as social environments where group interactions create social pressures, incentives, and environments conducive to persuasion and/or pro-social conformity (Johnston 1999, 289).

The influence of ideas on state policy is mediated by structure and individual agents. Internationally, a changing external environment helps create windows of opportunity through which policy entrepreneurs – the carriers of new ideas – jump (Checkel 1997b). Policy entrepreneurs are usually international non-governmental organizations proposing new information be considered by decision-makers (Finnemore and Sikkink 1998), but they can also be officials who are socialized and desire to convince their peers. Based on Schneider and Teske's definition, entrepreneurs are individuals who change the direction and flow of politics (1992, 737). The

literature suggests that successful entrepreneurs possess one or more of the following: expertise and knowledge in their given field; substantial negotiating skills; persistence; and connections to relevant political actors. Entrepreneurs can be clever, persistent, and politically well connected, and they can offer solutions to many problems. But their goal of changing the direction and flow of politics will be extraordinarily difficult unless elites in positions of political power also recognize that such problems exist. In other words, they have to argue to convince their targets so that they will share common perceptions of problems. Then, the local actors also have active roles in considering and reinterpreting or reconstructing the norms so that they can fit in the region. If an entrepreneur carries ideas that are at variance with core aspects of the organization's ideology, his or her task will be doubly difficult (Checkel 1997, 10). In other words, local actors will find it difficult to build the congruence with new norms. Johnston (2003) also suggests similarly that the actor should possess few prior, ingrained attitudes that are inconsistent with the counterattitudinal message to facilitate norms acceptance.

The thesis will treat international institutions as "social environments" of which social norms are embedded and social action takes place. Members in an institutional social setting might act differently from when they are interacting with one another outside the institutional context. In some instances, actors in the process of negotiation may attempt to construct

features they deem will facilitate reaching mutual agreement. In negotiating the Charter, the drafters must resolve conflicting goals through communication guided by norms. Attempting to reach a compromise or better understanding regarding contested course of action, they mainly employ two types of communication: arguing and/or bargaining. The concepts thus merit a special attention.

2.6 Arguing and bargaining in multilateral negotiations

The debate between arguing and bargaining emanates from German academic circles where the idea of Habermasian communicative action was introduced, suggesting that actors are prepared to change their ideas by the power of better arguments (Habermas 1984; 1992). In the beginning the debate used to focus on whether communicative action actually takes place, thereby distinguishing strategic from communicative action by separating the logic of action. Later, empirical evidence suggested that arguing and bargaining coexisted in negotiations (Elgström and Jönsson 2000; Holzinger 2004). Actors who intend to employ strategic bargaining often argue to protect their initial standpoints and have to refer to a shared normative framework. Before entering the negotiations, they must come to share basic assumptions about the deep structure of their interaction: who are legitimate players and what is a legitimate value to be bargained over

(Johnston 2001, 493)? Guided by the norm of state sovereignty, legitimate players are generally national delegates. However, this can include other non-state actors if the social setting where the negotiations take place permit their participation. Müller (2004) agrees when he suggests that the pursuit of self-interest is legitimate as it is guided by two different sets of norms — the first set is substantial and defines which self-interests count as appropriate in a negotiation setting, and which type of self-interest is to be excluded. For example, actors agree without having to negotiate again that it is not appropriate or legitimate to ask for the territory of another country, so they will not bother to make that seemingly unreasonable request in the first place. In other words, the pursuit of self-interest is also governed by norms imbued in a particular social environment. Critical constructivism, in particular, is interested in what Weldes (1998, 223) calls a 'mode of reasoning'. This phrase is intended to suggest the limitations of conceiving of rationality merely as a singular and formal mechanism of choice by highlighting the multiplicity of forms of reasoning that are available to actors, by emphasizing that rationality is an active process or set of practices through which meaning is produced, and by noting the intersubjective rather than individual character of reasoning practices. Social communication is important to constructivist analysis precisely because the process over content and conception of social reality as created in communication rather than through the interaction of pre-existing units is highlighted (Albert,

Kessler, and Stetter 2008). By engaging in a negotiation, by employing mode of reasoning resulting in an act of arguing and/or bargaining, the actors depict and create representations of the world. The question is, if actors still argue when they bargain, how could we differentiate the two categories?

In this regard, Naurin (2007), following Barry's typology of different types of social decision procedure (Barry 1965), further distinguishes arguing and bargaining into 1) cooperative arguing; 2) competitive arguing; 3) cooperative bargaining; and 4) competitive bargaining. Many other scholars deal with the conceptual distinction of modes of communication (Deitelhoff and Müller 2005; Panke 2006; Ulbert and Risse 2005). For instance, Deitelhoff and Müller (2005) distinguish three types of communications: 1) bargaining; 2) rhetorical action (which can be fitted into Naurin's competitive arguing); and 3) arguing. However, Naurin's work by far manages to best take motivations that define arguing and bargaining as types of social decision procedures into account, emphasizing the difference between cooperative behaviour and arguing which is often mistaken to be the same. To study bargaining without distinguishing it further can be misleading since it oversimplifies methods actors use to achieve their goals. Even though the goal of bargaining is to maximize one's own wants, actors do not always do that at the cost of others. They can choose to maximize their interests through the want-satisfaction of others if that will lead to better solutions in the long run.

2.61 Arguing and communicative action

Habermas (1984, 86) defined arguing as

the interaction of at least two subjects capable of speech and action who… seek to reach an understanding about their action situation and their plans of action in order to coordinate their actions by way of agreement.

Habermas himself says little that is concerned directly with international relations, except when he discussed Kant's perpetual peace (Habermas 1998). He sees the gradual development of human rights and international law as a "cosmopolitan transformation of the state of nature among states into a legal order" (Habermas 1998, 149). Habermas' works are vast and complex, but his ideas of argumentation along with public sphere have been of particular interest to international relations scholars (Crawford 2009). Indeed, Adler (2006, 124) maintains that "we can find added value in constructivist theories that build on Habermas' theory of communicative action".

Arguing implies that actors challenge the validity claims inherent in any causal or normative statement and seek a communicative consensus about their understanding of a situation as well as justifications for the principles and norms guiding their action (Risse and Kleine 2009). It can be done by providing sound reasons concerning various options on the table in

terms of normative rightness and/or factual validity. Successful argumentation results in the change of mind of the other party.

Unlike bargaining, in communicative action power exercise recedes into the background and actors assume that preferences can be changed, especially their own. It is not necessary; however, that a valid consensus can only be achieved under conditions of the ideal speech situation. For Habermas (1992), strategic elements in the dialogue can actually be distinguished from strategic actions since they are indeed under the presuppositions of communicative action. However, in a "true" communicative action, Habermas requires sincerity from parties involved. In such cases, arguments are not used strategically to further self-interested goals. Interactions are 'communicative' when

> The participants coordinate their plans of action consensually, with the agreement reached at any point being evaluated in terms of the intersubjective recognition of validity claims (Habermas 1990, 58).

This leads Naurin (2007) to further distinguish between cooperative and competitive arguing. Cooperative arguing is the "true" form of arguing in a Habermasian sense, whereas competitive arguing is known as rhetorical action. Schimmelfennig terms rhetorical action as "the strategic use and exchange of arguments to persuade other actors to act according to one's preferences" (2003, 5). In his study focusing on why the Western European states agreed to the expansion of the EU and NATO, he shows that the liberal rules and values constituting the Western international community's identity

and the organizations' rules influenced the enlargement decisions through rhetorical action. The Western European countries were constrained by their previous commitments, and could not go back on their words for fear of damage to their own reputation. In rhetorical action, actors merely use arguments in a strategic mode in order to justify themselves and persuade others, but they are not prepared to change their own beliefs or reach common understanding (Risse 2000, 8; Naurin 2007, 562). They pursue their goals while anticipating and taking into account how others might react to their actions, but they do not aim to understand the claims of others. Apart from pandering and demagoguery, the mechanism at work is shaming the target into abiding by their previous commitments for fear of being inconsistent. Arguing along this line means that the rhetorical actor may only have to reinforce the audience's former beliefs or shame them into cooperation in order to persuade other of one's preferred course of action without actually convincing them.

Arguing can also increase the influence of the less powerful. Lacking material resources and usually remaining in inferior position, these actors have to rely on the power of the better argument should they hope to convince others. When the act of following a norm is not automatic (the norms are not yet "taken for granted"), the actors have to stop to reason which norm should apply. It is in this situation that Risse (2000, 6) – building on Habermas' communicative rationality – argues that social constructivism

encompasses not only the "logic of appropriateness" but also the "logic of truth seeking or arguing" and terms the process "argumentative rationality". In a collective communicative process, actors will try to figure out 1) whether their assumptions about the world are correct; or 2) whether norms of appropriate behaviour can be justified, and which norms apply under given circumstances (Risse 2000; Risse and Kleine 2009, 5). Framing this under critical constructivist framework, we can say that norms are what actors intersubjectively make of them under a shared framework of common understanding.

Argumentative rationality in the Habermasian sense is based on three presuppositions:

- *the actor's ability to empathize*

  According to Zartman and Berman (1982, 17), empathy involves the crucial ability to understand the other party's point of view, if only in order to counter it more effectively. It encompasses both emotional/affective (Eisenberg and Strayer 1987) and cognitive process (Mead 1934). Habermas (1993) refers to empathy as "the ability to project oneself across cultural distances into alien and at first sight incomprehensible conditions of life, behavioral predispositions, and interpretive perspectives". Empathy is a necessary prerequisite for an actor aiming to validate a moral

norm. They have to be able to take the perspective of other participants in discussing whether a proposed norm is fair to all. Research has shown that empathy also facilitates helping (Batson 1991; Stephan and Finlay 1999). In the process of argumentative rationality in particular, actors with empathy enter the negotiation prepared to change their ideas for the sake of better arguments.

- *a "common lifeworld" shared among actors*

  First used by Edmund Husserl (1970) to signify (in a very positivist sense) intersubjective experiences acquired by men for their common life, the concept of lifeworld was developed further by Alfred Schütz and Thomas Luckmann (1974) to mean the framework linking an individual's life to the society. It occupies central position in Habermas' theory of communicative action (1992). The theory of communicative action offers 'a much needed microfundation of social construcivism, in so far as it stresses the collective communicative process of interpretation through which intersubjective structures of meaning are produced and reproduced, and the process through which the agents themselves – their identities, interests, and shared understandings of meaningful behaviour – are continuously produced and reproduced' (Risse 1997). It supplements the 'void' social constructivism is often accused of lacking in methodology.

Lifeworld or *lebenswelt* can be perceived as a culturally transmitted interpretive patterns consisting of a shared culture, a common system of norms and rules perceived as legitimate, and the social identity of actors being capable of communicating and acting. It is an intersubjectively shared, collective life context comprising the totality of interpretations which are presupposed as background knowledge by members of society. Habermas (1990) also suggests that 'societies reproduce themselves by continuing the interpretive acts of proceeding generations in which members intersubjectively exchange world orientations and situational definitions stored up in the lifeworld.' This forms a common context where agents can obtain agreement about problematised issues since the contested validity claim (which essentially points to a problematic part of the lifeworld) is evaluated with reference to shared norms and principles (Deitelhoff and Müller 2005). Common lifeworld provides arguing actors with a repertoire of collective understandings to which they can refer when making truth claims (Risse 2003). It was long argued that international politics lack a shared lifeworld due to the anarchic nature of the system; however, international law-making usually takes place among diplomats who often share socialization history and common understanding about how things 'work' in a

particular venue. This is especially true in the ASEAN case, where the ASEAN Way provides a cultural and historical backdrop from which negotiators draw shared norms and principles. Since the concept of lifeworld would provide an important backdrop to the analysis of ASEAN negotiation in following chapters, it needs to be explored in more detail.

The concept of lifeworld can provide an insightful framework for an analysis of ASEAN negotiating context particularly because it goes beyond a set of regional norms governing actors' behaviours. Lifeworld defines who the actors are, what they value about themselves, what they believe in, which behaviour is deemed as offensive, what they aspire to, what they desire, what they are willing to sacrifice to which ends, and so forth. To participate in a lifeworld (and the lifeworld is nothing but mutual participation) is to share a common sense of who "we" are. (Frank 2000). ASEAN has been emphasizing that the ASEAN Way unifies and holds ASEAN members together. It is a regional solution to a regional problem (Loke 2005; Sukma 2010). Although in most instances it is manifested as a set of regional norms, it goes beyond that. It is a way of life. It defines how the actors perceive themselves and others and how they expect others to behave. It is true that some parts of the lifeworld might be questioned, resulting in some

behaviours deviating from the pattern, i.e. the norm of interference. However, if asked what the cardinal norms of ASEAN should be and what should be codified into the ASEAN Charter, the actors still agree on the validity claim of non-interference (Summary Record of the First Meeting). It is who they are and who they still want to be: countries that avoid intervening into domestic affairs of others. It is embedded in their lifeworld.

Defined as "implicit knowledge", lifeworld "remains in the back of communicative participants" (Dallmayr 1984). It is the social background to communicative action (although communicative action needs not occur every time the negotiating conditions or environment permit). Lifeworld is also conceptualized by Habermas (1990) as a "holistically structured knowledge", implying the wholeness of its existence in the shared understanding of actors in a social group.

For Habermas (1990, 103), "practical discourses depend on content brought to them from outside. It would be utterly pointless to engage in a practical discourse without a horizon provided by the lifeworld of a specific social group and without real conflicts in a concrete situation in which the actors consider it incumbent on them to reach a consensual means of regulating some controversial social matter". Communicative action is a

rational action. The occasion for the argument will be motivated by the need to resolve a concrete situation and the content of the argument will also be shaped by the lifeworld (Habermas 1990, 135).

Lifeworld needs affirmation and reproduction. According to Habermas (1987), the lifeworld is divided into culture, society, and person aspect. The cultural reproduction of the lifeworld produces a store of valid knowledge as Habermas (1992) contends "in coming to an understanding of one another about their situation, participants in interaction stand in a cultural tradition that they at once use and renew". Habermas (1987) calls culture "the store of knowledge from which those engaged in communicative action draw interpretations susceptible of consensus as they come to understanding about something in the world". The cultural tradition shared by a community is constitutive of the lifeworld which the individual member finds already interpreted, and the processes of reaching understanding upon which the lifeworld is centered require a cultural tradition across the whole spectrum (Habermas 1992, 327).

There is also a social dimension to lifeworld, which provides solidarity. Participants who coordinate their actions by way of

intersubjectively recognising criticizable validity claims are at once relying on membership in social groups and strengthening the integration of those same groups (Habermas 1992). In another words, members employ their positions in the groups to engage in the debate of the validity claims of the norm in question and by doing that further solidarize the "we" feeling within the group since Habermas (1987) sees society (as a component of lifeworld) as the legitimate orders from which those engaged in communicative action gather a solidarity, based on belonging to groups as they enter into interpersonal relationships with one another. Moreover, Habermas (1992) sees that newly arising situations can be connected up with existing conditions in the world. This takes care of co-ordination of action by means of legitimately regulated interpersonal relationships and lends constancy to the identity of groups. Engaging in argumentation activity reaffirms the norms in question as well as the identity of the participants sharing the same lifeworld.

The socialisation process of the members can "secure the acquisition of generalized capacities for action for future generations and takes care of harmonizing individual life histories and collective life forms" (Habermas 1992). In international negotiations, we might expect to see negotiators with shared

lifeworld existing within the same social structure carry on the same pattern or 'rules of the game' of the negotiation from previous negotiators, given that the validity claims are not questioned[4].

Outhwaite (1996) sees that Habermas uses lifeworld to refer to relatively informal ways of life as well as to a cognitive 'horizon of meaning'. He contends that the different status of these two senses has given rise to some misunderstandings in the reception of Habermas' work (Outhwaite 1996, 369). In the ASEAN context, the thesis employs the concept of lifeworld which has manifested in a shared understanding of the ASEAN Way as the way the actors define and perceive themselves as well as others, drawing on their shared understanding. Thus, the lifeworld in this context incorporates both the 'way of life' and the 'horizon of meaning' whereby the actors base their shared understanding upon. Communicative actors always move within the horizon of their lifeworld (Habermas 1990). According to Lose (2001, 185), Habermas attributes to the lifeworld a contextual as well as a

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[4] Habermas goes on to discuss the 'uncoupling' of social integration in the lifeworld and the system, but this is beyond the context of the thesis and adds little contribution to the subject at hand. The thesis employs the concept of the lifeworld, a culturally transmitted interpretive patterns consisting of a shared culture, a common system of norms and rules perceived as legitimate, and the social identity of actors, along with the concept of the artificial lifeworld that is not originally born within the group and thus must be created by external actors in order to extend the normative space for in-group actors to debate the validity claim of the norm in question.

constitutive function. Contextually, the lifeworld functions as an implicit horizon, a stock of understandings of the elements of reality. Constitutively, an acting agent is constituted by the structures of meaning embedded in the lifeworld, that is, in the acquired understandings that are the resource that one has to apply in order to conduct meaningful action, including speech acts.

For some critics, the definition of lifeworld is still not clear-cut. Lifeworld is inherently subjective, leading Hardy (2014) to conclude that the use of conceptual term as a foundational piece of his theory weakens Harbermas' own arguments. However, subjecting communicative action to interpretation which is rooted in the subjective nature of the lifeworld highlights the role of the researcher as the subjective interpreter along the critical constructivist line. It implies that changes can be made via argumentation. Habermas' 'social constructivist' theory (Lose 2001, 185) does not build on a utopian understanding of the agent as an altruistic person (unlike Wendt's 'collective identity' discussed above in 2.4 where the 'Self' and 'Other' is blurred, leading to altruistic behaviour) who suppresses all needs and interests in the name of the common good. Habermas' social constructivist dynamic rests on the assumption of an agent who has the ability to critically reflect on her own understandings of reality, interests,

preferences, and maxims of behaviour; to estimate the consequences for other actors should she decide to pursue her own interests; and to participate in a discourse with others regarding the interpretation of interests and norms for the coordination of behaviour and interaction (Benhabib 1992, 71-72; Baynes 1992, 5-6). The actors "will always have the reflective capacity to change intersubjective structures of understandings through a discourse in which validity claims can be raised" (Lose 2001, 185). Thus, employing the concept of lifeworld both highlights the role and capacity of the actors studied as well as the researchers towards the potential change in a reflexive way. Common lifeworld enables actors to engage in meaningful way, through which they can reach constructed meaning of a contested norm.

If we recognize the concept of lifeworld as implicit, background knowledge by which negotiators or actors rely upon in a setting, what will happen if that stock of knowledge in a particular community does not include some norms? What if some newer, internationally recognized, widely accepted norms are not originally found in the group's 'way of life'? What if the communication gets stuck and cannot go anywhere? This leads me to introduce the concept of the 'artificial lifeworld' popularized in

international relations by Harald Müller. Müller (1994) sparked the debate in German international relations realm by questioning rationalist bargaining. Artificial lifeworld is where another shared lifeworld must be created in order for the negotiation to continue. It has to be created if the existing lifeworld does not permit normative space for the ongoing debate. Müller (1994) raises an example where an artificial lifeworld emerged during the negotiations between Israelis and Palestinians in Oslo: "Whenever the conversation got stuck, negotiators sat on the floor and started playing with the Norwegian foreign minister's four-year-old son, thus pledging symbolic allegiance to fundamental elements of a shared lifeworld (fatherhood, duties and care towards children, and the threat to private life if negotiations failed). Diplomacy is generally conducted in an artificial lifeworld, which provides a substantial background of shared rituals" (Müller 2007, 210). Actors facing a breakdown in cooperation strive to create artificial lifeworld features (Deitelhoff and Müller 2005, 173).

What if the actors in the negotiation setting are unwilling or unable to create an artificial lifeworld? Non-state actors could come in to fill this void. Deitelhoff (2009) contends that where the shared lifeworld is 'thin', it is possible to increase the degree of lifeworld certainties, i.e. the level of mutual trust. Norm entrepreneurs such

as NGOs or epistemic communities have the power of manipulating the discursive setting in which negotiations take place. By opening up lifeworld connections and generating publicity, they support discursive interactions among states (Deitelhoff 2009, 43-5). The NGOs have to employ basic norms and principles that can serve as a universally accepted point of reference for new arguments. They have to appeal to human rights and human-centric norms which are already widely recognized in the international community.

In the ASEAN context, especially during the drafting of the ASEAN Charter, it is argued that the negotiation setting is usually 'closed'. The decision-making was mainly made by the delegates consulting with their policy-makers or leaders. The delegates met with the NGOs and the CSOs during the process of the drafting. Even though there is no obligation for the delegates to incorporate the NGOs and CSOs' opinions into the Charter, the NGOs and CSOs consistent activities which have been going on since the previous decade within the region have created an artificial lifeworld whereby the officials could have normative space to debate human-centric norms. Its 'power' in influencing the discursive setting of the negotiation cannot simply be measured and discarded in a single meeting. Their collective efforts open up normative space where

the existing state-centric lifeworld does not permit before, creating an artificial lifeworld where the negotiation could go on. Where negotiation objectives can be related to basic human rights, notably protection against death and suffering, it is hard for opposing parties to withstand arguments of this kind (Deitelhoff and Müller 2005, 173). ASEAN used to be a very state-centric organization and did not incorporate human rights formally in any of their documents. A lot has changed after 1993 where ASEAN along with other states in Asia-Pacific had to consider human rights norm seriously during the Vienna Conference. The reluctance by the governments to embrace universality of human rights (it was not in their lifeworld – being human rights champion in all cases notwithstanding their 'cultural and historical background' was not their identity. It was not 'who they are' at that time) spurred the NGOs to issue their own Declaration emphasizing opposite viewpoint from the governments, that human rights must be recognized in whole. The norm is universal and indivisible. ASEAN in 2007 cannot simply ditch human centric norms (crafted as an artificial lifeworld by non-state actors over the years) and must reconsider its validity claims during the negotiation process. It might not be necessary if this artificial lifeworld does not exist, because it will be beyond their cognitive 'horizon of meaning'.

Based on the critical constructivist framework, social facts depend on a constructed consensus about meaning. A norms validity claim actors debate within a shared lifeworld also derive meaning from that constructed consensus. Non-state actors, supplying an artificial lifeworld for the negotiations to draw upon in a communication, help proceed the talks regarding human-centric norms. The ASEAN Way as a shared lifeworld will be further discussed in 3.3 and the role of non-state actors in supplementing ASEAN with an artificial lifeworld will be discussed in 4.4 when we turn to the incorporation of human rights provisions into the ASEAN Charter.

- *actors have to recognize each other as equals and have equal access to the discourse.*

  In this sense, relationships of power, force, and coercion are assumed to recede into the background when argumentative consensus is sought. In other words, the institutional setting should be as close as possible to the ideal speech situation in order to allow for communicative action. Habermas (1982) by no means insists that this "ideal speech" situation is a perfect, Utopian goal. It is used rather to highlight the imperfections of actual communication which may be distorted by power relations.

These presuppositions; nonetheless, are useful in assessing the conditions conducive to the use of communicative action in a certain negotiation. They form the basis where actors can more easily enter into communicative action mode, but they do not always guarantee that actors will not also employ competitive arguing or rhetorical action. We still need to go back to the actors' motivations: do they intend to change the other parties' minds by convincing them of the factual/moral rightness of their arguments or do they aim only to persuade others of their own preferred course of action?

2.62 Bargaining and strategic action

Bargaining is characterized by demands, concessions, or rejections, which can additionally be linked to a threat or to reasons that are related to the subjective world (Panke 2006, 362). Bargaining actors assess the moves in negotiations based on utility functions, seeking to sustain their own interests. The communication is focused on reaching a point where the involved parties can agree, but includes no effort at changing the minds of the others about what they want or what they perceive to be right (Naurin 2007, 561). Along this line, it is not surprising that bargaining is linked to the logic of expected consequences present in strategic action because interests are assumed to be fixed in a short term. Compromise is usually a result of

strategic bargaining, rendering the outcome the lowest common denominator among parties.

It is possible to distinguish bargaining with reference to a cooperative and competitive form (Naurin 2007, 562). Cooperative bargaining is known in negotiation theory as integrative (or win-win) bargaining. This involves promises and solutions-seeking after comparing and mating actors' preferences in an attempt to satisfy all participants. The goal of integrative bargaining is not to transform the existing preferences, but to clarify them to find a good compromise. On the other hand, actors who engage in competitive bargaining or distributive bargaining will try to pressure the other party to make concessions and comply with their demands. Competitive bargaining process involves manipulating information about the utilities and costs of policy alternatives and using threats (Naurin 2007, 563). It depends on strategic management of information which can cause distrust among actors, believing they receive incomplete or even wrong information. In communicative action, by contrast, actors need to trust one another, i.e. to believe that his or her intention is meant as it is expressed. This will directly affect the social environment where the negotiations take place: actors who favour the use of distributive bargaining will withhold important information and form allies within the setting while actors who see benefits in using integrative bargaining will be more willing to exchange the information.

The following table demonstrates types of arguing and bargaining and the modes of communication used to achieve different goals.

Table 1 Types of arguing and bargaining

	Arguing	Bargaining
Cooperative	Deliberation	*Integrative Bargaining*
	Problem: Disagreement over course of action due to partiality of views, differing frames of reference.	*Problem*: Disagreement over course of action, caused by conflicting wants (self-regarding, other-regarding or ideal-regarding).
	Mode: Dialogue, elaborate each other's view, explore each other's understanding of empirical facts and normative principles.	*Mode*: Clarify wants of other and self, searching for optimal compromise solution, trading via issue-linkages, log-rolling, "I Owe You".
	Goal: Common and better understanding of right course of action	*Goal*: To maximize own wants (via the want-satisfaction also of others).
Competitive	Rhetorical Action	Distributive Bargaining
	Problem: Disagreement over course of action, caused by lack of info or other's wrong belief.	*Problem*: Disagreement over course of action, caused by conflicting wants (self-regarding, other-regarding or ideal-regarding
	Mode: Monologue, "rhetorical action", plebiscitary reason	*Mode*: Signaling commitments, pressuring via threats and demands, giving concessions.
	Goal: Persuade other of one's preferred course of action	*Goal*: To maximize own wants (at the cost of others).

Source: Naurin, Daniel. 2007. Why give reason? Measuring arguing and bargaining in survey research. *Swiss Political Science Review* 13 (4): 559-75, p. 563.

2.63   Conceptual   operationalisation: Norm   codification   and
legitimization in multilateral negotiations

The contested norms and practices can be legitimized or delegitimized through different types of arguing and bargaining as clarified above. Framing this in a critical constructivist framework, contested norms derive their meaning from the actors constituting them in a particular context. After the contestation process, a 'legitimized' norm and practice would be codified in the Charter while a 'delegitimized' one would not find its way into the text. This does not mean that all non-codified norms are delegitimized. They could remain in the background as tacit rules since they were not questioned. Exploring the types of communication through which norms were codified provides insights to how the key provisions of the Charter were formed. Is the provision regarding human rights body there because of the parties were convinced that it was a 'right' decision (cooperative arguing) or because it was imposed (competitive bargaining)? Is it there because of rhetorics (competitive arguing) or because it was an optimal compromise (cooperative bargaining) at that time? How has the communication evolved? The negotiating process can begin with rhetorical exchanges then evolve towards true reasoning (Risse 2000, 9). The mode of communication affects norm legitimization because a norm legitimized through cooperative arguing tends to be more enduring than other types. It is, after all, commonly accepted after careful consideration of all the views by those at stake which also

enhances its legitimacy. Furthermore, communicative action or cooperative arguing helps reproduce the lifeworld (Habermas 1990) which will remain parts of the actors' shared understanding as well as how they define themselves and others. Norm true advocacy "should not rely on promises of rewards and benefits, not on shaming and arm-twisting (of bargaining mode) nor overtly or covertly coercion to ensure compliance" (Björkdahl 2006, 8). Indeed, "coercive approaches... do not lead to authentic socialization" (Björkdahl 2006, 9). Norm undergoing the contestation process where communicative action takes place, where the negotiators have a chance to collectively weigh and debate its validity claims without any use of threat or force induces true acceptance of the norm and thus bolsters its endurance. Preference shifts promoted by suasion should be more enduring than those promoted by incentives and strategic calculation. With the latter, newly adopted behaviours can be discarded once incentive structures change; with the former, they will show greater stickiness, as actors have begun to internalize new values (Checkel 2005, 813). Adoption of norms according to a logic of appropriateness is preferred to adoption according to a logic of consequentiality, even if the latter is expected to lead to the former (Jonasson 2013, 13). If actors in a negotiation perceive that the constructed meaning of the norm reached through consensus is produced collectively, with more or less equal participation, they are more apt to embrace the norm.

It is thus important to distinguish cooperative bargaining from cooperative arguing. A highly cooperative attitude from the parties does not in itself indicate whether they are arguing or bargaining (Naurin 2007, 564). In an institutional setting where consensus-seeking is commonplace such as ASEAN, it should not be confused with true arguing.

We can also assess the social environment of the negotiation setting to conclude whether strategic or communicative action is currently at work. The first-, second-, and third-party contexts outlined earlier in this chapter come in useful. Normally, the Charter was negotiated in the third-party context where preexisting rules are applied to a given conflict and the parties adhere to the principle of equal standing. However, in the course of the negotiation, the first- and second-party context intermittently conditioned the negotiating outcomes: when some delegates tried to direct or command the meeting and exercise strategic behaviour where coercive moves were used. The second-party context can thus witness cooperative bargaining, rhetorical action, or distributive bargaining. Moreover, when there was unresolved disagreement, the Members willingly seek the second-party context (mandate or decisions from the Foreign Ministers) to authoritatively settle the controversy. This is quite unique to the setting in the drafting process. However, it also shows that negotiation in the third-party context already collapsed in that particular issue.

The more the institutional setting is close to the ideal pre-conditions outlined in 2.61; i.e. the non-hierarchical nature of the institutional setting, the more conducive the environment will be for the actors to engage in communicative action and achieve solution that is better than the lowest common denominator. At the end of the negotiation process, some actors may still preserve their initial position, not because no parties engage in arguing, but probably because arguing was not yet successful (at least in the short term). Since the use of arguing does not guarantee that other parties will become convinced of better arguments, operationalising guidelines are needed to test whether arguments will prevail.

In testing whether arguments will prevail in a particular setting, Risse and Kleine (2009) put forward following propositions built on arguing and persuasion literature:

1) Institutional settings that favour overlapping role identities are likely to increase uncertainty about appropriate behaviour and other actors' preferences and, thus, the likelihood that arguing leads to persuasion. In situations where different rules overlap, actors may be uncertain about their appropriate behaviour. As a consequence, their counterparts cannot be sure about the preferences of their negotiating partners, and do not know which incentives or threats to make in a bargaining situation. This should induce

arguing to clarify the doubt. They will also likely to be open to persuasion due to uncertainty about their role identities.

2a) A transparent negotiation setting is conducive to persuasion, the more actors are uncertain about the preferences of their audiences whose consent is required. The more the consent of the audience is required, or the less certain speakers are about the preferences of their audiences, the more norms can affect their derived preferences. Thus, the more public the negotiation is, the more careful the speakers have to be regarding the content (preferably impartial, consistent, and plausible) for fear of damage to their credibility.

2b) Negotiations "behind closed doors" are conducive to persuasion, the more actors know the preferences of their audiences whose consent is required. Once speakers know the preferences of their audience whose consent is required, they do not need to argue, but can employ rhetorical devices to sway their audience. Under these conditions (of a principal-agent relationship), secrecy and negotiating behind closed doors might be the only way toward problem-solving, since it enables speakers to argue "out of the box" and to work toward a reasoned consensus without having to fear that some principal in the audience might accuse him/her of "betraying the national interest."

3a) The more the institutional norms and procedures privilege authority based on expertise and/or moral competence, the more arguing is likely to lead to persuasion and

3b) The more institutional norms and procedures require neutral chairs of negotiations in centralized settings, the more leadership is conducive to the prevalence of arguing. Honest brokers, who are considered trustworthy by the opposing sides and who can acquire authority to suggest innovative solutions, can shift negotiations toward a problem-solving mode. Trustworthiness and authority are not only a matter of individual personality solely; they are the result of a specific institutional context that privileges and legitimates negotiating authority and leadership. If coupling with corresponding personal quality, it will further facilitate arguing oriented to understanding. In other words, the "honest broker" or chair acts as the third party to whom negotiators refer the matters.

Employing the above-mentioned propositions, we can analyse further how the setting of the negotiation influences the use of arguing. Deciding the prevailing mode of social decision procedures in drafting each key provision against the backdrop of the institutional setting should illuminate how the norm in question was perceived by different negotiators and how willingly it was incorporated into the Charter. It can be argued that the fact that the norm is codified in written form should be the proof of its relevancy;

however, it could be the case that some norms are vigorously debated using arguing mode while some norms are imposed or traded off by bargaining. The different path of how norms found their way into the Charter should suggest the strength and level of legitimacy. For instance, if it is achieved through arguing, it is likely that that the norm will sustain its appropriateness and normally will be less exposed to future contestation since it is approved on the basis of its merits or moral rightness. The meaning of the norm is intersubjectively constituted by the actors along the critical constructivist framework, deeming it 'right' or 'good'. In this way, situations where submitting to the better argument is required and how particular outcomes on agreements about legitimate norms are achieved can be traced to assess whether they are the best solutions agreed by the parties.

2.7 Conclusion

This chapter attempts to lay out an analytical framework for studying norm codification in ASEAN that culminated in the ASEAN Charter. It explores how rationalists and constructivists treat the question of how norms affects actors' decisions, then grounds the thesis in a critical strand of social constructivism by problematizing the power relations among involved parties. Because the making of the ASEAN Charter is essentially law-making, the chapter explores why there is a need to formulate hard laws or transform

tacit rules into explicit ones. This is linked to the degree of norm robustness. If the norm is clear, around for a long time despite challenges and widely accepted, there is less need to formulate a written code. The thesis is also informed by Acharya's constitutive localization in explaining the actors' active role in conditioning the norms based on their cognitive prior. This will be explored further in the next chapters in order to provide the backdrop of the normative context prior to the drafting of the ASEAN Charter.

Distinguishing the modes of social decision procedures which actors employed to decide on norm validity in each key provision is crucial to the understanding of the development of ASEAN norms during the process leading to the Charter final outcome. Only then can we fully understand how a contested norm was legitimized or delegitimized through the negotiation, and whether the norm validity claim was accepted through the use of argumentation, rhetorics, force, or trade-off. Since the negotiation took place within an institutional context, the institutional norms and procedures are also important to the prevalence of arguing. Based on the common normative framework or, in Habermasian terms, the shared 'lifeworld' namely the core norms in the ASEAN Way, a problematic part of the lifeworld (questioned by community members) constituting the problematic validity claim is evaluated. Actors aiming to settle the problem whether it is due to conflicting frames of reference or conflicting wants can engage in arguing or bargaining. Arguing is key to the theory of communicative action and is on

the opposite end of strategic bargaining. However, it is necessary to further distinguish arguing and bargaining into cooperative arguing/bargaining and competitive arguing/bargaining in order not to confuse cooperative gesture without transforming preferences with arguing which aims to convince another party. Cooperative bargaining suggests that the outcome is a compromise based on preferences of involved parties while competitive bargaining entailing coercion and threats indicates that the norms in question were imposed and may remain problematic.

The next chapter will deal with ASEAN historical background, setting it up as a social environment where the negotiation took place. It will explore the traditional diplomatic norms of ASEAN – the ASEAN Way – as a shared lifeworld which provides a common normative framework for members to evaluate raised validity claims.

Chapter 3

ASEAN's 'lifeworld': Exploring core norms in the ASEAN Way

3.1 Introduction

This chapter aims to provide the background to the social and normative context in which the ASEAN Charter was negotiated. The negotiation which re-evaluated the relevancy of governing norms and practices in ASEAN did not take place in the normative vacuum. Rather, the actors share a culturally transmitted interpretative pattern providing them with a stock of norms and rules they can refer to when seeking agreement about problematic issues. As discussed in Chapter 2, this is known as a 'lifeworld'. Over the time, norms can be questioned due to their perceived ineffectiveness in providing solutions, or because of their weakened legitimacy. The efforts to reaffirm the norms which are already under heavy criticism might weaken the norms even further by revealing the lack of integrity, or result in the norm legitimization and codification if the norm in question is rather robust in the process of development. The social context also exerts influence on the lifeworld. ASEAN formation as well as its predecessive regional set-ups will be discussed since the development of the institution is also linked to how the lifeworld has evolved.

In ASEAN, the shared lifeworld is usually referred to as the 'ASEAN Way', a term favoured by both policy-makers and interested academics. The

core norms and practices of the ASEAN Way were contested during the drafting process, and the codification was a result of arguing and bargaining in many levels to reach better solutions or compromises. As a matter of fact, the norms have been questioned by other member countries prior to the drafting of the Charter through a number of events. Therefore, the chapter will also trace the main contestations of some of the core norms before the members countries embarked on the road towards the ASEAN Charter in order to provide a complete picture of the normative context the drafting panel found themselves in at the beginning of 2007.

3.2 ASEAN as a social setting[5]

As discussed in Chapter 2, actors refer to structures of norms embedded in an institution which offer shared background understandings, reference arguments and procedural mechanisms allowing for normative co-ordination action plans. It is then useful to briefly trace the development of regional cooperation in Southeast Asia up to ASEAN in order to understand the current institutional setting where the normative contestation of a part of the lifeworld took place. Looking at regional organizations prior to ASEAN can also shed light to how the governing norms were developed at the same

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[5] This section benefits partly from Chapter 2 in Kasira Cheeppensook, 'The ASEAN Way on Human Security', MPhil thesis in International Relations, University of Cambridge, 2006.

time as the institutions. This will provide a 'social reality' in a constructivist sense, setting the stage for the drafters when they began their work in 2007.

3.21 The Great Power brainchild: SEATO and its demise, 1954-1977

In the wake of the Cold War, collective defense was the US main strategy to contain communism since the UN-based collective security system became stagnant as a result of the Soviet veto. The brain behind collective defense framework was John Foster Dulles, who relentlessly argued for an Asian collective defense organization, with the US interests in the region in mind even before he became the US Secretary of State under President Dwight D. Eisenhower. He notes in Foreign Affairs journal article, "it is in Asia that Russian imperialism finds its most powerful expression" and "considerations of justice and morality… call for the creation in the Pacific area of a more adequate security system" (Dulles 1952, 186-187).

The idea of regional collective defense pacts was predictably met with suspicion from some Asian leaders who shared long and enduring experiences of struggle for independence, resulting in a strong sense of anti-colonialism. It was also at odds with "non-alignment" policy popular in post-World War II era. Prior to the signing of the Southeast Asia Collective Defense Treaty at Manila in September 1954 to create the Southeast Asia Treaty

Organization – SEATO, the growing crisis in Indochina[6] brought the leaders from five Asian countries (India, Pakistan, Burma, Indonesia, and Ceylon) together in a group that came to be known as the Colombo Powers[7]. The group made non-intervention the basis of its response to the Indochina crisis (Acharya 2009b, 37), in contrast to the US approach in its involvement with the crisis. It should not come as a surprise that the group viewed the US proposal to create a regional collective defense system as a form of intervention and remained deeply skeptical. At the Manila Conference there was some clash of opinion on how the purpose of the proposed body should be officially proclaimed. The United States wanted to limit it to resistance against communist aggression, while the United Kingdom and some other countries thought it would be more politic to refer to aggression in general terms, since this might make SEATO less unpalatable to the Colombo powers. The United States then agreed to refer to aggression in general terms in the body of the Treaty, but announced its "Understanding" that its own military obligations were limited to the resistance of communist aggression (Ball 1958, 17).

The crisis in Indochina led to the negotiations between France and the Viet Minh in Geneva in the same month. In July 1954, the Geneva Accords

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[6] The first Indochina war between the French (and supported by the Vietnamese National Army) and the Viet Minh was entering the last stage. After the Second World War, France reoccupied Indochina and met with Viet Minh rebellion. It escalated into a conventional war at the beginning of 1950s with the French campaigning it as a war against communism. The US supported the French forces while the Soviet Union supported the opposite side.

[7] The group held its first meeting in April 1954 in Colombo, Ceylon (now Sri Lanka).

dividing Vietnam at the 17th parallel, in addition to the ceasefire agreements, were signed. The Northern part of Vietnam was designated to be governed by the Viet Minh while the Southern part was to be governed by the French and US-supported State of Vietnam. John Foster Dulles who was at the meeting did not sign the Accords, feeling that it gave too much power to the communists, and instead set out to work on the Asia-Pacific collective defense pact against communism.

SEATO held its first meeting in Bangkok, February 1955. Only two Southeast Asian countries, Thailand (at that time known as Siam) and the Philippines, joined. Both were steadfast allies of the US. Other members apart from the US were Pakistan, Australia, New Zealand, the UK, and France. The British actually recognized that in order to stabilize and ensure the future of this new cooperation, the involvement from other members in the Colombo Powers was crucial (Olver 1956; Lowe 2009). However, the remaining powers were not convinced. Indonesia and Burma saw it as a compromise to the principle of non-alignment and also feared of great power domination (Penders 1979). Ceylon sided firmly with India whose Prime Minister Jawaharlal Nehru disapproved NATO to which SEATO was expected to perform similar functions. The SEATO Treaty is considered the Asiatic counterpart to the North Atlantic Treaty. Article 4(I) of the SEATO Treaty commits the state parties to take measures in accordance with their respective constitutional processes in the case of an aggression by means of

armed attack against one of the other state parties. Unlike Article 5 of the NATO Treaty; however, the parties to the treaty do not consider an attack as an attack directed against them all, but as endangering the 'peace and safety' of the other parties (Meiertöns 2010, 118).

SEATO was never a full-fledged military pact and was far from a collective defense organization like NATO (Buszynski 1983; Severino 2006). It was stagnant by the practice of unanimity and only required the members to act according to one's constitutional procedures. Thus, an attack on one was not deemed necessarily an attack on all. No members ever sought help from the organization except Thailand who wanted support in containing communism in Laos. The US indeed deployed military forces in Thailand to that end albeit limitedly, but this can be argued to be the fruits from the obligations in the bilateral agreement – the Thanat-Rusk Joint Communiqué signed by the US Secretary of State and Thailand's Foreign Minister in 1962 to reduce the stagnancy from consensus-seeking practice in SEATO – rather than from the Southeast Asia Collective Defense Treaty. Pakistan withdrew from the organization in 1968. When Nixon visited China in 1972, it seemed that there was no point in maintaining SEATO with its anti-communist front. France refused to contribute any more financial aid by 1975. Finally, Thailand and the Philippines agreed in 1975 for SEATO to cease its operation. SEATO formally came to an end in 1977.

There are several different attempts to explain the demise of SEATO. From a realist perspective, the lack of commitment in maintaining the organization by the hegemon – the US – triggers the organization's premature death. There was also no commonly accepted regional hegemon at that time to whom the US could successfully delegate the leadership to further maintain the organization. The cause can also be from the power differentials between the US and its Asian allies. Seeing that the Asian members had so little to offer in terms of material resources, there was no point to employ multilateralism in Asia-Pacific (Crone 1993). If the interests of the hegemon change (as when the US leader finally visited China), the cooperation might as well collapse. Some attribute the SEATO demise to the conflict of interests within the region and the lack of overwhelming and clearly defined threat to all members (Sneider and Borthwick 1983). The Liberals tend to blame the overly politicization of the cooperation which renders it weak and unsuccessful (Schubert 1978).

On the other hand, Hemmer and Katzenstein (2002) provides a constructivist account of why there is "no NATO in Asia". It is because of the perception of the US towards its Asian allies as inferior and the lack of strongly shared identity comparing to the European allies. However, all of the explanations above tend to undermine the active role of local actors in selecting the competing norms: collective defense and non-intervention. The exclusion of the Philippines and Thailand from earlier Anglo-American

deliberations over collective defence, the subsequent failure of Western powers to secure wider Aian participation in the alliance, and the evident conflict between the sense of Asian identity fostered by Bandung and the nature of SEATO as an outsiders' project weakened the alliance from its very perception and strengthened its alternative: a subsidiary norm against collective defence pacts (Acharya 2014). As Acharya (2009b) argues, there was a strong normative opposition to the idea of an Asian regional defense organization from the influential section of Asian leaders. Collective defense means weakened authority on security issues for them, a return to colonial era where sovereign equality was imperceptible. Their perceptions undermined the legitimacy of collective security while non-interference and non-intervention was promoted. There was virtually no norm contestation on the principle of non-interference and non-intervention at that time. The persistent rejection of the organization prevented a meaningful participation from most of the Asian countries until the only two countries from within Southeast Asia had to announce the end of this regional cooperation. The US then had no choice but to let its brainchild wither and die. SEATO – an organization formed primarily to deal with security issues in a particular region – needed support from powers within the region to survive. However, the institution failed because it could not garner blessing from prospective members who disapproved of the norms embedded within the structure of the said cooperation.

3.22 The ASEAN 'in-betweens': ASA, ASPAC and MAPHILINDO, 1961-1967

By the beginning of the 1960s, it was quite clear that the norms of sovereign equality and non-intervention have been established firmly in the region alongside the growing ineffectiveness of SEATO. Malaya, the Philippines, and Thailand decided to form the Association of Southeast Asia (ASA) in July 1961. To avoid the complications from having another security organization in the region, ASA stressed economic prosperity as a way towards regional stability. For the first time, the cooperation was confined to Southeast Asian states and was created by a regional initiative. ASA was not successful in bringing in more members from within the region since it was viewed by other countries, Indonesia in particular, as an attempt by the SEATO states to link themselves to the non-SEATO states to oppose China (Narine 2002). In the following year it collapsed over the Philippines' claim to the former British colony of North Borneo (Sabah), which had opted to join the Malaysia Federation, and also because of the Indonesian confrontation (*Konfrontasi*) with Malaya (Palmer 1992). Because of the rift between members as well as the tension with Indonesia, ASA remained dormant and

continued to exist only in name until 1966 (Tarling 1992). Nonetheless, its founding rationale of political stability through economic prosperity (initially to counter communism), as well as other stated objectives of cooperation in cultural, scientific and administrative fields, were carried forward to succeeding cooperative efforts. ASA had minimal institutional structure and demanded very little from its members in terms of obligations. This legacy was also present in Southeast Asia's later regional cooperative efforts. ASPAC (created 1966), which was composed of members from East and Southeast Asia as well as Australia, lasted only seven years.

Almost at the same time of the interruption of ASA, the Philippines was developing proposals for a 'Greater Malay Confederation', later dubbed 'MAPHILINDO' which is an acronym for three proposed member countries – Malaya, the Philippines and Indonesia. The Macapagal plan was discussed at a foreign ministers' meeting of Indonesia, Malaysia and the Philippines in June 1963, and the Manila Accord stipulating that the first summit be held by the end of July was adopted (Hamanaka 2010, 34). Established to settle the differences of those three countries over the legitimacy and territorial boundaries of Malaysia, MAPHILINDO was a diplomatic device which did not display any institutional form. Although it was expected to develop as a full-scale regional organization in Southeast Asia (Hamanaka 2010, 35), its function was limited and temporary. Unlike ASA, MAPHILINDO was an experiment in conflict resolution (Dreisbach 2004, 251). Both Indonesia and

the Philippines considered MAPHILINDO as a potential device to increase their influence in the region. In contrast to ASA, MAPHILINDO drew from more obvious ethnonationalist ideas of region but proved even less able to manage the centrifugal forces and rivalries pulling states apart (Ba 2009a, 47). After MAPHILINDO foundered with the formation of Malaysia on 16 September 1963 and Indonesia and the Philippines both refused to recognize the legitimacy of the new state, there was no attempt to restore the organization. While Kuala Lumpur joined MAPHILINDO in the hopes of gaining the others' acceptance of the Federation of Malaysia; Jakarta and Manila conceived MAPHILINDO to preempt the federation. The political tension also caused a stalemate in ASA which lasted for about three years (Dreisbach 2004, 251). The norms carried over from the demise of SEATO, namely non-intervention, prevailed during several attempts from within the region to create a regional organization.

3.23 Lessons learned?: ASEAN, 1967-

ASA was temporarily revived in 1966 after the improvement of relations between Indonesia and Malaysia after Sukarno lost power and Konfrontasi ended. The Philippines' claim to Sabah also subsided since the election of President Marcos. The resolution of most of the major disputes by the end of 1966 offered the opportunity for a sounder basis of regional cooperation through the establishment of a new and more broadly based

grouping. (Irvine 1982, 11) Indonesia under Suharto then wished to be a part of the region's cooperative arrangements, but the organization should ideally be the one that Indonesia had a role in creating. An initial proposal by Thailand for a 'South-East Asia Association for Regional Co-operation' (SEAARC) was withdrawn in favour of the Association of Southeast Asian Nations or ASEAN, a term devised by Adam Malik, Indonesia's Foreign Minister at that time. Moreover, SEAARC was seen as a criticism to the security cooperation between many countries in the region with the big powers. Therefore, the proposal could not be accepted by a number of countries that favored such relationships.

Apart from the end of *Konfrontasi* and a more harmonious attitude from Jakarta under General Suharto's New Order, the formation of ASEAN was also facilitated by the restoration of diplomatic relations between the Philippines and Malaysia. Although the conflict was not entirely settled, Manila agreed not to raise the Sabah issue at future ASEAN meetings. This constituted a standard that bilateral disputes should not involve the Association (Haacke 2005a, 47). When the issues are not brought up to the ASEAN level, countries who want to pass advice or criticism to the conflicting parties must do so discretely (and informally) in a form of quiet diplomacy. According to Ba (2009a, 48), three factors are critical to explaining the emergence of ASEAN in the face of strong centrifugal forces: 1) a window of opportunity created by domestic and international developments; 2) a group

of transnational elites and advocates committed to an alternative vision of regional order; and 3) the ways that new regional ideas were defined in relation to established nationalist ones. These three factors worked together to create a condition where a more inclusive organization was possible, especially the last one, albeit we have to note that the nationalist sentiment has been upholding strong sense of state sovereignty as well as the principle of non-intervention. Nonetheless, resilience was broadened to a regional scale. Fighting between states simply provided opportunities for external powers to interfere into, and project their own agendas onto, the politics of Southeast Asia, or to manipulate one neighbor against the other (Ba 2009a, 56). It was best for members in the region to minimize border disputes which in turn provided stability for them to focus on domestic economic development.

The 1967 ASEAN Declaration (also known as Bangkok Declaration) leaves open the membership for all states in Southeast Asia to join, given that they accept ASEAN's purposes (see Appendix A). Apart from reinstating the aim to promote economic, social and cultural cooperation which was carried forward from ASA (Leifer 1989), this inaugural declaration explicitly codifies the norm of sovereign equality, non-recourse to the use of force and peaceful settlement of conflict as well as non-interference and non-intervention:

Desiring to… promote regional cooperation in South-East Asia in the spirit of equality and partnership…;

Considering that the countries of Southeast Asia share a primary responsibility for strengthening the economic and social stability of the region and ensuring their peaceful and progressive national development, and that they are determined to ensure their stability and security from external interference in any form or manifestation…;

Affirming that all foreign bases are temporary and remain only with the expressed concurrence of the countries concerned and are not intended to be used directly or indirectly to subvert the national independence and freedom of States in the area or prejudice the orderly processes of their national development;

It is clear from the wording that the "founding fathers", Indonesia, Malaysia, Thailand, Singapore, and the Philippines emphasized non-interference and non-intervention to avoid SEATO-like illegitimacy as well as to prevent the collapse over internal rivalry like ASA. The founding fathers made clear from the beginning that ASEAN was not formed to be any military defense pact. According to Khoman (n.d.) who was Thailand's Foreign Minister at that time,

Attempts were made by some to launch us on the path of forming a military alliance. We resisted; wisely and correctly we stuck to our resolve to exclude military entanglement and remain safely on economic ground.

To ensure the longevity of the organization, the lessons from the demise of both ASA and MAPHILINDO such as the significance of intra-regional conflict containment and wider participation from other countries in

the Southeast Asian region were also taken into account. The norm of non-interference and non-intervention is bolstered further by Zone of Peace, Freedom and Neutrality Declaration (ZOPFAN) signed in Malaysia in 1971. ZOPFAN recognizes "the right of every state, large or small, to lead its national existence free from outside interference in its internal affairs as this interference will adversely affect its freedom, independence and integrity". The ZOPFAN takes after the governing norms made universal by the UN "in particular… the principles of respect for the sovereignty and territorial integrity of all states, abstention from threat or use of force, peaceful settlement of international disputes, equal rights and self-determination and non-interference in affairs of States". By the 1970s, a group of collectively shared norms originated from shared experiences bolstered by the UN Charter have taken a firm ground among ASEAN leaders, providing them with a normative background from which they can draw when conducting interstate relations. This normative terrain continued largely uncontested until the 1990s where some of the validity claims were questioned. This will be discussed further in 3.4.

3.3 The ASEAN Way as a shared 'lifeworld'

Insofar as lifeworld is used to mean a culturally transmitted interpretive patterns consisting of a shared culture and a common system of

norms and rules perceived as legitimate whereby actors can operate under a common context, it was often assumed that international politics lack a shared lifeworld due to the anarchic nature of the system. However, negotiators engaging in international law-making often operate under the same frame of reference, mostly drawn from the institutional setting. Even when facing a breakdown in co-operation, they strive to create artificial lifeworld to resume the work (Deitelhoff and Müller 2005). In the case where actors are members of the same international institution, the shared lifeworld is even more perceptible and there is less need for artificial lifeworld to be constructed by themselves since institutions also generate shared experiences, understandings and reference arguments. Negotiators thus share a set of common norms and decision-making procedures to facilitate the decision-making process.

In ASEAN, a shared normative terrain forming a common lifeworld was known collectively as 'the ASEAN Way'. As discussed in Chapter 2, lifeworld goes beyond just a set of norms. The ASEAN Way is how ASEAN leaders, negotiators, officials, tend to define themselves, use as guideline in the meeting or when faced with problems. It is how they still would like to perceive themselves as well as others. Their expectations in the meetings lie mainly within this framework. In ASEAN diplomacy, actors more or less operate in the same lifeworld, manifesting in what could be called a diplomatic and security culture – the ASEAN Way. The officials tend to

reiterate this understanding (the aspect of cultural reproduction) and socialize one another through this pattern of behaviour (they are in the same society). In so far that the ASEAN Way is intra-mural, ASEAN actors share intersubjective meaning and understanding when they act in ASEAN forum and do not extend the lifeworld elsewhere. Ba (2009b, 44) sees that 'ASEAN states do not view themselves and China as existing in the same "lifeworld"'. Maier-Knapp (2010, 97) also concludes that a lack of, or a mere rudimentary existence of a common lifeworld impedes deeper interaction between the ASEAN and the EU. In order to negotiate, actors might have to consciously construct the lifeworld.[8]

Conceptualizing the ASEAN Way as ASEAN's overarching common lifeworld provides an insightful framework in to why ASEAN officials usually refer back to the term when justifying actions or tackling problems. When communicating, the actors make truth or validity claims and refer to the common lifeworld as their source of justification (see also Maier-Knapp 2010). ASEAN actors fall back on the shared understanding when they negotiate. ASEAN members 'managed their conflicts… through a process of elite socialization around this set of shared ASEAN norms' (Acharya 2005, 107). These norms have constitutive effects by transforming over time and through repeated interactions the way ASEAN states (or their ruling elites)

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[8] Risse (2000) does not distinguish the efforts where actors have to consciously construct the lifeworld anew, but this is where Deitelhoff and Müller (2005) sees as 'artificial'. Artificial lifeworld has to be constructed where it does not yet exist in order for the negotiation to go on.

see themselves – their identity – as members of a regional grouping sharing a common lifeworld and fate (Ba 2005).

Having no agreed upon or 'official' definition does not prevent the ASEAN Way from being used widely among policy-makers and academics. Practitioners tend to treat the ASEAN Way as a distinct decision-making procedure to provide solutions for problems within the region. It is perceived as a useful tool to ensure agreement and maintain harmony among actors. The leaders often use the term to signify regional solidarity by emphasizing a different process of intra-mural interaction when comparing to the one in other, especially Western, multilateral settings. In his interview, former Malaysian Prime Minister Mahathir Mohammad (1997) has described the ASEAN Way as a "winning formula" which "more than anything else has held ASEAN together". His minister of foreign affairs went further when he stated that 'in fact, through the ASEAN way there are no problems or challenges that we in ASEAN cannot deal with.' (Badawi 1998). The leaders usually perceive the ASEAN Way as behavioural guidelines or practices when conducting interstate relations. As former Singaporean Foreign Minister S. Jayakumar (1998) put it, the ASEAN Way 'stresses informality, organizational minimalism, inclusiveness, intensive consultations leading to consensus...'.

The way in which the academic literature captures the ASEAN Way ranges from regional conflict management (Busse 1999; Caballero-Anthony

2005; Goh 2003; Hoang 1996) to collective identity in-the-making (Acharya 2009a; Rüland 2000). Scholarly attempts in defining the ASEAN Way are diverse and often result in overly itemizing what should be included in the ASEAN Way. For instance, Soesastro (1995) sees that the ASEAN Way is consisted of twelve principles[9]. Acharya (2009b, 79) attributes the ASEAN Way to how Asian leaders have behaved in various conferences (such as the Bandung Conference) since before the ASEAN was established. He lists informality, preference for consensus over majority voting, avoidance of legalistic procedures, preference for non-binding resolutions, among other traits, as how the ASEAN Way came to be known.

The problem lies in the non-differentiation of widely accepted practices (or procedural norms) from the core norms. As Haacke (2005a) proposes, ASEAN's diplomatic and security culture comprises six core norms:

1) sovereign equality;

2) non-recourse to the use of force and the peaceful settlement of conflict;

3) non-interference and non-intervention;

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[9] These are 1) the principle of co-operative peace; 2) the principle of seeking agreement and harmony; 3) the principle of respect for territorial integrity; 4) the principle on non-interference in the domestic affairs of member states; 5) the principle of egalitarianism; 6) the principle of decision-making by consensus; 7) the principle of sensitivity, politeness, non-confrontation and agreeability; 8) the principle of mutual caring; 9) the principle of quiet, private and elitist diplomacy versus public washing of dirty linen and diplomacy through the media; 10) the principle of solidarity; 11) the principle of being non-Cartesian, non-legalistic and concentrating on process and content; and 12) the principle of pragmatism.

4) non-involvement of ASEAN to address unresolved bilateral conflict between members

5) quiet diplomacy; and

6) mutual respect and tolerance.

Other practices often included as elements of the ASEAN Way are actually generated from one or more of these core norms. For example, consultation and consensus-seeking is derived from sovereign equality and mutual respect in decision-making process. Minimal institutionalism and the preference for non-binding instruments are also an expression of strong adherence to non-interference and non-intervention as well as non-involvement of ASEAN to address unresolved bilateral conflict between members. Non-confrontational attitude – that members often agree to disagree while allowing others to 'save face' during a negotiation – is a result of quiet diplomacy, mutual respect and tolerance. These core norms and the practices derived from them form a common context where actors draw shared frame of reference when trying to solve problematic issues.

The six core norms and the practices derived from them will be treated as a 'social reality', constructed collectively and therefore derived its intersubjective meaning from actors' interaction along the critical constructivist framework, which then the change proposed by the ASEAN Charter will be set against. The focus of the thesis is not to construct a

detailed account of how these norms came about to be the common lifeworld, but to study how the problematic parts of the lifeworld needed to be re-evaluated and codified in the form of the ASEAN Charter. The contested validity claim essentially points to a problematic part of the lifeworld. The contestations of the validity claims and how the negotiators chose to resolve conflicts through competitive/cooperative arguing/bargaining will be examined through the following chapters dealing with the enhanced peaceful dispute settlement mechanism and the establishment of human rights mechanism. The problem of increasingly conflicting frame of reference allowed for re-assessment which norms are still relevant, and the ASEAN Charter formulated them.

It is useful here to outline how each core norm has been understood prior to the contestation during the process of the Charter drafting. It must also be noted that the core norms in the ASEAN Way are perceived in the region (and thus defined) as ideal types to which states strive to adhere. This does not mean that they are unchallenged or that norm deviant behaviour does not occur as will be addressed in the next section.

3.31 Sovereign equality

This means that all states are equal in law despite their differences in other respects such as size, wealth, or population strength. The states (and their national delegates) are equal regarding their rights and will not be

prevented from having a say in matters concerning them. In any negotiation, it is presumed that national delegates should have equal access to information and should be treated by one another as equals.

3.32 Non-recourse to the use of force and peaceful settlement of conflict

One of the ASEAN's main aims is to reduce intra-regional conflict so that the member countries could focus on the economic development. It thus reinforces the norms made universal by the UN to prohibit the threat or use of force to claim territories and to settle the disputes peacefully. It even establishes an institutional mechanism in the 1976 Treaty of Amity and Cooperation (TAC) to facilitate the settlement of disputes, although the members prefer to solve the problems between themselves without invoking the institutional mechanism.

3.33 Non-interference and non-intervention

This norm is cardinal to modern diplomacy and was made universal by the UN. It forbids intervention in matters within the domestic jurisdiction of the states. The member countries refrain from criticizing the actions of one another and from supporting any destabilising activities. At the time Asian countries were not very much involved with the process of drafting the UN Charter and paid more attention to other agendas such as self-determination

and equality. Nonetheless, they ratified the Charter soon afterwards[10]. By the time ASEAN was established, any lingering so-called 'Pan-Asian' sentiment was replaced by the principle of non-intervention reinforced by strong desire to resist domination from outside powers (Acharya 2009b).

3.34 Non-involvement of ASEAN to address unresolved bilateral conflict between members

ASEAN members prefer to solve their disputes between themselves without any meddling from outside. That the mechanism for the pacific settlement of disputes outlined in the TAC which basically authorizes the High Council composed of ministerial level representatives from each member states to recommend appropriate means of settlement of disputes has never been invoked should illustrate this point. Moreover, there has never been any concrete regional legal instrument such as the Court to solve disputes that are political in nature.

3.35 Quiet diplomacy

This core norm is used to signify private conduct of diplomacy and the emphasis on confidentiality which in many cases allows ASEAN members to

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[10] Most of the countries in Southeast Asia became members of the UN soon after the organization was established with the Philippines as early as 1945. Thailand followed suit in 1946. Over the following decades the remaining Southeast Asian countries subscribed to the UN Charter and its obligations with Brunei Darussalam joining in 1984, the same year as it joined ASEAN. In other words, most countries became UN members before they joined ASEAN. The founding fathers who found reciprocations in the UN Charter with their former adherence to a number of norms namely non-interference and non-intervention then further codified them in the inaugural Declaration which every country wanting to join the Association must accept.

evade resentful confrontation regarding conflicting polices. Comments are preferable through selected alleys and should be kept informal or done in informal venues. Members normally refrain from collectively making judgments on the domestic affairs of member states or their bilateral disputes. Some scholars actually use the term to mean intergovernmental or "third-party" engagement distinct from the traditional diplomacy of an interested party or Government to ensure impartiality in dispute settlement (Collins and Packer 2006), but this is certainly not in mind of the leaders when they conduct private diplomacy since it also conflicts with another core norm: non-involvement of ASEAN to address unresolved bilateral conflict between members.

3.36 Mutual respect and tolerance

This is essentially linked with ASEAN negotiation cultures (Antolik 1990; Ba 2009a; Koh, Manolo, and Woon 2009; Severino 2006; Thambipillai and Saravanamuttu 1985). ASEAN is more familiar with the "high context" negotiating style. Cohen (1991) suggests that in non-Western cultures, group interests define individual needs, thus the bilateral disputes were continually shelved. "Face" or one's standing in the eyes of the group must be preserved. Tolerance also generally applies in the case of violations; consequently, concrete punishments or sanctions are virtually non-existent.

3.4 Contestations over the core norms prior to the drafting of the ASEAN Charter[11]

Over time, a norm may become problematic because it can no longer provide solution to problems due to the inefficiency in its problem-solving function, or may be questioned in its legitimacy. The governing core norms in ASEAN enjoyed relatively stable positions among member countries until the late 1990s. There were some turbulence in the 70s namely the invasion of East Timor in 1795 and Vietnam's toppling of Cambodia's regime in 1978, but at that time the East Timor issue was perceived as Indonesia's affairs (thus warranted non-interference) and Vietnam and Cambodia were not ASEAN members. The ASEAN Way applies first and foremost to intramural relationship. As a matter of fact, the ASEAN members tried to approach the Cambodian situation in a manner consistent with the ASEAN Way and any attempts to challenge that were thwarted by reaffirming the validity of the non-use of force and non-intervention (Haacke 2009a, 111). In other words, the core norms' robustness (Legro 1997) was high in terms of specificity (the clarity of what can and cannot be done), durability (how long the rules have

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[11] This section benefits partly from Chapter 3 in Kasira Cheeppensook, 'The ASEAN Way on Human Security', MPhil thesis in International Relations, University of Cambridge, 2006; Cheeppensook 2007; 2012.

been in effect and how they weather challenges), and concordance (how widely accepted the rules). The catalyst that made ASEAN reconsider its way and destabilised some of the core norms' robustness was the Asian Economic Crisis in 1997. The Crisis also served as a turning point that trigger more interest in human-centric norms, seeing that the state can no longer link state-centric security and stability to economic prosperity and development. This will be touched upon in detail in Chapter 6 dealing with the codification of human rights in the Charter.

The rapid spread of crisis increased awareness that the countries were more closely connected than formerly presumed. ASEAN leaders recognized that the crisis had serious implications across the region and that cooperative efforts were needed in order to solve the problems (Pitsuwan 1998a; 2000; Habibie 1998). The proposal of 'constructive intervention' by Malaysia's then deputy prime minister, Anwar Ibrahim, stated that ASEAN members should invite each others' services to improve the domestic social infrastructure such as education (Henderson 1999, 49; Sridharan 2007, 163). The specific measures suggested included 1) direct assistance to firm up electoral processes; 2) an increased commitment to legal and administrative reforms; 3) the development of human capital; and 4) the general strengthening of civil society and the rule of law (Tay 2001, 253). This clearly suggested that ASEAN members should be more involved with one another to be prepared

for future crisis. There was a ripple in a part of the lifeworld that needed to be addressed.

In June 1998, Surin Pitsuwan, Thailand's Minister of Foreign Affairs, called for a review in the principle of non-intervention in ASEAN, proposing instead "constructive intervention' in those cases where 'domestic concern poses a threat to regional stability" (1998b). This was in continuity from what Anwar Ibrahim proposed a year before (Thayer 1999). The proposal was also triggered by ASEAN's failure in dealing with Myanmar[12] and Cambodia[13] using the policy of 'constructive engagement' adopted in 1991. However, Surin had to soften his proposal into 'flexible engagement' due to opposition from other ASEAN members after a meeting with senior officials on June 26, 1998. It was further stressed in Thailand's Non-Paper on The Flexible Engagement Approach (1998) that strict interpretation of the principle of non-interference was no longer practical:

> Many "domestic" affairs have obvious external or transnational dimensions, adversely affecting neighbours, the region and the region's relations with others. In such cases, the affected countries

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[12] In May 1990, Myanmar's military regime overturned the results of democratic elections won by Aung Sang Suu Kyi and her National League for Democracy. Human rights were also seriously violated. ASEAN was criticized by the international society that it did not adopt any meaningful solution regarding the issue. ASEAN responded by adopting a policy of 'constructive engagement' at its annual ministerial meeting in Kuala Lumpur the following year. However, constructive engagement with Myanmar did not yield any fruitful result.

[13] In July 1997, a violent breakdown of political order in Cambodia sparked the review of non-interference principle in ASEAN once again. At the fourth ASEAN Regional Forum (ARF) Meeting in the same year, consensus was reached that ASEAN should adopt a collective stance regarding situations in Myanmar and Cambodia. As a result, ASEAN was committed at that time to conduct the policy of constructive engagement with those two countries. (Cambodia wished to join ASEAN in 1997, then attained membership in 1998. Other ASEAN countries were treating Cambodia as a soon-to-be member).

should be able to express their opinions and concerns in an open, frank and constructive manner, which is not, and should not be, considered "interference" in fellow-members' domestic affairs.

The proposal of flexible engagement is in essence a reinterpretation of one of the most robust norms in ASEAN, and a sign that a part of ASEAN's lifeworld is problematic. When a part of the lifeworld is questioned by members aiming to change its definition or meaning in a certain situation, its intersubjective meaning must be debated in order to solve the contestation problem. Actors engaging in the debate would fall back on the unquestioned part of the lifeworld. Non-interference is clear that criticizing others' domestic affairs is undesirable, but some members started to question its validity since it could not provide satisfactory solutions. At the end, ASEAN members reached a compromise that watered down the proposed constructive intervention, signifying that non-interference is still intact. After all, it has been there since before the inception of ASEAN, won over the competing norms such as collective security, and was widely accepted. On the other hand, constructive intervention (and even when it was watered down to flexible engagement) was a rather fuzzy concept and quite new. It lacked specificity (it was not clear how far members can criticize other members' affairs), durability (it did not weather the objections well), and concordance (only the Philippines agreed with Thailand that it could be useful). It also went against the norms of non-involvement of ASEAN to

address unresolved bilateral conflict between member, quiet diplomacy, mutual respect and tolerance by attempting to raise the problems at the ASEAN level.

The proposal of 'flexible engagement' was toned down even further to an 'enhanced interaction' whose meaning still remained vague but was eventually adopted by ASEAN foreign ministers at that meeting as a reluctant concession to what Surin formerly proposed. That the original proposal had to be watered down until it was unanimously agreed upon by all ASEAN foreign ministers only shows that the core norms of non-interference and sovereign equality are still quite robust. If anything, the questioning process might strengthen them. The norm is so strong that in practice enhanced interaction does not differ much from the principle of non-interference (and quiet diplomacy) when Thailand after all still urged private communications with any concerns about Malaysia's human rights records in 1998. While arguing that ASEAN should be able to 'discuss all issues once considered as "taboos"', Surin also stressed Thailand's 'continued commitment to non-interference as the cardinal principle for the conduct of (ASEAN) relations (Thailand's Non-Paper 1998)'.

There was really no conflict regarding the frame of reference since the proposed 'new' standard still conformed to the former principles and there seemed to be implicit consensus among ASEAN leaders to let the question

drop, partly because they did not want to be perceived as weak from internal criticism. Nonetheless, the lack of clarity in the contested core norms was highlighted as a result. It is no longer possible to view non-interference in absolute terms. The subjective meaning of a norm, after all, depends on the meaning actors give within a social context. When a part of the lifeworld becomes problematic, the actors' 'horizon of meaning' also ripples and they must come together to determine its intersubjective meaning. The norm's durability waned as a result of the challenge in its validity claim. This set the ground for common need to explicitly codify the rules, strengthening the norms member deemed essential even further.

3.5 Conclusion

This chapter established the social and normative context prior to the negotiation of the ASEAN Charter to provide a social reality against which the proposal for change during the Charter negotiation could be analyzed. It explored how governing core norms known collectively as the ASEAN Way provided a shared lifeworld members draw upon when communicating. The lifeworld could be questioned and the process would condition the environment during the negotiation. In the process of negotiating the Charter, the HLTF members re-evaluated the contested validity claims arisen from the problematic parts of the lifeworld. ASEAN provided the institutional

backdrop, structures of norms governing the negotiation. Previous normative contestations in the region after the 1997 economic crisis resulted in less specificity and durability of the norms in question namely non-interference and non-intervention, rendering the norms less robust. The reinterpretation of the norm in the form of 'enhanced interaction' also did not provide satisfactory settlement of the issue in terms of specificity. These factors led to the need to transform implicit normative principles into explicitly codified rules as Chapter 4 will now explore.

Chapter 4

Formulating the ASEAN Charter: Setting up 'rules of the game'

4.1 Introduction

The ASEAN Charter is the first cohesive attempt to codify governing norms in written form that is legally binding. After almost five decades, having explicit rules to further facilitate interstate conduct as well as to guide future behaviours was deemed necessary. This Chapter will explain why as well as provide an analysis of the drafting process of the ASEAN Charter. It is necessary to understand the negotiating context where actors operate before proceeding to the detailed studies of the two controversial provisions. Although actors draw from shared lifeworld when they address a problematic issue, there are some parts of the lifeworld that were not 'home-grown'. This must rely on continuous promotion from norm entrepreneurs which include civil society as well as socialized officials.

4.2 The need for explicit rules: The origin of the ASEAN Charter

4.21 Key documents leading to the drafting of the ASEAN Charter

The formulation process of the ASEAN Charter can be traced to a number of documents. Although ASEAN envisioned itself as a community since its inception, there was a lack of effort or willingness to realize it. In the

ASEAN Declaration (1967) establishing the organization, also known as the

Bangkok Declaration, the aims and purposes of the Association shall be

> 1. To accelerate the economic growth, social progress and cultural development in the region through joint endeavours in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful **community** of Southeast Asian Nations. (emphasis by author)

ASEAN evolved slowly at first, with the members preoccupied with their own affairs in maintaining domestic stability. It was commonly perceived that the "community of Southeast Asian Nations" will be loosely constructed around shared purposes stated in the Declaration, without any concrete obligations demanded from the members. This theme recurred in the Treaty of Amity and Cooperation (TAC) in Southeast Asia (1976) which laid down ASEAN's principles and modus operandi in more detail including the dispute settlement mechanism. It is stated in article 6,

> the High Contracting Parties shall collaborate for the acceleration of the economic growth in the region in order to strengthen the foundation for a prosperous and peaceful **community** of nations in Southeast Asia. (emphasis by author)

> Article 12 also states that,

> the High Contracting Parties in their efforts to achieve regional prosperity and security, shall endeavour to cooperate in all fields for the promotion of regional resilience, based on the principles of self-confidence, self-reliance, mutual respect, cooperation and solidarity which will constitute the foundation for a strong and viable **community** of nations in Southeast Asia. (emphasis by author)

However, there was little movement towards an institutional structure for this "community of Southeast Asia" until 1997 when the region was struck hard by the economic crisis. This was not surprising given that the region has operated well enough on its practice of institutional minimalism and ad hoc problem-solving, requiring no concrete institutional structure or mechanism. The crisis, in a way, motivated ASEAN leaders to question the former practice and see the need for a more integrated community with substantive institutional arrangements. This triggered the declaration of ASEAN Vision 2020 adopted during the Second Informal ASEAN Summit in 1997, envisioning "the entire Southeast Asia to be, by 2020, an ASEAN community conscious of its ties of history, aware of its cultural heritage and bound by a common regional identity" (ASEAN 1997).

The ASEAN Vision 2020 also puts emphasis on human dignity and the development of human resources in the region. It was followed by the Hanoi Plan of Action adopted during the 6th ASEAN Summit in 1998 in order to complement the long-term vision set out in ASEAN Vision 2020. The Hanoi Plan of Action lasted from 1999-2004. It clearly forms the basis for the Declaration of ASEAN Concord II, also known as the Bali Concord II, adopted at the 9th ASEAN Summit in 2003. The Declaration designates that an ASEAN community will comprise of three pillars: political and security cooperation, economic cooperation, and socio-cultural cooperation.

The ASEAN Foreign Ministers agreed in their annual meeting in the following year that they would

> work towards the development of an ASEAN Charter which would, inter alia, reaffirm ASEAN's goals and principles in inter-state relations, in particular the collective responsibilities of all ASEAN Member Countries in ensuring non-aggression and respect for each other's sovereignty and territorial integrity; the promotion and protection of human rights; the maintenance of political stability, regional peace and economic progress; and the establishment of effective and efficient institutional framework for ASEAN (ASEAN 2004b).

The Joint Communiqué of the 37th ASEAN Ministerial Meeting envisions what should be included in the Charter. At the 10th Summit, the ASEAN leaders adopted the Vientiane Action Programme (2005-2010) to replace the Hanoi Plan of Action that expired in 2004. The Vientiane Action Programme set out the strategic goals towards the realization of an ASEAN community. The leaders declared that they "recognize the need to strengthen ASEAN and shall work towards the development of an ASEAN Charter" (ASEAN 2004c). They accepted that the formulation of the ASEAN Charter was necessary to "the strategies for shaping and sharing of norms". Therefore, they agreed to initiate preparatory activities for the Charter.

4.22 The necessity for explicit rules codification in the ASEAN Charter

All documents leading to the ASEAN Charter hold a common theme: to achieve an ASEAN community. Simon S. C. Tay (2010) identifies three factors fueling ASEAN's desire to become a community. The first of these was the

experience of the group from the financial crisis of 1997-98 and its expansion to include all ten member countries of the sub-region. He argues that this has led ASEAN to recognize both its weaknesses and its potential strength if its member countries could have cooperated much more closely than in the early years of the group. A second factor is ASEAN's desire to be more competitive as an economic unit. Fearing the rise of China and India, they strive to create the economic pillar of ASEAN community. A third factor behind the ASEAN Community and Charter is to maintain and gain political influence in the wider region. Yancha (2009, 2) also sees that the ASEAN Charter "may be considered as ASEAN's strategic response to the challenges of a rapidly changing global milieu that is bolstered by the evolving political landscape in the region, globalization, increasing trade bilateralism, and the group's own political dynamics." Its effort was perceived as a strategy nurturing nascent Asian regionalism by shifting the focus to ASEAN from the East Asian hegemon.

Attributing the ASEAN Charter development to geopolitical calculation may be plausible, but it cannot explain the commonly perceived need to transform the implicit norms to explicit rules. ASEAN Charter drafting, in essence, is international law-making, codifying code of conducts into written form with legally-binding effect for every member. This practice is in conflict with traditional practices in the ASEAN Way such as non-commitment to

legally binding instruments and preference for minimal institutionalism. What made codifying explicit rules possible in this context?

If the degree of norm robustness is high and the interacting parties share a common background, the rules from which actor draw shared behavioral guidance need not be explicitly formulated, as they are implicitly understood. An explicit formulation will be necessary in cases in which the interacting parties do not share a common history or culture (Kratochwil 1989, 78). This is hardly the case for ASEAN members, although their shared governing core norms popularly known as the ASEAN Way were questioned intermittently. The process of contestation weakened robustness of the norm such as non-interference as discussed in the previous section.

Kractohwil (1989, 79) discusses three more conditions which seem to make an explicit formulation necessary: the imprecision of tacit rules; the compelling character of the coordination dilemma; and when the solution is likely to engender further debate. Less specificity resulted in the imprecision of tacit rules, and invited an explicit formulation of the code of conducts. Strict non-interference was less clear after the debate ensuing the proposal of flexible engagement and enhanced interaction. Clarification of the governing principles of interstate conduct was needed.

The compelling character of the coordination dilemma can be attributed to the 1997 Asian economic crisis. Kratochwil raises examples of

the allocation of frequency bands of the radio spectrum and the establishment of rules of traffic on a river as too compelling to wait for emerging practices to develop. The compelling impact of the crisis also made ASEAN aware of the need for a more institutionalized measures such as cooperation in social safety nets programmes. They cannot wait around for emerging practices to develop in order to provide the solutions for the crisis that might recur. In 1998 ASEAN Post-Ministerial Conference (PMC) at Manila, the ministers agreed to set up the ASEAN-PMC Caucus on Social Safety Nets (Slazon 1998) to lessen the impact of the economic crisis. For the region that has been paying more attention to maintaining state-centric security, this kind of human-centric initiative call for an explicitly negotiated norm to bolster its legitimacy. Moreover, if one considers enhanced interaction as a compromising solution at the end of the norm contestation process in the late 1990s, it most certainly has not settled into widely accepted practice. These conditions made transforming the implicit understandings to explicit ones desirable for more legitimate and efficient operation of the institution. All in all, a problematic part of the lifeworld instigated the process of validity claim adjustment so that those sharing the same lifeworld could have common understanding and realign their approaches in future situations.

4.3 Setting up rules of the game: On establishing the EPG and the HLTF

4.31 Mandates to establish the EPG and the HLTF

The mechanism created to facilitate the Charter formulation was set out during the 11th Summit in 2005. The ASEAN leaders adopted the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter which called for the establishment of an Eminent Persons Group (EPG) and tasked the ASEAN Foreign Ministers to establish a High Level Task Force (HLTF) to carry out the drafting of the ASEAN Charter. At the 39th ASEAN Ministerial Meeting in Kuala Lumpur in 2006, the ASEAN Foreign Ministers then agreed on the formation of the HLTF on the ASEAN Charter. The Charter would be drafted on the basis of 1) the directions from ASEAN leaders at the 11th and 12th ASEAN Summits; 2) the relevant ASEAN documents; 3) the EPG recommendations; and 4) the guidance from the Ministers of Foreign Affairs (HLTF TOR 2006; see Appendix C).

The EPG comprised

highly distinguished and well respected citizens from ASEAN member countries, with the mandate to examine and provide practical recommendations on the directions and nature of the ASEAN Charter relevant to the ASEAN Community as envisaged in the Bali Concord II and beyond (ASEAN 2005b).

The EPG met during 2006 and submitted a report recommending what should be included in the draft at the 12th ASEAN Summit in January 2007

(see also Appendix B for the Terms of Reference of the Eminent Persons Group on the ASEAN Charter). The ASEAN leaders adopted the Cebu Declaration on the Blueprint of the ASEAN Charter during this Summit, endorsing the Report of the EPG on the ASEAN Charter. They gave the mandate to the HLTF to commence the drafting of the Charter to be completed in time for the 13th ASEAN Summit in November that year (ASEAN 2007). They accelerate the time frame for an ASEAN Community, and adopted the Cebu Declaration on the Acceleration of the Establishment of an ASEAN Community by 2015 during the same Summit.

The HLTF differs from the EPG, since it was comprised of national delegates, representing their respective countries' interests. The chairperson was changed twice. Ambassador Rosario G. Manalo, representing the Philippines, chaired the HLTF from January to August 2007. Professor Tommy Koh from Singapore then succeeded her from August to November 2007 when the Charter was completed and signed by ASEAN leaders. The change of chair also affected the institutional setting conditioning types of communication used. Madame Manalo assumed double responsibilities as both chairperson and the Philippines' national delegate while Professor Koh only acted as a chair (Singapore had another national delegate so that Professor Koh could be neutral as a mediator). This will be discussed further in the following chapters when the provisions negotiated under different chairpersons were explored.

Table 2 Members of the HLTF on the ASEAN Charter, January to November

2007

Country	Name	Position
Brunei Darussalam	Pengiran Dato Osman Patra	Permanent Secretary/ASEAN Senior Officials Meeting Leader, Ministry of Foreign Affairs and Trade
Cambodia	Dr. Kao Kim Hourn	Secretary of State/ASEAN Senior Officials Meeting Leader, Ministry of Foreign Affairs and International Cooperation
Indonesia	Mr. Dian Triansyah Djani	Director-General, ASEAN-Indonesia, Department of Foreign Affairs
Lao PDR	Mr. Bounkeut Sangsomak	Deputy Minister, ASEAN Senior Officials Meeting Leader, Ministry of Foreign Affairs
Malaysia	Tan Sri Ahmad Fuzi Haji Abdul Razak	Ambassador-at-Large, Ministry of Foreign Affairs
Myanmar	U Aung Bwa	Director-General, ASEAN-Myanmar, Ministry of Foreign Affairs
Philippines HLTF Chairperson (January-August 2007)	Amb Rosario G. Manolo	Special Envoy for the Drafting of the ASEAN Charter
Singapore HLTF Chairperson (August-November 2007)	Prof Tommy Koh	Ambassador-at-Large, Ministry of Foreign Affairs
Thailand (January-March 2007)	Mr. Sihasak Phuangketkeow	Deputy Permanent Secretary, Ministry of Foreign Affairs

(April-November 2007)	Mr. Pradap Pibulsonggram	Deputy Permanent Secretary, Ministry of Foreign Affairs
Vietnam (January-August 2007)	Mr. Nguyen Trung Thanh	Assistant Minister, ASEAN Senior Officials Meeting Leader, Ministry for Foreign Affairs
(September-November 2007)	Mr. Pham Quang Vinh	ASEAN Senior Officials Meeting Leader, Ministry for Foreign Affairs

Sources: Koh, Manolo, and Woon 2009

4.32 Rules of the game for the negotiators: How the HLTF operated

Collective norms and understandings define the basic "rules of the games" in which they find themselves in their interactions (Kratochwil 1989; Wendt 1999). The rules of the games are underlying principles guiding the interaction shared as common knowledge by actors (Risse, 2000). The HLTF Terms of Reference (TOR) does not designate explicitly the negotiation rules, leaving the matter to the HLTF members. Normally before the actors start negotiating, there is a 'pre-negotiation phase' to establish the common knowledge or rules of the game (Risse, 2000). The 'informal' HLTF meeting on January 13, 2007 only requested the ASEAN Secretariat's Special Assistant to the Secretary-General to prepare documents for the drafting. The HLTF members seemed to share a common understanding that the drafting process would also in general follow the same practices in other ASEAN meetings and conferences. Consultation and consensus-seeking was cardinal

in drafting the Charter. In an interview with author, a high-level official from Thailand participating in a number of Meetings (who requested to be anonymous) said that every drafter 'knows' that the discussion would not end in voting and that consensus is always preferred. Even when the HLTF members disagreed on some of the issues openly (as will be explored in Chapter 6 the establishment of the Human Rights Body), the end result must read as there was a consensus to refer the issues to the Foreign Ministers. Consultation and consensus-seeking is the unspoken rule of the game which also applies to most negotiations in ASEAN.

During the First Meeting of the HLTF, Singapore proposed eight guideline points for the drafting which are:

- The Charter should be visionary and inspiring

- The Charter should be short and succinct

- The Charter should be clear to the point that even students can understand it

- The Charter should not get bogged down on details

- The Charter should not attempt to solve every problem which can subsequently be better resolved in the form of subsidiary rules and legislation

- The Charter should be flexible enough

- The drafters should consider adopting a better framework for the Charter, such as the UN Charter

- The Charter should be people-oriented (Summary Record of the First Meeting)

Then, Malaysia proposed the ninth point which is the Charter should be the basis of cohesive, strong, and rule-based organization to facilitate greater compliance. The HLTF adopted all nine points without much arguing.

In an interview with author, a Thai high-level official who requested to be anonymous was of the opinion that since it was still early in the series of Meetings, none of the Members wanted to appear non-cooperative or obstructive to the drafting. Moreover, the guiding points proposed were general and flexible enough that there was no point in rejecting. He felt that there was a sense of equality among the drafters, and that every member can voice his or her concern. This was also confirmed by a Singaporean high-level official who participated in the Meetings (and requested to be anonymous) in an interview with author.

As a matter of fact, the drafting process and the general negotiating environment was conducive to the use of argumentative rationality or Habermasian communicative action on the surface. As discussed in chapter 2, there are three presuppositions for argumentative rationality: the actor's ability to empathize, a common lifeword, and equal position in the

negotiation and equal access to the discourse. Apart from sharing a common system of norms and rules perceived as legitimate, the HLTF members operated as equals and were generally amiable to one another (Pibulsonggram 2009). Influenced by the core norm of mutual respect and tolerance, they generally entered the debate preparing to understand the other party's point of view vis-à-vis their own national interests. However, power relationship did not completely recede to the background to provide a totally coercion-free environment. The famework of critical constructivism the thesis employs highlights the problematization of power. Actors might be able to debate the contested norm validity claims in a society of equals, but power relations must also be take into consideration. According to one of the HLTF members in charge of drafting the Charter, the prevailing mode of decision-making in ASEAN meant that "no single member state could claim to play the dominant role" but he also noted that, "the absence of 'undue pressure' did not mean the complete absence of threats exhibited by some members from time to time" (Razak 2009, 21). Another member mentioned that the first Chairperson of the HLTF, Madame Rosario G. Manalo,

> could also be dramatic such as when she called for a closed-door meeting, asked the other staffs to leave and… informed us that her Minister wanted this or that. We were compelled to remind her that her Foreign Minister was not our Foreign Minister and that we were also guided by our own Minister's instructions. (Bwa 2009)

The threats were mostly in the form of walking out (temporarily) or even catching a plane home (Koh 2009). Given that the decision-making was by consensus, the absence of members would cause difficulties. The fact that some members retained the use of threat to maximize their wants make it more difficult for cooperative arguing to be the first choice. Still, in general members understood that the negotiating environment was one that promoted equality as can be seen from the overall mood and tone of their memoir from the event (Koh, Manalo, and Woon 2009). Regardless of the size, all countries could voice their opinions or opposition. The meetings almost always proceeded in a non-confrontational manner (as mentioned by a high-level Singaporean official requesting to be anonymous in an interview with author in 2011). They agreed easily on how to deal with the media, granting ASEAN legal personality, immunities and privileges (Summary Record of the Fifth Meeting). The meetings also proceeded smoothly on how the decision-making in ASEAN should be: consensus or employ the Summit if failing that. The use of threats in order to inhibit the meetings' progress was an exception not a rule, and were widely met with disapproval from other HLTF members in the meeting (Bwa 2009). Using threats is not perceived commonly as 'rule of the game'.

When we analyse propositions outlined in chapter 2 regarding whether arguments will prevail in a particular setting, proposition 1) applies to the institutional setting in the drafting of the ASEAN Charter from the

beginning to August 2007. If actors with different role identities are supposed to clarify their uncertainty and seek to use argument, the HLTF members generally did not need to do that since they shared clear common understanding that each and every one of them represented their respective national interests. They constitute one another and understand one another as assuming the role of national delegate, unlike the EPG. Each HLTF member held only one role identity, and that is of the national delegate. However, the overlapping of role identities occurred when the Chairperson also acted as a national delegate. This will be analysed further in the following chapters when in-depth formulation of the controversial provision is tackled.

The drafting process is not a closed space, but it is not public or "transparent" either. The HLTF submitted some issues that they could not agree upon to the Foreign Ministers' Meetings. Rosario Manalo who assumed both national delegate position and chairperson of the HLTF made clear that the HLTF will have to take into consideration directives from the ASEAN leaders in drafting the Charter, incorporating the second-party context in the negotiation process early on. The HLTF member from Indonesia agreed that "we work under government instructions" (Summary Record of the First Meeting). This was not an outright first-party situation; however, since the HLTF maintained a two-way communication with the Foreign Ministers when submitting the progress report. In some occasions, they recommended or requested the Ministers to approve or decide on the

formulated clause. In the first-party context, the order or directives must be followed in a one-way communication.

Although neither the Kuala Lumpur Declaration nor the Cebu Declaration suggested the drafting process heavily involve the Foreign Ministers, the HLTF still consulted the Foreign Ministers. The negotiators adopted this practice voluntarily, censoring the public sphere. The HLTF Members met with actors outside their negotiating context such as the ASEAN High Level Task Force on Economic Integration, Senior Officials, and representatives from National Human Rights Institutions and the Working Group for an ASEAN Human Rights Mechanism which is an NGO; however, they had no obligation whatsoever to follow the recommendations from outside with the exception of their own Leaders and Foreign Ministers.

The HLTF and the EPG went on field trips to Berlin and Brussels during 7-15 March 2007. (The EPG also visited Brussels in 2006). It was termed 'working visit' and occurred after the First Progress Report to the ASEAN Foreign Ministers. The HLTF then held the Dialogue with civil society organizations approximately two weeks after the working visit (Koh, Manalo, and Woon 2009, 211). Although some involved in the drafting were of the opinion that 'ASEAN and EU are not comparable' since the EU is only an inspiration but not a model (Chalermpalanupap 2009, 132), the others saw that the EU was a useful reference for regional conciliation and integration

(Wong 2013). It was decided that the EU developments are worth studying in order to avoid the same mistakes and pitfalls, hence the visit (Wong 2013). Wong (2012) concluded that the EU is an important reference point for ASEAN. Another specific reason was seen to be an attempt by the HLTF members to examine human rights systems in other regions (Vanoverbeke and Reiterer 2014, 193). Singapore Foreign Ministers George Yeo (2007) then remarked that

> … Some members of the High Level Task Force drafting our ASEAN Charter have visited Berlin and are now in Brussels, precisely to learn from the EU experience. I don't think our integration will ever go as far as Europe's but your footsteps, including your missteps, are a guide to us in our journey. The European Commission has been most helpful to us. Last year, the Eminent Persons appointed by the ASEAN Leaders received excellent briefings on the European Union in Brussels which influenced them in the way they crafted their recommendations.

The HLTF also met up with civil society organizations such as Focus on the Global South and other groups comprising the Solidarity for Asian Peoples Advocacies (SAPA) Working Group on ASEAN half way through the negotiation, as well as representatives of the ASEAN Inter-Parliamentary Assembly (Koh, Manolo, and Woon 2009). Nonetheless, the HLTF did not have to seek consent from these "audiences". As mentioned earlier, there was no bringing out draft for referendum, no effort to involve public opinion. The HLTF Members might bear in mind the wishes and recommendations of civil society organizations they interacted with, but the end result depended on what went down in the closed HLTF Meeting. In an interview with author,

a Singaporean high-level official who requested to be anonymous mentioned that drafting the ASEAN Charter was actually 'affairs of the state'. He and some of the colleagues would have liked to involve other (non-state) parties, but it would not be practical.

Therefore, proposition 2b (negotiation behind closed doors) is more applicable than 2a (transparent negotiation). It remains to be explored in the following chapters whether this kind of negotiation is more conducive to persuasion. Communicative rupture can lead to the second-party context where the negotiators resort to coercive moves and form separate allies within the setting for the sake of leverage.

The institutional setting did not particularly privilege authority based on expertise and/or moral competence. There was no invitation of experts to give opinion and Members never appealed to their individual expertise when arguing (confirmed by a Thai high-level official who participated in the Meeting as well as another Thai official in the Department of ASEAN Affairs, Ministry of Foreign Affairs, Thailand, in an interview with author in 2011). They would rather justify using their rights as national delegates. Therefore, proposition 3b which emphasizes neutral chair is more applicable. Although formulating the ASEAN Charter is essentially law-making, and requires legal experts to "scrub" it towards the end of the process, the HLTF member who is also a legal expert did not have any privilege in the drafting process when it

comes to voicing opinions (as confirmed by a Singaporean high-level official requesting to be anonymous in an interview with author in 2011). In this situation, an "honest broker" was needed more and his authority was derived from his neutrality. When a disagreement was severe, negotiating authority and leadership was essential in bringing parties to the negotiating table again as when there was a rift during human rights mechanism negotiation.

On the last day of the drafting process, the HLTF adopted a mode of operation where one single objection would lead to the dropping of any new suggestion or idea, granting all members de facto veto rights (Koh 2009). This demonstrates that the core norms of sovereign equality and mutual respect and tolerance were adhered to. It can be argued that this was done in order to push for the draft to be completed before the 13th Summit. However, the HLTF did not resort to voting even though it is by far a quicker method. Consultation and consensus seeking was emphasized. Since mutual respect and tolerance dictates consultation and avoidance of publicly humiliating or angering any one, the HLTF members opted for a compromise that was less confrontational.

To sum up the drafting process, the HLTF

1) based the Charter text on directions given by the Leaders as reflected in the Kuala Lumpur Declaration on the Establishment of the ASEAN

Charter and the Cebu Declaration on the Blueprint of the ASEAN Charter and in consideration of the recommendations made by the EPG and other relevant ASEAN documents (HLTF TOR 2006);

2) sought to reach consensus and exercised de facto veto rights based on agreed texts in previous meetings prepared by the working group of assistants;

3) reported the progress periodically to the ASEAN Foreign Ministers and sought advice from them when the issues were considered too sensitive or when the HLTF could not reach consensus; and

4) met up with various ASEAN officials as well as civil society organizations and the NGOs during the drafting process although the HLTF did not necessarily seek their consent or approval.

The table below summarises the HLTF meetings with the main tasks completed in each meeting, leading to the signing of the Charter in the 13th Summit meeting.

Table 3 Meetings of the HLTF on Drafting the ASEAN Charter, January-

November 2007

Date/Place	Activities	Main tasks completed
13 January 2007 (12th ASEAN Summit) The Philippines	Informal HLTF Meeting	requested the ASEAN Secretariat's Special Assistant to the Secretary-General to prepare documents for the drafting
5-6 February 2007 ASEAN Secretariat Indonesia	1st HLTF Meeting	1) authorized the Singapore delegation to redraft the preamble and the chapters on objectives and principles; 2) agreed to meet with representatives of civil society before the 3rd HLTF meeting.
28 February-1 March 2007 Cambodia	2nd HLTF Meeting	1) adopted an agreed outline of the chapters and articles of the Charter; 2) adopted a work plan for March to November
1 March 2007 (ASEAN Foreign Ministers' Retreat), Cambodia	First Progress Report to the ASEAN Foreign Ministers	(Following the Ministers' recommendations) 1) omitted the term "ASEAN Union" suggested by the EPG; 2) omitted clauses about suspension, expulsion and withdrawal; 3) omitted specific provisions on funding the Special Fund 4) intended to draft a provision dealing with serious non-compliance and when consensus cannot be achieved; 5) intended to include a provision on an ASEAN Human Rights Commission as an organ.
7-15 March 2007 Germany and Belgium	Working visit of HLTF and EPG members to Berlin and Brussels	

27 March 2007 the Philippines	Dialogue with Civil Society Organisations	
28-29 March 2007 the Philippines	3rd HLTF Meeting	1) created a working group of assistants to meet one day before the HLTF to consider draft summary records and merge them into a single text; 2) completed discussions of the Preamble and the Principles (Chapter I).
9 April 2007 Myanmar	Dialogue with ASEAN High Level Task Force on Economic Integration 4th HLTF Meeting	1) discussed the Purposes; 2) revisited what had already been agreed which slowed the process.
19-20 April 2007 Vietnam	5th HLTF Meeting	1) completed discussions on legal personality, membership, privileges and immunities, and decision-making; 2) began a preliminary discussion on the organizational structure of ASEAN.
15 May 2007 ASEAN Secretariat Indonesia	Dialogue with senior officials attending the ASEAN Socio-Cultural Community Coordination Conference	
17 May 2007 Malaysia	Dialogue with representatives of the ASEAN Inter-Parliamentary Assembly	
17-19 May 2007 Malaysia	6th HLTF Meeting	1) completed discussions on provisions on dispute settlement, budget and finance, and administration and procedure; 2) considered a revised organizational srtructure proposed by the Secretary-General.
25-27 June 2007 Indonesia	7th HLTF Meeting	1) considered human rights mechanism in more detail as a

		result of the dialogue with representatives of National Human Rights Instiutions 2) discussed key organs (Chapter IV)
26 June 2007 Indonesia	Dialogue with representatives of National Human Rights Institutions from Indonesia, Malaysia, the Philippines and Thailand, and an informal Working Group for an ASEAN Human Rights Mechanism	
11 July 2007 ASEAN Secretariat Indonesia	Dialogue with senior officials attending the ASEAN Security Community Coordinating Conference	
13 July 2007 the Philippines	Informal Meeting with the Asian Development Bank	
22-26, 28, 30-31 July 2007 the Philippines	8th HLTF Meeting	1) completed discussions on external relations, and general and final provisions; 2) accepted Singapore's proposal to insert a provision for the Leaders to task the relevant Ministers to deal with emergency situations. 3) divided over human rights mechanism before accepted the Secretary-General's choice of wordings for the clause on human rights body
30 July 2007 (40th ASEAN Ministerial Meeting), the Philippines	Second Progress Report to the ASEAN Foreign Ministers	(Following the Ministers' recommendations) 1) the Foreign Ministers gave green light for the establishment of an ASEAN human rights body; 2) included the principles of democracy and constitutional government, in place of the principle of rejecting

		undemocratic and unconstitutional changes of government 3) deleted the principle of non-discrimination and the repatriation of foreign works; 4) deleted the provision on Special Funds altogether.
24-26 August 2007 Singapore	9th HLTF Meeting	(under the changed Chairpersonship from the Philippines to Singapore with another delegate representing national interests of Singapore) resolved some issues on organizational organs.
10-14 September 2007 Thailand	10th HLTF Meeting	1) divided over the function of the human rights body, who should draft its terms of reference (TOR) and when it should be completed. 2) Singapore played the role of mediator until the compromise was reached. The TOR will be determined by the Foreign Ministers.
26 September 2007 Permanent Mission of Brunei to the UN, US	11th HLTF Meeting	selected only two issues by request of the Foreign Ministers to submit to the Informal Ministerial Meeting and agreed that they should be human rights body together with the problem of its TOR, and the frequency of summit meetings.
27 September 2007 (Informal ASEAN Ministerial Meeting), UN Headquarter, US	Third Progress Report to the Foreign Ministers	the HLTF was allowed for the first time to remain in the room during the meeting. Following the Ministers' recommendations, the TOR would be drafted by the HLTF.
3-5 October 2007 Brunei Darussalam	12th HLTF Meeting	"cleaned" the text of the Charter, although some members insisted on re-opening agreed texts.

18-20 October 2007 Laos	13th and final HLTF Meeting	1) adopted a rule that any amendment which was met by even a single objection would not be accepted. 2) adopted the final texts, legally scrubbed by the national delegate from Singapore who also chaired the group of legal experts.
19 November 2007 Singapore	Presentation of the ASEAN Charter to the ASEAN Foreign Ministers	
20 November 2007 (13th ASEAN Summit) Singapore	ASEAN Leaders signed the ASEAN Charter	
Sources: ASEAN Secretariat 2007; Koh 2009; Koh, Manolo, and Woon 2009		

4.4 The role of non-state actors: Constructing an 'artificial' lifeworld?

The common lifeworld in ASEAN was constructed through shared experiences and understandings. The actors then draw norms and principles to obtain agreement about problematic issues such as contested validity claim from this common context. Generally, the ASEAN Way constituting the common lifeworld reinforces the state-centric security concept, meaning that the state, and not human, is the ultimate referent subject. Security policy, first and foremost, must be directed to protect the state. Non-interference and mutual respect and tolerance implies the state's absolute rights to prevent what it deems to be domestic issues from being raised at the international level. As a result, the region has been notorious for its less than stellar human rights records and erratic democracy: both norms are human-centric in nature.

However, the human centric norms have been competing with the state-centric norms markedly since the 1990s. When the state-centric lifeworld has not been providing enough normative space for human centric ones, the norm entrepreneurs such as the NGOs and civil society groups have been active in creating an artificial lifeworld so that they (and the norms they champion) could be included in the negotiations. Artificial lifeworld is the system of norms and rules as well as patterns of understandings which are not culturally transmitted through shared experiences. It has to be created, constructed in order for the negotiation in a particular issue can go on. ASEAN might not be able to engage in any meaningful debate regarding human-centric norms if the appropriate normative space does not exist prior to the negotiation. Non-state actors often attempt to re-frame issues (often from state-centric to human-centric orientation) in order to establish norms that may serve as a basic common lifeworld (Deitelhoff and Müller 2005). They usually appeal to human rights related norms or human-centric norms, especially if the norms are against protection of death and suffering. The successful example is where the International Campaign to Ban Landmines (ICBL) reframed a security-oriented topic where military considerations were the focus to a humanitarian one where the suffering of the victims was highlighted. Other techniques include holding conferences parallel to the official ones, issuing statements, and organizing co-workshops attempting to socialize the officials. Seeing that ASEAN still does not have enough space for

civil society involvement in key decision-making process and human-centric norms, they work to create an artificial lifeworld for the ASEAN agents to operate within. This is most evident in the case of regional human rights mechanism campaign discussed later in Chapter 6. Although the HLTF operated in a relatively closed space, the continuous effort from civil society in creating as well as maintaining space for human-centric norms which used to be viewed as alien and external is not to be ignored. In the process of norm codification where debate on norms validity claims prevail, actors will move within their lifeworld, their 'horizon of meaning'. If the lifeworld is still state-centric without the input from the non-state actors since the 1990s, actors would not have been informed of the new, extended horizon of meaning. They will not know that human-centric norms are now parts of rule of the game, a legitimate topic to be discussed. The fact that it is not culturally transmitted within the society or exists only in a 'thin' form leads the newly constructed lifeworld to be called 'artificial'. Deitelhoff and Müller (2005) contends that an artificial lifeworld is constructed where negotiation gets stuck because of lack of shared lifeworld. The actors might strive to construct the lifeworld in order to facilitate the negotiation. If the actors in the negotiation are unaware of new 'horizon', new norms, then the role of constructing a new, artificial lifeworld belongs to non-state actors employing techniques as discussed above.

ASEAN has usually practised 'elitist' diplomacy behind the closed door, excluding the voices of non-state actors (Soesastro 1995). However, by promoting norms associated with democracy and human rights such as transparency and the people's participation (Payne and Samhat 2004; Samhat 2005), the civil society groups have legitimized publicity in diplomacy and increased interaction between the officials and the experts/NGOs. In other words, they strived to widen the scope of public sphere. The EPG report that provided the basis for the Charter text was also written with continuous consultation with the NGOs and CSOs. The EPG was different from the HLTF as noted above: they did not have to receive mandates from the Foreign Ministers/heads of government and therefore might be prone to the socialization more. Although ASEAN generally acknowledges civil society, the HLTF did not strive to accommodate its feedback. Before the 10th HLTF meeting with the agenda to discuss the ASEAN Human Rights Body Terms of Reference, over 30 NGOs gathered for the first Regional Consultation on ASEAN and Human Rights (Forum Asia 2007). As the title suggested, the main concern was to strongly promote human rights and democratization. This conference also involved representatives from the UN, national human rights institutions, and academia. The main criticism was that ASEAN did not publish any draft of the ASEAN Charter for civil society to debate. The HLTF did meet with them and promised to take their concerns into account, but they did not plan to release the draft to the public before it was signed by the

leaders. The Charter was actually leaked[14] two weeks before the 13th Summit where the ASEAN leaders were supposed to sign it. However, by that time it was too late for the civil society to voice any more of its concerns or hoped that the HLTF would again revise the draft before the signing. In this regard, artificial lifeworld maintenance proves to be a challenge and represents underlying normative struggle until it gains acceptance and blends into the existing lifeworld.

Chapter 2 already discussed norm diffusion and the role of 'transnational advocacy networks' as norm entrepreneurs. The non-state actors have been actively promoting human centric norms and attempting to influence the decision-making process in ASEAN. Some parts of the lifeworld was questioned by the official track, but the creation of artificial lifeworld also resulted in problematizing other parts of the current lifeworld which again needed evaluation and common agreement among ASEAN agents. This process occurs from time to time, resulting in occasional inclusion of the civil society in the decision-making process in ASEAN (although not to the satisfying degree from the civil society viewpoint). The robustness of human-centric norms might not yet be as high as the traditional state-centric governing core norms, but norm contestation is an ongoing process. Consistently contested norm fuels the re-evaluation, which might result in

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[14] A Thai newspaper, Pracha Thai, obtained the draft and posted it for online download. Thailand was the first to receive the draft since the parliament had to endorse any agreement before it could be signed (in accordance with a provision in the 2007 Thai Constitution). The Charter was then leaked to the media.

the legitimization and codification of the said norm. The fact that there has been vigorous debate concerning human rights in the 1990s was due largely to these norm entrepreneurs who took advantage of "window of opportunity" formed by the international pressure.

4.5 Conclusion

This chapter sets out how ASEAN has established its rules of the game prior to the drafting of the ASEAN Charter. The EPG is fundamentally different from the HLTF because the former's role identity is not of national delegate but of experts. Therefore, they consulted freely with the NGOs and CSOs, and incorporated their opinions in the EPG report. However, the HLTF members are aware of their role identities as national delegates, and adhere to their leaders' demands much more strictly.

Generally, the negotiating environment in ASEAN setting was conducive to the use of argumentative rationality, but power relationship did not always recede into background. The national delegates sought advice from their leaders, circumventing the public sphere. Working to widen the scope of the public sphere by promoting competing norms to the state-centric lifeworld is the civil society, whose role in creating artificial lifeworld also influenced the normative contestation process.

The following chapter will then explore in detail the first selected main provision in the ASEAN Charter: the dispute settlement mechanism. It will explore the norm of peaceful settlement of conflict in ASEAN, how it remained an uncontested part of the lifeworld, and how the norm of non-involvement of ASEAN to address bilateral conflict between members became problematic and needed to be clarified in the Charter. This will be explained through selected case studies of how ASEAN has been dealing with regional conflicts prior to and after the ASEAN Charter was in place. The HLTF members had to decide the most effective way for ASEAN to resolve the conflicts between its members in the future, and chose between preserving the former traditional norm of non-involvement of ASEAN in conflicts and empowering ASEAN with a more robust dispute settlement mechanism.

Chapter 5

Dispute Settlement Mechanisms in the ASEAN Charter

5.1 Introduction

This chapter aims to explore how Chapter VIII Settlement of Disputes of the ASEAN Charter was formulated by the HLTF. Peaceful settlement of conflict in ASEAN was codified in its key documents prior to the ASEAN Charter and ASEAN leaders helped mediate a number of disputes, but the Charter has an added value of increased authority and legitimacy of the Secretary-General and the ASEAN Chairman to act as mediators. The HLTF did not envision this at the beginning of the drafting process. In order to illustrate how ASEAN has been managing conflict prior to the drafting of the ASEAN Charter, existing regional dispute settlement mechanisms in both economic and political areas will be explored against the backdrop of unquestioned parts of the lifeworld. The core norm reevaluated during the drafting process before the HLTF agreed on increased authority of the ASEAN representatives was non-involvement of ASEAN in unresolved bilateral conflict between members unless requested. The mode of communication during the drafting, how the members 'ruled in' or 'ruled out' some of the options will illustrate how the norm was interpreted in less strict sense and how the norm of increased ASEAN's involvement in the conflict was finally codified instead. This was tested in the latest round of Thai-Cambodian border dispute, where the Secretary-General and the Chairman exercised their authority in mediation based on the Charter.

5.2 Peaceful settlement of conflict in ASEAN

When it comes to intramural conflict settlement, a regional institution has a range of options to prevent, contain or terminate the incident. The strategies range from norm-setting, assurance, community-building, deterrence, non-intervention, isolation, intermediation, enforcement and internationalization (Alagappa 1997, 427). Through norm-setting, regional organization members have come to share a common understanding and expectations of an appropriate behaviour. The founding fathers of ASEAN: Indonesia, Malaysia, the Philippines, Thailand, and Singapore envisioned an association of neighbouring countries co-existing peacefully from the onset when they came together on the inaugural meeting in 1967. If institutions are structures of norms (Goertz 2003), non-recourse to the use of force and peaceful settlement of conflict were emphasized from the very beginning. Both were firmly localized, arising from the need to focus on nation-building and domestic development without having to worry about dealing with external threats and bolstered further by members' adopting of similar norms in the UN Charter.

The 1967 Bangkok Declaration states that of the aims of the organization is "to promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of

the region and adherence to the principles of the United Nations Charter"
(ASEAN 1967). There was no need to reinterpret the norm to suit local actors
or congruence building since non-recourse to the use of force (and therefore
settling disputes without the use of force) has been robust in terms of clarity,
durability and concordance. Adhering to common norms forged through a
continuing process of dialogue capable of producing resilient relationships
able to withstand any shift to adversity in interstate ties has been a way
ASEAN addressed the issue of peace and security in the region. This was
backed up by close working relationships between ministers and officials
(Leifer 1999, 28) and created a basis of peer-group pressure for newer
members.

Non-intervention is used when a regional institution (or other
members who are not direct disputing parties) does not seek to become
involved in a particular conflict. It is closely linked to how ASEAN has been
refraining from addressing unresolved bilateral conflicts. Deterrence
strategies involving collective security and collective defense implies
intervention, a direct and active involvement in a conflict through the
application of a regional organisation's collective political, economic and
military resources to contain and terminate conflict (Alagappa 1997, 427).
What a regional organization chooses to do in a given circumstance depends
on their past experiences acting as a kind of strategy repertoire. In other
words, the social learning process through which the common stock

knowledge was developed would guide its decision. This will influence the actors to opt for a way that does not go against or collide with the region's established core norms. Dialogue, consultation and deferring are all unintrusive methods consistent with mutual respect and tolerance. ASEAN members earlier on chose not to include intervention (collective security and defense) based on their cognitive prior as discussed in the previous chapter. The norm-setting process codified in the Bangkok Declaration, the TAC, and the ZOPFAN all took care to exclude interference in any form.

Intermediation (or mediation) is a process of conflict management where disputing parties seek the assistance of, or accept an offer of help from an individual, group, state, or organization to settle their conflict or resolve their differences without resorting to physical force or invoking the authority of the law (Bercovitch and Houston 1993; Dryzek and Hunter 1987). Successful third-party mediation requires two preconditions: 1) mediation must be acceptable to the adversaries in the conflict and 2) the parties concerned must show their desire to seek resolution by co-operating diplomatically with the third party. Intermediation was spelled out in the TAC, but it was never used since members have preferred to talk about the problem bilaterally, shelving it in some cases until a more opportune or accommodating situation arrives. In some cases where disputing parties agreed for mediation or good offices, they did not invoke the regional mechanism set out in the TAC or ask the ASEAN Secretary-General to

mediate as a representative of ASEAN. Member countries were more willing to use mediation and good offices in solving economic disputes since they were deemed less sensitive and also less intrusive to national sovereignty.

The first successful exploitation of mediation was the management of the dispute between Malaysia and the Philippines over Sabah in 1968 (Tuan 1996, 69), just a year after ASEAN was formed. The personal intervention of Indonesia's President Soeharto led to a private meeting between foreign ministers of Malaysia and the Philippines in Jakarta. They agreed to settle the dispute outside the ASEAN framework and the relationships between the two countries were normalized soon afterwards. The crisis did not escalate into full military confrontation. President Soeharto was not acting on behalf of the larger regional framework, and this has become a norm for other disputes when the parties opted for mediation. They were executed by heads of state/government or Ministers who were accepted by the disputing parties.

ASEAN stepped up and tried to fulfill a role of mediator when a coup erupted in Cambodia in 1997. Prince Norodom Ranariddh was overthrown by co-Prime Minister Hun Sen and fighting between forces loyal to the two Prime Ministers spread into Cambodia's western provinces bordering Thailand, posing threats to international peace and security. The crisis in Cambodia made some ASEAN members question the norm of non-

involvement of ASEAN in bilateral disputes. Deputy Prime Minister Anwar Ibrahim of Malaysia acknowledged that ASEAN's "non-involvement in the reconstruction of Cambodia contributed to the deterioration and final collapse of national reconciliation" (Peou 1998, 32). Consensus emerged at the summit of the Asian Regional Forum (ARF) that ASEAN should take the lead in addressing the crisis. A Troika of three Foreign Ministers (Ali Alatas of Indonesia, Prachuab Chaiyasan of Thailand, and Domingo Siazon of the Philippines) was founded for a mediatory role. The Troika was meant to represent ASEAN; however, this did not mean that all member countries were united in their position regarding the crisis. For example, Vietnam was quite supportive of Hun Sen's action.

Hun Sen accepted the Troika on the basis of strict non-interference abided by the Troika, limiting the Troika's role and influence by referring to the core norm in the region. At the second meeting, Hun Sen criticized ASEAN for interfering in Cambodia's internal affairs, again invoking the norm of non-interference and linking it to the Troika's legitimacy. He earlier declared, "… on the subject of democracy and human rights, they must not teach us" (Peou 1998, 33).

By straight-locking the Troika, Hun Sen consolidated his power until political pragmatism won over and a number of ministers returned from exile to work with him. However, this did nothing to Cambodia's international

reputation at the time. Failing to have any significant effect on events in Cambodia, ASEAN chose to internationalize the problem again by declaring that it would not grant Cambodia ASEAN's membership until after the elections had taken place. It also supported a UN decision to leave Cambodia's seat vacant until after the elections. ASEAN had internationalized its regional crisis before when Vietnam invaded Cambodia in 1979, appealing for the UNSC pressure until the war was brought to an end. On a regional level, ASEAN attempted its best to promote dialogue between factions by hosting a number of peace conferences (mainly led by Indonesia and Thailand) but little concrete outcome was produced.

In 1998, Japan which was Cambodia's largest donor at the time advanced the Peace Plan. The Troika endorsed this at a consultative meeting of the "Friends of Cambodia". The group included developed countries involved in the Paris Agreement which settled the earlier dispute between Vietnam and Cambodia. Both Hun Sen and Ranariddh accepted the Plan, resulting from strategic calculations of economic benefits rather than the credibility of the Troika. The elections and the trials occurred as a result of the Peace Plan, albeit accused of being just a 'show', paved a way towards Cambodia's eventual membership in ASEAN and bolstered the organization's notion of inclusivity.

From past experiences, ASEAN as an organization thus has had limited role in mediating disputes. Although mediation and good offices were employed, it was done by individuals or groups of Ministers (who may have to collaborate with external powers for increased efficiency) and not in official capacity as a representative or official affiliated with ASEAN. Non-involvement of ASEAN to address unresolved bilateral conflict between members, then, has been a norm. Needless to say, enforcement is never a strong point in the region. The mediating process if originated in the region is voluntary with no binding obligations to the parties involved. Cooperative security practiced in the region foregoes the vehicle of sanctions and works on the basis of suasion through peer-group pressure underpinned by the assumption of self-interest (Leifer 1999, 27).

Through the norm-setting process and relevant conflict management in the past, non-recourse to the use of force and peaceful settlement of dispute were already a part of ASEAN's lifeworld when the ASEAN Charter was set to happen as explained in previous Chapters. They were the uncontested part of the lifeworld during the negotiation, since the HLTF members did not raise question against these norms even once. Consequently, there was no conflicting frame of reference or dispute in validity claim of non-use of force in settling the conflict at the onset of the drafting. The norm that was more heavily questioned was non-involvement of ASEAN to address unresolved bilateral conflict between members, as

clearly acknowledged by Deputy Prime Minister of Malaysia during the political crisis in Cambodia. The formation of ASEAN Troika on Cambodia led to the establishment of the ASEAN Troika as an *ad hoc* body at the ministerial level "in order that ASEAN could address more effectively and cooperate more closely on issues affecting regional peace and stability" (ASEAN 2000). Growing frustration about the thwarted role of ASEAN in managing the Cambodian crisis facilitated the contestation of non-involvement of ASEAN to address unresolved bilateral conflict between members' validity claim. It became a problematic part of the ASEAN lifeworld that the HLTF had to set right in the Charter.

5.3 Dispute Settlement Mechanisms in ASEAN

Following Alagappa's classification (1995), Caballero-Anthony (2005, 55) divides conflict management mechanisms in ASEAN into two types: 1) formal mechanisms and 2) informal or normative mechanisms. The formal mechanisms are then divided into 1) the institutionalized framework of discussions and consultations, namely the ASEAN Summits, the AMM, the ASEAN PMC and the SOM; 2) the institutionalized bilateral mechanisms and processes such as Joint Border Commission between two neighbouring countries; and 3) the legal instruments such as the TAC and ZOPFAN. Caballero-Anthony (2005, 65) sees that, in essence, the informal mechanism

of conflict management in ASEAN is the ASEAN Way. Core norms in the ASEAN Way provide guidelines for ASEAN should a conflict arise. She highlights its usefulness as a mechanism to manage conflict and identifies some of its elements, including diplomacy of accommodation, networking, and agreeing to disagree. These practices stem from core norms in the ASEAN Way such as mutual respect, tolerance, and quiet diplomacy. In an attempt to highlight ASEAN's contribution in conflict management, Rajshree Jetly (2003, 55) also emphasizes the importance of informal mechanism of either reaching consensus through mutual consultations and negotiations or deferring consideration of contentious issues to diffuse conflict. Antolik (1990) summed "ASEAN Diplomacy" up as talking to each other, speaking with one voice, and standing together. Consultative process and an appearance of unity and solidarity have been characterizing ASEAN interstate conduct.

The institutionalized "formal" dispute settlement mechanisms in ASEAN all incorporate these "informal" mechanisms. Institutionalized regional dispute settlement mechanisms specified in the key Treaty prior to the ASEAN Charter negotiation will be explored in order to illustrate the tools available to ASEAN before the final result of the Charter ends up enhancing them even though the first draft did not mention anything about the empowered role of the Secretary-General and the ASEAN Chairman in conflict management.

5.31 Dispute settlement mechanisms in economic area

The regional dispute settlement mechanism for economic issues in ASEAN initially referred to the 1992 Framework Agreement on Enhancing ASEAN Economic Cooperation. It states in Article 9 that "any differences between Member States concerning the interpretation or application of this Agreement… shall, as far as possible, be settled amicably between the parties. Where necessary, an appropriate body shall be designated for the settlement of disputes". This article was expanded by a Protocol on Dispute Settlement Mechanism in 1996, which was then replaced by the ASEAN Protocol on Enhanced Dispute Settlement Mechanism of 2004. Also known as the Vientiane Protocol, the ASEAN Protocol on Enhanced Dispute Settlement Mechanism remains key in resolving economic disputes in ASEAN. First and foremost, it encourages the use of consultations. The principle of 10-X which allows regional economic initiatives to proceed without the concurrence of all members also plays a crucial part in conflict prevention. Member states can abstain so long as they are not damaged by non-participation and excluded from future participation (Jetly 2003, 57). It enshrines the core norm of equal sovereignty as well as mutual respect and tolerance.

Good offices, conciliation or mediation can begin at any time if agreed by both parties. Article 4(3) of the Vientiane Protocol states that the Secretary-General of ASEAN may, acting in an ex officio capacity, offer good

offices, conciliation or mediation with the view to assisting Member States to settle a dispute (ASEAN 2004a). If the Member State to which the request for consultations is made does not reply within 10 days after the date of receipt of the request, or does not enter into consultations within a period of 30 days after the date of receipt of the request, or the consultations fail to settle a dispute within 60 days after the date of receipt of the request, the matter shall be raised to the SEOM if the complaining party wishes to request for a panel (ASEAN 2004a, Article 5(1)). Member states can still seek recourse to other fora for the settlement of disputes, but a party opting for that must do it before its disputant makes a request to establish a panel. A panel can also be requested when good offices, conciliation or mediation are terminated, although all that may continue while the panel process proceeds if agreed by both parties. However, the SEOM can decide by consensus not to establish a panel.

The panel, once established, will examine the relevant provisions in agreements that are covered by the Vientiane Protocol cited by the parties to the dispute. It will then objectively assess the case and make findings. The SEOM can decide whether to adopt the panel report or not (ASEAN 2004a, Article 6(1)). If a party has decided to appeal, the report shall not be considered for adoption by the SEOM until after the completion of the appeal (ASEAN 2004a, Article 9(1)). Article 12 of the Vientiane Protocol authorizes the ASEAN Economic Ministers (AEM) to set up the Appellate

Body. The Vientiane Protocol even specifies the timeframe for parties to the dispute (60 days) from the SEOM adoption of the panel report unless the parties agree on a longer time period (ASEAN 2004a, Article 15(1)). Any party required to comply with the findings and recommendations will have to provide the SEOM with a status report of their progress in the implementation of the report adopted by the SEOM. The SEOM, assisted by the ASEAN Secretariat, will keep under surveillance the implementation of the finds and recommendations. Article 17 provides for the ASEAN Dispute Settlement Mechanism Fund contributed initially by all Member States to meet the expenses of the panel, the Appellate Body, and any related administration costs (ASEAN 2004a). Any drawdown from the Fund shall be replenished by the parties to the dispute.

It can be seen that ASEAN has a formal legal settlement mechanism regarding disputes arising from economic instruments. It is voluntary and cannot be initiated without consent from both parties, but it is concrete and quite detailed and specific regarding the time frame. The institutionalized dispute settlement mechanism in political area is a different case.

5.32 Dispute settlement mechanism in political area

Prior to the ASEAN Charter, the 1976 TAC provides the sole formal mechanism for disputes in non-economic area. It is similar to the dispute

settlement mechanism in the Vientiane Protocol in the sense that both

disputing parties must grant consent before it can be invoked, but with less

detail and no time frame is provided. Chapter IV Pacific Settlement of

Disputes of the TAC envisages that disputes threatening peace should be

referred to a High Council consisting of ministerial level representatives from

each member states (called the High Contracting Parties) who will

recommend the appropriate means of settlement of the disputes. The

ministerial level representatives need not be lawyers or legal experts, which

at the end could render the process more political than legal (Caballero-

Anthony 1998, 50). We could only speculate its effectiveness since it has

never been used by the members.

First and foremost, the disputing parties shall refrain from the threat

or use of force and attempt to settle the disputes among themselves through

friendly negotiations (ASEAN 1976, Article 13). If desired or if direct

negotiations fail, the disputes can be settled through regional process by

constituting a High Council. The process can only be invoked if the parties to

the dispute agree. The High Council can then recommend to the parties in

dispute appropriate means of settlement or act as mediator, inquirer, or

conciliator provided that the disputing parties agree. Member States could

always recourse to peaceful settlement of disputes prescribed by the UN

Charter including the use of the ICJ (ASEAN 1976, Article 17). The dispute

settlement mechanism as specified in the TAC depends wholly on the

disputing parties' willingness to employ it, although other members not party to the dispute can offer assistance to settle the dispute. Even when the mediation is sought, parties to a dispute are not strictly bound in any way to accept the means the High Council recommends. There is no enforcement, and the High Council is meant to be resorted to when direct negotiations fail. In the case where negotiations do not bear fruits, the members choose to defer or shelve the conflict rather than to invoke the High Council. Members opt to use informal dispute settlement mechanism which still conforms to the core norms in the ASEAN Way.

The ASEAN Troika was set up to support and assist the ASEAN Foreign Ministers and was meant to carry out its work in accordance with the TAC "in particular the core principles of consensus and non-interference" (ASEAN 2000). Its TOR was adopted at the 33rd AMM in July 2000 following the proposal of Prime Minister Chuan Leekpai of Thailand at the 3rd ASEAN Informal Summit in Manila on November 28, 1999. The proposal was raised against the backdrop of inability of ASEAN to address the East Timor crisis in the 1990s in any meaningful way (Haacke 2005a, 204). Earlier on in 1975 when Indonesia invaded East Timor, ASEAN countries also sidelined the issue as Indonesia's internal affairs. The Troika concept was later proposed by the UN-Secretary-General to the Chairman of ASEAN Standing Committee to help resolve the political deadlock in Burma to no avail. The aim of such an initiative would be to ultimately bring about dialogue between the ruling

junta and the opposition movement, the National League for Democracy (NLD), headed by Daw Aung San Suu Kyi (Sen 2000). Myanmar came out most strongly against the proposal of the ASEAN Troika in both cases, and the TOR eventually endorsed in 2000 was a watered-down compromise. Since the ASEAN Troika cannot represent ASEAN beyond the issues assigned by the ASEAN Foreign Ministers, its scope is very limited. The TOR also states that the Troika "shall refrain from addressing issues that constitute the internal affairs of ASEAN member countries" (ASEAN 2000, 3.2). It is an ad-hoc body which means that its mandate is decided (via consensus) by the ASEAN Foreign Ministers on a case-by-case basis. The ASEAN Troika comprises the Foreign Ministers of the present, past and future chairs of the ASC, which would rotate in accordance with the ASC Chairmanship. The composition could be adjusted upon the consensus of the Foreign Ministers (ASEAN 2000, 3.1). Although limited in scope and authority, the concept of the ASEAN Troika represents an increasing doubt in the ASEAN level regarding the frame of reference of the degree ASEAN should be involved in conflict settlement. The process culminated in the Charter drafting process.

Disputing parties did make use of third-party dispute settlement mechanism outside of the region. For example, the dispute over Pedra Blanca between Malaysia and Singapore and that of Ligitan and Sipadan between Malaysia and Indonesia have been referred to the ICJ (Caballero-Anthony 1998, 62). It seems that the member states only have particular

aversion to institutionalized dispute settlement mechanism within the region when it comes to political disputes and do not want the issues to be raised at an ASEAN level. They could; however, raise them elsewhere in an international level.

Not invoking the formal mediation the TAC prescribes, the informal mediator's role is based on goodwill of the disputing parties and his identity is very much attached to his country. The role of the Secretary-General has been very minimal in conflict management. There was no precedent that an ASEAN official affiliated in the first instance to the Secretariat acting on behalf of ASEAN could play the role of a mediator. This has changed in the ASEAN Charter's Chapter VIII Settlement of Disputes. Non-involvement of ASEAN to address members' conflict was revisited and reevaluated during the drafting of the ASEAN Charter, with an aim for a more effective dispute settlement mechanism regarding non-economic issues.

5.4 Formulating Chapter VIII Settlement of Disputes in the ASEAN Charter

5.41 Enshrining peaceful settlement of disputes: 'ruling out' the mechanisms

Codifying the norm of peaceful settlement of dispute is not the main task for the HLTF since the TAC has explicitly codified it since 1976. They did not have to engage in truth-seeking behaviour since the norm of peaceful settlement of dispute is clear on what it prohibits: the use of force. Their aims were not to break one another's will, since there was no one who questioned or challenged this norm. They proposed the case which was already cast in universalizable rules endorsed as jus cogens or peremptory norm. There was no conflicting frame of reference, and they agreed to highlight it in the ASEAN Charter. Initially, the High Council spelled out in the TAC was still meant to be the main dispute settlement mechanism in political and security area without any other embellishments. According to one of the drafters, it does not matter how many cases the mechanism manages to settle, the achievement is the lack of the cases brought to attention (Woon 2009). However, it was envisioned in the working draft prepared by the ASEC that enforcement mechanisms shall be established along side with dispute settlement mechanisms (that will have binding adjudication). The HLTF had to finalize how it should be done and forged the way forward. There was no mention anywhere regarding the empowered role of the Secretary-General or the ASEAN Chairperson. The Secretary-General's role as a mediator is already highlighted in the 2004 Vientiane Protocol, but that only applies to disputes arising from economic issues. There is no dispute settlement mechanism in the socio-cultural pillar, but it was envisioned at the beginning

of the drafting process that there should be an institutionalized mechanism similar to that in the Vientiane Protocol.

The HLTF from the first meeting had decided it must find the most effective way for ASEAN to resolve the conflicts between its members in the future. Non-recourse to the use of force and peaceful settlement of conflict was an essential part of ASEAN's lifeworld as previously discussed. Its legitimacy was not questioned by the members. The problematised issue in the negotiating process regarding the provisions in Chapter VIII Settlement of Disputes was another part of the lifeworld: non-involvement of ASEAN to address unresolved bilateral conflict between members. The contested validity claim lied between preserving ASEAN's distance from members' disputes and increasing the role of ASEAN in solving the conflict. In deciding which would be the most suitable way forward, the actors evaluated the validity of each option with reference to agreed norms – the unquestioned part of the lifeworld. The provision codified must not go against the settled norms: non-recourse to the use of force, peaceful settlement of conflict, non-interference and non-intervention, quiet diplomacy, and mutual respect and tolerance.

At an extreme end is the proposal to set up an ASEAN Court of Justice. The proposal for an ASEAN Court of Justice was first brought up by Tun Musa Hitam, Chairperson of the EPG at the first meeting of the HLTF at the ASEAN

Secretariat in Jakarta in February 2007 (Summary Record of the First Meeting). As a matter of fact, the EPG Report does not mention the Court since the proposal could not garner enough support from other EPG members. The EPG Chair; nonetheless, still saw it as his duty to try to persuade the HLTF because the Court would be desirable as the "right" way forward in dispute settlement mechanism. The EPG member from Cambodia also used similar method when he appealed to moral highground of the HLTF, asking them to "put… personal interests aside and look at our recommendations objectively" (Summary Record of the First Meeting). To persuade the HLTF to agree over a course of action (or to even agree to consider the proposal seriously), the EPG Chair and his supporters embarked on cooperative arguing and tried to elaborate the views of both themselves and their counterparts. The HLTF member from Malaysia pushed forward for the ASEAN Court of Justice, in line with the EPG Chair. They are from the same country, and the Malaysian national delegate also saw the Court as beneficial to ASEAN and Malaysia as one of the members. However, the institutional setting for the HLTF meetings did not exactly benefit the use of arguments by the EPG, which was included only in the First Meeting. ASEAN institutional setting does not privilege authority based on expertise or moral competence due to the norm of sovereign equality which emphasizes same standing and rights of all national delegates regardless of their backgrounds. It was agreed that the HLTF members are accountable to their respective

Foreign Ministers and heads of state/government, not the EPG members (Summary Record of the First Meeting, Annex 5). The EPG was recognized to be a panel of experts, but the HLTF had a strong shared understanding that it did not have to abide by the experts' advice. Rosario Manalo, the HLTF chair from the Philippines made it clear that the directives of the leaders were more important (Summary Record of the First Meeting), and therefore the EPG was not their "audience". It needed no consent from the EPG to proceed.

The HLTF had a dialogue with the Civil Society Organisations on March 27, 2007 in Manila. Among other concerns, those from the non-official diplomacy track (specifically the ASEAN-ISIS) have expressed desire to be included in the process of dispute settlement (Summary Record of the Third Meeting, Annex 8). The HLTF was quick to note to the civil society organizations that it would not be bound by any of the proposals although it would try to incorporate the elements deemed workable. It was clear that the HLTF did not want the civil society to become their audience.

The HLTF met with the ASEAN Inter-Parliamentary Assembly (AIPA) on May 17, 2007 in Penang, Malaysia. AIPA is consisted of representatives from Parliaments of the member countries. Among other proposals, AIPA suggested that ASEAN should look into having an ASEAN Tribunal and should try to include it in the Charter (Summary Record of the Seventh Meeting, Annex 9). Again, the proposal for an arbitration body was raised. The HLTF

responded that there were already existing dispute settlement mechanisms for the security and economic pillars, but the concept of an ASEAN Tribunal was still an idea that was open to discussion. It did not refuse the proposal outright.

The fact that the HLTF only answered to the leaders was reinstated again in the Fifth Meeting when the Chairperson raised an issue that the media was providing "inaccurate news" to the public. By being "inaccurate", she meant the general lack of participation from other stakeholders since the HLTF already met with the civil society organizations. There was consensus across the board for the media strategy for the ASEAN Charter (Summary Record of the Fifth Meeting, Annex 2). The first point is that "the HLTF is accountable to the leaders through the Foreign Ministers". The HLTF agreed that they "must not inform the media before they inform their Ministers on the progress or on controversial questions". Employing critical constructivist framework, we can see that all things being equal, the foreign policy representations constructed by state officials have prima facie plausibility compared to other representations because these officials are themselves constituted as the legitimate voices of "the state" (Weldes 1998, 221). The officials also strived to be perceived in that way. They would work out an agreed press line so that they could speak with one voice. This implies that no HLTF member should speak out individually to the press. The Ministers preferred the Charter to remain in secrecy by instructing the Chair of HLTF

not to give any interview (Summary Record of the Eighth Meeting, Annex 18). They also ordered that the draft of the Charter should not be submitted to the press. This demonstrates, time and again, that the institutional setting of the Charter drafting was quite closed.

All in all, the proposal of the court was ruled out at the First Meeting. The court also clashed with other unquestioned parts of the lifeworld such as quiet diplomacy, since the judgment would be public and binding. The HLTF members gave an intersubjective meaning to the court as undesirable, 'too much' (mentioned by a high-level ASEAN Secretariat official requesting to be anonymous in an interview with author in Bangkok in 2011). This was also the case for expulsion as one of the "enforcement mechanisms". The EPG concluded that expulsion should only be considered by the ASEAN Council in exceptional circumstances, and the EPG Chair appealed in the First Meeting that the HLTF should really include this as one of the options to deal with deviant behaviour. He stated that "if we say under no circumstances can expulsion be considered, then we will be the laughing stock of the rest of the world" (Summary Record of the First Meeting). The arguments were again, to persuade that the "right" course of action for the common good of an organization be upheld. It was countered strongly by the HLTF member from Myanmar. Bearing the mandate from his Prime Minister in mind, he put forward that "the issue of expulsion is not in the interest of preserving the unity and solidarity of ASEAN" and that "(ASEAN) need to give a clear and

strong signal of mutual understanding that we are united". This was, indeed,

plebiscitary reason. No members would want to counter "unity and solidarity"

argument. Unity, after all, has been ASEAN's identity (Summary Record of the

Twelfth Meeting, Agenda 4; also mentioned by an ex-Senior Officials'

Meeting leader requesting to be anonymous in an interview with author in

2011). The HLTF Member from Myanmar still reasoned and argued, but to

persuade others of the preferred course of action from Myanmar's point of

view, not to elaborate on each other's understanding.

This point was crucial for Myanmar and it did not prepare to change

its standpoint. Myanmar made sure the First Meeting recorded that "the

issue of expulsion has no place in the ASEAN Charter" and that the EPG's

recommendation that the decision to suspend a member may be decided in

its absence is "contrary to the democratic principles and the outward-looking

nature of our organization" (Summary Record of the First Meeting, Annex 7).

For Myanmar, it is unjustifiable for members to "gang up" and decide the

fate of another equal member, rendering this practice "undemocratic".

Myanmar's argument of democratic principles to which ASEAN should

adhere was actually related to the core norm of sovereign equality and there

was less emphasis on people's participation. This was a direct draw from a

shared lifeworld, appealing to a common understanding and experiences of

the HLTF members. However, Myanmar chose to justify its reason for not

having expulsion as an option for ASEAN in terms of democracy even though

it has been under attack regarding this issue more than any other member countries. It 'understood' that referring to democracy was expected due to criticisms in the past. Myanmar's rhetorical action was still heavily influenced by other members' past expectations and interactions. Myanmar was denied the hosting of an ASEAN Summit in 2006 due to human rights abuse (Davis 2012), just a year before the negotiation on the ASEAN Charter started. It did not wish that to happen again and did not want to be seen as an outcast no matter from within or from outside the organization. Due to consensus-based procedure resulting from the norm of sovereign equality, any proposal strongly opposed by a member (or a group of members) could not be included in the text.

Competitive arguing was at work when Myanmar countered the EPG Chair's proposal. It was far more detrimental for ASEAN to be perceived as lacking unity and solidarity than to be able to expel delinquent members. This was in part due to national interests since Myanmar would be an early target given its past regime records. Withdrawal was also out of the question. It was reasoned by Cambodia that ASEAN should avoid the case of the League of Nations whereby too many members withdrew. The EPG chair also rebutted the argument that ASEAN might end up like the League of Nations if withdrawal is allowed, stating that the League of Nations' existence and demise happened in a different historical context than what ASEAN is facing. However, his arguments did not manage to convince other HLTF members.

The HLTF agreed with Myanmar's use of arguments. It cannot proceed anyway without consensus from all national delegates. Another main reason that the EPG Chair's appeal to moral high ground regarding the issue of setting up the ASEAN Court and the proposal of expulsion did not work is because both proposals were delegitimized already during the EPG meetings. The fact that they were not backed by consensus from other EPG members went against the practice generated from sovereign equality and mutual respect and tolerance. The EPG Chair's expertise and credibility as an individual (he used to serve in the UN Human Rights Commission) did not have so much weight when compared with the lack of consensus from other nine EPG members. Again, this was due to ASEAN's institutional setting that prioritizes sovereign equality (and thus neutral chair's authority) more than the experts' authority.

The HLTF members were unable to settle another controversial issue regarding whether the Charter should include the clause rejecting "unconstitutional or undemocratic changes of government of ASEAN Member states" (Summary Record of the Eighth Meeting, Annex 16). Non-interference was reinstated as rules of the game early on when Sihasak Phuangketkeow of Thailand emphasized that it is "at the heart of ASEAN". The EPG chair on the other hand sees that non-interference should be adapted to the changing situation in ASEAN since undemocratic and unconstitutional change of government is unacceptable. The HLTF resolved

to refer it to the Foreign Ministers. Even though all members participating in the First Meeting agreed with Myanmar that suspension, expulsion, and withdrawal should not be considered, the fact that the EPG Chair was adamant to it led the members to conclude that this was still a controversial issue that needed a higher authority to settle it. The HLTF submitted the questions that needed guidance from the Foreign Ministers, asking whether there should be specific provisions in the Charter relating to suspension, expulsion, and withdrawal of member states. They also asked about the dispute settlement mechanism: seeing that the TAC was still meant to be the dispute settlement Mechanism for the Security Community, and the ASEAN Enhanced Dispute Settlement Mechanism existed for the Economic Community, should there be any overarching dispute settlement mechanism?

The Foreign Ministers chose the option that only stated adherence to the rule of law, good governance, the principles of democracy and constitutional government (Summary Record of the Eighth Meeting, Annex 18) when they commented on the First Draft of the ASEAN Charter on July 28, 2007. The Ministers agreed that inclusion of all members was more important than finding ways to "punish" delinquent ones. The initial intention of the HLTF to strengthen the enforcement element of dispute settlement mechanisms was snubbed due to the drafters' own willingness to have the decision made for them due to underlying 'rules of the game'

established early on in the negotiation process. In the eighth meeting, the HLTF followed up the decisions of the ASEAN Foreign Ministers at their Retreat in Siem Reap on March 2, 2007 and excluded suspension, expulsion and withdrawal from the text for good.

Even with the Minister's reinstating the principle of democracy, it became clear that democracy was seen and accepted as a rhetorical argument among the newer members of ASEAN known as the CLMV (Cambodia, Laos, Myanmar and Vietnam) when they collectively voiced concerns regarding the democratic values reinstated in the Charter. The Cambodian member was concerned about "overloading" the Charter with democracy without having a clear common understanding of what democracy is all about (Summary Record of the Thirteenth Meeting). The Vietnamese member agreed that there was a lack of common understanding on democracy, and suggested that democracy, good governance, and rule of law stated in the Charter should all be read together. The Lao Member pointed out redundancy and inconsistency in the use of terms in these provisions, echoing the Cambodian member's opinions. They collectively engaged in competitive arguing to persuade other HLTF members of their preferred course of action, which was to decrease the mention of democracy in the text. Their actions signified that democracy was still not a very robust norms, lacking especially in specificity and concordance, bolstered by the fact that the Ministers authorized the exclusion of undemocratic changes to

governments from the text. This communicated to the HLTF that deviation from the democratic norms would not be dealt with by ASEAN since it clashed with non-interference and non-intervention. It was the wavering robustness of the norm that constituted the main argument for the CLMV. Although the CLMV actions might look like truth-seeking behaviour (clarifying and exploring each other's understanding of normative principles), but the immediate intention of the CLMV was not to invoke common and better understanding of how democracy meant.

The older members attempted to counter the CLMV arguments. The Philippine HLTF emphasized her position that the Philippines were earnest in reflecting ASEAN democratic values everywhere in the Charter, rebutting the argument that democracy was too "redundant" (Summary Record of the Thirteenth Meeting). She stated that the emphasis on democracy should be taken as a sign of strength rather than weakness of ASEAN. The Indonesian HLTF Member supported the Philippine Member by arguing that there are repetitions of other values in the Charter such as non-interference (Summary Record of the Thirteenth Meeting). Repeating the democratic values in different parts in the Charter should be seen in positive light while repeating non-interference throughout could give the wrong signal that Member States do not yet completely trust one another. This argument was not well-received in the Meeting (Summary Record of the Thirteenth Meeting). Non-

interference is regarded as a cardinal principle in the organization since it is part of the unquestioned lifeworld.

The HLTF Member of Myanmar again reiterated that there was no need to repeat the democratic values. The Malaysian HLTF Member's position was that adherence to principles of democracy should be seen as a principle (Summary Record of the Thirteenth Meeting, 5), and strengthening democracy seen as purpose, thereby having no qualms that democratic values are frequently mentioned in the text. The Singaporean HLTF Member also rebutted the Vietnamese proposal, saying that there was no "new added value" in trying to harmonize separate parts about democratic values (Summary Record of the Thirteenth Meeting, 6). There was really no consensus on whether there are too many mentions of democracy in the text. In the end, the Thai HLTF Member stated that it was important to keep these democratic values in the Charter (Summary Record of the Thirteenth Meeting, 6). Since there was no consensus to delete more democracy mentioning from what was already endorsed by the Ministers, the proposal remained the same and the CLMV failed to push their positions through. Democracy was often mentioned in the Charter's text, but the lack of participation and willingness from the four members during the codification signifies that the norm still lacks robustness. However, democracy might as well be seen as gaining ground since it withstood normative contestation in the negotiation and still remained in the text.

The HLTF was by no means passive when they submitted the controversial issues to the Foreign Ministers. The questions that needed guidance were almost always accompanied by the HLTF opinions (Koh 2009, 60, 64). This reiterates the point that the HLTF did not interact with the Ministers in the first-party context where they had to quietly follow orders and norm had little to no influence on the decisions. However, it was clear that they would not go blatantly against what the Foreign Ministers suggested (Koh 2009; Ong 2009, 214). The green light from the Foreign Ministers was welcomed to bolster the legitimacy of their own conclusions. If they truly function in the third-party context, they should recognize that the negotiation outcome in itself is legitimate, and need not seek for higher stamp of approval from elsewhere. This also reveals power structure in negotiation setting ASEAN, one the negotiators impose on themselves. Most of the time, they operate in the third-party context except when there are controversial issues that cannot be agreed upon despite long negotiations.

5.42 Enshrining peaceful settlement of disputes: 'ruling in' on the mechanisms

The next legacy (which was achieved through consensus) from the EPG Report was met with more enthusiasm from the HLTF: the EPG

envisioned that the Secretary-General should be empowered (Summary Record of the First Meeting; Report of the EPG on the ASEAN Charter, 5). This was justified by attributing its benefits to a more empowered and organized ASEAN. They reason that the Secretary-General represents ASEAN to the world (Report of the EPG on the ASEAN Charter, 23, 36-37). The image of ASEAN depends largely on what the international community perceives its representative. From the draft model of the ASEAN Charter Chapter VI Dispute Settlement included in Annex 9 of Summary Record of the First Meeting of the HLTF, there was no mention of the enhanced role of the Secretary-General or the ASEAN Chairperson. However, this proposal was successfully pushed through by Singapore with support from many levels (mentioned by a retired Singaporean Ambassador in an e-mail correspondence with author in 2011).

The EPG viewpoint was later heavily supported by the High Level Task Force on ASEAN Economic Integration (HLTF-EI). The HLTF met with the HLTF-EI in a Joint Session on April 7, 2007 in Myanmar. The HLTF-EI wished for enhanced role of the ASEAN Secretary-General to monitor compliance and for the 2004 Enhanced Dispute Settlement Mechanism to be enshrined in the Charter. The HLTF-EI made it clear as well that the Dispute Settlement Mechanism for economic issues would not be opened to private business or individuals to bring their cases against any Member Government any time soon (Summary Record of the Fifth Meeting, Annex 14). This is in line with

the HLTF's position that the ASEAN dispute mechanism belongs only to the state domain.

It was noted, time and again, that nothing in the draft Charter is final until all members have agreed to the text (Summary Record of the Sixth Meeting, Agenda 1). If the HLTF member was uncertain about any of the Article negotiated, he would request a footnote be put in place until he can go back and consult with home authorities. This happened when Indonesia did not fully agree on referring the unresolved disputes to the ASEAN Summit, and requested a footnote stating that the paragraph was to be subject to approval by home authorities of Indonesia. In the case of a serious breach of the Charter or non-compliance, Myanmar had requested that referring the matter to the ASEAN Summit may be revisited if necessary. Indonesia and Malaysia also expressed reservations. In such cases, the paragraph would be understood by all other members as unsettled. Generally, the HLTF understood that the negotiated text was not set in stone until it submitted the text for the signing in November 2007. It was stated in the "working methodology" (Summary Record of the Second Meeting, Agenda 7) that "every part of the draft Charter including the skeleton is not final and is subject to possible improvement". This means that the HLTF generally entered the negotiation prepared to change their opinions. Thus, the use of arguments was still possible except for some issues that were deemed detrimental to national interests such as Myanmar's objection of expulsion

clause. No matter how much leverage a country may wield outside, its representative has equal rights in the drafting. Myanmar was adamant and was not willing to change opinion at that time.

When the ASEAN Foreign Ministers concluded during their Working Dinner on March 1, 2007 that suspension, expulsion and withdrawal needed not be mentioned in the ASEAN Charter, they also suggested that the HLTF should draft a provision regarding dispute settlement mechanism for specific situation, implying that the TAC might not be sufficient. However, they did not propose anything on increasing the role of the Secretary-General or the Chair in mediating the disputes. The members discussed the role of the Chair in detail for the first time in the Sixth Meeting, including his role in providing good offices. ASEAN's involvement in members' bilateral disputes must not interfere with the unquestioned part of the lifeworld.

The HLTF met with Senior Officials of the ASEAN Political-Security Community (ASCCO) on May 11, 2007 in Jakarta. There was a specific proposal from the Director of the Resources Development Bureau of the ASEC, Mr. M. C. Abad, Jr. that every ASEAN Member State should commit to be well disposed towards offers of assistance in times of bilateral disputes that threaten to disrupt regional harmony. He referred back to the TAC which already mentions this and reasoned that it could help create a good balance

with the principles of non-interference to maintain peace and harmony in ASEAN (Summary Record of the Eighth Meeting, Annex 10).

Amidst the support from various sectors, the provision that the Secretary-General should have a role of monitoring compliance actually came from the man himself. Ong Keng Yong (who served as a Singaporean diplomat before assuming his position at the ASEC) was quoted by a Thai high-level official who assisted one of the HLTF members and requested to be anonymous in an interview with author to say (jokingly) that he, following the "expected" role of ASEAN Secretary-General, was more of a general secretary. The HLTF at that time was working on a provision for the ASEAN Ministerial Coordinating Council (AMCC) and intended to have this body ensure compliance and progress of implementation of the Summit decisions including their recommendations in case of non-compliance. The Secretary-General on the other hand proposed a formulation along the lines of the EPG Report for the role of the Secretary-General of ASEAN in facilitating and monitoring progress in the implementation of all ASEAN sectoral agreements including cases of non-compliance (Summary Record of the Tenth Meeting, Annex 5). The HLTF again resolved to ask for guidance from the Foreign Ministers. The option was vesting monitoring compliance with the AMCC or with the Secretary-General. The HLTF first came up with the AMCC (changed later to ASEAN Coordinating Council – ACC) because of the norm of sovereign equality which requires all ten members to have representatives present.

Vesting monitoring compliance with the Secretary-General implies more involvement of ASEAN (since the Secretary-General represents ASEAN directly and not national interests) in dispute settlement between members.

In the ninth meeting, Professor Tommy Koh replaced Rosario Manalo as the HLTF Chairperson and informed the meeting that he would sit apart from his national delegation in order to serve as a neutral Chairman (Summary Record of the Ninth Meeting, Agenda 2). Later, he conveyed the "suggestion" from the Foreign Minister of Singapore that the HLTF should try to minimize the number of pending issues that will be submitted for guidance of the ASEAN Foreign Ministers. His reasons were time constraints (the HLTF must finish drafting the Charter in time for the signing at the 13th ASEAN Summit) and that the Ministers needed to discuss other important issues. By "important issues", he actually meant the provision on the Human Rights Body in the Charter and implied that there should be a give-or-take/trading in that area, which was actually more important for some newer members. Delegates perceived that a compromise was necessary most of the time since they hoped to achieve desired results 'in the next round'. This was cooperative bargaining through clarifying wants of other parties and himself and searching for optimal compromise solution. The Chair succeeded in making other members realize that time constraint was really a condition, and the solution was to settle a number of issues without referring them to the Ministers. Other members did not have any problem with the Chair

pushing the Singaporean position in the negotiation due to the impression of an "honest broker" of the Chair. The Singaporean HLTF who was understood to represent national interests of Singapore should have been the one conveying his Foreign Minister's ideas, but he remained silent in this regard. The HLTF then concluded that the AMCC shall coordinate implementation of agreements and decisions of the Summit, and the Secretary-General shall facilitate and monitor progress in the implementation of ASEAN agreements and decisions, including reporting on cases of non-compliance. This was, again, the Singaporean position from the beginning since Singapore supported the Secretary-General's proposal. By trading one issue area for another, Singapore succeeded in pushing its position through and reserved the Ministers' judgment for human rights body which was far more controversial. This was facilitated by the institutional setting, which privileged neutral authority more than expertise. Thus, the new Chair's conveying of his own Foreign Minister was met by little questioning, and his credibility held. The Chair reverted back to the original Secretary-General's arguments regarding the empowerment of the position so that the Secretary-General could play more than coordinating and facilitating role, and managed to convince other members of the Secretary-General's future role and function from then on. On the issue of non-compliance, Singaporean Prime Minister Lee Hsien Loong's viewpoint is that "ASEAN must develop into a rules-based organization with necessary mechanisms to ensure

compliance… There must be measures to redress cases of serious breaches to promote a culture of compliance" (Summary Record of the Thirteenth Meeting). The HLTF Chair promoted this message and the HLTF members agreed that non-compliance would be referred to the ASEAN Summit by the affected members or by the Secretary-General. Unresolved disputes will also be referred to the ASEAN Summit for its decisions. Indonesia's and Myanmar's early reservations were altered which signify that in this issue they entered the negotiation prepared to change their minds. Exclusion of ASEAN from being involved with members' disputes was reconstructed. However, the core norm of non-interference and non-intervention was also still very robust to the point that involvement of ASEAN cannot happen without the disputing parties' consent and the ASEAN Summit remained the supreme decision-making body in cases of non-compliance.

Singapore's integrative (cooperative) bargaining resulted in a compromise solution. The HLTF chose the least intrusive way to settle the disputes that still allowed ASEAN's increased involvement. The best possible solution would be to have the Secretary-General initiate the mediation, which was not endorsed. In summary, there were two main controversial areas in ruling in on the mechanisms:

1) Non-involvement of ASEAN to address unresolved bilateral conflict between members VS ASEAN's increased role in the disputes. At the extreme

end, the Chairman or Secretary-General should be able to offer good offices, conciliation or mediation without being requested by disputing parties. The core norm of non-involvement of ASEAN was reevaluated against the backdrop of unquestioned part of the lifeworld represented by the TAC. The TAC explicitly prescribes that the High Council cannot be invoked without the disputing parties' consent. The Charter still follows this, but vests the mediating and monitoring compliance role in an ASEAN's representative. The High Council can be argued to represent ASEAN, but it must comprise all ten ministerial level officials including those from the disputing parties. The Secretary-General; on the other hand, does not represent any specific country's interests. Reevaluating the norm of non-involvement of ASEAN led to a controversy regarding the practice to execute it: should ASEAN opt for a Tribunal or a Court?

2) Arbitration VS adjudication. Adjudication or the proposal to set up an ASEAN Court would be legal-binding to parties who agree to submit the case. Although the judicial process cannot begin without the parties' consent, it is the most concrete (and public) form of dispute settlement mechanism. Moreover, the HLFT already embraced the practice of consultation and consensus-seeking derived from the core norm of mutual respect and tolerance as the operational rule from the onset. The adjudication involves voting and decision on individual basis which sidelines the importance of consultation and consensus. It was then agreed that ASEAN "is not quite

ready yet for a formal court" (Woon 2009, 74). If the parties ask for help themselves, it becomes more difficult for them to back out of the recommendations. In Walter Woon's words, it is "far better that well-intentioned relatives wait to be asked at a time when the parties are ready to be assisted" (2009, 72). This is more preferable than "butting in". Therefore, the HLTF settled for arbitration as a loose form of dispute settlement mechanism, but it will only be established when there is no other mechanism specifically provided for disputes concerning the interpretation or application of this Charter and other ASEAN instruments. The possibility of setting up arbitration is most applicable to the socio-cultural pillar which still lacks any specific dispute settlement mechanism. Other (non-economic) disputes are meant to be resolved based on the TAC, but with more empowered role of the Secretary-General and the Chairman

5.43 Final result in the ASEAN Charter: the institutionalized dispute settlement mechanism and the way forward

Non-recourse to the use of force and peaceful settlement of conflict was codified explicitly since the first article. The Article 1(1) of the ASEAN Charter (ASEAN 2008) states that the purposes of ASEAN are "to maintain and enhance peace, security and stability and further strengthen peace-

oriented values in the region". Chapter VIII then was set aside to deal with settlement of disputes. It prescribes that ASEAN Member States endeavor to resolve peacefully all disputes in a timely manner through dialogue, consultation and negotiation and that there should be dispute settlement mechanisms in all fields of ASEAN cooperation. The disputing states may agree to resort to good offices, conciliation or mediation requested from the Chairman of ASEAN or the Secretary-General of ASEAN. Article 25 of the ASEAN Charter (2008) states that appropriate dispute settlement mechanisms including arbitration shall be established for disputes which concern the interpretation or application of the Charter and other ASEAN instruments.

In other disputes not involving the interpretation or application of any ASEAN instrument, the TAC prevails. Economic disputes shall be settled in accordance with the ASEAN Protocol on Enhanced Dispute Settlement Mechanism as discussed in 4.31. Therefore, institutionalized dispute settlement mechanisms in ASEAN was similar to the situation prior to the ASEAN Charter, except for increased role of the Secretary-General and the Chairperson in mediating and providing good offices to consented parties. In settling economic disputes, the Secretary-General can offer good offices which the disputing parties should graciously accept. The ASEAN Charter mentions that the disputing parties may request the Chairman or the Secretary-General to provide good offices, conciliation or mediation. It does

not specifically authorize the Chairman or the Secretary-General to initiate the services, but there is no explicit prohibition which allows some flexibility as will be shown in the case below.

Unresolved disputes shall be referred to the ASEAN Summit for its decision as well as non-compliance. The Secretary-General will monitor the compliance and submit a report to the Summit. A member state which is affected by non-compliance with the findings, recommendations or decisions resulting from an ASEAN dispute settlement mechanism may refer the matter to the ASEAN Summit for a decision. The ASEAN Summit is the highest decision-making organ in ASEAN, and still retains its authority in this area. However, it is by no means a judicial body. According to Article 28 of the ASEAN Charter (2008), Members States have the right of recourse to the modes of peaceful settlement contained in Article 33(1) of the UN Charter or any other international legal instruments to which they are parties. This is still in line with what the TAC prescribes for disputes which do not concern the interpretation or application of any ASEAN instrument.

Since the ASEAN Charter prescribes for the establishment of dispute settlement mechanisms for disputes which concern the interpretation or application of the Charter and other ASEAN instruments in Article 25, ASEAN Foreign Ministers later signed the Protocol to the ASEAN Charter on Dispute Settlement Mechanism on 8 April 2010 in Hanoi. The Protocol is now

awaiting ratification from all members. So far none has ratified yet, preventing the Protocol from entering into force. If ratified, the Protocol which applies to disputes concerning the interpretation or application of the ASEAN Charter as well as the instruments where there are no specific dispute settlement mechanisms will allow the Complaining Party to request for the establishment of an arbitral tribunal to resolve the dispute when consultation fails (2010). Moreover, it can raise the matter to the ACC if the Responding Party opposes to the establishment of the tribunal. It has to be noted that the arbitral tribunal will not cover the areas that already have institutionalized dispute settlement mechanisms prescribed by the ASEAN Charter such as economic agreements or those that do not concern the interpretation or application of ASEAN instruments. The former was already covered by the ASEAN Protocol on Enhanced Dispute Settlement Mechanism while the latter has to rely on the TAC and good offices or mediation from the Secretary-General or the ASEAN Chairman.

The structure of the organization according to the ASEAN Charter (2008) which provides the legal and institutional framework of the dispute settlement mechanism as of now comprises of various organs. These ASEAN organs work together and serve as a framework whereby dispute settlement within the organization could take place (see Forum-Asia 2010; Hernandez 2007).

1) ASEAN Summit

According to Forum-Asia (2010, 9) guidebook on engaging ASEAN and its human rights mechanism, ASEAN Summit is "the supreme policy-making body of ASEAN. This organ deliberates, provides policy guidance and takes decisions on key issues pertaining to the realization of the objectives of ASEAN, important matters of interest to Member States and all issues referred to it by the ASEAN Coordinating Council, the ASEAN Community Councils and ASEAN Sectoral Ministerial Bodies." The guidebook (Forum-Asia 2010, 9-10) further concludes that:

> The ASEAN Summit also instruct the relevant Ministers in each of the Councils concerned to hold ad hoc interministerial meetings and address important issues concerning ASEAN that cut across the Community Councils; authorize the establishment and the dissolution of Sectoral Ministerial Bodies and other ASEAN institutions; appoint the Secretary-General of ASEAN; and address emergency situations affecting ASEAN by taking appropriate actions.

Given that the first Summit only occurred in 1976 and was not held regularly until after the Fourth Summit held in Singapore in 1992 when a decision was made to hold a formal summit every two years and an informal summit also every two years in between the formal summits (Hernandez 2007, 10), the ASEAN Charter aims to have the leaders collaborate even more closely by holding the Summit twice a year. Unresolved issues including dispute settlements and non-compliance with the findings of dispute settlement mechanisms are to be referred to the ASEAN Summit. The Charter maintains member states' right of recourse to the modes of dispute

settlement listed in the United Nations Charter (Centre for International Law 2011).

2) ASEAN Coordinating Council (ACC)

Forum-Asia (2010, 10) summarizes that "ASEAN Coordinating Council is an organ that is composed of the ASEAN Foreign Ministers. This organ will prepare the meetings of the ASEAN Summit, coordinate with the ASEAN Community Councils to enhance policy coherence, efficiency and cooperation among them, coordinate the reports of the ASEAN Community Councils to the ASEAN Summit, consider the report of the Secretary General on the functions and operations of the ASEAN Secretariat and other relevant bodies, to approve the appointment and termination of the Deputy Secretaries General upon the recommendation of the Secretary General, and last but not least undertake tasks provided for in the ASEAN Charter or such other functions as may be assigned by the ASEAN Summit". It can be seen that the ACC assists the Summit in preparing the agenda, including unresolved issues such as disputes. The ASEAN leaders participating in the Summit can also assign other coordinating tasks regarding dispute settlements for the ACC to assist with.

3) ASEAN Community Councils

The Forum-Asia (2010, 10) guidebook summarises that "ASEAN Community Councils is comprised of the ASEAN Political-Security Community

Council, ASEAN Economic Community Council, and ASEAN Socio-Cultural Community Council. In each ASEAN Community Council meeting, each Member State of ASEAN designates its national representation. According to Article 9 of the ASEAN Charter (2008), this organ should ensure the implementation of the relevant decisions of the ASEAN Summit, coordinate the work of the different sectors under its purview, and on issues which cut across the Other Community Councils, and last but not least submit reports and recommendations to the ASEAN Summit on matters under its purview." The ASEAN Community Councils assist the Summit in the implementation of the leaders' decisions including those relating to the disputes resolution pertaining to each Community Council's responsibility if there are such cases.

4) ASEAN Sectoral Ministerial Body

According to Forum-Asia (2010, 10) guidebook summary of ASEAN structure, "each ASEAN Sectoral Ministerial Body has four general functions: 1) function in accordance with their respective established mandates; 2) implement the agreements and decision of the ASEAN Summit under their respective purviews; 3) strengthen cooperation in their respective fields in support of the ASEAN integration and community building; and 4) submit reports and recommendations to their respective Community Councils." The ASEAN Sectoral Ministerial Body assists the Community Councils and their

tasks are indirectly related to dispute settlement to support the process of trust-building among the member countries.

5) Secretary-General of ASEAN and ASEAN Secretariat

"The Secretary-General and the staff have the obligation to refrain from any action which might reflect on their position as ASEAN Secretariat officials responsible only to ASEAN" (Forum-Asia 2010, 11). In other words, the Secretary-General acts as a representative of ASEAN in his official capacity. Moreover, "the Secretary-General and the staff cannot seek or receive instruction from any government or external party outside of ASEAN" (Forum-Asia 2010, 11). This ensures neutrality especially when the Secretary-General is acting as a mediator in any dispute. "The Secretary-General and the staff must also uphold the highest standards of integrity, efficiency, and competence in the performance of their duties" and "the ASEAN Summit appoints the Secretary-General of ASEAN for a non-renewable term of office of five years" (Forum-Asia 2010, 11). He will be assisted by four Deputy Secretaries-General, who will be accountable to the Secretary-General. As a matter of fact, the Secretary-General used to be the Secretary-General "of the ASEAN Secretariat" until after the Fourth Summit which granted ministerial rank to the office and made its occupant "the Secretary-General of ASEAN" (Hernandez 2007, 11). Although the Leaders agreed to open this post to competition and to break the traditional rotational occupancy of

major ASEAN positions (such as the Chair of the ASEAN Standing Committee), in the end, the practice of alphabetical rotation akin to the EU Presidency prevailed (Hernandez 2007, 11). However, the Charter bestows greater authority upon the Secretary-General especially as an important part in dispute settlement mechanism. This will be discussed in the case of the Cambodian –Thai border dispute in the next section.

6) Committee of Permanent Representatives (CPR) to ASEAN

According to Forum-Asia (2010, 11) guidebook summary, "each ASEAN Member State appoints a Permanent Representative to ASEAN, with rank of Ambassador based in Jakarta. Collectively, they constitute a Committee of Permanent Representatives, who will support the work of the ASEAN Community Councils and ASEAN Sectoral Ministerial Bodies. They liaise with the Secretary-General of ASEAN and the ASEAN Secretariat on all subjects relevant to its work, and facilitate ASEAN cooperation with external partners. They also coordinate with ASEAN National Secretariats and other ASEAN Sectoral Ministerial Bodies and perform such other functions as may be determined by the ACC". It can be seen that the CPR is a liaison between its own national Foreign Ministry and the ASEAN Secretariat. In the case that the party to the dispute would need the service of the Secretary-General as a mediator, it could also employ the CPR to communicate with the Secretariat.

7) ASEAN National Secretariats

According to the Forum-Asia (2010, 11) guidebook summary, "each ASEAN Member State shall establish an ASEAN National Secretariat which will serve as the national focal points, be the repository of information on all ASEAN matters at the national level, coordinate the implementation of ASEAN decisions at the national level, contribute to ASEAN community building. Beside these, they also coordinate and support the national preparations of ASEAN meetings and promote ASEAN identity and awareness at the national level". ASEAN National Secretariats must work closely with the CPR in order to communicate with the ASEAN Secretariat in relevant matters.

8) ASEAN Foundation

Forum-Asia (2010, 11-12) guidebook states that "this organ will support the Secretary-General of ASEAN and collaborate with the relevant ASEAN bodies to support ASEAN community building by promoting greater awareness of the ASEAN identity, people-to-people interaction, and close collaboration among the business sector, civil society, academia and other stakeholders in ASEAN. It will be accountable to the Secretary-General of ASEAN, who will submit report about this body to the ASEAN Summit through the ACC". Although the ASEAN Foundation only plays supportive role to the dispute settlement, it can have indirect impact in promoting greater

understanding among people which can lead to greater unity and less animosity in the region.

5.44 Testing the setting that arguments will prevail: Chapter VIII in retrospect

1) Whether overlapping role identities are likely to increase the likelihood that arguing leads to persuasion. As previously discussed, every HLTF member was sure of their role identities as national delegates. They were there to represent their respective national interests. Although they were sure about their appropriate roles, they were uncertain about the preferences of their negotiating partners. They had to clarify that doubt among one another, which led to some leeway for arguments to be used. However, due to their strict adherence to role identities, the arguments were competitive rather than cooperative. When Philippines had overlapping identities of both Chairperson and national delegate, they were less persuasive than when Singapore separated its duties. It can be said that in ASEAN institutional setting which privileges neutrality over expertise, overlapping role identities are not likely to increase the likelihood that arguing leads to persuasion.

2) Whether a closed negotiation setting is more conducive to persuasion. Except for the first meeting that the HLTF met with the EPG, the negotiation was set in a closed space without any public access. Even when

the EPG was invited to participate, the HLTF members shared a common understanding that the EPG was not their audience. The closed setting did not encourage the members to "speak out of the box" since they were national delegates with mandates in mind. Only the EPG Chair engaged in cooperative argument, but to no avail.

3) Whether an institutional setting that privileges authority based on expertise and/or moral competence or leadership of a neutral chair is more conducive to persuasion. Institutional norms and procedures of ASEAN do not particularly privilege authority based on expertise. It was not perceived that a legal expert in the HLTF possessed more authority than a non-expert from another country. There was indeed a request for ASEAN Senior Law Officials Meeting (ASLOM) to be made legal advisory committee for all ASEAN sectors, but they were not involved in the drafting. The HLTF assigned a member who was a legal expert to "scrub" the text, but it was for technical purposes and he was not permitted to change any of the text (since any change must receive consensus from all members). On the other hand, leadership of a neutral chair played a far more important role in the negotiation. When the second HLTF Chair (Professor Tommy Koh) conveyed his Prime Minister's message to the meeting, it was not perceived as such which was different from when the Philippine Chair also acted as a national delegate. Professor Koh employed integrative bargaining successfully since he exercised his power/authority as the Chair (and convinced other members in the second-

party context) and was actually reinstating Singaporean position. Therefore, in the last criteria it can be said that in ASEAN negotiating context, the use of neutral chair is more conducive to persuasion that the use of experts.

It was codified that the disputing parties should be the ones requesting the mediation, conciliation, and good offices. However, in practice it actually depends on the practitioner to make use of the flexibility since the Charter does not explicitly prohibit ASEAN Secretary-General or the Chairman from offering it. This will be shown in the following case of dispute after the ASEAN Charter entered into force.

5.5 The Cambodian-Thai border dispute: testing ASEAN's limits

5.51 Background

The Cambodian-Thai conflict has been ongoing since the dispute over Preah Vihear in 1959. The ICJ judgment on June 15, 1962 on the case concerning the Temple of Preah Vihear (Cambodia V. Thailand) found that it was situated in territory under the sovereignty of Cambodia (ICJ 1962). Thailand complied by withdrawing military forces, but was of the opinion that the ICJ did not rule on the exact borderline (Ministry of Foreign Affairs of Thailand 2009). Cambodia has always referred to 1:200,000 made by the French which was not fully accepted by Thailand. Due to the disagreement

regarding the territorial map, the two countries have engaged in on and off border dispute. Thailand and Cambodia signed the Memorandum of Understanding (MOU) on the Survey and Demarcation of Land Boundary in 2000 which set up a Thai-Cambodian Joint Commission on Demarcation for Land Boundary, or "the Joint Boundary Commission" (JBC). The Deputy Minister of Foreign Affairs of the Kingdom of Thailand and the Adviser to the Royal Government in charge of State Border Affairs of the Kingdom of Cambodia shall be the Co-Chairmen (MOU 2000, Article 2). It also prescribes that any dispute arising out of the interpretation or application of this Memorandum of Understanding shall be settled peacefully by consultation and negotiation (MOU 2000, Article 8).

The latest clashes began in 2008 because Cambodia has submitted claims to have Preah Vihear registered as world heritage site by the UNESCO without consulting with Thailand. Thailand understands that according the 2000 MOU, there should not be any change to the environment including submitting the case to the UNESCO until the demarcation work is done. Also, during the ministerial meeting between Thailand and Cambodia in 2003, both countries agreed to cooperate in restorations. Cambodia attempted to submit the case to the UNSC which postponed it. Both countries tried to negotiate again and involved the General Border Commission (GBC) which is the JBC's military counterpart in July 2008. It comprises Thailand's Supreme Commander (who is also Minister of Defense) and Cambodia's Deputy Prime

Minister and Minister of National Defense. However, no fruitful results were achieved. The clashes still occurred along the border in 2009 and 2010, involving injuries from landmines and the loss of soldiers' lives from both sides.

After the clash in February 2011 which involved gunfires and extended fighting, Cambodia submitted the case to the UNSC again. Thailand; however, saw that the 2000 MOU precluded third-party intervention and referred to UN Secretary-General Ban Ki-moon who spoke during the ASEAN-UN Summit earlier in October 2010 that third countries should not interfere in the Thai-Cambodian territorial dispute (Mass Communication Organisation of Thailand 2010). The UNSC called for ceasefire on February 14 and expressed support for ASEAN's active efforts regarding the situation between Cambodia and Thailand, and encouraged the parties to continue to cooperate with the organization in this regard (UN News Centre 2011). It can be seen that Cambodia tried to internationalize the problem while Thailand was still reluctant and preferred bilateral mechanisms which were in place since 2000. Together with Cambodia's relentless efforts of internationalization, the ASEAN Secretary-General's involvement has made it more difficult to limit the conflict only within bilateral dispute settlement mechanisms such as the JBC and the GBC, and raised the issue to the ASEAN level.

5.52 The role of the Secretary-General in the conflict

Article 11(9) of the ASEAN Charter states that "each ASEAN Member State undertakes to respect the exclusively ASEAN character of the responsibilities of the Secretary-General and the staff, and not to seek to influence them in the discharge of their responsibilities". This guarantees the neutrality of the Secretary-General and privileges neutral chair in negotiation. After the Charter entered into force, the Secretary-General Surin Pitsuwan took it upon himself to provide mediation. Knowing full well that he could not initiate the mediation without the invitation from disputing parties, he made use of personal connections and consultative-based approach.

When at last the UNSC suggested that Cambodia and Thailand should use regional dispute settlement mechanism, Surin and the Indonesian Chairman of ASEAN were proactive regarding the involvement of ASEAN. In an interview with author, Surin Pitsuwan (2011) admitted that his approach to the Thai-Cambodian Border Dispute was first through personal connection, but he was able to do that "with the support from the Charter". He could not explicitly act 'ex officio' since both parties did not formally ask him for mediation. Thailand was initially averse to any meddling from outside. Surin emphasizes the importance of quiet diplomacy, which has to be improvisational and flexible enough. He met Hunsen in August, taking initiative in the first step of acting as a mediator.

Abhisit Vejjajiva, the then Prime Minister, hinted that he might meet Hunsen at the ASEM Meeting on October 3, 2010 in Brussells. Surin conveyed this to Hunsen after convincing him that appointing Thaksin (who was ousted from his Prime Minister position in a coup earlier) as a government's advisor would be detrimental to the negotiation. Thailand was set on revoking its ambassador during the tension between the borders. Hunsen complied with the Secretary-General's suggestion and said that Thaksin resigned from the advisory position himself. Kasit Piromya, Thailand's Foreign Minister at that time, made it public that diplomatic relations with Cambodia were still intact. They resumed the negotiation, and tried to work in bilateral terms once again.

By February 2011; however, it rapidly became clear that the consultative process Thailand tried to adhere did not bear fruits when Cambodia internationalized the issue. Seeing that the matter outgrew bilateral negotiation, Surin openly called on both parties in February 2011 to allow ASEAN to help mediate after his personal initiation. Thailand and Cambodia expressed willingness to avoid further armed clashes along their common border (ASEAN 2011). Having been backed up by the Secretary-General who made sure that this seemed like a "request" from both parties, Indonesia agreed to send observers to the areas of both sides of the borders. As a matter of fact, other members sent observers to Indonesia in Timor-Leste (1999) and Aceh cases (2003-2005), and Indonesia will based the TOR

for the observers on these experiences. This progress will be informed to the UNSC. Surin also signified that the ASEAN Chairman's efforts are not *ad hoc*, and that the ASEC was building on capacity enhancement to manage similar challenges in the future (ASEAN 2011).

On April 28, 2011, Cambodia requested the ICJ to interpret its judgment in 1962 concerning the Temple of Preah Vihear. Thailand was lukewarm to the prospect of observers during the ASEAN Summit in May 2011 due to its own internal disagreement and Cambodia's internalization of the issue to the ICJ. The Ministry of Foreign Affairs and the Security Division of the Office of the Prime Minister agreed with Indonesia's proposal, but their military counterparts were reluctant (Thepchatree 2011). However, it generally welcomed Indonesia's efforts. The ICJ authorized a provisional measure of demilitarized zone again in 2012.

There is a possibility that in the end Indonesian observers will have to work with Thai and Cambodian 'observers' in a joint working group. However, this is due to Indonesia's end of chairmanship (and therefore its legitimacy to act according to the ASEAN Charter) rather than pure unwillingness from Thailand and Cambodia. Both parties agreed to follow the ICJ's order and withdraw the troops at the 8th GBC Meeting in late 2011. The date is still to be decided. With efforts from the Secretary-General and the ASEAN Chairman as well as the UN encouragement for the parties to use regional

organization, ASEAN has become more involved with its members' dispute. As Cambodia succeeded Indonesia as ASEAN Chairman in 2012, the ASEAN Secretary-General was set to work with its leader to settle the dispute peacefully. Cambodia already pledged to take the Chairmanship "with responsibility" (Permanent Mission of the Kingdom of Cambodia to the United Nations 2011) and welcomed the Secretary-General's further involvement.

5.6 Conclusion

Dispute settlement in ASEAN was 'beefed up' from prior to the ASEAN Charter where members relied on the Vientiane Protocol and the underused TAC and Troika. The clearest change lies in empowering the Secretary-General and the Chairman of ASEAN as mediators, conciliators, or providers of good offices. ASEAN is not a stranger to mediation, but it is due to the Charter that the ASEAN representative can undertake this duty with increased legitimacy.

Although it can be argued that the HLTF members reached only a compromise and not the best possible way forward since the initiation to request their services lies with disputing parties, the norm of non-involvement of ASEAN to address unresolved bilateral conflict between members was reevaluated and was interpreted in a less strict manner as

seen from the case above. It is clear from the Secretary-General's and the Indonesian Chairman's understandings that they are not going to remain passive in settling the conflict. The Secretary-General took the initiative in mediating the conflict by personal approach at first, then gradually publicized the issue and raised it to ASEAN level. The Chairman was also proactive in proposing to send observers to the area, and the Secretary-General emphasized on the disputing parties' willingness so as not to clash with the unquestioned part of the lifeworld.

Compromise is a result of bargaining, in this case an integrative one. The HLTF Chair did not threaten other members or employed other mode of communication that can be concluded as distributive bargaining. He maximized Singaporean wants, but also via the want-satisfaction of others. The negotiaion setting during the drafting process also privileged authority from neutral chair more than expertise or moral competence. This facilitated Singapore's actions as well as other members' acceptance of its proposal. However, in this case, the leadership did not lead to more arguing since Singapore was still prioritizing its national interests. The proposal that clashed too much with the settled core norms were ruled out such as the ASEAN Court of Justice. Expulsion, suspension and withdrawal were ruled out by Myanmar's and Cambodia's rhetorics accompanied by a stamp of approval from the Foreign Ministers.

Due to the fact that the HLTF members were clear about their role identities, there was less need to argue. The HLTF members operated in a closed setting, but willingly submitted the issues that they could not settle themselves to the higher authority, the Foreign Ministers. The EPG Chair attempted at cooperative arguing in a number of issues, but the HLTF members were not convinced due to their shared understanding that they would only be accountable to their leaders as well as the institutional setting which did not privilege authority based on expertise or moral competence.

Without the increased role of the Secretary-General and the ASEAN Chairman in mediation, the Charter will only codify exisiting dispute settlement mechanisms. The change was forged through by Singapore's integrative/cooperative bargaining that convinced other members not to submit the issue to the Foreign Ministers then followed through with its position of supporting an increased role of the Secretary-General. On the other hand, concrete punishment for deviant behaviour was ruled out by Myanmar's and Cambodia's competitive arguing. This highlights that ASEAN is still lacking in terms of enforcement, but then having hard 'punishment' in place also goes against the unquestioned part of the lifeworld which are non-interference and non-intervention and quiet diplomacy. In the case of non-compliance, ASEAN leaves the matter to the Secretary-General who has the authority through the Charter to monitor state compliance with ASEAN agreements and report this to the ASEAN Summit.

Chapter 6

Human Rights and its mechanism in the ASEAN Charter

6.1 Introduction

This chapter aims to explore how human rights which remained elusive in ASEAN until recently were incorporated into the ASEAN Charter. Human rights are included in the text as early on as the Preamble, Article 1 Purposes, and Article 2 Principles. The ASEAN Charter codified human rights more explicitly than any other formal documents produced by ASEAN, culminating in Article 14 which establishes an ASEAN human rights body (AHRB) as a regional mechanism. Given that the norm of human rights has been met with skepticism in the past, human rights codification in ASEAN needs to be analyzed further to see how one of the most questioned parts of the lifeworld has become exactly the opposite, providing the backdrop and point of reference for the negotiation. The validity claim of human rights norms was sustained while the problematic part which the actors needed to reposition themselves was whether a mechanism should be in place and what should constitute its function. A number of delegates saw that adopting the norm in principle were sufficient without Article 14 establishing a regional mechanism. Adherence to minimal institutionalism stemming from the core norm of non-interference and non-intervention as well as non-involvement of ASEAN in controversial issues was reevaluated during the negotiation process. Given the region's past state-centric values coupled with lingering preference for non-binding mechanism, it is not surprising that human rights mechanism codification in the ASEAN Charter was the most controversial in the drafting process. However, the role of non-state actors in

promoting and sustaining a normative space for the debate to grow is not to be neglected despite the relatively closed atmosphere of the negotiating context.

6.2 Human rights in ASEAN

6.21 Human rights development in post-Cold War Southeast Asia

Human rights concerns have come to the forefront once again since the end of the Second World War. Gross violations and atrocities in various parts of the world, including the Holocaust, generated political momentum in the post-war years for the establishment of an international human rights protection system (Donnelly 2007; Haas 2008; Tang 1995, 3). While the League of Nation Covenant does not mention human rights, the United Nations emphasizes the concept throughout the Charter and makes promoting the norm in various parts of the world one of its mission as resulted in series of the UN talks beginning in the 1980s. This served as a beginning point in international norm diffusion which Southeast Asian countries would come to experience in the next decade.

Whereas the vast atrocities in the West serve as catalyst to norm acceptance, lesser sense of geographical continuity (and thus the sense of community and solidarity) explained Southeast Asia's lukewarm attitude to

human rights in the beginning. This would gradually change when the process of norm learning took place and ASEAN later faced international pressure as well as the sweeping crisis within its own region.

In Asia, there was no explicit concept of human rights before the experience with the Western liberal discourse (Freeman 1995, 15). Especially in East Asia, Confucianism emphasizes social relations and obligations stemmed from those relations, e.g. respect towards the elders or duty to the family (Roy 2001, 219). Perceptions of human rights are also reflective of social and class positions in society (Ghai 1995, 55). Traditionally, East Asian states such as Japan and Korea associated inequality with order and equality with chaos. People were not believed to born equal (Roy 2001, 235): the ruling class and men were more superior than the underlings and women. Before the modern-state era, countries under absolute monarchism such as Thailand view "rights" as legitimacy and authority of the King (and/or the elites). They also have duties to those under their rulings (Distapichai 2006; Naksakul 2012). For the serfs, rights pertain to communal well-being and their obligations according to their positions and statuses. Thus, rights are not conceptualized for any particular individual (Apornsuwan 2006; Chamarik 2001). It can be seen that the cognitive prior in the region has been about the state and society stability, not individual security. The cognitive prior at that time was not particularly receptive to human-centric values.

Unlike non-recourse to the use of force and peaceful settlement of conflict which was emphasized by the ASEAN leaders and enshrined in the inaugural meeting, human rights and its human-centric values have been struggling in Southeast Asian state-centric diplomacy. The ASEAN Declaration of 1967 is aware of the "ideals of peace, freedom, social justice and economic well-being", but when it later mentions justice and freedom, it is that of the states. ASEAN had until very recently little to say or do in the area of human rights (Acharya 1995, 167).

Rapid economic development in the region before the crisis of 1997 fueled the debate of Asian values (Mohamad 2002, 233). In the 1993 World Bank policy research report, nine Asian countries (four are ASEAN members – Indonesia, Malaysia, Singapore, and Thailand) are characterized as high-performing Asian economies (World Bank 1993). It is concluded that one of the factors behind this rapid growth is government intervention, which runs opposite liberalism championed by Western economies. This greatly supports the 'strong state' argument (VS weaker non-governmental organizations and civil society). The state was seen as 'the provider'. Strong role of government in fostering economics was advocated and in turn sustained state-centric values in the region. The economic and development rights are superior to civil and political rights since economic development is supposed to improve human welfare.

Asian values as maintained by the three most prominent advocators namely Malaysia, Indonesia and Singapore are the ways they attempt to respond to liberal/Western values (human rights included). Various aspects of life are claimed to be governed by these cultural values. Malaysia spearheaded by the Prime Minister Mahathir Mohamad espoused the 'East' or the 'South' against the 'wicked West', maintaining the moral high ground over what he saw to be false democracy and corrupted way of life. In essence; however, it has sustained authoritarianism since freedom of speech, association and assembly was heavily regulated as can be seen from the Internal Security Act which was used to suppress the opposition. For Mahathir (1996, 9), "the West's interpretation of human rights is that every individual can do what he likes, free from any restraint by governments…" which leads to breaking rules and codes in the society. Indonesia, on the other hand, has been mostly qualifying the norm by reserving the rights to interpret it according to local culture and custom. Rather than falling back on to traditional values embedded in the region such as Confucianism or Islam like Malaysia, Indonesia led by Suharto appealed to the UN human rights system to argue for sensitivity to economic, social and cultural context regarding human rights implementation (Suharto 1992; Langlois 2001, 17-18). ASEAN leaders also articulated the Asian values discourse in a number of international settings such as the UN-sponsored Asia-Pacific Regional

Conference on Human Rights and the UN World Conference on Human Rights in 1993.

The appeal to a particular context where human rights could be restricted clashed with the universalism of the norm international actors sustained, spearheaded by the UN and supported by the civil society organizations (advocacy networks) worldwide. The World Conference on Human Rights in Vienna between 14 and 25 June 1993 reaffirmed the inherently universal character of all human rights. According to the 1993 Vienna Declaration,

> All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional peculiarities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

Although it seemed as if the Declaration provided a leeway in qualifying human rights according to particular backgrounds of the states, it is clear that the universalism of human rights should come first as promoted Customary International Law. Ali Alatas, Indonesia's Foreign Minister, addressed the 1993 World Conference on Human Rights in Vienna, claiming that the universal validity of basic human rights and fundamental freedoms were to be recognized. However, the rights of individual are balanced by the

rights of the community. Alatas (and Indonesia) was at that time an influential player in ASEAN interstate affairs, and his claims were more or less agreed by fellow AEAN members. The rights of society and the rights of the nation must be taken into account. Therefore, at the national level, expression and implementation of human rights "should remain the competence and responsibility of each government" (Alatas 1993, 232). This also highlights greatly the running principle of non-intervention.

Several Asian states sought to redefine the concepts of human rights by questioning the applicability of universal human rights in different cultural, economic and social settings (Tang 1995, 1). A Senior Foreign Ministry official from Singapore (Kausikan 1993, 9) commented that the promotion of human rights by all countries "will always be selective, even cynical, and concern for human rights will always be balanced against other national interests… such as the territorial integrity of the state or the fundamental nature of their political systems". He sees that even in non-Asian countries, universal human rights cannot be applied "universally". In an attempt to respond to an ever growing pressure of international human rights campaign from Western states, international agency such as the UN, and active international and regional NGOs, they have come up with their own version of the concept. Kausikan (1993) sees that the need for Asian states' response stems from the emerging global culture of human rights as demonstrated in international human rights law, the UN Declaration on human rights, the UN Charter, as

well as the emphasis of human rights in the foreign policy of the major

powers, the US and many European countries, which turn human rights into

an international issue. The Asian states then tried to build congruence with

this external norm since human rights were not yet formally adopted in

interstate discourse at that time. They did not reject the norm outright, but

tried to highlight existing core norm they value such as non-interference and

mutual respect and tolerance.

This was evidenced at the Regional Meeting for Asia of the World

Conference on Human Rights where Asian states announced in the Final

Declaration of the Regional Meeting for Asia of the World Conference on

Human Rights (1993) or the Bangkok Declaration that

> while human rights are universal in nature, they must be considered in
> the context of a dynamic and evolving process of international norm-
> setting, bearing in mind the significance of national and regional
> particularities and various historical, cultural and religious
> backgrounds.

The statement does not denounce the universality of human rights

outright, but qualify it by employing the argument of diversity. As summed

up by Singaporean Foreign Minister at that time, "universal recognition of

the ideal of human rights can be harmful if universalism is used to deny or

mask the reality of diversity" (Wong 1993, 2).

Other Southeast Asian government positions at that time were indeed similar. For example, Myanmar saw that (the human rights declaration) 'should reflect that the international community is composed of societies with diverse historical, economic, social, religious and cultural values; the documents should also reflect the consensus view of the entire international community; the question of universal observanced and promotion of human rights and fundamental freedoms has been rightly placed within the context of international cooperation; so that the UN mechanisms is rationalized and avoid duplication of work' (ACFOD 1993). It saw that the regional mechanism or documents were unnecessary.

6.22 The role and impact of NGOs and CSOs

As opposed to the stance taken by the governments, some 240 representatives of more than 110 NGOs from 26 countries across the Asia-Pacific region came together to propose their stance in the 1993 'Bangkok NGO Declaration on Human Rights'. The 'Asian reality' seen by the NGOs was that the governments in the Asia-Pacific region were "guilty in one way or another of violations of the basic human rights of their citizens" (ACFOD 1993, 5). It was a sweeping claim, but nonetheless clearly represented their viewpoints towards the governments. The NGOs agreed that "The human rights are of universal concern and are universal in value, the advocacy of human rights cannot be considered to be an encroachment upon national

sovereignty" (Asian Human Rights Commission 1993). Participating NGOs also formulated separate Joint Statement on Universality of Human Rights stating that "the universal nature of human rights is beyond question; their promotion and protection are the duty of all States, regardless of their cultural, economic, or political systems" (ACFOD 1993, 96). The Joint Statement emphasizes that universal human rights standards are rooted in many cultures. Therefore, the Asia-Pacific governments, ASEAN members included, should not use 'specific' cultural or historical background as excuses not to comply to universal standards of human rights. The NGOs participating in the Asia Pacific NGO Conference on Human Rights also issued another Joint Statement on Regional Human Rights Instruments and Mechanisms (ACFOD 1993, 189). They recommended a regional human rights charter with the emphasis on principles of universality, indivisibility, and non-selectivity of human rights. The collective efforts initiated by the NGOs participating in the Conference with distinguished standpoint from the governments both brought the region up to the global human rights agenda as well as highlighted how the perception of human rights in the region was different from international standards. This signified to the countries that the human-centric set of norms cannot be ignored or simply swept under the carpet. The governments in the region must start to seriously consider the human-centric norms.

In an attempt to influence the implementation of human rights in the region, the NGOs have been using the power of networks (Renshaw 2011, 185) termed transnational advocacy networks by Keck and Sikkink (1998). The networks might deploy four main types of tactics: information politics (generation and dissemination of salient information), symbolic politics (use of symbols, narratives, etc. to connect with a variety of audiences), leverage politics (alliances with stronger actors), and accountability politics (holding actors to promises and avowed principles) (Keck and Sikkink 1998). In the context of ASEAN post-Vienna Conference, we are looking at the network of non-state actors spearheaded and supported by certain NGOs and CSOs. The Asian Network of National Institutions for the Promotion and Protection of Human Rights (ANNI) comprising of some of the largest and best resourced NGOs in the region was established to encourage the operation of effective National Human Rights Institutions (NHRIs) which comply with the Paris Principles: in particular, that are transparent, accountable, independent institutions which have a mandate to protect a wide range of human rights and which are led by human rights commissioners who are representative of society including women and those from diverse racial and religious backgrounds (Renshaw 2011, 198). The ANNI engages with the NGOs and INGOs such as the International Service for Human Rights, International Womens Rights Action Watch (Asia Pacific), Asia Pacific Human Rights Information Centre (HURIGHTS-OSAKA). By promoting human rights norm

diffusion mainly through information politics tactic, the network has also promoted the general awareness and helped preventing the norm contestation or debate from disappearing. Countries with existing NHRIs can influence or serve as model for countries without one on the roads towards the establishment of regional human rights mechanism (Burdekin 2007).

The NGOs and CSOs operating in the network were also active in promoting the norm in the region through series of talks, meetings, campaigns, and joint workshops with government officials. These were all tactics of creating an artificial lifeworld according to Deitelhoff and Müller (2005). They employed 'Track II' diplomacy which was more informal and open than 'Track I' or official forum where delegates must act in their official capacity. At least, the norm must enter or diffuse into the unofficial diplomacy track, in the hope that Track II could then influence Track I. Track II institutions that have been working closely with the network of NGOs and CSOs include the ASEAN-ISIS. This regional network of think-tanks cooperated with the NGOs and CSOs such as the ASEAN Inter-Parliamentary Organization (AIPO) to promoted human rights especially the establishment of a regional human rights mechanism (Working Group on an ASEAN Human Rights Mechanism 2005). Carolina Hernandez, Director of the Institute of Strategic and Development Studies (ISDS), the Philippines' member of ASEAN-ISIS, brought up the idea for an ASEAN-ISIS Colloquium on Human Rights (AICOHR) (Kraft 2006). The AICOHR was another important instrument

in Track II diplomacy where government officials can meet with non-state actors in an unofficial capacity. Herman Kraft (2006) noted that the AICOHR was important because it put forward

> the idea that human rights can be discussed in a public forum in an open and candid manner without having to worry about political repercussions. It became part of the process which made human rights and the language of human rights an increasingly acceptable part of the political discourse in ASEAN.

Since the lifeworld at that time did not allow much space for human-centric values, the non-state actors strive to create normative space so that it would be easier to consider the norm validity claim. They defined the terms, disseminated the information, tried to 'teach' the official track.

On the civil society front, Solidarity for Asian People's Advocacy (SAPA) has been at the forefront in rallying for human rights. SAPA formed the SAPA task force on ASEAN and human rights. It has been calling on ASEAN to uphold human rights in many instances, i.e. enforced disappearances. It has released its own human rights report as an alternative source of information from the governments. SAPA also engaged with the EPG vigorously, writing letters to them regarding what the organization would like to see in the ASEAN Charter (SAPA 2006). As cited in Gerard (2014), the submissions were based on civil society forums held at the national level, and also a two-day meeting that was held prior to the meeting with the EPG (Chandra 2005). The SAPA submissions recommended incorporating environmental sustainability, human rights and human security into the ASEAN Charter (Gerard 2014, 89).

SAPA also proposed that ASEAN processes be streamlined, and some practices reformed, i.e. consensus decision-making process and non-intervention norm (Gerard 2014, 89). By seeking to engage with the EPG who was the working group with the task to draft recommendations for the HLTF on the ASEAN Charter, SAPA broadened and extended the shared understanding about the rule of the game, about what can be negotiated. Although the HLTF did not have to include the EPG's recommendations verbatim, SAPA expected that the interaction between the EPG and the HLTF might yield results. At the very least, the CSO network has been reiterating and circulating the human-centric norm among official track of diplomacy, supplementing the artificial lifeworld where negotiators could draw upon.

Gerard (2014, 78-79) further explains that,

SAPA has formed other task forces related to human rights such as the SAPA Task Force on ASEAN and Burma to promote the democratization of Myanmar and the SAPA Task Force on ASEAN and Freedom of Information. By grouping CSOs around specific ASEAN processes, and then organizing these task forces under the SAPA Working Group on ASEAN, the SAPA network has functioned in unifying CSOs in their attempts to influence ASEAN policy, thereby overcoming officials' criticisms that Southeast Asian CSOs are too divided and disparate to warrant engagement. All in all, SAPA has been a crucial organizing force for Southeast Asian CSOs seeking to target ASEAN. It has also played the lead role in the organization of the ASEAN Civil Society Conference, which has become the central parallel summit for groups seeking to influence ASEAN policy.

Other examples of these human rights related activities from the NGOs and the CSOs include when The Law Association for Asia and the Pacific (LAWASIA) Human Rights Standing Committee organized a series of meetings among human rights activists and parliamentary human rights committees in the region to discuss proposals for a human rights mechanism in Southeast Asia starting from 1995. The meetings eventually led to the formation of the working group for an ASEAN Human Rights Mechanism in 1996, which composed of human rights advocates from both governments and non-governmental sectors (Cheeppensook 2006; Medina 2006).

The Regional council on Human Rights in Asia, an NGO found in Manila in 1982, met in Jakarta and issued a Statement on the Promotion of Human Rights in the ASEAN Region and a Declaration of the Basic Duties of ASEAN Peoples and Governments. It also sent a copy to ASEC. The statement emphasizes universality of human rights and seeks to change exploitative structures meaning authoritarian governments.

Moreover, LAWASIA even drafted a Pacific Charter of Human Rights (with a provision for the creation of a Pacific Human Rights Commission) and tried to persuade governments to adopt it, but failed. Had the charter been adopted, the Pacific would have had a separate regional human rights mechanism from Asia, the one that was not created by governments. LAWASIA lobbied the governments to support its resolution to have a

regional seminar at the intergovernmental level to "examine the possibility of some kind of regional institutions and arrangements for the promotion and protection of Human Rights..." (Plantilla 2000).

The Working Group for an ASEAN Human Rights Mechanism started to interact with government officials when it met ASEAN foreign ministers in 1996, and with senior officials from 1997 onwards (Medina 2006). However, the mechanism for human rights was endorsed in the Joint Communique in the annual ASEAN Ministerial Meetings after the economic crisis. According to Johnston (2003), a crisis or threatening environment is needed to motivate actors to pay attention to counterattitudinal information. By keeping the human-centric norm on the ground, providing a normative space in the region where it was formerly unreceptive, the NGOs and CSOs network have been collaborating with institutions in Track II diplomacy to foster an artificial lifeworld – the shared 'language' of human centric norms – whereby the official delegates could negotiate. Since the cognitive prior in the region was not particularly receptive to the norm, the 1997 economic crisis was a 'window of opportunity' as will be elaborated further in the next section.

6.23 The effects of the 1997 economic crisis on human-centric norm:

Increased acceptance and codification[15]

The 1997 economic crisis occurred from several complicated causes (Phongpaichit and Baker 1998; Wade 1998; Chandrasekhar and Ghosh 1998). They will be discussed briefly in order to provide the background for this turning point, although it is beyond the scope of the thesis to explore them all. The striking feature of the crisis was the virulence with which the crisis spread through the region (Smith 1999, 20). The pull-out of international capital, which was the main cause of economic growth in Southeast Asia due to US increasing interest rates in mid 1990s, interacted with structural weaknesses of the financial sectors in the region. At that time, some Southeast Asian countries such as Thailand and Indonesia had their currencies pegged to the US dollar, which led to foreign exchange risk in the financial sector. This invited speculative attacks, draining funds out of Thai (and Korean) currencies and stock markets. Higher US interest rates made the US more attractive in terms of investment destination and also raised the value of the US dollar, making many ASEAN member countries' exports less competitive because their commodities' prices were more expensive when compared to that of the US (Higgot 1998; Karunatilleka 1999; Morita, Raychaudhuri and Chatterjee 2000). Thus, their export growth slowed in

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[15] This section makes use of Chapter 3 of my MPhil thesis: Kasira Cheeppensook, 'The ASEAN Way on Human Security', MPhil thesis in International Relations, University of Cambridge, 2006.

1996, aggravating their current accounts which were already at deficit. Free movement of capital adopted at the beginning of the decade also contributed to Southeast Asia's financial vulnerabilities of depending too much on foreign short-term capital flows. The closely integrated economies and financial markets in the region coupled with poor regulation in the economic sector helped spread the contagion (Dornbusch, Park and Claessens 2000).

When Thai baht was floated on July 2, 1997, subsequent devaluations followed in other neighbor countries like Malaysia, the Philippines, Indonesia, and Singapore. The repercussions of the Asian economic crisis were also felt elsewhere in advanced economies after a period of stability in 1998.[16] The economic impact within the region itself was vast: rapid falls in currency's values against the dollar, increased interest rates resulted in decreasing funds available for borrowing, and increased corporate bankruptcies resulted in high rates of unemployment (Karunatilleka 1999, 24-27; Ching 1999). For example, from the beginning of July to mid-September 1998, Indonesia's currency had declined approximately by 80% against the US dollar. Stock prices had fallen sharply by more than 50% in all five major ASEAN countries: Indonesia, Malaysia, the Philippines, Singapore, and Thailand, with Indonesia's stocks market declining almost by 100% (Evan 1998).

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[16] The stock market falls in Asia led to market declines across the globe. Falling international trade resulting from decreasing imports had implications for countries like the US and Japan.

The crisis posed grave social and political impact to the region which has enjoyed the so-called Asian values induced growth for the past three decades. The crisis forced the governments to reduce wage rates and employments, resulting in decreasing purchasing power and high unemployment rates. ASEAN countries that were hardest hit by the crisis included Thailand and Indonesia. The pre-crisis unemployment rate in Thailand was as low as 2% in 1996. With the onset of the crisis, the unemployment rate increased to 5.2% in 1998 (UNESCAP 2002, 10). Other social repercussions included higher crime rates and increasing suicide rates (Lotrakul 2003). These social repercussions could have been cushioned off should the government had any meaningful social safety nets programs. However, they were not adequately provided, illustrating the failure on the part of the government to provide security for people's livelihoods. Real wages decline also provided a setback for rising living standards and poverty alleviation which used to sustain the rationale of political stability through economic development in the pre-crisis era, and thus the rationale to prioritize social and economic rights over political and civil rights which was decided by the state.

The clarity, durability and concordance of human-centric norms, human rights included, were better in the post-crisis era, in part from non state actors continuous efforts in maintain the artificial lifeworld. The crisis served as a turning point where people started to question a part of the

lifeworld formerly incorporated state-centric values, along the similar line of what the Holocaust did to the West. The development of human rights norm codification in ASEAN is therefore two-folded. Human-centric norms must first find its way to the interstate discourse as can be seen from Dr. Surin Pitsuwan's proposal to set up the ASEAN-PMC Caucus on Human Security when he was Thailand's Minister of Foreign Affairs (1998c). Since 1998, human rights norm continues to cascade until the contentious part of the lifeworld is not whether or not human rights should be incorporated in the codification of the ASEAN Charter, but whether there should be a regional legally binding mechanism to deal with the protection and promotion of human rights. The debate moved from the emphasis on the norm's inherent character to its implications on regional cooperation as well as the authority and responsibility of the regional mechanism.

The thesis does not intend to make a sweeping claim that ASEAN has fully incorporated the norm without any reference back to the particular historical and cultural background. ASEAN still maintains its usual reservation and is still reluctant to embrace the compete universality of human rights. Nonetheless, member countries actually made conscious effort not to appear hostile to the concept. Opposing to human rights concept could reflect badly upon them. This will be demonstrated later in the chapter.

6.3 The development of human rights mechanism in ASEAN

Until recently, Asia is the only one region without any regional human rights mechanism. It was deemed a disappointment (Leary 1990, 13) since all other major parts have all devised their regional systems. Again, even though some countries in ASEAN suffered from colonization, it was on a different scale from what Africa (which even has a regional Charter on Human Rights in place) experienced. For example, Thailand was never fully colonized, and other decolonized ones were quick to establish their independence with ferocious emphasis on non-intervention. As explained in earlier chapters, this core norm in the ASEAN Way also contributes to adherence to minimal institutionalism as well as avoidance of legally binding mechanism. Nevertheless, there has never been a lack of effort from outside the region to encourage the establishment of human rights regional mechanism.

In 1982 the UN held the Seminar on National, Local and Regional Arrangements for the Promotion and Protection of Human Rights in the Asian Region at Colombo. Sixteen Asia-Pacific member-states were represented. This is the first UN-organized workshop on regional arrangement on human rights for Asia-Pacific. It took eight years before the UN started to sponsor the yearly intergovernmental workshop on regional arrangement on human rights for the Asia-Pacific in 1990 (Plantilla 2000). The workshop considered the advisability of establishing an Asian Human

Rights Commission (Welch, Jr., and Leary 1990, p. 16). The result was that government representatives from Asian countries attending the seminar did not recommend the establishment of such a commission.

However, in response to the World Conference on Human Rights, the 1993 ASEAN Ministerial Meeting endorsed the idea that there should be a regional human rights mechanism, in line with paragraph 36 of the Vienna Declaration. The Declaration (1993) highlights the role played by national institutions as part of the human rights architecture. Indonesia and Thailand started preparatory steps towards national human rights institutions (Thio 1999, 61-75).

In 1996, ASEAN declared that no regional human rights mechanism could be set up unless each member country forms its own national human rights commission, or at the very least, the human rights 'focal point' such as a parliamentary committee (Working Group on an ASEAN Human Rights Mechanism 2005, para. 2). It seemed like a typical 'one step forward, two steps backward' diplomatic move. ASEAN was generally reluctant to establish a region-wide mechanism in the pre-crisis era.

After the Vision 2020 was in place in order to forge closer cooperation in light of the crisis, Thailand's Prime Minister Chuan Leekpai called for the development of an ASEAN permanent Human Rights Commission in May 1998 as a part of realizing the goals. The talks regarding the establishment of

a regional human rights mechanism floated about in the air without any real commitment yet. Since ASEAN operation is based generally on consensus and mutual agreement, it is keen to move all ten members forward without singling or leaving some behind. However, the prospects of having national human rights institution in every country as a prerequisite to a regional mechanism seemed quite farfetched at the time when some of the newer members still wanted to focus on how to do better economically.

The emphasis, it seems, has always been on the promotion of human rights and limitations of derogations to sovereignty. In an interview with author in 2011, an ex-SOM Leader requesting to be anonymous stated that the sentiments among leaders from his experience are that a regional Human Rights Commission can be developed "if it is not harmful to national interests". On the other hand, some seem to think that ASEAN has been on the right path. In an interview with author, a retired high-level official in the ASEAN Secretariat requesting to be anonymous saw that ASEAN has cooperated on human rights issues since 1993 and did not back down. It is a "step up" and a "positive sign" that ASEAN appears more and more cooperative regarding this issue. Indeed, ASEAN has come a long way since its inception in 1967 where state-centric security was enshrined and human-centric norms are at best under 'human development'. However, overall it has adamantly qualified the universal characteristics of human rights, fearing intervention from outside. It is not surprising that the older Members with

the established NHRIs are more comfortable with the concept, but convincing the newer Members proved to be hard work. Human rights codification and the debate on the AHRB was the most controversial issue in the drafting process.

6.4 Codifying human rights and other human-centric norms in the ASEAN Charter

6.41 Human rights in Preamble, Article 1 Purposes and Article 2 Principles

Human rights are mentioned explicitly in the Preamble, Article 1, and Article 2. It is useful to note that ASEAN rarely mentions human rights as a conceptual framework in its agreement before the ASEAN Charter (and avoids the use of human security – another human-centric norm), although it often uses terms such as human development, people-centred, and community. Human rights were not codified in the inaugural Declaration. It is now set up first and foremost that ASEAN accepts and is willing to enshrine the concept in its formal codifications of norms. This emphasizes the point that the validity claim of human rights is intact, also due to the concerted efforts of the NGOs and the CSOs in the region. It has become an unquestioned part of the lifeworld through the long process of norm interaction since ASEAN first experienced it directly in the 1990s. Artificial

lifeworld created and continuously maintained can also be the source

Members draw upon when deciding on a particular matter (Deitelhoff and

Müller 2005) although it was not home-grown (hence, the term artificial).

The contentious issue was whether any concrete mechanism to execute the

norm should exist (and later, the extent of the mechanism's authority and its

function).

In an interview with author, a Thai high-level official requesting to be

anonymous confirmed that members are generally benign about including

the concept in the Charter. However, there was an underlying understanding

that each member country retained the right to decide how to approach the

issue. The Thai official attended many drafting meetings, and saw that

members were careful not to 'copy' the UN. They wanted to have a

distinctive voice for ASEAN. Human security, another human-centric value,

was excluded from the Charter (and any other formal ASEAN document, for

the matter). Thailand which is the only country in Southeast Asia attempting

to incorporate human security in its policy resulting in the establishment of

Ministry of Human Security and Social Development tried to pushed for the

concept as a number of its leaders as well as Minister of Foreign Affairs have

been doing since after the economic crisis (Pitsuwan 1998c), but the

Philippines and Indonesia saw that it should be excluded. Thailand is the only

country in Southeast Asia with the Ministry of Social Development and

Human Security. It can be said that Thailand already embraced the norm at

the domestic level and tried to influence the actors at the international level, acting as a norm entrepreneur. This effort failed partly due to the fear that human security would be a free card to intervention from outside the region. Other member countries thought that the concept could be used as a pretext for humanitarian intervention (as mentioned by a Thai high-level official requesting to be anonymous in an interview with author in 2011). The core norm of non-intervention and respect for national sovereignty is very robust and precluded any codification of opposing norms. It is interesting that to concede with AIPA's wishes, the HLTF agreed that 'the elements of human development and human security would be in the Charter' (Summary Record of the Seventh Meeting). This seemed to be another rhetoric since the inclusion of human security was after all opposed by the majority of drafters. However, the HLTF agreed only to the 'elements' pertaining to the concept and not the 'term' itself.

6.42 ASEAN Human Rights Body in Article 14

The Seventh HLTF Meeting during June 25-28, 2007 in Indonesia is the first time the drafters discussed human rights body in detail. Singapore and Thailand was represented by alternates (Walter Woon and Manasvi Srisodapol, respectively). The Secretary General was also present. There were meetings with non-state actors prior to the negotiation. The HLTF decided during the first day that it would have dialogue sessions with the NHRIs from

Indonesia, Malaysia, the Philippines, and Thailand including Mr. Marzuki Darusman, the Co-Chair of the Working Group for an ASEAN Human Rights Mechanism in the morning of June 27 (Summary Record of the Seventh Meeting). In response to AIPA's proposal earlier in May, the HLTF reassured the civil society again that it would follow through with drafting an enabling provision for a human rights body as well as propose terms of reference for this new body (Summary Record of the Seventh Meeting, Annex 9).

In the afternoon of June 28, 2007, the HLTF held a closed brainstorming session to discuss the idea to establish an ASEAN Human Rights Commission. What was agreed without dispute and remained unchanged regarding the AHRB's function is the composition of the organ, which is ten eminent persons, one each from the Member States. This in turn reflects the core value of sovereign equality which remains an unquestioned part of the lifeworld. At that time, the name for the AHRB was undetermined and several titles have been put forth during the discussions including the Forum, Board, Body, Agency, and Mechanism (Summary of the Seventh Meeting, Annex 10). This actually showed uncertainty on the part of the HLTF regarding the AHRB's function. Nonetheless, they decided that the exact title can be determined later on. The TOR for an AHRB was initially drafted by the ASEC based on the HLTF discussions. The HLTF members see that the AHRB should promote and protect human rights as a fundamental mission.

The idea that ASEAN should still develop and articulate its own definition and concept of human rights and fundamental freedom survived. For ASEAN, there is no one legitimate, universally applicable concept of human rights. An "ASEAN's approach" to the promotion and protection of human rights calls for "a balance between rights and responsibilities of individuals and the State" (Summary Record of the Seventh Meeting, Annex 10).

The AHRB's responsibilities as conceived by the HLTF members only endorse the legacy of 1993 when the drafted TOR maintains that it is the primary role of each ASEAN Member State to promote and protect human rights and fundamental freedoms in accordance with national law and policy. The TOR barred any sovereignty derogation or pooling of the sovereignty which could happen when a regional mechanism is set up. It also states that the AHRB shall resist external influence attempting to interfere in the human rights issues of any ASEAN Member State. The guiding principles, unsurprisingly, include respect for national independence, sovereignty, equality, and territorial integrity of all ASEAN Member States as well as non-interference in the internal affairs of the members. The AHRB shall respect the right of every ASEAN Member State to lead its national existence free from external interference, subversion, and coercion (Summary Record of the Seventh Meeting, Annex 10).

Despite of the brainstorming, the drafted TOR was not included in the Charter. (Summary Record of the Seventh Meeting, Annex 9). Nonetheless, it still reflected the majority of the views of the drafters regarding the functions of an external body such as the AHRB. It reflected the shared understanding they drew from the lifeworld. Because the artificial lifeworld created by the NGOs and CSOs can only open the normative space for the negotiators to debate the norm but the universality of the norm promoted is not culturally transmitted within the region, the actors only arrive at the constructed meaning that human rights should still be promoted on the backdrop of member states' concerns. Human rights as a concept should be promoted and protected with regard to the rights and responsibilities of the Member States. Even though the establishment of the AHRB was recommended by the Ministers after the Second Meeting, its function should not in any way trample with the core norm of equal sovereignty and non-interference. Other practices stemmed from the core norm of the ASEAN Way that still forms the unquestioned part of the lifeworld are also maintained in the TOR namely that decision-making must be through friendly consultation and consensus. Everything must move forward "at a pace comfortable to all" (Summary Record of the Seventh Meeting, Annex 10).

Although the HLTF Members agreed that drafting the TOR was not their responsibilities, drafting the clause establishing the AHRB for the

Charter caused the rift among the HLTF during the Eighth Meeting. On the evening of July 26, the members of the HLTF were divided into three camps:

1) the CLMV questioned the creation of an ASEAN Human Rights Commission since there were some uncertainties in the last Meeting and they doubted whether it is necessary after all.

2) Indonesia and Thailand were in favour of creating one; and

3) Brunei, Malaysia, the Philippines and Singapore occupied the middle ground (mentioned by a Thai high-level official requesting to be anonymous in an interview with author in 2011).

The HLTF discussed the possibility of recommending to the ASEAN Foreign Ministers the following draft provision ["ASEAN shall/may establish an ASEAN human rights body, at a time acceptable to all ASEAN Member States to promote and protect human rights and fundamental freedoms of the people in ASEAN."] The bracket indicates that consensus has not yet been reached.

On July 28, 2007, the Chairperson (at that time Rosario G. Manalo) informed the HLTF that her Foreign Minister had rejected the formulation. Indonesia, Malaysia and Singapore also informed the meeting that their Foreign Ministers had also rejected the formulation as falling below their instruction given in Siem Reap (Koh 2009, 59). The Chairperson put forth her

new draft formulation as follows: "ASEAN shall establish an ASEAN Human Rights Commission to promote and protect human rights and fundamental freedoms of the people of ASEAN. Participation in the Commission is open to Member States ready to do so" (Summary Record of the Eighth Meeting). The proposal was supported by Indonesia, Malaysia and Thailand and again rejected by the CLMV. According to the Singaporean HLTF member, "strong words were exchanged and emotions ran high" (Koh 2009, 59). Talks on establishing the AHRB proved to be the most controversial in the drafting process of the Charter where most of the time the negotiating atmosphere was amicable and peaceful.

The Secretary-General stepped in to mediate and proposed a new draft formulation stating that ["In conformity with the purpose and principles of the ASEAN Charter relating to the protection and promotion of human rights and fundamental freedoms, ASEAN shall cooperate to establish an ASEAN human rights body/organ/commission."] The HLTF member from Myanmar requested that the above draft formulation be put in brackets because Myanmar still has some reservations (Summary Record of the Eighth Meeting, Addendum 1). Together with the contentious issues regarding rejection of unconstitutional government (as dealt with in 5.42), the HLTF submitted the clause on AHRB to the Foreign Ministers in the Second Progress Report on July 30, 2007.

Following the ASEAN Foreign Ministers' consideration of the HLTF's Second Progress Report, the Chairperson briefed the HLTF Members on key decisions of ASEAN Foreign Ministers. The HLTF are to use the following text: "In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body." Again, the controversy was settled in the second-party context sought willingly by the HLTF members when they could not reach an agreement. In both contentious issues, the authoritative role of the Ministers was evident in settling the outstanding conceptual conflict (whether there should be a clause rejecting unconstitutional government and whether there should be a concrete mechanism like an AHRB) while the neutral mediator (the Chairperson) was essential in bringing about the agreement on technicalities among national delegates (whether there are too many repetitions of the concept in the Charter text and that the TOR should have the approval from the Ministers).

This was evidenced in the Ninth Meeting where there was a disagreement on how much the Charter should touch upon the function of the AHRB. However, the Secretary-General's attempt to water down the clause and bridge the gap before the issues were submitted to the Ministers was not as successful because the contentious issue at that time was still on the framework level and not the technicalities.

The Ninth Meeting saw the change of chairmanship from the Philippines to Singapore, with Professor Tommy Koh replacing Ms. Rosario Manalo. (Ms. Manalo resumed her position as the Philippines national delegate). The modus operandi also changed accordingly since Koh informed the Meeting at the very beginning in his opening remarks that he would sit apart from his national delegation (Walter Woon) in order to serve as a neutral Chairman (Summary Record of the Ninth Meeting, Agenda 2). In an interview with author, a Singaporean high-level official who requested to be anonymous mentioned that this was Koh's intention from the beginning since he felt that he and Woon could focus on the task better this way. Woon also served as the 'cleaner' or 'scrubber' of the text based on his legal background. In an e-mail correspondence with author, a retired Singaporean Ambassador who requested to be anonymous confirmed this. He mentioned that Koh would not be able to play a role of mediator as well if he did not detach himself from the national delegate's duties.

The HLTF Member from Viet Nam reconfirmed the principal position of Viet Nam that the future AHRB would have consultative status. The HLTF Member from the Philippines stated that there were no instructions from the ASEAN Foreign Ministers on the functions on the proposed human rights body (Summary Record of the Ninth Meeting). Since both sides remained rhetorical while other Members felt that they should first talk to their

respective Foreign Ministers or Leaders, the Ninth Meeting ended without any settled compromise.

The Tenth Meeting was held in Chiang Mai during September 10-14, 2007. The HLTF Member from Philippines, Ms. Manalo, (formerly acted as the Chairperson) said that the body's function would include monitoring (in line with the AIPA) and that its TOR should be taken up by a group of experts after the Charter has been signed. On the other hand, Cambodia, Laos, Myanmar and Vietnam (in other words, the CLMV) took the position that the TOR must be finished by the HLTF as a package with the enabling provision and that the AHRB would only have consultative status (Koh 2009, 62). The Philippines were among the few in the brainstorming session during the Seventh Meeting who saw that the AHRB should have more authority. The CLMV felt that they could better 'control' what the AHRB would be able to do if they were also involved in the drafting.

While the atmosphere deteriorated, the new Chairperson organized a working dinner on September 12, hoping that the colleagues would feel more relaxed "in a dinner setting". He hoped an informal environment would break the impasse between the two groups. This was not the case. According to the Chairperson, disagreement over the AHRB led to "strong words… one colleague threatening to pack his bag and go home… Rosario Manalo was so worked up that she went into the men's toilet by mistake!" (Koh 2009, 63).

The mode of communication during the Tenth Meeting and particularly during that dinner was characteristically competitive bargaining since threats were issued. (When asked who 'the colleague' was, all interviewees refused to answer). The dinner adjourned without any common ground. On the morning of September 13, the Chair found that the HLTF members had gathered themselves into two different rooms. The CLMV were on the ground floor and Brunei, Indonesia, Malaysia, the Philippines and Thailand on the upper floor. Singapore then assumed the role of mediator. The Chair and his national delegate spent the whole morning going back and forth between the two groups, trying to compromise.

Finally, at around noon, the two sides agreed to accept a compromise consisting of two elements:

1) the inclusion of an additional paragraph in the Charter on the AHRB that "the ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers which becomes Article 14(2) in the ASEAN Charter;

2) an informal discussion on the ASEC's concept paper on "Possible Elements for Inclusion in the TOR of an AHRB."

When the Third Progress Report was submitted to the ASEAN Foreign Ministers on September 26 in New York, it was stated that the text represents the consensus views of the HLTF (Summary Record of the

Eleventh Meeting, Annex 3). At the request of the Foreign Minister of Singapore, the HLTF was to submit no more than two issues to the IAMM. The HLTF Chairman informed his colleagues of this suggestion. Koh was careful to appear only as a messenger and appealed that this would be more efficient for the drafting process as a whole. It was different from when the Chairperson was also the national delegate which could be seen as only representing Philippines national interests.

The HLTF requested the Foreign Ministers to adopt a second paragraph of the Article on the AHRB in the Charter (Summary Record of the Eleventh Meeting, Annex 3) as achieved through the compromise and mediation by the Singaporean Chair and his national delegate. This confirmed (as dealt with in the previous chapter) that the HLTF did not operate in the first-party context, but relied on the authority of the Foreign Ministers to approve and therefore legitimize their compromise. It is the self-imposed second-party context. Article 14(2) in the ASEAN Charter reads "This ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting". Since then, the High Level Task Force was set up at the ASEAN Foreign Ministers' Retreat in Singapore in February 2008 to draft the TOR. The ASEAN Intergovernmental Commission on Human Rights (AICHR) was established as the ASEAN Human Rights Body according to what the Charter prescribes. It remains strictly intergovernmental in the sense that national sovereignty will

not be compromised in any way; therefore; it cannot receive any complaints.

The AICHR further codifies human rights norm in ASEAN Human Rights Declaration while still opted for a typical reservation. Item 7 in the General Principles reads

> All human rights are universal, indivisible, interdependent and interrelated. All human rights and fundamental freedoms in this Declaration must be treated in a fair and equal manner, on the same footing and with the same emphasis. At the same time, the realization of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical and religious backgrounds.

This only confirms the points that ASEAN still maintains its point of view or tenet regarding the concept of human rights. Although they recognize that human rights are universal and indivisible, they also state that the realization of the concept must be considered in the context where there are different backgrounds among the countries. This is still a reservation leaning towards state-centric agenda. As discussed above, the NGOs and CSOs have had important role in the region interacting with track II diplomatic officials, attempting to socialise them as well as disseminating information opening up the normative space, thus providing an artificial lifeworld for the debate related to human rights. However, because the artificial lifeworld is not culturally transmitted, implicit to the understanding of the actors like existing state-centric lifeworld manifested through the ASEAN Way, the actors still do not define themselves in terms of absolute

human rights defender. They do recognize the importance of the norms in the provided normative space, but universal human rights without any reservations is still not 'who they are'.

6.43 Testing the setting that arguments will prevail: Article 14 in retrospect

1) Whether overlapping role identities are likely to increase the likelihood that arguing leads to persuasion. The HLTF members did not have other role than national delegates. Again, separating the identity of national delegate from the chair proved to be useful in inducing compromise. When Koh assumed the role of mediator, his national delegate also helped him. However, Koh made sure that the parties knew that the initiative came from him (mentioned by a Singaporean high-level official requesting to be anonymous in an interview with author in 2011). Therefore, separate role identities are likely to increase the likelihood that arguing leads to persuasion. This is in line with the findings of Chapter VIII formulation in the previous chapter.

2) Whether a transparent or closed negotiation setting is more conducive to persuasion. The HLTF met a lot more external actors than when they were considering Chapter VIII. However, this did not change the fact that the HLTF still operated in closed negotiating environment most of the time because it was not the purpose to negotiate with the civil society.

Similar to when the HLTF Members did not consider the EPG as their audience to seek approval from, they did not try to impress the civil society group more than appearing accommodating and polite. When I was doing my research at the Institute of ASEAN Studies in Singapore during the field trip, I had a chance to watch the video recording of the Meeting between the HLTF and the civil society group (it is the only video recording allowed in all the HLTF Meetings). The HLTF made sure that the 'rule of the game' was known to the civil society group, i.e. they cannot guarantee the external request would find its way into the text, disclosing the text is unfortunately 'very difficult' and that they have to seek approval from the Ministers. If this constitutes transparent setting (since the video recording is deposited in a library and the Meeting was attended by various non-state groups), it did not encourage the members to "speak out of the box" more than the closed setting. All in all, the HLTF adhere to its rule of the game closely regardless of the nature of the space.

3) Whether an institutional setting that privileges authority based on expertise and/or moral competence or leadership of a neutral chair is more conducive to persuasion. This also confirmed the findings when Chapter VIII was studied. Institutional norms and procedures of ASEAN do not particularly privilege authority based on expertise. The role of neutral chairmanship is more important to the negotiation. Some of the AIPA's request was in the Charter namely good governance and the uphold of the principle of human

rights, but it was caused by the Ministers' approval more than the expert opinion and justification from AIPA. The civil society wished that the AHRB should have more authority in its monitoring capacity, but the AIHCR established as a result of Article 14 was strictly intergovernmental. On the other hand, neutral chairmanship was more conducive to persuasion although Koh was able to achieve only the lowest common denominator. However, at that time, a compromise was better than stagnancy caused by two groups of the HLTF Members in separate rooms.

6.5 Conclusion

Human rights as a concept was codified with reservation derived from the core norm of equal sovereignty and non-interference which constitute the unquestioned lifeworld. The artificial lifeworld created by non-state actors originally to provide a normative space stuck through although it is arguably less robust than the lifeworld derived within the region which was tried and test. However, ASEAN was less reluctant in establishing a more concrete regional mechanism, which is a deviation from their former practices as explained earlier. In the communication to reach the common agreement, the role of a neutral Chairman proved to be essential, but secondary to seeking advice from external authority which is already 'rules of the game'.

Chapter 7

Conclusion

7.1 Summaries of findings and research question revisited

At the very beginning of the research project, central research questions were posed to find out how the ASEAN core norms manifested in the ASEAN Way have been affected through the process of norm contestation in the development of the ASEAN Charter and to discover whether ASEAN is conducive to the use of arguments or communicative action. The thesis posits to answer the questions through an analytical framework of critical constructivism incorporating the concept of Habermasian lifeworld as shared background knowledge to explain how norms are legitimized and codified through communication mode during the negotiation in the form of arguing and bargaining. It was argued that the core norms in the ASEAN Way constitute important parts of lifeworld, since lifeworld itself is more than a set of norms. The concept incorporates implicit knowledge the actors fall back to and draw upon as well as the way they define themselves. Further distinction was made between arguing and bargaining since actors sometimes reason when they argue. Forms of arguing and bargaining supplement the understanding of how actors act in a negotiation.

Along the journey to answer the research questions, two main provisions that proposed unprecedented practices in ASEAN interstate conduct were chosen: Chapter VIII dispute settlement of conflict and Article 14 establishing human rights body. The ASEAN Way consists of six core norms, i.e. 1) sovereign equality; 2) non-recourse to the use of force and the peaceful settlement of conflict; 3) non-interference and non-intervention; 4) non-involvement of ASEAN to address unresolved bilateral conflict between members 5) quiet diplomacy; and 6) mutual respect and tolerance. After the analysis of both main provisions, it can be seen that the ASEAN Charter upholds sovereign equality, non-recourse to the use of force and the peaceful settlement of conflict, and non-interference and non-intervention most explicitly. Sovereign equality, non-recourse to the use of force and the peaceful settlement of disputes already constitute parts of the ASEAN lifeworld, and actors did not question the norms validity claims. They moved on to discuss the problematic part of the lifeworld, non-interference and non-intervention, when they were discussing both provisions. They discussed how far ASEAN representatives should be able to get involved in mediating disputes between member countries, and how much authority the human rights body should have. The norm of non-interference was questioned before by member countries representatives such as Mahathir and Surin Pitsuwan, making it susceptible to doubts. At the end, non-interference was codified in the Charter throughout from the beginning, signifying that the

actors are still satisfied to define themselves and perceive one another this way. Non-interference is still part of their lifeworld. Non-involvement of ASEAN to address unresolved bilateral conflict between members was weakened through the negotiation and norm contestation in formulating Chapter VIII. It is not as robust as before since ASEAN represented by the Secretary-General and the Chairman has more authority in mediation. The EPG actually envisioned that the Secretary-General should be empowered, and Singapore by the HLTF Chair used cooperative bargaining, trading one issue area for another (in this case Secretary-General empowerment for referring the topic of human rights body to the ASEAN Foreign Ministers). The Secretary-General at that time (a Singaporean) proposed a formulation similar to the EPG report regarding the role of the Secretary-General of ASEAN in facilitating and monitoring progress in the implementation of all ASEAN agreements including cases of non-compliance. The Singaporean Chair then echoed this proposal, trading one issue area for another as mentioned above. From a critical constructivist viewpoint, one or more actors might try to assume narrative or representation of the situation. In this case, Singapore by gathering support from the HLTF-EI and employing cooperative bargaining was successful in persuading other actors. Since reality cannot exist independently, actors constantly construct the meaning of the norm within the context. They render incorporating democracy in the Charter time and again 'redundant', empowering Secretary-General

'necessary', non-interference 'central' and so on (mentioned by a Thai high-level official requesting to be anonymous in an interview with author in 2011). Since non-intervention and non-interference is still robust and already codified, ASEAN cannot act without request from disputing members. However, the Cambodia-Thai border dispute was analysed to show the leeway the Charter afford to the officials in practice.

Quiet diplomacy and mutual respect and tolerance were questioned during the negotiation to include the clause of expulsion and withdrawal. Myanmar employed competitive arguing when the delegate countered the EPG Chair's proposal. By appealing to the rhetorics of unity and solidarity, Myanmar was successful in protecting its own national standpoint. The ASEAN Foreign Ministers also decided that suspension, expulsion and withdrawal need not be mentioned in the ASEAN Charter. The HLTF, although not required by their TOR, always looks upon the ASEAN Foreign Ministers as an added source of legitimacy. Viewing this from critical constructivist point of view, we can see that although delegates viewed and understood one another as equals during the negotiation in the sense that smaller states were able to question and raise opinions, the negotiators impose external source of legitimacy upon themselves – the Foreign Ministers. Power relations thus exist during the drafting, not necessarily always among the drafters themselves, but distinctively between the drafters and the ASEAN Foreign Ministers. Threats to 'walk out', 'go home' among the

drafters were often met with (good-natured) ridicule (Bwa 2009) or some mediation to bring back the deviant delegate so that the negotiation could continue. However, the drafters willingly submit issues they cannot agree among themselves (albeit with their comments) to the Foreign Ministers to decide. Once the Foreign Ministers make the decision, that is that. The drafters did not deviate from what the Foreign Ministers deem 'the right thing to do' or 'the right thing to include in the Charter', not even once. 'Unmasking' power relations or dominant and subordinate social realities along the critical constructivist line reveals that when in doubt, the Foreign Ministers' narrative and constructed meaning of the norm is more powerful than that of the drafters, even though the Foreign Ministers were not involved directly with the task of drafting the ASEAN Charter.

Quiet diplomacy and mutual respect and tolerance relate closely to the practice of consensus which was deemed an essential mode of decision making as demonstrated in every meeting. Therefore, both are still intact. The CLMV employed competitive arguing again when they opposed inclusion of democracy in the Charter. They attempted to clarify the understanding of this normative principle, but their intentions were not to invoke common and better understanding. They did not prepare to change their views.

The effect of the 1997 economic crisis was used to serve as a turning point in norm evolution. Its effects are two-folded. It provided an

opportunity for human centric norms to be considered, bolstered by artificial lifeworld created and maintained by the non-state actors. Artificial lifeworld was needed for norm grafting of human rights because it was perceived that the norm originated from elsewhere. On the other hand, peaceful settlement of dispute and non-recourse to the use of force was an unquestioned part of the lifeworld and actors need not clarify the norm before negotiating.

The economic crisis also led to ASEAN Vision 2020 which is among the first documents that pave the way towards the ASEAN Charter. It made ASEAN realize that it needs to cooperate more closely. In contextualizing the development of the Charter, ASEAN is viewed as a social setting where negotiation – social communication - took place. Still, even though power relations between the Foreign Ministers and the drafters are revealed, the second research question remains. Is ASEAN conducive to communicative action for norm endurance? In an ASEAN context, the setting that induces the use of arguments can be summarized as below. The criteria is adapted from Risse and Kleine (2009) as discussed in detail earlier in Chapter 2:

1) ASEAN does not favour overlapping role identities. When the identity of national delegate was separated from the identity of Chairperson, it was received more favorably. Most of the time the HLTF members do not feel uncertain about appropriate behaviour since they subscribe to the

established 'rules of the game' where they seek advice from the Foreign Ministers when in doubt. This decreases the need to argue.

2) Most of the time, the HLTF Members operated in closed environment except for when they seek advice from the Foreign Ministers. They met and interacted with non-state actors and other officials, but do not think of them as "audience" to receive consent from. When meeting with non-state actors, they operated in more transparent space. However, they are quite certain of the preferences and needs of the non-state actors as well as their agenda. This also decreases the need to argue.

3) ASEAN institutional norms and procedures do not privilege authority based on expertise and/or moral competence but prefer neutral Chairmanship. This corresponds to proposition 3b stating that *the more institutional norms and procedures require neutral chairs of negotiations in centralized settings, the more leadership is conducive to the prevalence of arguing.* It can be seen when Koh assumed Chairmanship and delegated the national representation to his colleague. He was able to act as honest broker, achieve compromise and solve the stalemate during human rights mechanism codification. However, the inductive social setting by no means guarantee that arguments will be used instead of bargaining. It only increases the opportunity that arguments can be used and lead to persuasion.

This can also explain why, despite very accommodating environment for communicative rationality such as empathy, perceived equality, and shared common lifeworld, actors did not engage in cooperative arguing during the negotiaion. Cooperative arguing will work best when power recedes to the background. Employing critical constructivist framework, this might be difficult since there might be one or more actors attempting to dominate the discourse or the construction of meaning. Threats were used occasionally to signify dissatisfaction and coerced others to comply to particular wants. The only exception of cooperative arguing usage was when the EPG Chair was invited to attend the First Meeting. He argued and justified to achieve better course of action and understanding. However, the Chair did not possess the drafting power as the HLTF members.

All in all, even when the negotiating environment accommodates the use of communicative rationality, the actors might choose not to. The preferred mode of communication during the drafting of the ASEAN Charter was competitive arguing (rhetorics) and cooperative bargaining by trading off and clarifying one's preferred course of action. The actors would appeal to common, attractive norms such as equality, solidarity and unity in order to protect their standpoint in competitive arguing (as in where Myanmar opposed expulsion clause) or appeal to the idea that some issues should be traded off in exchange for the next round compromise in cooperative bargaining (as in where Singapore appeals to the members regarding the

empowerment of Secretary-General). Competitive bargaining was used a lot less in the HLTF negotiation. Apart from the disputes surrounding human rights mechanism codification, the use of competitive bargaining was deemed too costly since they still have other governing negotiating style in place such as appear non-hostile in order to 'win the next round' (mentioned by a Thai high-level official requesting to be anonymous in an interview with author in 2011).

7.2 The main contribution of the thesis to ASEAN studies and social constructivism

There is a gap in existing literature on the formulation process of the ASEAN Charter especially how the two main provisions which constitute unprecedented practice in ASEAN were developed. The reason that the development of the Charter which entails the negotiating process is a difficult subject to study is partly because the primary sources are difficult to access. This project began in 2009, only a year after the Charter was ratified. Throughout 2007 when the Charter was being negotiated, the process was shrouded in secrecy most of the time. It really happened behind closed doors. The fieldwork was conducted in 2011 when the request to access the archive at the Secretariat was approved. By being able to access the Records of all thirteen Meetings for the first time, the thesis hopes to shed light on how the

ASEAN Charter came to look like it does with special regard to Chapter VIII

dispute settlement mechanism and Article 14 which establishes human rights.

Elite interviews were also generally difficult to secure since ASEAN officials

prefer to look at the end result as a common effort without singling any one

out.

These two provisions were deemed most important in the research

design since they prescribe unprecedented practices in more than four

decades since the organization's conception in 1967. Other provisions codify

existing robust norms and practices such as consensus, national sovereignty,

and non-intervention and non-interference. However, Chapter VIII bestows

increased authority to the Secretary-General and Chairman, and Article 14

prescribes a regional concrete mechanism dealing specifically with human

rights in the region that used to strictly adhere to minimal institutionalism.

The core norm of non-involvement of ASEAN in member's unresolved

disputes was weakened as a result of norm contestation when a part of the

lifeworld was questioned.

Habermasian lifeworld is a relatively new framework in studying

ASEAN. As discussed in the analytical framework, lifeworld goes beyond a set

of regional norms. For the operationalization purposes, the thesis maintains

that core norms in the ASEAN Way constitute instrumental parts in the

shared, common lifeworld in ASEAN. A part of lifeworld can become

problematic by consistent questioning from members in the society, and the members must come together to debate the norm validity claims, to see if it is still relevant. Unproblematic part of the lifeworld remains at the backdrop of the negotiation, providing common background where negotiators can draw upon. Lifeworld still does not end there. It incorporates culturally transmitted pattern of understanding, implicit background knowledge, the way the actors perceive themselves and others. However, this must be employed critically, in a self-reflective way. If asked 'why do you do this?', 'why do you believe such-and-such?' – based on the lifeworld, the answer might ultimately incorporate something like 'because this is who I am' – this is who we are (Frank 2000). This explains why ASEAN leaders and officials in general take offense when the ASEAN Way is under attack, why they often fall back on this mantra when asked about regional solutions to regional problems, why they still deem it relevant. It is part of who they think they are and how they would expect other members to behave. But this can also change if the meaning is reconstructed anew. We must not treat norms embedded in the ASEAN Way as a rather fixed concept along conventional constructivist line. The actors construct the meaning of the norm, and their role can also constitute change. Norms can always be contested, leading to change in meaning or implementation. This is true in the case of non-involvement of ASEAN. Before the Charter explicitly grants the authority to the Secretary-General and the Chair to mediate disputes, one or more ASEAN

countries might offer themselves as mediators to the disputing parties. That act is in their own capacity, not because they represent ASEAN. However, after the Charter members could expect more involvement from ASEAN Secretary-General or Chairman in a dispute. Even though disputing parties have to endorse their efforts, we can expect to see more initiatives coming from ASEAN representatives since the legal framework already endorses it as in the Cambodian-Thai border dispute where the Secretary-General offered himself and was heavily involved. The meaning of the norm change through construction – negotiation, and so involvement of ASEAN in disputes is not taboo any more.

The thesis adds value to the field by also analyzing the concept of 'artificial lifeworld'. When the lifeworld derived from shared experiences have limited normative space to accommodate arguments or discussions of new norms, non-state actors who are often norm entrepreneurs try to construct, promote, and maintain a new set of shared understanding through interactions with government officials, meetings and workshops so that the new norm can find its way into existing discourse or discussion. The thesis showed that this was evident in human rights codification. It set up ASEAN as a social setting where negotiation took place, and analyze the criteria which induce persuasion from arguments as summarized above. ASEAN have interacted with numerous NGOs and CSOs, but during the drafting the HLTF was quite silent to the demand that the Charter text be open to review by

non-state actors. 'Entities Associated with ASEAN' (see Annex II) which is annex to the ASEAN Charter lists the Working Group for an ASEAN Human Rights Mechanism as 'other stakeholders', but the 'stakeholders' seem to work in parallel to the official track given that the AICHR stemming from the provision to establish the HRB has much less authority and mandate than what the Working Group has been setting out. Nonetheless, the role of NGOs and CSOs have been important in disseminating the information and socializing track II diplomacy especially the ASEAN-ISIS (also listed in 'Entities Associated with ASEAN), constructing an artificial lifeworld where a normative space does not exist before. By illuminating the process of norm contestation in ASEAN Charter development, the thesis hopes to provide a distinct contribution to ASEAN studies as well as social constructivism and norm studies.

Last but not least, critical constructivist account of ASEAN in particular and Southeast Asian in general is still sparse, none exists on the analysis of the development of the ASEAN Charter. The thesis hopes to fill this intellectual and academic gap by revealing the power structure behind the drafting of the ASEAN Charter, apart from how the core norms were affected through the process of norm contestation, arguing and bargaining. It might be seen as 'normal procedure', Foreign Ministers presiding over the negotiation and act as advisors. However, the drafters consciously rested the ultimate decision-making with them regarding 'difficult' issues that they

cannot decide on their own, and thus forsook the chance to engage in communicative action even though all the conditions proposed by Habermas was present. The social setting has also influenced the avoidance of communicative action as discussed above. Viewing the HLTF TOR might lead us to conclude that the HLTF had authority to decide on what to include in the Charter based on what the EPG proposed, but a closer look reveals that the opinion of the Foreign Ministers was valued as a way out of a 'deadlock', instead of engaging in more dialogue. The opinions (or in some cases 'directives') from the Foreign Ministers are much more valued to the detriment of other non-state stakeholders in the region. This can be argued as 'reality' in ASEAN, but we have to bear in mind that constructions of reality could enact and reify relations of power. Identifying the structure is the first step towards recognition of the situation and towards change. Dominant and subordinate structure is usually taken for granted, but once we problematize power relations and conceptualize that social reality including the meanings of norms are constantly contested, existing situation does not have to be legitimized through the study. Employing critical constructivist framework proposes to do the opposite: to explore venue for change.

Regarding the policy contribution, the thesis proposes that ASEAN as a social setting for negotiations value neutral chairmanship or leadership more than the opinion of experts. If the Chair is seen as neutral, it can induce the

use of more arguments. This proposal of course should be studied further and applied to different kinds of negotiations with different actors. However, neutral leadership appeals directly to the embedded core norm of sovereign equality and non-interference and non-intervention. It could be useful in conducting a negotiation since overlapping identities such as those of chairman and national delegate would be less favourable and receive less cooperation than separating the role identities. In his own words, Koh feels that, "I think I made the right decision to act as a neutral chairman... If I were not a neutral chairman, I do not think it would have been possible for me to act as an honest broker in Chiang Mai and to broker a compromise acceptable to the two opposing groups of colleagues" (Koh 2009, 67).

7.3 Possible avenues of future research

Change in one set of norms may open possibilities for, and even logically or ethically require changes in, other norms and practices. The thesis demonstrates that non-involvement of ASEAN in members' disputes was weakened as a result of norm contestation while others are still intact. It could be studied further which norms or practices are affected since the Charter was in place for five years as of now. Moreover, the AICHR and its ASEAN Declaration on human rights should be another rich venue for evaluation of human rights norm in the region.

Another area that could be of interest is other concepts which were omitted from the EPG recommendations and the HLTF negotiations. Many are very good ideas that could be useful if realized, such as

1) Special Fund

The Chapter IX regarding budget and finance was completed during the HLTF 6th meeting. Having been recommended by the Foreign Ministers, the HLTF omitted the clauses regarding the Special Fund. There would be no specific provisions on funding the Special Fund for Development in order to narrow the development gap among member countries as suggested by the EPG. As a matter of fact, there is no provision regarding any funding in the ASEAN Charter. The Chapter simply proceeds to say that the operational budget of the ASEAN Secretariat shall be met by ASEAN member states through equal annual contributions which shall be remitted in a timely manner.

2) ASEAN Union

During HLTF's First Progress Report to the ASEAN Foreign Ministers, the Ministers decided that the term "ASEAN Union" recommended by the EPG should not be mentioned in the Charter. The EPG actually saw this as a potential surgery to the former principles and objectives. According to the EPG Report (2006),

The principles and objectives enshrined at ASEAN's founding have served us well and are integral to ASEAN's future success. At the same time, the Charter should update ASEAN's principles and objectives in line with the new realities confronting ASEAN, and to strengthen regional solidarity and resilience. The EPG recommends that these principles and objectives be reflected in the Charter which broadly cover the following areas:… *Expressing the resolve to realise an ASEAN Community and ultimately an ASEAN Union*. (Emphasized by author.)

The concept of the ASEAN Union remains elusive since Members do not want ASEAN to become integrated along the line of the EU. However, it is interesting to see where ASEAN will look upon becoming a Community in 2015.

7.4 Final remarks

The ASEAN Charter might appear to be a giant compromise of will from the first look, some propositions watered down in order to achieve consensus. However, it is also the most recently developed structure of norms which are binding to the Members, where members would now be expected to comply 'as a rule'. If norm evolution and the study of norms are an ongoing process, it is interesting to see whether norms which were codified would withstand questioning in the future. Robust norms put in place through reason-based argumentation usually signify 'true' internalization rather than adaptive behaviour, but that mode of communication has become rare in a negotiating context that power never truly recedes to background and lets communicative rationality shine. Critical

constructivism aiming at 'unmasking the power' is employed as an overarching framework linking how norms and rules manifested in the ASEAN Way have gone through the contestation process during the development of the ASEAN Charter via arguing and bargaining against the backdrop of implicit knowledge conceptualized as the lifeworld. Although non-interference was also contested, it became codified in full since it is still deemed relevant when actors come together to give it meaning in a negotiating context. At the end, non-involvement of ASEAN in disputes is altered through cooperative bargaining, empowering the Secretary-General and the Chair in initiating mediation. Other unquestioned norms recede into the unproblematic part of the ASEAN lifeworld.

On the final note, there is an underlying insinuation of hope. Habermas' theory of communicative action and the overall framework of critical social constructivism affords the international hope by asserting that social integration can be achieved through dialectical interaction. It is possible for international actors to institute real, cooperative change (Hardy 2014). It is through continued dialogue – conceptualized as a collective process of interpretation – that state actors collect and coordinate their understandings – their experience and wisdom – which is lifted to the intersubjective level as a collective overlap in lifeworlds, and is expressed in a given social practice (Lose 2001). Critical constructivism highlights role of

actors towards change. The thesis adds on the interpretivist, communicative turn in international relations.

Reference List

Abbott, Kenneth W., and Duncan Snidal. 2000. Hard and soft law in international governance. *International Organization* 54 (3): 421-56.

Acharya, Amitav. 1995. Human rights and regional order: ASEAN and human rights management in Southeast Asia. In *Human Rights and International Relations in the Asia Pacific*, ed. James. T. H. Tang, 167-182. London and New York: Pinter.

-----------------------. 1997. Ideas, identity, and institution-building: from the 'ASEAN way' to the 'Asia-Pacific way'? *The Pacific Review* 10 (3): 319-46.

-----------------------. 2000. *The quest for identity: International Relations of Southeast Asia*. Oxford: Oxford University Press.

-----------------------. 2005. Do norms and identity matter: Community and power in Southeast Asia's regional order. *The Pacific Review* 18 (1): 95–118.

-----------------------. 2009a. *Constructing a security community in Southeast Asia: ASEAN and the problem of regional order*. 2nd ed. London and New York: Routledge.

-----------------------. 2009b. *Whose ideas matter? Agency and power in Asian Regionalism*. Ithaca and London: Cornell University Press.

-----------------------. 2014. *Rethinking power, institutions and ideas in world politics: Whose IR?* Oxon and New York: Routledge.

ACFOD (Asian Cultural Forum on Development) on behalf of the Organizing Committee and Coordinating Committee for Follow-Up, Asia Pacific NGO Conference on Human Rights. 1993. *Our voice: Bangkok NGO Declaration on Human Rights*. Bangkok: ACFOD

Acharya, Amitav, and Richard Stubbs. 2006. Theorizing Southeast Asian relations: An introduction. *The Pacific Review* 19 (2): 125-134.

Adler, Emanuel. 1997. Seizing the middle ground: Constructivism in world politics. *European Journal of International Relations* 3 (3): 319-363.

----------------------. 2006. Constructivism and international relations. In *Handbook of International Relations*, ed. Walter Carlsnaes, Thomas Risse, and Beth A. Simmons, 95-118. London: Sage Publications Ltd.

Aggestam, Lisbeth. 1999. Role conceptions and the politics of identity in Foreign Policy. ARENA Working Papers 99/8. http://www.sv.uio.no/arena/english/research/publications/arena-publications/workingpapers/working-papers1999/wp99_8.htm (accessed July 7, 2014).

Alagappa, Muthiah. 1993. Regionalism and the quest for security: ASEAN and the Cambodian conflict. *Journal of International Affairs* 46 (2): 439-467.

--------------------------. 1995. Regionalism and conflict management: A framework for analysis. *Review of International Studies* 21 (4): 359-387.

------------------------, ed. 1998. Asian security practice: Material and ideational influences. Stanford, CA: Stanford University Press.

Alatas, Ali. 1993. Statement by Ali Alatas, Minister for Foreign Affairs and Head of the Delegation of the Republic of Indonesia, Vienna, 14 June 1993. In Appendices, *Human rights and International Relations in the Asia Pacific*, ed. James T. H. Tang, 228-234. London and New York: Pinter.

Albert, Mathias, Oliver Kessler, and Stephan Stetter. 2008. On order and conflict: International relations and the 'communicative turn'. *Review of International Studies* 34 (1): 43-67.

ALTSEAN Burma. 2005. Pressure works: Burma backs off from ASEAN Chair. BN2005/1018: 6 August 2005. Bangkok: ALTSEAN.

Antolik, Michael. 1990. *ASEAN and the Diplomacy of Accommodation*. New York: M. E. Sharpe, Inc.

Apornsuwan, Thanet. 2006. *กำเนิดและความเป็นมาของสิทธิมนุษยชน* (Kum nerd lae kwam pen ma khong sitti manoosayachon – Origins and the history of human rights). Bangkok: Kobfai Publishing.

ASEAN. 1967. The ASEAN Declaration (Bangkok Declaration). http://www.asean.org/news/item/the-asean-declaration-bangkok-declaration (accessed 28 February 2013).

---------. 1976. Treaty of Amity and Cooperation in Southeast Asia. http://www.asean.org/1217.htm (accessed April 13, 2011).

---------. 2000. The ASEAN Troika Terms of Reference. http://www.aseansec.org/3701.htm (accessed April 24, 2012).

---------. 2004a. ASEAN Protocol on Enhanced Dispute Settlement Mechanism. http://www.aseansec.org/16754.htm (accessed April 9, 2012).

---------. 2004b. Joint Communiqué of the 37th ASEAN Ministerial Meeting. http://www.aseansec.org/16192.htm (accessed January 2, 2010).

---------. 2004c. Vientiane Action Programme. http://www.aseansec.org/VAP-10th%20ASEAN%20Summit.pdf (accessed January 3, 2010).

---------. 2005a. Kuala Lumpur Declaration on the establishment of the ASEAN Charter. http://www.asean.org/news/item/kuala-lumpur-declaration-on-the-establishment-of-the-asean-charter-kuala-lumpur-12-december-2005 (accessed June 6, 2014).

---------. 2005b. Terms of Reference of the Eminent Persons Group (EPG) on the ASEAN Charter. http://www.aseansec.org/18060.htm (accessed October 19, 2009).

---------. 2007. Cebu Declaration on the Blueprint of the ASEAN Charter. http://www.gees.org/documentos/Documen-02648.pdf (accessed January 2, 2010).

---------. 2008. *The ASEAN Charter*. 2nd reprint. Jakarta: ASEAN Secretariat.

---------. 2010. Protocol to the ASEAN Charter on Dispute Settlement Mechanisms. http://cil.nus.edu.sg/rp/pdf/2010%20Protocol%20to%20the%20ASEAN%20Charter%20on%20Dispute%20Settlement%20Mechanisms-pdf.pdf (accessed April 2, 2012).

---------. 2011. ASEAN Welcomes Cambodian-Thai Firm Commitment to Avoid Further Clashes. http://www.aseansec.org/25931.htm (accessed January 23, 2012).

Austin, John L. 1962. *How to do things with words*. Oxford: Clarendon Press.

Axelrod, Robert. 1986. An evolutionary approach to norms. *American Political Science Review* 80 (4): 1095-1111.

Ba, Alice D. 2005. On norms, rule breaking and security communities: A constructivist response. *International Relations of the Asia-Pacific* 5: 255-266.

--------------. 2009a. *(Re)Negotiating East and Southeast Asia: region; regionalism, and the Association of Southeast Asian Nations*. Stanford: Stanford University Press.

----------------. 2009b. Who's socializing whom? Complex engagement in Sino-ASEAN relations. *In Theorizing Southeast Asian relations: Emerging debates*, ed. Amitav Acharya and Richard Stubbs, 31-52. Oxon and New York: Routledge.

Badawi, Abdullah A. 1998. Opening Statement. 31st ASEAN Ministerial Meeting, Manila, the Philippines. http://www.aseansec.org/3921.htm (accessed February 27, 2011).

Ball, W. Macmahon. 1958. A political re-examination of SEATO. *International Organization* 12 (1): 17-25.

Barkun, Michael. 1968. *Law without sanctions: Order in primitive societies and the world community*. New Haven and London: Yale University Press.

Barry, Brian. 1965. *Political Argument*. London: Routledge and Kegan Paul.

Batson, Charles D. 1991. *The altruism question: Toward a social psychological answer*. Hillsdale, NJ: Erlbaum.

Bercovitch, Jacob, and Houston, Allison. 1993. Influence of mediator characteristics and behaviour on the success of mediation in international relations. *International Journal of Conflict Management* 4 (4): 297-321.

Björkdahl, Annika. 2002. Norms in international relations: Some conceptual and methodological reflections. *Cambridge Review of International Affairs* 15 (1): 9-23.

-----------------------. 2006. The European Union - A normative power in the Western Balkans: A theoretical framework and an empirical illustration.

Paper presented at the International Seminar, Department of Political Science, Göteborg University, 30 October 2006.

Bozdağlıoğlu, Yücel. 2003. *Turkish foreign policy and Turkish identity*. London: Routledge.

Broinowski, Alison, ed. 1982. *Understanding ASEAN*. New York: St. Martin's Press.

Burdekin, Brian. 2007. *National Human Rights Institutions in the Asia Pacific Region*. Leiden: Koninklijke Brill NV.

Busse, Nikolas. 1999. Constructivism and Southeast Asian security. *The Pacific Review* 12 (1): 39-60.

Buszynski, Leszek. 1983. *SEATO: The Failure of an Alliance Strategy.* Singapore: Singapore University Press.

--------------------------. 1987. ASEAN: A changing regional role. *Asian Survey* 27 (7): 764–786.

Buzan, Barry, and Gerald Segal. 1994. Rethinking East Asian security. *Survival* 36 (2): 3-21.

-------------------, and Ole Waever. 2003. *Regions and powers: The structure of international security*. Cambridge: Cambridge University Press.

Caballero-Anthony, Mely. 2005. *Regional security in Southeast Asia: Beyond the ASEAN Way*. Singapore: ISEAS Publications.

Campbell, David. 1992. *Writing security: United States foreign policy and the politics of identity*. Minneapolis: University of Minnesota Press.

Center for International Law. 2011. Dispute settlement in ASEAN. http://cil.nus.edu.sg/dispute-settlement-in-asean/ (accessed July 4, 2014).

Chamarik, Saneh. 2001. *สิทธิมนุษยชน: เกณฑ์คุณค่าและฐานความคิด* (Sitti manoosayachon: Ken koon kha lae than kwam kid – Human rights: Values and thoughts). Nakorn Pathom: Committee of Human Rights studies and Social Development, Mahidol University.

Chandra, Alexander C. 2005. The roles of Southeast Asian civil-society in the making of an ASEAN Economic Community. *Asia-Pacific Research*

Network Journal 12. Cited in Kelly Gerard. 2014. *ASEAN's engagement of civil society: Regulating dissent*. Hampshire: Palgrave Macmillan.

Chandrasekhar, C. P. and Jayati Ghosh. 1998. Hubris, hysteria, hope: The political economy of crisis and response in Southeast Asia. In *Tigers in Trouble: Financial Governance, Liberalisation and Crisis in East Asia*, ed. K. S. Jomo, 63-84. London: Zed Books.

Chanto, Sisowath Doung. 2003. The ASEAN Regional Forum – The emergence of 'soft security': Improving the functionality of the ASEAN security regime. Dialogue and Cooperation 3: 41-47.

Checkel, Jeffrey T. 1997a. *Ideas and international political change: Soviet/Russian behavior and the end of the Cold War*. New Haven and London: Yale University Press.

-----------------------. 1997b. International norms and domestic politics: Bridging the rationalist-constructivist divide. *European Journal of International Relations* 3 (4): 473-495.

-----------------------. 1998. The constructivist turn in international relations theory. *World Politics* 50 (2): 324-348.

-----------------------. 1999. Norms institutions and national identity in contemporary Europe. *International Studies Quarterly* 43 (1): 83-114.

-------------------------. 2001. Why comply? Social learning and European identity change. *International Organization* 55 (3): 553-588.

-----------------------. 2005. International institutions and socialization in Europe: Introduction and framework. *International Organization* 59 (4): 801-826.

-----------------------. 2007a. Constructivism and EU Politics. In *Handbook of European Union Politics*, ed. Knud Erik Jørgensen, Mark A. Pollack, and Ben Rosamond, 57-76. London: Sage Publications Ltd.

-----------------------. 2007b. It's the process stupid! Tracing causal mechanisms in European and international politics. http://83.143.248.39/students/DNH110/AUBG%20Classes/Spring%202012/Research%20Methods/Readings/Checkel-_Process.pdf (accessed July 23, 2011).

Cheeppensook, Kasira. 2006. The ASEAN Way on Human Security. MPhil Thesis in International Relations. University of Cambridge.

------------------------------. 2007. The ASEAN Way on Human Security. Paper presented at the International Development Studies Conference, "Mainstreaming Human Security: The Asian Contribution," October 5 2007, Bangkok.

------------------------------. 2012. Shaping Human Security in ASEAN: Transnational NGOs' Contributions. In *Mainstreaming Human Security: Asian Perspectives*, ed. Chantana Banpasirichote, Philippe Doneys, Mike Hayes, and Chandan Sengupta. Bangkok: Chula Global Network.

Chernoff, Fred. 2008. *Theory and metatheory in International Relations*. Basingstoke: Palgrave.

Ching, Frank. 1999. Social impact of the Regional Financial Crisis. The Asian Economic Crisis, Asia Society's Conference Papers. http://www.ciaonet.org/ conf/ass07/ass07_b.html (accessed June 12, 2011).

Cohen, Raymond. 1991. *Negotiating across cultures: communication obstacles in international diplomacy*. Washington D.C.: United States Institute of Peace Press.

Collier, Ruth B. and David Collier. 1991. *Shaping the political arena: Critical junctures, the labour movement, and regime dynamics in Latin America*. New Jersey: Princeton University Press.

Collins, Alan. 2013. *Building a people-oriented security community the ASEAN Way*. Oxon and New York: Routledge.

Collins, Craig and John Packer. 2006. *Options and techniques for quiet diplomacy*. Conflict Prevention Handbook Series. Stockholm: Edita Stockholm.

Commons, J. R. 1924. *Legal foundations of capitalism*. New York: Macmillan.

Cortell, Andrew P., and James W. Davis, Jr. 1996. How do international institutions matter? The domestic impact of international rules and norms. *International Studies Quarterly* 40 (4): 451-78.

--. 2000. Understanding the domestic impact of international norms: A research agenda. *International Studies Review* 2 (1): 65-87.

Cox, Robert W. 1981. Social forces, states and world orders: Beyond international relations theory. *Millenium* 10 (2): 126-155.

Crawford, Neta C. 2009. Jürgen Habermas. *Critical theorists and international relations*, ed. Jenny Edkins and Nick Vaughan-Williams, 187-198. Oxon and New York: Routledge.

Crawford, S. E. S. and Elinor Ostrom .2005. A grammar of institutions. In *Understanding institutional diversity*,ed. Elinor Ostrom, 137–174. Princeton, NJ: Princeton University Press.

Crone, Donald. 1993. Does hegemony matter?: The reorganization of the Pacific political economy. *World Politics* 45 (4): 501-25.

Dallmayr, Fred R. 1984. Life-world and communicative action. https://kellogg.nd.edu/publications/workingpapers/WPS/020.pdf (accessed May 9, 2014).

Davies, Mathew. 2013. ASEAN and human rights norms: constructivism, rational choice, and the action-identity gap. *International Relations of the Asia-Pacific* 13 (2): 207-231.

Davis, Jeff. 2012. John Baird to meet Burmese opposition leader Aung San Suu Kyi on historic visit. http://www.canada.com/John+Baird+meet+Burmese+opposition+leader+Aung+historic+visit/6260527/story.html (accessed April 8, 2012).

Deitelhoff, Nicole, and Harald Müller. 2005. Theoretical paradise – empirically lost? Arguing with Habermas. *Review of International Studies* 31 (1): 167-179.

Denoon, David B. H. and Evelyn Colbert. 1998-1999. Challenges for the Association of Southeast Asian Nations (ASEAN). *Pacific Affairs* 71 (4): 505-523

Desch, Michael C. 1998. Culture clash: Assessing the importance of ideas in security studies. *International Security* 23 (1): 141-170.

Deutsch, Karl W et al. 1957. *Political community in the Northern Atlantic area*. Princeton: Princeton University Press.

Dibb, Paul. 1995. *Towards a new balance of power in Asia*. Adelphi Paper, No. 295. London: International Institute for Strategic Studies.

Distapichai, Jarun. 2006. *บนหนทางสิทธิมนุษยชน* (Bon hon tang sitti manussaya chon - On the road of human rights). Bangkok: Institute of Policy Studies.

Dornbusch, Rudiger, Yung Chul Park, and Stijn Claessens. 2000. Contagion: How it spreads and how it can be stopped. http://www1.worldbank.org/economicpolicy/ managing%20volatility/contagion/documents/Claessens-Dornbusch-Park.pdf (accessed June 10, 2011).

Donnelly, Jack. 2007. *International human rights*, 3rd ed. Colorado: Westview Press.

Dreisbach, Kai. 2004. Between SEATO and ASEAN: The United States and the regional organization of Southeast Asia. In *The transformation of Southeast Asia: International perspectives on decolonization*, ed. Marc Frey, Ronald W. Pruessen, Tan Tai Yong, 241-256. Singapore: Singapore University Press.

Dulles, John F. 1952. Security in the Pacific. *Foreign Affairs* 30 (2): 175-187.

Eaton, Sarah, and Richard Stubbs. 2006. Is ASEAN powerful? Neo-realist versus constructivist approaches to power in Southeast Asia. *The Pacific Review* 19 (2): 135-55.

Eisenberg, Nancy, and Janet Strayer. 1987. Critical issues in the study of empathy. In *Empathy and its development*, ed. Nancy Eisenberg and Janet Strayer, 3-13. Cambridge: Cambridge University Press.

Elgström, Ole and Christer Jönsson. 2000. Negotiating in the European Union: Bargaining or problem-Solving? *Journal of European Public Policy* 7 (5): 684–704.

Elster, John. 1992. Arguing and bargaining in the Federal Convention and the Assemblée Constituante. In *Rationality and institutions*, ed. Raino Malnes and Arild Underdal. Oslo: Universitetsforlaget. Quoted in Erik O. Eriksen

and Jarle Weigård. *Understanding Habermas*, 38. London and New York: Continuum, 2004.

Evans, K. 1998. Survey of recent developments. Bulletin of Indonesian Economic Studies 34.

Fearon, James D. 1997. Signaling foreign policy interests: Tying hands versus sinking costs. *Journal of Conflict Resolution* 41 (1): 68–90.

Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights. 1993 http://www.law.hku.hk/conlawhk/conlaw/outline/Outline8/Bangkok%20 Declaration.htm (accessed 20 February 2013).

Finnemore, Martha. 1993. International organizations as teachers of norms: The United Nations Educational, Scientific, and Cultural Organization and science policy. *International Organization* 47 (4): 565-97.

--------------------------. 1996. *National interests in international society*. New York: Cornell University Press.

Finnemore, Martha, and Kathryn Sikkink. 1998. International norm dynamics and political change. *International Organization* 52 (4): 887-917.

--. 2001. Taking stock: The constructivist research program in International Relations and Comparative Politics. *Annual Review of Political Science* 4: 391-416.

------------------------, and Stephen J. Toope. 2001. Alternatives to "legalization": Richer views of law and politics. *International Organization* 55 (3): 743-58.

Forum Asia. 2007. Consultation brings civil society together to help create a truly people-centred ASEAN Community. http://www.forum-asia.org/index2.php?option=com_content&do_pdf=1&id=958 (accessed March 5, 2011).

-----------------. 2010. *A guidebook on engaging ASEAN and its human rights mechanism*. Bangkok: Asian Forum for Human Rights and Development.

Franck, Thomas M. 1968. *The structure of impartiality: Examining the riddle of one law in a fragmented world.* New York: Macmillan.

Frank, A. 2000. Notes on Habermas: Lifeworld and system. http://people.ucalgary.ca/~frank/habermas.html (accessed August 3, 2014).

Freeman, Michael. 1995. Human rights: Asia and the West. In *Human rights and International Relations in the Asia Pacific*, ed. James T. H. Tang, 13-24. London and New York: Pinter.

Friedberg, Aaron L. 1993-94. Ripe for rivalry: Prospects for peace in a multipolar Asia. *International Security* 18 (3): 5-33.

Ghai, Yash. 1995. Asian Perspectives on Human Rights. In *Human Rights and International Relations in the Asia Pacific*, ed. James. T. H. Tang, 54-67. London and New York: Pinter.

Goertz, Gary. 2003. *International norms and decision making: A punctuated equilibrium model*. Oxford: Rowman&Littlefield Publishers, Inc.

Goh, Gillian. 2003. The 'ASEAN Way': Non-intervention and ASEAN's role in conflict management. *Stanford Journal of East Asian Affairs* 3 (1): 113-118.

Goldschagg, Peter. 2007. *Does ASEAN matter? Reconciling realist and constructivist approaches to regional security in Southeast Asia*. Norderstedt: GRIN Verlag.

Goldstein, Judith, and Robert O. Keohane. 1993. *Ideas and foreign policy: Beliefs, institutions and political change*. New York: Cornell University Press.

Goodin, Robert E. 1996. Institutionalizing the public interest: The defense of deadlock and beyond. *American Political Science Review* 90 (2): 331-43.

Gourevitch, Peter A. 1999. The governance problem in international relations. In *Strategic choice and international relations*, ed. David A. Lake and Robert Powell, 137-164. New Jersey: Princeton University Press.

Gurowitz, Amy. 1999. Mobilizing international norms: Domestic actors, immigrants, and the Japanese state. *World Politics* 51 (3): 413-45.

Guzzini, Steffano. 2000. A reconstruction of constructivism in international relations. *European Journal of International Relations* 6 (20): 147-182.

Haacke, J. 2005a. *ASEAN's Diplomatic and Security Culture: Origins, development and prospects*. London and New York: Routledge.

------------. 2005b. Michael Leifer and the balance of power. *The Pacific Review* 18 (1): 43-69.

Haas, Michael. 2008. *International human rights: A comprehensive introduction*. Oxon: Routledge.

Habermas, Jürgen. 1984. *The theory of communicative action, vol. 1*. Translated by Thomas McCarthy. London: Heinemann.

--------------------------. 1987. The philosophical discourse of modernity: Twelve lectures. Translated by Frederick G. Lawrence. US: MIT.

--------------------------. 1990. *Moral Consciousness and Communicative Action*. Cambridge: MIT Press.

--------------------------. 1992. *The theory of communicative action, vol. 2*. Translated by Thomas McCarthy. Cambridge: Polity Press.

--------------------------. 1993. *Justification and application: Remarks on discourse ethics*. Translated by Ciaran P. Cronin. Cambridge: Polity Press.

--------------------------. 1994. Truth and justification. Edited and Translated by Barbara Fultner. Massachusetts: the MIT Press.

--------------------------. 1998. *The inclusion of the other: Studies in political theory*. Cambridge: MIT Press.

Hamanaka, Shintaro. 2010. *Asian regionalism and Japan: The politics of membership in regional diplomatic, financial and trade groups*. Oxon and New York: Routledge.

Hardy, Ashalyn. 2014. Hope and Habermas. *http://www.e-ir.info/2014/01/13/hope-and-habermas/* (accessed June 9, 2014).

He, Kai. 2006. Does ASEAN matter? International Relations Theories, Institutional Realism, and ASEAN. *Asian Security* 2 (3): 189-214.

Hemmer, Christopher M. and Peter J. Katzenstein. 2002. Why is there no Nato in Asia? Collective Identity, Regionalism, and the Origins of Multilateralism. *International Organization* 56 (3): 575-607.

Henderson, Jeannie. 1999. *Reassessing ASEAN*. Adelphi Paper 328. Abingdon: Routlegde.

Hernandez, Carolina G. 2007. Institutional building through an ASEAN Charter. *Panorama*. Singapore: Konrad Konrad-Adenauer-Stiftung Southeast Asia Office.

Higgott, Richard. 1994. Ideas, identity and policy coordination in the Asia-Pacific. *The Pacific Review* 8 (4): 367-379.

----------------------. 1998. *The Asian Economic Crisis: A study in the politics of resentment*. Centre for the Study of Globalisation and Regionalisation Working Paper No. 02/98. Warwick: University of Warwick.

Hoang, Anh T. 1996. ASEAN dispute management: Implications for Vietnam and an expanded ASEAN. *Contemporary Southeast Asia* 18 (1): 280-91.

Holsti, K. J. 1970. National role conceptions in the study of Foreign Policy. *International Studies Quarterly* 14 (3): 233-309

Holzinger, Katharina. 2004. Bargaining through arguing: An empirical analysis based on speech act theory. *Political Communication* 21 (2): 195–222.

Hopf, Ted. 1998. The promise of constructivism in International Relations theory. *International Security* 23 (1): 171-200.

Husserl, Edmund. 1970. *The crisis of European sciences and transcendental phenomenology: An introduction to phenomenological philosophy*. Evanston : Northwestern University Press

Huxley, Tim. 1996. Southeast Asia in the study of international relations. *Pacific Review* 9 (2): 199-228.

Hwang, Kyu Deug. 2006. *The mechanisms of politico-security regionalism in Southeast Asia and Southern Africa: A comparative case study of ASEAN and SADC*. Thesis submitted in partial fulfillment of the requirements for the degree of Doctor Philosophiae (International Relations). South Africa: Faculty of Humanities, University of Pretoria.

ICJ. 1962. Summary of the Summary of the Judgment of 15 June 1962. http://www.icj-cij.org/docket/index.php?sum=284&code=ct&p1=3&p2=3&case=45&k=46&p3=5 (accessed January 4, 2011).

Irvine, Roger. 1982. The formative years of ASEAN: 1967-1975. In *Understanding ASEAN*, ed. Alison Broinowski. London and Basingstoke: Macmillan.

James, M. R. 2003. Communicative action, strategic action, and inter-group dialogue. *European Journal of Political Theory* 2 (2): 157–82.

Jayakumar, Shunmugam. 1998. Opening Statement. The 31st ASEAN Ministerial Meeting, Manila, the Philippines. http://www.aseansec.org/3924.htm (accessed February 27, 2011).

Jepperson, Ronald L., Alexander Wendt, and Peter J. Katzenstein. 1996. Norms, identity, and culture in national security. In *The culture of national security: Norms and identity in world politics*, ed. Peter J. Katzenstein, 33-79. New York: Columbia University Press.

Jetly, Rajshree. 2003. Conflict management strategies in ASEAN: Perspectives for SAARC. *The Pacific Review* 16 (1): 53-76.

Johnston, Alastair I. 1999. The myth of the ASEAN Way? Explaining the evolution of the ASEAN Regional Forum. In *Imperfect unions: Security institutions over time and space*, ed. Helga Haftendorn, Robert O. Keohane, and Celeste A. Wallander, 287-324. Oxford: Oxford University Press.

------------------------. 2001. Treating international institutions as social environment. *International Studies Quarterly* 45 (4): 487-515.

------------------------. 2003. Socialization in international institutions: The ASEAN Way and International Relations theory. In *International Relations theory and the Asia-Pacific*, ed. G. John Ikenberry and Michael Mastanduno, 107-62. New York: Columbia University Press.

------------------------. 2005. Conclusions and extensions: Toward mid-range theorizing and beyond Europe. *International Organization* 59 (4): 1013-1044.

Jonasson, Ann-Kristin. 2013. *The EU's democracy promotion and the Mediterranean neighbours: Orientation, ownership and dialogue in Jordan and Turkey*. Abingdon: Routledge.

Jones, David M. and Michael L. R. Smith. 2001. The changing security agenda in Southeast Asia: Globalization, new terror, and the delusions of regionalism. *Studies in Conflict & Terrorism* 24: 271-288.

---. 2002. ASEAN's imitation community. *Orbis*. 46 (1): 93-109.

Jones, Lee. 2012. *ASEAN, sovereignty and intervention in Southeast Asia*. Hampshire: Palgrave Macmillan.

Jorgensen-Dahl, Arnfinn. 1982. *Regional organization and order in Southeast Asia*. London: Macmillan.

Jupille, Joseph, James A. Caporaso, and Jeffrey T. Checkel. 2003. Integrating institutions: Rationalism, constructivism, and the study of the European Union. *Comparative Political Studies* 36 (1/2): 7-40.

Karunatilleka, Eshan. 1999. The Asian Economic Crisis. Research paper 99/14. http://www.parliament.uk/commons/lib/research/rp99/rp99-014.pdf (accessed June 11, 2011).

Katzenstein, Peter J., ed. 1996. *The culture of national security: Norms and identity in world politics*. New York: Columbia University Press.

Kausikan, Bilahari. 1993. Asia's Different Standard. *Foreign Policy* 92: 24, 26

Kawazaki, Tsuyoshi. 2009. Neither skepticism nor romanticism: The ASEAN Regional Forum as a solution for the Asia-Pacific Assurance Game. In *Theorizing Southeast Asian Relations: Emerging debates*, ed. Amitav Acharya and Richard Stubbs, 91-108. Oxon and New York: Routledge.

Keck, Margaret, and Kathryn Sikkink. 1998. *Activists beyond borders: Advocacy networks in international politics*. Ithaca: Cornell University Press.

Keohane, Robert. 1984. *After hegemony: Cooperation and discord in the world political economy*. New Jersey: Princeton University Press.

-----------------------. 1989. *International institutions and state power: Essays in international relations theory.* Boulder: West View Press.

Khoman, Thanat. ASEAN Conception and Evolution. (n. d.) http://www.aseansec.org/thanat.htm (accessed June 1, 2006).

Khoo, Nicholas. 2004. Deconstructing the ASEAN security community: A review essay. *International Relations of the Asia-Pacific* 4 (1): 35-46.

Klotz, Audie. 1995a. *Norms in international relations: The struggle against apartheid*. Ithaca: Cornell University Press.

----------------. 1995b. Norms reconstituting interests: Global racial equality and U.S. sanctions against South Africa. *International Organization* 49 (3): 451-78.

Koh, Tommy, Walter Woon, Andrew Tan, and Chan Sze-Wei. 2007. Charter makes ASEAN stronger, more united and effective. *The Strait Times*, 8 August.

Koh, Tommy. 2009. The Negotiating Process. In *The Making of the ASEAN Charter*, ed. Tommy Koh, Rosario G. Manolo, and Walter Woon, 47-68. New Jersey: World Scientific Pub. Co.

Koh, Tommy, Rosario G. Manolo, and Walter Woon, ed. 2009. *The Making of the ASEAN Charter*. New Jersey: World Scientific Pub. Co.

Kolko, Gabriel. 1986. *Vietnam: Anatomy of a war, 1940-1975*. London: Allen and Unwin.

Kraft, Herman J.S. 2006. ASEAN ISIS and Human Rights Advocacy: The Colloquium on Human Rights (AICOHR)." In *Twenty years of ASEAN ISIS: Origin, evolution and challenges of Track Two Diplomacy*, ed. Hadi Soesastro, Clara Joewono, and Carolina G. Hernandez. Jakarta: Centre for Strategic and International Studies (CSIS). Cited in Yajai Bunnag. 2012. An evaluation of ASEAN's progress in regional community building: Implications of Thailand's bilateral relations and the extent of civil society participation in regionalism. PhD Thesis in Politics and International Relations. Royal Holloway University of London.

Krasner, Stephen D. 1983. Structural causes and regime consequences: Regimes as intervening variables. In *International regimes,* ed. Stephen D. Krasner, 1-22. New York: Cornell University Press.

------------------------. 1985. *Structural conflict: The third world against global liberalism*. Berkley: University of California Press.

------------------------. 1993. Sovereignty, regimes, and human rights. In *Regime theory and international relation s*, ed. Volker Rittberger, 139-167. Oxford: Clarendon Press.

Kratochwil, Friedrich V. 1984. Errors have their advantage. *International Organization* 38 (2): 305-320.

-----------------------------. 1989. *Rules*, *norms, and decisions: On the conditions of practical and legal reasoning in international relations and domestic affairs*. Cambridge: Cambridge University Press.

-----------------------------, and John G. Ruggie. 1986. International organization: A state of the art on an art of the state. *International Organization* 40 (4): 753-775.

Laffey, Mark, and Jutta Weldes. 1997. Beyond belief: Ideas and symbolic technologies in the study of international relations. *European Journal of International Relations* 3 (2): 193–237.

Langlois, Anthony J. 2001. *The politics of justice and human rights: Southeast Asia and universalist theory*. Cambridge: Cambridge University Press.

Leary, Virginia A. 1990. The Asian region and the international human rights movement. In *Asian perspectives on human rights*, ed. Claude E. Welch and Virginia A. Leary., 13-14. Boulder, San Francisco, Oxford: Westview Press.

Legro, Jeffrey W. 1997. Which norms matter? Revisiting the "failure" of internationalism. *International Organization* 51 (1): 31-63.

Leifer, Michael. 1989. *ASEAN and the security of South-east Asia*. International Politics in Asia Series London and New York: Routledge.

--------------------. 1996. *The ASEAN Regional Forum: Extending ASEAN's model of regional security*. London: Oxford University Press for the International Institute for Strategic Studies.

Leifer, Michael. 1999. The ASEAN peace process: a category mistake. *The Pacific Review* 12 (1): 25-38.

--------------------. 2000. *The political and security outlook for Southeast Asia*. Singapore: Institute of Southeast Asian Studies.

Loke, Beverly. 2005. The 'ASEAN Way': Towards regional order and security cooperation? *Melbourne Journal of Politics* 30: 8-38.

Lose, Lars G. 2001. Communicative action and the world of diplomacy. In *Constructing International Relations: The next generation*, ed. Karin M. Fierke, Knud Erik Jorgensen, 179-200. New York: M. E. Sharpe, Inc.

Lotrakul, Manote. 2003. Suicide in Thailand during the period 1998-2003. *Psychiatry and Clinical Neurosciences* 60: 90-95.

Lowe, Peter. 2009. *Contending with nationalism and communism: British policy towards Southeast Asia, 1945-65*. New York: Palgrave Macmillan.

Mahathir bin Mahamad. 1996. Keynote Address. In *Human wrongs: Reflections on Western global dominance and its impact upon human rights*. Proceedings from Rethinking Human Rights Conference, December 1994 by Just World Trust. India: The Other India Press.

Maier-Knapp, Naila. 2010. A friend in need. A friend in Deed? ASEAN-EU interregionalism in the light of non-traditional security crises in Southeast Asia. In *Austrian Journal of Southeast Asian Studies* 3 (1): 76-100.

March, James G., and Johan P. Olsen. 1998. The institutional dynamics of international political orders. *International Organization* 52 (4): 943–69.

Mass Communication Organisation of Thailand. 2000. Abhisit says 2000 Thai-Cambodian MoU precludes UN, third country interventions. http://www.mcot.net/cfcustom/cache_page/122810.html (accessed February 1, 2011).

Mead, George H. 1934. *Mind, self and society from a standpoint of social behaviorist*. Chicago: University of Chicago Press.

Mearsheimer, John J. 1994-1995. The false promise of international institutions. *International Security* 19 (3): 5–49.

Meiertöns, Heiko. 2000. *The doctrines of US security policy: An evaluation under international law*. Cambridge: Cambridge University Press.

Ministry of Foreign Affairs of Thailand. 2009. ข้อมูลที่ประชาชนไทยควรทราบเกี่ยวกับกรณีปราสาทพระวิหารและการเจรจาเขตแดนไทย – กัมพูชา (Kor moon tee prachachon Thai

kuan sab keiw kab koranee Prasat Pra Viharn lae karn jeraja ket dan Thai – Useful information for Thai citizens regarding the case of the Temple of Preah Vihear and Thai border negotiation). Bangkok: Amarin Printing.

Mohamad, Mazna. 2002. Towards a human rights regime in Southeast Asia: Charting the course of state commitment. *Contemporary Southeast Asia* 24 (2): 230-251.

Mohammad, Mahathir. 1997. Future ambitions: Is the Community of Southeast Asian Nations ready for the challenges of the 21st century?. Interview for Asia Week, December 12. http://cgi.cnn.com/ASIANOW/asiaweek/97/1212/cs2.html (accessed June 12, 2011).

Moravcsik, Andrew. 1998. *The choice for Europe: Social purpose & state power from Messina to Maastricht*. London and New York: Routledge.

Morita, Bhaswar, Ajitava Raychaudhuri, and Biswajit Chatterjee. 2000. Financial instability, Economic Crisis and national security: Lessons from South East and East Asia. In *Southeast Asia: Security in the coming Millennium*, ed. Suchita Ghosh and Rabindra Sen, 77-101. Calcutta: Allied Publishers Limited and Jadavpur University.

MOU (Memorandum of Understanding) between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on the Survey and Demarcation of Land Boundary. 2000. http://www.cambodiamirror.org/2011/01/24/memorandum-on-cambodian-thai-border-issues-monday-24-1-2011/ (accessed April 19, 2011).

Müller, Harald. 1994. Internationale Beziehungen als kommunikatives Handeln. Zeitschrift für Internationale Beziehungen, 1. Jg., Heft 1. Cited and translated in Geraldo Miniuci. Communicative action and international relations. http://citation.allacademic.com//meta/p_mla_apa_research_citation/1/8/0/2/1/pages180212/p180212-1.php (accessed May 17, 2014).

--------------------. 2004. Arguing, bargaining and all that: Communicative action, rationalist theory and the logic of appropriateness in international relations. *European Journal of International Relations* 10 (3): 395-435.

---------------------. 2007. Internationale Verhandlungen, Argumente und Verständigungshandeln. Verteidigung, Befunde, Warnung. In Anarchie der kommunikativen Freiheit. Jürgen Habermas und die Theorie der internationalen Politik, ed. P. Niesen and B. Herborth, 199-223. Frankfurt am Main: Suhrkamp. Cited and translated in Jürgen Neyer. 2008. Justice, not democracy: Legitimacy in the European Union. *Frankfurter Institut für Transformationsstudien Discussion Paper* 01/08.

Nabers, Dirk. 2011. Identity and role change in international politics. In Role theory in international relations, ed. Sebastian Harnisch, Cornelia Frank and Hanns W. Maull, 74-92. Oxon and New York: Routledge.

Nadelmann, Ethan. 1990. Global prohibition regimes: The evolution of norms in international society. *International Organization* 44 (4): 479-526.

Naksakul, Kanchana et al. 2012. *พระมหากษัตริย์กับงานสิทธิมนุษยชน* (Phra maha kasut kub ngan sitti manussaya chon – The king and human rights activities). Bangkok: Office of the National Human Rights Commission of Thailand.

Narine, Shaun. 2002. *Explaining ASEAN: Regionalism in Southeast Asia*. Colorado: Lynne Rienner Publishers, Inc.

------------------. 2006. The English School and ASEAN. *The Pacific Review* 19 (2): 199-218.

Naurin, Daniel. 2007. Why give reason? Measuring arguing and bargaining in survey research. *Swiss Political Science Review* 13 (4): 559-75.

Olver, Arthur S. B. 1956. SEATO: The Manila Treaty and Western Policy in Southeast Asia. London: Royal Institute of International Affairs.

Ong, Keng Yong. 2009. At close quarters with the drafting of the ASEAN Charter. In *The making of the ASEAN Charter*, ed. Tommy Koh, Rosario G. Manalo, Walter Woon. Singapore: World Scientific Publishing.

Onuf, Nicholas. 1989. *The world of our making*. Columbia: University of South Carolina Press.

Ostrom, Elinor. 1991. *Governing the commons: The evolution of institutions of collective action*. Cambridge: Cambridge University Press.

--------------------- and Xavier Barsurto. 2011. Crafting analytical tools to study institutional change. *Journal of Institutional Economics* 7 (3): 317-343.

Outhwaite, William, ed. 1996. *The Habermas reader*. Cambridge: Polity Press.

Palmer, Norman D. 1992. SEATO, ASA, MAPHILINDO and ASPAC. In *the ASEAN reader*, ed. Kerniel S. Sandhu et. al., 27-32. Singapore: Institute of Southeast Asian Studies.

Panke, Diana. 2006. More arguing than bargaining? The institutional designs of the European Convention and intergovernmental conferences compared. *Journal of European Integration* 28 (4): 357-379.

Payne, Rodger A. and Nayef H. Samhat. 2004. *Democratizing global politics: Discourse norms, international regimes, and political community*. Albany: State University of New York Press.

Penders, C. L. M, ed. 1979. *Milestones on my journey: The memoirs of Ali Sastroamijoyo, Indonesian patriot and political leader*. St. Lucia: University of Queensland Press.

Peou, Sorpong. 1998. Diplomatic Pragmatism: ASEAN's response to the July 1997 coup. http://www.c-r.org/accord-article/diplomatic-pragmatism-aseans-response-july-1997-coup (accessed May 13, 2012).

--------------------. 2002. Realism and constructivism in Southeast Asian security studies today: A review essay. *The Pacific Review* 15 (1): 119-38.

Permanent Mission of the Kingdom of Cambodia to the United Nations. 2011. Cambodia News. http://www.cambodiaun.org/files/bulletins/2011/12-2011/Edition%2064,%20the%20month%20of%20Dec%202011.pdf (accessed February 2, 2011).

Philpott, Daneil. 2001. *Revolutions in sovereignty: How ideas shaped modern international relations.* New Jersey: Princeton University Press.

Pibulsonggram, Pradap. 2009. The Thai Perspective. In *The Making of the ASEAN Charter*, ed. T. Koh, R. G. Manolo, and W. Woon, 79-94. New Jersey: World Scientific Pub. Co.

Pierson, Paul and Theda Skocpol. 2002. Historical institutionalism in contemporary Political Science. In *Political Science: State of the discipline*, ed. Ira Katznelson and Helen V. Milner, 693-721. New York: Norton and American Political Science Association.

Pitsuwan, Surin. 1998a. Joint Press Statement of the 2nd ASEAN Senior Officials Meeting on Rural Development and Poverty Eradication. http://www.aseansec.org/1725.htm (accessed March 1 2011).

----------------------. 1998b. Thailand's foreign policy during the economic and social crises. Keynote address at the Seminar in Commemoration of the 49th Anniversary of the Faculty of Political Science, Thammasat University, Thailand. http://www.shaps.hawaii.edu/fp/asean/fm02.html (accessed June 13, 2006).

----------------------. 1998c. Statement by H.E. Mr. Surin Pitsuwan Minister of Foreign Affairs of Thailand At the PMC 9+10 Session, Agenda Item 2 (a) - (c) Manila, Philippines, 28 July 1998. http://www.aseansec.org/3950.htm (accessed March 21, 2011).

----------------------. 2000. Heeding ASEAN's Legacy. *Far Eastern Economic Review*, February 17.

Plantilla, Jefferson R. 2000. The United Nations and Human Rights Education in the Asia-Pacific Region. Human Rights Education in Asian School Volume VII. http://www.hurights.or.jp/archives/human_rights_education_in_asian_schools/section2/2004/03/the-united-nations-and-human-rights-education-in-the-asia-pacific-region.html#note04 (accessed 30 January 2012).

Phongpaichit, Pasuk and Chris Baker. 1998. *Thailand's Boom and Bust*. Chiang Mai: Silkworm Books.

Price, Richard. 1988. Reversing the gun sights: Transnational civil society targets land mines. *International Organization* 52 (3): 613-44.

Raymond, Gregory A. 1997. Neutrality norms and the balance of power. *Cooperation and Conflict* 32 (2): 123–46.

Renshaw, Catherine. 2011. The role of networks in the implementation of human rights in the Asia Pacific region. In *Human rights in the Asia-Pacific Region: Towards institution building*, ed. Hitoshi Nasu and Ben Saul. Oxon and Newyork: Routledge.

Reus-Smit, Christian. 2013. Constructivism. In *Theories of International Relations*, ed. Scott Burchill and Andrew Linklater, 217-240. Hampshire and New York: Palgrave Macmillan.

Risse-Kappen, Thomas. 1994. Ideas do not float freely: Transnational coalitions, domestic structures, and the end of the Cold War. *International Organization* 48 (2): 185-214.

Risse, Thomas. 2000. ''Let's argue!'': Communicative action in world politics**.** *International Organization* 54 (1): 1-39.

-------------------, and Mareike Kleine. 2009. Deliberation in Negotiations. Paper Presented at EUSA Conference, Los Angeles CA. http://www.unc.edu/euce/eusa2009/papers/risse_02A.pdf (accessed November 24, 2010).

-------------------, Stephen C. Ropp, and Kathryn Sikkink. 1999. *The power of human rights: International norms and domestic change*. Cambridge: Cambridge University Press.

Roberts, C. 2011. Region and identity: The many faces of Southeast Asia. *Asian Politics & Policy* 3 (3): 365–382.

Rother, Stefan. 2012. Wendt meets East: ASEAN cultures of conflict and cooperation. *Cooperation and Conflict* 47 (1): 49-67.

Roy, Denny. 2001. Northeast Asia. In *The politics of human rights in East Asia*, Kenneth Christie and Denny Roy. London and Sterling: Pluto Press.

Ruggie, John G. 1998. *Constructing the world polity: Essays on international institutionalization*. London: Routledge.

Samhat, Nayef H. 2005. International regimes and the prospects for global democracy. *The Whitehead Journal of Diplomacy and International Relations*, Winter/Spring: 179-191.

SAPA. 2006. SAPA letter to the EPG on the ASEAN Charter reiterating the key points of its submissions. Cited in Kelly Gerard. 2014. *ASEAN's engagement of civil society: Regulating dissent*. Hampshire: Palgrave Macmillan.

Saravanamuttu, Johan. 1999. The ASEAN model for regional cooperation. In *Asian peace: Security and governance in the Asia-Pacific region*, ed. Majid Tehranian, 97-111. London & New York: I.B. Tauris.

------------------------------. 2010. *Malaysia's foreign policy: The first fifty years*. Singapore: ISEAS Publishing.

Schimmelfennig, Frank. 2003. *The EU, NATO and the integration of Europe: Rules and rhetoric*. Cambridge: Cambridge University Press.

Schmidt, Vivien. A. 2010. Taking ideas and discourse seriously: Explaining change through discursive institutionalism as the fourth 'New Institutionalism'. *European Political Science Review* 2 (1): 1-25.

Schneider, Mark, and Paul Teske. 1992. Toward a theory of the political entrepreneur: Evidence from local government. *American Political Science Review* 86 (3): 737-747.

Schubert, James N. 1978. Toward a 'working peace system' in Asia: Organizational growth and state participation in Asian Regionalism. *International Organization* 32 (2): 425-462.

Schütz, Alfred. 1962. On the methodology of the social sciences. In *The problem of social reality*, ed. Alfred Schutz, 3–47. The Hague, Boston and London: Martinus Nijhoff Publishers. Quoted in Guzzini, Stefano. A reconstruction of constructivism in International Relations. *European Journal of International Relations* 6 (2): 147-182, 2000.

Schütz, Alfred, and Thomas Luckmann. 1974. *The structures of the life-world*. London: Heinemann Educational Books.

Searle, John R. 1969. *Speech acts: An essay in the philosophy of language*. Cambridge: Cambridge University Press.

Sen, B. K. 2000. The case for humanitarian intervention. http://www.ibiblio.org/obl/docs/LIOB07-humanitarian_intervention.htm (accessed May 2, 2012).

Severino, R. C. 2006. *Southeast Asia in search of an ASEAN community: insights from the former ASEAN Secretary-General*. Singapore: Institute of Southeast Asian Studies.

Simmerl, Georg. 2001. A Critical constructivist perspective on global multi-level governance: Discursive struggles among multiple actors in a globalized political space. http://www.academia.edu/499659/A_Critical_Constructivist_Perspective_on_Global_Multi-Level_Governance (accessed August 18, 2014).

Simon, Sheldon W. 1982. *The ASEAN states and regional security*. Stanford, CA: Hoover Institution Press.

Slazon, Domingo L. Opening Statement of H.E. Domingo L. Slazon, Jr., Secretary of Foreign Affairs of The Philippines at The Joint Press Conferences of The Post-Ministerial Conferences (PMC). http://www.aseansec.org/3990.htm (accessed February 24, 2011).

Smith, Heather. 1999. Managing international economic forces post-crisis: Some implications for regional economic security. In *An Asia-Pacific Security Crisis?: New Challenges to Regional Stability*, ed. Guy Wilson-Roberts, 11-37. New Zealand: Centre for Strategic Studies.

Sneider, Richard L. and Mark Borthwick. 1983. Institutions for Pacific regional cooperation. *Asian Survey* 23 (12): 1245-1254.

Sridharan, Kripa. 2007. *Regional cooperation in South Asia and Southeast Asia*. Singapore: ISEAS Publishing.

Stephan, Walter G. and Krystina Finlay. 1999. The Role of Empathy in Improving Intergroup Relations. *Journal of Social Issues* 55 (4): 729-743.

Stryker, Sheldon, and Anne Statham. 1985. Symbolic interaction and role theory. In *The Handbook of Social Psychology Vol. 1*, ed. G. Lindzey and E. Aronson, 311-378. New York: Random House.

Suharto. 1994. Speech at 1992 NAM Summit. Cited in Anthony J. Langlois. 2001. *The politics of justice and human rights: Southeast Asia and universalist theory*. Cambridge: Cambridge University Press.

Sukma, Rizal. 2010. *ASEAN and regional security in East Asia*. Panorama 2: 109-120.

Tan, Hsien-Si. 2011. *The ASEAN Intergovernmental Commission on Human Rights: Institutionalising human rights in Southeast Asia*. Cambridge: Cambridge University Press.

Tan, See Seng. 2006. Rescuing constructivism from the constructivists: A critical reading of constructivist interventions in Southeast Asian security. *The Pacific Review*. 19 (2): 239-260.

Tang, James T. H. 1995. Human rights in the Asia-Pacific region: Competing perspectives, international discord, and the way ahead. In *Human rights and International Relations in the Asia Pacific*, ed. James T. H. Tang, 1-9. London and New York: Pinter.

Tarling, Nicholas. 1992. *The Cambridge History of Southeast Asia*. Cambridge: Cambridge University Press.

Tay, Simon S.C. 2001. Institutions and processes: Dilemmas and possibilities. In *Reinventing ASEAN*, ed. Simon S.C. Tay, Jesus P. Estanislao and Hadi Soesastro, 243-272. Singapore: Institute of Southeast Asian Studies.

--------------------. 2008. The ASEAN Charter: Between national sovereignty and the region's constitutional moment. *Singapore Year Book of International Law and Contributors* 12: 151-170.

Thailand's Non-Paper on The Flexible Engagement Approach. 1998. Quoted in Markus Hund. The development of ASEAN norms between 1997 and 2000: A paradigm shift?. Centre for East Asian and Pacific Studies Occasional Paper no. 15, 2001. http://www.politik.uni-trier.de/forschung/zops15.pdf (accessed February 28, 2011).

Thakur, Ramesh. 2006. *The United Nations, peace and security: From collective security to the responsibility to protect*. Cambridge: Cambridge University Press.

Thambipillai, Pushpa, and Jayaratnam Saravanamuttu. 1985. *ASEAN negotiations: Two insights*. Singapore: Institute of Southeast Asian Studies.

Thepchatree, Prapat. 2011. Pan ha kwam kad yaeng Thai-Kampuchea (Thai-Cambodian conflict). *Thai Post*, May 5.

Thayer, Carlyle A. 1999. Re-inventing ASEAN: From constructive engagement to flexible intervention. *Harvard Asia Pacific Review* 3 (2): 67-70.

Thio, Li-ann. 1999. Implementing Human Rights in ASEAN countries: "Promises to keep and miles to go before I sleep". *Yale Human Rights and Development* 2: 1-84.

Thomson, Janice E. 1993. Norms in international relations: A conceptual analysis. *International Journal of Group Tensions* 23 (1): 67–83.

Tuan, Hoang Ang. 1996. ASEAN dispute management: Implications for Vietnam and an expanded ASEAN. *Contemporary Southeast Asia* 18 (1): 61-80.

Ulbert, Cornelia, and Thomas Risse. 2005. Deliberately changing the discourse: What does make arguing effective? *Acta Politica* 40 (3): 351-67.

UNESCAP (United Nations Economic and Social Commission for Asia and the Pacific). 2002. Social impact of the Asian Economic Crisis. http://www.unescap.org/drpad/ publication/protecting%20marginalized%20groups/ch1.pdf (accessed June 10, 2011).

UN News Centre. 2011. Security Council urges permanent ceasefire after recent Thai-Cambodia clashes. http://www.un.org/apps/news/story.asp?Cr=cambodia&Cr1=thai&NewsID=37528 (accessed January 2, 2011).

Vanoverbeke, Dimitri and Michael Reiterer. ASEAN's regional approach to human rights: The limits of the European model? In *European Yearbook on human rights* 2014, ed. Wolfgang Benedek, Florence Benoît-Rohmer, Wolfram Karl, et. al. Antwerp, Vienna and Graz: Intersentia.

Vienna Declaration and Programme of Action. 1993. http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument (accessed June 13, 2011).

Wade, Robert. 1998. From "Miracle" to "Cronyism": Explaining the Great Asian Slump. *Cambridge Journal of Economics* 22 (6): 693-706.

Waltz, Kenneth. 1979. *Theory of international politics*. New York: McGraw-Hill.

Weatherbee, D.E. 1987. The Philippines and ASEAN: Options for Aquino. *Asian Survey* 27 (12): 1223–1239.

Weldes, Jutta. 1998. Bureaucratic politics: A critical constructivist assessment. *Mershon International Studies Review* 42 (2): 216-225.

------------------, and Diana Saco. 1996. Making state action possible: The United States and the discursive construction of the "Cuban Problem" 1960-1994. *Millennium* 25 (2): 361-395.

Wendt, Alexander. 1992. Anarchy is what states make of it: The social construction of power politics. *International Organization* 46 (2): 391-425.

-----------------------. 1994. Collective identity formation and the international state. *American Political Science Review* 88 (2): 384-396.

-----------------------. 1999. *Social theory of international politics*. Cambridge: Cambridge University Press.

-----------------------. 2005. Social Theory as Cartesian science: An auto-critique from a quantumperspective. In *Constructivism and International Relations: Alexander Wendt and his Critics*, ed. S. Guzzini and A. Leander, 181-219. Abingdon, Routledge.

Wiener, Antje. 2004. Contested compliance: Interventions on the normative structure of world politics. *European Journal of International Relations* 10 (2): 189-234.

--------------------. 2007. The dual quality of norms and governance beyond the state: Sociological and normative approaches to 'interaction'. *Critical Review of International Social and Political Philosophy* 10 (1): 47-69.

--------------------, and Uwe Puetter. 2009. The quality of norms is what actors make of it: Critical constructivist research on norms. *Journal of International Law and International Relations* 5 (1): 1-16.

Wong, Kang Seng. 1993. *The real world of human rights*. Statement by Mr. Wong Kang Seng, Minister for Foreign Affairs of the Republic of Singapore, World Conference on Human Rights, Vienna. Singapore Government Press Release no. 20/Jun 09-1/93/06/16.

Wong, Reuben. 2012. Model power or reference point? The EU and the ASEAN Charter. *Cambridge Review of International Affairs* 25 (4): 669-682.

----------------------. 2013. An EU model for ASEAN? http://www.e-ir.info/2013/01/16/an-eu-model-for-asean/ (accessed June 19, 2014).

Woon, Walter. 2009. The ASEAN Charter Dispute Settlement Mechanisms. In *The Making of the ASEAN Charter*, ed. T. Koh, R. G. Manolo, and W. Woon, 69-77. New Jersey: World Scientific Pub. Co.

Working Group on an ASEAN Human Rights Mechanism. 2005. Following up on ASEAN 1993 Commitment. http://www.aseanhrmech.org/ouropinion.html (accessed July 6, 2012). Cited in Kasira Cheeppensook. 2006. *The ASEAN Way on Human Security*. MPhil Thesis in International Relations. University of Cambridge.

World Bank. 1993. *The East Asian miracle: Economic growth and public policy* (New York: Oxford University Press for the World Bank).

Yancha, Dashell C. 2009. The ASEAN Charter: Where to? What next? http://www.fsi.gov.ph/pdf/2009/The%20ASEAN%20Charter.pdf (accessed March 3, 2011).

Yeo, George. 2007. Transcript of reply by Singaporean Foreign Minister George Yeo to questions in parliament (on Myanmar). Cited in Dimitri Vanoverbeke and Michael Reiterer. ASEAN's regional approach to human rights: The limits of the European model? In *European Yearbook on human rights* 2014, ed. Wolfgang Benedek, Florence Benoît-Rohmer, Wolfram Karl, et. al. Antwerp, Vienna and Graz: Intersentia.

Zartman, William I., and Maureen R. Berman. 1982. *The Practical Negotiator*. New Haven and London: Yale University Press.

Zehfuss, Maja. 2002. *Constructivism in International Relations: The politics of reality*. Cambridge: Cambridge University Press.

Unpublished documents from the ASEAN Secretariat Archive

Summary Record of the First Meeting of the HLTF, 5-6 February 2007, ASEAN Secretariat, Jakarta, Indonesia.

Summary Record of the Second Meeting of the HLTF, 28 February-1 March 2007, Siem Reap, Cambodia

Summary Record of the Third Meeting of the HLTF, 28-29 March 2007, Manila, the Philippines

Summary Record of the Fourth Meeting of the HLTF, 9 April 2007, Yangon, Myanmar

Summary Record of the Fifth Meeting of the HLTF, 19-20 April 2007, Hanoi, Viet Nam

Summary Record of the Sixth Meeting of the HLTF, 17-19 May 2007, Penang, Malaysia

Summary Record of the Seventh Meeting of the HLTF, 25-28 June 2007, Bali, Indonesia

Summary Record of the Eighth Meeting of the HLTF, 22-31 July 2007, Manila, the Philippines

Summary Record of the Ninth Meeting of the HLTF, 24-26 August 2007, Singapore

Summary Record of the Tenth Meeting of the HLTF, 10-13 September 2007, Chiang Mai, Thailand

Summary Record of the Eleventh Meeting of the HLTF, 26 September 2007, New York

Summary Record of the Twelfth Meeting of the HLTF, 3-5 October 2007, Bandar Seri Begawan, Brunei Darussalam

Summary Record of the Thirteenth Meeting of the HLTF, 18-21 October 2007, Vientiane, Laos

Interviews

Ex-Senior Officials' Meeting Leader requesting to be anonymous. Interview with author. Personal Interview. Jakarta, Indonesia, December 23, 2011.

High-level ASEAN Secretariat official requesting to be anonymous. Interview with author. Personal Interview. Chulalongkorn University, Bangkok, Thailand, November 23, 2011.

High-level official requesting to be anonymous, Department of ASEAN Affairs, Ministry of Foreign Affairs, Kingdom of Thailand. Interview with author. Personal Interview. Department of ASEAN Affairs, Ministry of Foreign Affairs, Bangkok, Thailand, November 24, 2011.

Pitsuwan, Surin. Secretary-General of ASEAN. Interview with author. Personal Interview. Grand Millennium Sukhumvit Hotel, Bangkok, Thailand, October 26, 2011.

Retired high-level ASEAN Secretariat official requesting to be anonymous. Interview with author. Personal Interview. Institute of Southeast Asian Studies, Singapore, December 1, 2011.

Singaporean high-level official requesting to be anonymous. Interview with author. Personal Interview. National University of Singapore, Singapore, September 1, 2011.

Singaporean retired Ambassador requesting to be anonymous. E-mail correspondence with author. July 15, 2011.

Thai high-level official requesting to be anonymous. Interview with author. Personal Interview. Jakarta, Indonesia, December 20, 2011.

APPENDICES

Appendix A

The ASEAN Declaration

(Bangkok Declaration)

Bangkok, 8 August 1967

The Presidium Minister for Political Affairs/Minister for Foreign Affairs of Indonesia, the Deputy Prime Minister of Malaysia, the Secretary of Foreign Affairs of the Philippines, the Minister for Foreign Affairs of Singapore and the Minister of Foreign Affairs of Thailand:

MINDFUL of the existence of mutual interests and common problems among countries of South-East Asia and convinced of the need to strengthen further the existing bonds of regional solidarity and cooperation;

DESIRING to establish a firm foundation for common action to promote regional cooperation in South-East Asia in the spirit of equality and partnership and thereby contribute towards peace, progress and prosperity in the region;

CONSCIOUS that in an increasingly interdependent world, the cherished ideals of peace, freedom, social justice and economic well-being are best attained by fostering good understanding, good neighbourliness and meaningful cooperation among the countries of the region already bound together by ties of history and culture;

CONSIDERING that the countries of South-East Asia share a primary responsibility for strengthening the economic and social stability of the region and ensuring their peaceful and progressive national development, and that they are determined to ensure their stability and security from external interference in any form or manifestation in order to preserve their national identities in accordance with the ideals and aspirations of their peoples;

AFFIRMING that all foreign bases are temporary and remain only with the expressed concurrence of the countries concerned and are not intended to be used directly or indirectly to subvert the national independence and freedom of States in the area or prejudice the orderly processes of their national development;

DO HEREBY DECLARE:

FIRST, the establishment of an Association for Regional Cooperation among the countries of South-East Asia to be known as the Association of South-East Asian Nations (ASEAN).

SECOND, that the aims and purposes of the Association shall be:

1. To accelerate the economic growth, social progress and cultural development in the region through joint endeavours in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of South-East Asian Nations;

2. To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter;

3. To promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific and administrative fields;

4. To provide assistance to each other in the form of training and research facilities in the educational, professional, technical and administrative spheres;

5. To collaborate more effectively for the greater utilization of their agriculture and industries, the expansion of their trade, including the study of the problems of international commodity trade, the improvement of their transportation and communication facilities and the raising of the living standards of their peoples;

6. To promote South-East Asian studies;

7. To maintain close and beneficial cooperation with existing international and regional organizations with similar aims and purposes, and explore all avenues for even closer cooperation among themselves.

THIRD, that to carry out these aims and purposes, the following machinery shall be established:

(a) Annual Meeting of Foreign Ministers, which shall be by rotation and referred to as ASEAN Ministerial Meeting. Special Meetings of Foreign Ministers may be convened as required.

(b) A Standing committee, under the chairmanship of the Foreign Minister of the host country or his representative and having as its members the accredited Ambassadors of the other member countries, to carry on the work of the Association in between Meetings of Foreign Ministers.

(c) Ad-Hoc Committees and Permanent Committees of specialists and officials on specific subjects.

(d) A National Secretariat in each member country to carry out the work of the Association on behalf of that country and to service the Annual or Special Meetings of Foreign Ministers, the Standing Committee and such other committees as may hereafter be established.

FOURTH, that the Association is open for participation to all Stats in the South-East Asian Region subscribing to the aforementioned aims, principles and purposes.

FIFTH, that the Association represents the collective will of the nations of South-East Asia to bind themselves together in friendship and cooperation and, through joint efforts and sacrifices, secure for their peoples and for posterity the blessings of peace, freedom and prosperity.

DONE in Bangkok on the Eighth Day of August in the Year One Thousand Nine Hundred and Sixty-Seven.

For the Republic of Indonesia: For the Republic of Singapore:

ADAM MALIK   S. RAJARATNAM

Presidium Minister for   Minister of Foreign Affairs

Political Affairs

Minister for Foreign Affairs

For Malaysia:

TUN ABDUL RAZAK

Minister of Defence and

Minister of National Development

For the Kingdom of Thailand:

THANAT KHOMAN

Minister of Foreign Affairs

For the Republic of the Philippines:

NARCISO RAMOS

Secretary of Foreign Affairs

Source: ASEAN, The ASEAN Declaration (Bangkok Declaration) Bangkok, 8 August 1967, [http://www.asean.org/news/item/the-asean-declaration-bangkok-declaration]

Appendix B

Terms of Reference of the Eminent Persons Group (EPG) on the ASEAN Charter

<u>Background</u>

1. At the 11th ASEAN Summit, held in Kuala Lumpur, Malaysia, ASEAN Leaders signed the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter on 12 December 2005.

2. The Declaration calls for, among other things, the establishment of an Eminent Persons Group (EPG), comprising highly distinguished and well respected citizens from ASEAN Member Countries, with the mandate to examine and provide practical recommendations on the directions and nature of the ASEAN Charter relevant to the ASEAN Community as envisaged in the Bali Concord II and beyond, taking into account, but not limited to, the principles, values and objectives contained in this Declaration.

<u>Purpose</u>

3. The EPG will examine ASEAN in all areas of its cooperation activities, codify and build upon all ASEAN norms, principles, values and goals as contained in ASEAN's milestone agreements, treaties and declarations, as well as undertake a thorough review of the existing ASEAN institutional framework and propose appropriate improvements if so required. It will put forth bold and visionary recommendations on the drafting of an ASEAN Charter, which will serve as the legal and institutional framework for ASEAN, aimed at enabling the building of a strong, prosperous, and caring and sharing ASEAN Community that is cohesive, successful and progressing in the 21st century.

<u>Scope of Work</u>

4. The scope of the EPG includes but is not limited to the following :

    4.1 Take stock of ASEAN's 38 years of existence to identify its major achievements and shortcomings, and assess current ASEAN cooperation as well as propose improvements in the following areas:

    A. Political and security (the ASEAN Security Community)

B. Economic and finance (the ASEAN Economic Community)

C. Functional (the ASEAN Socio-Cultural Community)

D. External relations, bilaterally and inter-regionally

E. Narrowing the development gap among ASEAN Member Countries, in the context of the ASEAN Initiative for ASEAN Integration (IAI), and the UN's Millennium Development Goals (MDGs)

F. ASEAN structure, including decision-making process, administrative modalities, sources of funds, working methods, cross-sectoral coordination, conduct of meetings, documentation of meetings, roles of the Secretary-General and the ASEAN Secretariat

4.2 Recommend desirable key elements of an ASEAN Charter, including, among others :

A. Vision of ASEAN beyond 2020

B. Nature, principles and objectives of ASEAN

C. Membership of ASEAN

D. Areas for enhanced ASEAN cooperation and integration

E. Narrowing the development gap among ASEAN Member Countries

F. Organs of ASEAN and their functions and working methods

G. ASEAN administrative structure (mechanisms, roles of the Secretary-General and the ASEAN Secretariat)

H. Legal personality of ASEAN

I. Effective conflict resolution mechanisms

J. External relations

4.3 Recommend a strategy for the ASEAN Charter drafting process :

A. National consultations

B. Region-wide consultations of all relevant stakeholders in ASEAN in the ASEAN Charter drafting process, especially representatives of the civil society

C. Public information

<u>Composition and Chairmanship</u>

5. The EPG shall consist of 10 eminent persons, one from each of the 10 Member Countries, who are nominated by their respective Governments and appointed by ASEAN Leaders at the 11th ASEAN Summit under the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter.

6. The EPG Members shall elect a Chairman at its Coordination Meeting in Kuala Lumpur on 12 December 2005.

7. The EPG Members participate in all EPG activities in their personal and independent capacity, and not as representatives of their respective Governments or countries.

8. Each EPG Member shall have at least one assistant. The assistant may be assigned by the EPG Member to attend an EPG meeting on his behalf when the EPG Member is unable to attend. The EPG who cannot attend an EPG meeting shall inform the EPG Chairman well in advance.

<u>Frequency of Meetings</u>

9. The EPG will decide on the frequency and venue of meetings.

<u>Agenda</u>

10. The agenda of each EPG meeting shall be prepared by the Chairman in consultation with all EPG Members, based on the TOR of the EPG and the work programme to be developed by the EPG.

11. The agenda will be circulated to every EPG Members at least two weeks before an EPG meeting.

<u>Decision-Making</u>

12. All decisions of the EPG shall be based on consultation and consensus.

13. All pertinent decisions of the EPG shall be kept in a summary record of each EPG meeting for reference.

<u>Secretariat Support</u>

14. The Secretary-General of ASEAN will assign two of his senior staff members to act as resource persons of the EPG.

15. The Secretary-General of ASEAN will brief the EPG on pertinent ASEAN issues as and when requested by the EPG.

16. The ASEAN Secretariat shall, together with the EPG assistants, prepare a summary record of every EPG meeting. They will also assist the EPG Members in drafting the EPG Report.

Funding

17. Funding support for the participation of EPG Members and their assistants, including air tickets and hotel accommodations and per diem, will come from each of the ASEAN Member Countries concerned.

18. The ASEAN Member Country hosting an EPG meeting will provide logistical services and administrative assistance for the meeting, such as the local transport of EPG Members and their assistants as well as the resource persons from the ASEAN Secretariat, meals, arrangement of facilities and documentation, etc.

Reporting

19. The EPG Report shall be submitted to each of the ASEAN Leaders by the EPG Chairman before the 12th ASEAN Summit in the Philippines, scheduled in December 2006.

20. The EPG shall decide how to inform the general public of its views and recommendations after the EPG Report has been presented to ASEAN Leaders at the 12th ASEAN Summit.

Amendment

21. These Terms of Reference can be amended by mutual agreement of the EPG Members through consultation and consensus.

Adopted at the First Meeting of the EPG on the ASEAN Charter

Kuala Lumpur, 12-13 December 2005

Source: ASEAN, Terms of Reference of the Eminent Persons Group (EPG) on the ASEAN Charter, [http://www.asean.org/news/item/terms-of-reference-of-the-eminent-persons-group-epg-on-the-asean-charter]

Appendix C

TERMS OF REFERENCE

HIGH LEVEL TASK FORCE ON THE DRAFTING OF THE

ASEAN CHARTER (HLTF)

Background

1. At the 11th ASEAN Summit, held in Kuala Lumpur, Malaysia, ASEAN Leaders signed the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter on 12 December 2005.

2. The Declaration, among other things, tasked the ASEAN Foreign Ministers to establish, as necessary, a high level task force to carry out the drafting of the ASEAN Charter based on the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter and the recommendations of the Eminent Persons Group (EPG) on the ASEAN Charter.

3. At the 39th ASEAN Ministerial Meeting in Kuala Lumpur, the ASEAN Foreign Ministers agreed on the formation of the high level task force on the ASEAN Charter and discussed the composition and participation of the Task Force.

Role and Functions

4. The HLTF shall draft the ASEAN Charter based on the directions given by the Leaders as reflected in the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter and the Cebu Declaration on the Blueprint of the ASEAN Charter and in consideration of the recommendations made by the EPG and other relevant ASEAN documents.

5. The HLTF may form ad hoc working groups, as may be deemed necessary, in order to facilitate its work.

6. The HLTF may call on any member of the EPG on the ASEAN Charter for consultations or guidance, whenever necessary.

7. The HLTF shall submit a draft ASEAN Charter to the ASEAN Leaders at the 13th ASEAN Summit in Singapore.

Membership

8. The HLTF shall be composed of one high level representative from each ASEAN Member Country and assisted by not more than four (4) experts.

9. When the high level representative of a Member Country is unable to attend a HLTF meeting, the representative shall designate one of his or her team members as the substitute representative to attend the meeting.

10. Unless otherwise decided, the Chairman of the HLTF shall be the incumbent Chair of ASEAN. The High Level Task Force shall determine its own rules of procedure.

11. The Secretary-General of ASEAN shall serve as the resource person of the HLTF.

Reporting Mechanism

12. The HLTF shall report regularly to the ASEAN Foreign Ministers on the progress of their work.

Meeting Schedule

13. The HLTF shall meet regularly, or whenever deemed necessary.

14. The HLTF shall hold its first meeting in January 2007 at the ASEAN Secretariat in Jakarta. Subsequent meetings will also be held at the ASEAN Secretariat unless otherwise decided.

ASEAN Secretariat Support

15. The ASEAN Secretariat shall provide secretariat support to the HLTF.

Source: ASEAN, Terms of Reference High Level Task Force on the Drafting of the ASEAN Charter (HLTF), [http://www.asean.org/archive/HLTF-TOR.pdf].

Appendix D

Charter of the Association of Southeast Asian Nations

PREAMBLE

WE THE PEOPLES of the Member States of the Association of Southeast Asian Nations (ASEAN, as represented by the Heads of State or Government of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam:

NOTING with satisfaction the significant achievements and expansion of ASEAN since its establishment in Bangkok through the promulgation of The ASEAN Declaraion;

RECALLING the decisions to establish an ASEAN Charter in the Vientiane Action Programme, the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter and the Cebu Declaration on the Blueprint of the ASEAN Charter;

MINDFUL of the existence of mutual interests and interdependence among the peoples and Member States of ASEAN which are bound by geography, common objectives and shared destiny;

INSPIRED by and united under One Vision, One Identity and One Caring and Sharing Community;

UNITED by a common desire and collective will to live in a region of lasting peace, security and stability, sustained economic growth, shared prosperity and social progress, and to promote our vital interests, ideals and aspirations;

RESPECTING the fundamental importance of amity and cooperation, and the principles of sovereignty, equality, territorial integrity, non-interference, consensus and unity in diversity;

ADHERING to the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms;

RESOLVED to ensure sustainable development for the benefit of present and future generations and to place the well-being, livelihood and welfare of the peoples at the centre of the ASEAN community building process;

CONVINCED of the need to strengthen existing bonds of regional solidarity to realise an ASEAN Community that is politically cohesive, economically integrated and socially responsible in order to effectively respond to current and future challenges and opportunities;

COMMITTED to intensifying community building through enhanced regional cooperation and integration, in particular by establishing an ASEAN Community comprising theASEAN Security Community, the ASEAN Economic Community and the ASEAN Socio-Cultural Community, as provided for in the Bali Declaration of ASEAN Concord II;

HEREBY DECIDE to establish, through this Charter, the legal and institutional framework for ASEAN,

AND TO THIS END, the Heads of State or Government of the Member States of ASEAN, assembled in Singapore on the historic occasion of the 40th anniversary of the founding of ASEAN, have agreed to this Charter.

CHAPTER I

PURPOSES AND PRINCIPLES

ARTICLE 1

PURPOSES

The Purposes of ASEAN are:

1. To maintain and enhance peace, security and stability and further strengthen peace-oriented values in the region;

2. To enhance regional resilience by promoting greater political, security, economic and socio-cultural cooperation;

3. To preserve Southeast Asia as a Nuclear Weapon-Free Zone and free of all other weapons of mass destruction;

4. To ensure that the peoples and Member States of ASEAN live in peace with the world at large in a just, democratic and harmonious environment;

5. To create a single market and production base which is stable, prosperous, highly competitive and economically integrated with effective facilitation for trade and investment in which there is free flow of goods, services and investment; facilitated movement of business persons, professionals, talents and labour; and freer flow of capital;

6. To alleviate poverty and narrow the development gap within ASEAN through mutual assistance and cooperation;

7. To strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN;

8. To respond effectively, in accordance with the principle of comprehensive security, to all forms of threats, transnational crimes and transboundary challenges;

9. To promote sustainable development so as to ensure the protection of the region's environment, the sustainability of its natural resources, the preservation of its cultural heritage and the high quality of life of its peoples;

10. To develop human resources through closer cooperation in education and life-long learning, and in science and technology, for the empowerment of the peoples of ASEAN and for the strengthening of the ASEAN Community;

11. To enhance the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to opportunities for human development, social welfare and justice;

12. To strengthen cooperation in building a safe, secure and drug-free environment for the peoples of ASEAN;

13. To promote a people-oriented ASEAN in which all sectors of society are encouraged to participate in, and benefit from, the process of ASEAN integration and community building;

14. To promote an ASEAN identity through the fostering of greater awareness of the diverse culture and heritage of the region; and

15. To maintain the centrality and proactive role of ASEAN as the primary driving force in its relations and cooperation with its external partners in a regional architecture that is open, transparent and inclusive.

ARTICLE 2

PRINCIPLES

1. In pursuit of the Purposes stated in Article 1, ASEAN and its Member States reaffirm and adhere to the fundamental principles contained in the declarations, agreements, conventions, concords, treaties and other instruments of ASEAN.

2. ASEAN and its Member States shall act in accordance with the following Principles:

(a) respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States;

(b) shared commitment and collective responsibility in enhancing regional peace, security and prosperity;

© renunciation of aggression and of the threat or use of force or other actions in any manner inconsistent with international law;

(d) reliance on peaceful settlement of disputes;

© non-interference in the internal affairs of ASEAN Member States;

(f) respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion;

(g) enhanced consultations on matters seriously affecting the common interest of ASEAN;

(h) adherence to the rule of law, good governance, the principles of democracy and constitutional government;

(i) respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice;

(j) upholding the United Nations Charter and international law, including international humanitarian law, subscribed to by ASEAN Member States;

(k) abstention from participation in any policy or activity, including the use of its territory, pursued by any ASEAN Member State or non-ASEAN State or any non-State actor, which threatens the sovereignty, territorial integrity or political and economic stability of ASEAN Member States;

(l) respect for the different cultures, languages and religions of the peoples of ASEAN, while 333ndeavor333333333 their common values in the spirit of unity in diversity;

(m) the centrality of ASEAN in external political, economic, social and cultural relations while remaining actively engaged, outward-looking, inclusive and non-discriminatory; and

(n) adherence to multilateral trade rules and ASEAN's rules-based regimes for effective implementation of economic commitments and progressive reduction towards elimination of all barriers to regional economic integration, in a market-driven economy.

CHAPTER II

LEGAL PERSONALITY

ARTICLE 3

LEGAL PERSONALITY OF ASEAN

ASEAN, as an inter-governmental 333 ndeavor 333 333 333 n, is hereby conferred legal personality

CHAPTER III

MEMBERSHIP

ARTICLE 4

MEMBER STATES

The Member States of ASEAN are Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the

Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam.

ARTICLE 5

RIGHTS AND OBLIGATIONS

1. Member States shall have equal rights and obligations under this Charter.

2. Member States shall take all necessary measures, including the enactment of appropriate domestic legislation, to effectively implement the provisions of this Charter and to comply with all obligations of membership.

3. In the case of a serious breach of the Charter or non-compliance, the matter shall be referred to Article 20.

ARTICLE 6

ADMISSION OF NEW MEMBERS

1. The procedure for application and admission to ASEAN shall be prescribed by the ASEAN Coordinating Council.

2. Admission shall be based on the following criteria:

   (a) location in the 334 ndeavor 334 334 geographical region of Southeast Asia;

   (b) recognition by all ASEAN Member States;

   © agreement to be bound and to abide by the Charter; and

   (d) ability and willingness to carry out the obligations of Membership.

3. Admission shall be decided by consensus by the ASEAN Summit, upon the recommendation of the ASEAN Coordinating Council.

4. An applicant State shall be admitted to ASEAN upon signing an Instrument of Accession to the Charter

CHAPTER IV

ORGANS

ARTICLE 7

ASEAN SUMMIT

1. The ASEAN Summit shall comprise the Heads of State or Government of the Member States.

2. The ASEAN Summit shall:

(a) be the supreme policy-making body of ASEAN;

(b) deliberate, provide policy guidance and take decisions on key issues pertaining to the realization of the objectives of ASEAN, important matters of interest to Member States and all issues referred to it by the ASEAN Coordinating Council, the ASEAN Community Councils and ASEAN Sectoral Ministerial Bodies;

© instruct the relevant Ministers in each of the Councils concerned to hold ad hoc inter-Ministerial meetings, and address important issues concerning ASEAN that cut across the Community Councils. Rules of procedure for such meetings shall be adopted by the ASEAN Coordinating Council;

(d) address emergency situations affecting ASEAN by taking appropriate actions;

© decide on matters referred to it under Chapters VII and VIII;

(f) 335ndeavor335 the establishment and the dissolution of Sectoral Ministerial Bodies and other ASEAN institutions; and

(g) appoint the Secretary-General of ASEAN, with the rank and status of Minister, who will serve with the confidence and at the pleasure of the Heads of State or Government upon the recommendation of the ASEAN Foreign Ministers Meeting.

3. ASEAN Summit Meetings shall be:

(a) held twice annually, and be hosted by the Member State holding the ASEAN Chairmanship; and

(b) convened, whenever necessary, as special or ad hoc meetings to be chaired by the Member State holding the ASEAN Chairmanship, at venues to be agreed upon by ASEAN Member States.

ARTICLE 8

ASEAN COORDINATING COUNCIL

1. The ASEAN Coordinating Council shall comprise the ASEAN Foreign Ministers and meet at least twice a year.

2. The ASEAN Coordinating Council shall:

(a) prepare the meetings of the ASEAN Summit;

(b) coordinate the implementation of agreements and decisions of the ASEAN Summit;

© coordinate with the ASEAN Community Councils to enhance policy coherence, efficiency and cooperation among them;

(d) coordinate the reports of the ASEAN Community Councils to the ASEAN Summit;

© consider the annual report of the Secretary-General on the work of ASEAN;

(f) consider the report of the Secretary-General on the functions and operations of the ASEAN Secretariat and other relevant bodies;

(g) approve the appointment and termination of the Deputy Secretaries-General upon the recommendation of the Secretary-General; and

(h) undertake other tasks provided for in this Charter or such other functions as may be assigned by the ASEAN Summit.

3. The ASEAN Coordinating Council shall be supported by the relevant senior officials.

ARTICLE 9

ASEAN COMMUNITY COUNCILS

1. The ASEAN Community Councils shall comprise the ASEAN Political-Security Community Council, ASEAN Economic Community Council, and ASEAN Socio-Cultural Community Council.

2. Each ASEAN Community Council shall have under its purview the relevant ASEAN Sectoral Ministerial Bodies.

3. Each Member State shall designate its national representation for each ASEAN Community Council meeting.

4. In order to realise the objectives of each of the three pillars of the ASEAN Community, each ASEAN Community Council shall:

(a) ensure the implementation of the relevant decisions of the ASEAN Summit;

(b) coordinate the work of the different sectors under its purview, and on issues which cut across the other Community Councils; and

© submit reports and recommendations to the ASEAN Summit on matters under its purview.

5. Each ASEAN Community Council shall meet at least twice a year and shall be chaired by the appropriate Minister from the Member State holding the ASEAN Chairmanship.

6. Each ASEAN Community Council shall be supported by the relevant senior officials.

ARTICLE 10

ASEAN SECTORAL MINISTERIAL BODIES

1. ASEAN Sectoral Ministerial Bodies shall:

(a) function in accordance with their respective established mandates;

(b) implement the agreements and decisions of the ASEAN Summit under their respective purview;

© strengthen cooperation in their respective fields in support of ASEAN integration and community building; and

(d) submit reports and recommendations to their respective Community Councils.

2. Each ASEAN Sectoral Ministerial Body may have under its purview the relevant senior officials and subsidiary bodies to undertake its functions as contained in Annex 1. The Annex may be updated by the Secretary-General of ASEAN upon the recommendation of the Committee of Permanent

Representatives without recourse to the provision on Amendments under this Charter.

ARTICLE 11

SECRETARY-GENERAL OF ASEAN

AND ASEAN SECRETARIAT

1. The Secretary-General of ASEAN shall be appointed by the ASEAN Summit for a non-renewable term of office of five years, selected from among nationals of the ASEAN Member States based on alphabetical rotation, with due consideration to integrity, capability and professional experience, and gender equality.

2. The Secretary-General shall:

(a) carry out the duties and responsibilities of this high office in accordance with the provisions of this Charter and relevant ASEAN instruments, protocols and established practices;

(b) facilitate and monitor progress in the implementation of ASEAN agreements and decisions, and submit an annual report on the work of ASEAN to the ASEAN Summit;

© participate in meetings of the ASEAN Summit, the ASEAN Community Councils, the ASEAN Coordinating Council, and ASEAN Sectoral Ministerial Bodies and other relevant ASEAN meetings;

(d) present the views of ASEAN and participate in meetings with external parties in accordance with approved policy guidelines and mandate given to the Secretary-General; and

© recommend the appointment and termination of the Deputy Secretaries-General to the ASEAN Coordinating Council for approval.

3. The Secretary-General shall also be the Chief Administrative Officer of ASEAN.

4. The Secretary-General shall be assisted by four Deputy Secretaries-General with the rank and status of Deputy Ministers. The Deputy Secretaries-General shall be accountable to the Secretary-General in carrying out their functions.

5. The four Deputy Secretaries-General shall be of different nationalities from the Secretary-General and shall come from four different ASEAN Member States.

6. The four Deputy Secretaries-General shall comprise:

(a) two Deputy Secretaries-General who will serve a non-renewable term of three years, selected from among nationals of the ASEAN Member States based on alphabetical rotation, with due consideration to integrity, qualifications, competence, experience and gender equality; and16

(b) two Deputy Secretaries-General who will serve a term of three years, which may be renewed for another three years. These two Deputy Secretaries-General shall be openly recruited based on merit.

7. The ASEAN Secretariat shall comprise the Secretyry-General and such staff as may be required.

8. The Secretary-General and the staff shall:

(a) uphold the highest standards of integrity, efficiency and competence in the performance of their duties;

(b) not seek or receive instructions from any government or external party outside of ASEAN; and

© refrain from any action which might reflect on their position as ASEAN Secretariat officials responsible only to ASEAN.

9. Each ASEAN Member State undertakes to respect the exclusively ASEAN character of the responsibilities of the Secretary-General and the staff, and no to seek to influence them in the discharge of their responsibilities.

ARTICLE 12

COMMITTEE OF PERMANENT REPRESENTATIVES TO ASEAN

1. Each ASEAN Member State shall appoint a Permanent Representative to ASEAN with the rank of Ambassador based in Jakarta.

2. The Permanent Representatives collectively constitute a Committee of Permanent Representatives, which shall:

(a) support the work of the ASEAN Community Councils and ASEAN Sectoral Ministerial Bodies;

(b) coordinate with ASEAN National Secretariats and other ASEAN Sectoral Ministerial Bodies;

© liaise with the Secretary-General of ASEAN and the ASEAN Secretariat on all subjects relevant to its work;

(d) facilitate ASEAN cooperation with external partners; and

© perform such other functions as may be determined by the ASEAN Coordinating Council.

ARTICLE 13

ASEAN NATIONAL SECRETARIATS

Each ASEAN Member State shall establish an ASEAN National Secretariat which shall:

(a) serve as the national focal point;

(b) be the repository of information on all ASEAN matters at the national level;

© coordinate the implementation of ASEAN decisions at the national level;

(d) coordinate and support the national preparations of ASEAN meetings;

© promote ASEAN identity and awareness at the national level; and

(f) contribute to ASEAN community building.

ARTICLE 14

ASEAN HUMAN RIGHTS BODY

1. In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body.

2. This ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting.

ARTICLE 15

ASEAN FOUNDATION

1. The ASEAN Foundation shall support the Secretary-General of ASEAN and collaborate with the relevant ASEAN bodies to support ASEAN community building by promoting grater awareness of the ASEAN identity, people-to-people interaction, and close collaboration among the business sector, civil society, academia and other stakeholders in ASEAN.

2. The ASEAN Foundation shall be accountable to the Secretary-General of ASEAN, who shall submit its report to the ASEAN Summit through the ASEAN Coordinating Council.

CHAPTER V

ENTITIES ASSOCIATED WITH ASEAN

ARTICLE 16

ENTITIES ASSOCIATED WITH ASEAN

1. ASEAN may engage with entities which support the ASEAN Charter, in particular its purposes and principles. These associated entities are listed in Annex 2.

2. Rules of procedure and criteria for engagement shall be prescribed by the Committee of Permanent Representatives upon the recommendation of the Secretary-General of ASEAN.

3. Annex 2 may be updated by the Secretary-General of ASEAN upon the recommendation of the Committee of Permanent Representatives without recourse to the provisionon Amendments under this Charter.

CHAPTER VI

IMMUNITIES AND PRIVILEGES

ARTICLE 17

IMMUNITIES AND PRIVILEGES OF ASEAN

1. ASEAN shall enjoy in the territories of the Member States such immunities and privileges as are necessary for the fulfilment of its purposes.

2. The immunities and privileges shall be laid down in separate agreements between ASEAN and the host Member State.

ARTICLE 18

IMMUNITIES AND PRIVILEGES OF THE SECRETARY-GENERAL OF ASEAN AND STAFF OF THE ASEAN SECRETARIAT

1. The Secretary-General of ASEAN and staff of the ASEAN Secretariat participating in official ASEAN activities of representing ASEAN in the Member States shall enjoy such immunities and privileges as are necessary for the independent exercise of their functions.

2. The immunities and privileges under this Article shall be laid down in a separate ASEAN agreement.

ARTICLE 19

IMMUNITIES AND PRIVILEGES OF THE PERMANENT

REPRESENTATIVES AND OFFICIALS ON ASEAN DUTIES

1. The Permanent Representatives of the Member States to ASEAN and officials of the Member States participating in official ASEAN activities or representing ASEAN in the Member States shall enjoy such immunities and privileges as are necessary for the exercise of their functions.

2. The immunities and privileges of the Permanent Representatives and officials on ASEAN duties shall be governed by the 1961 Vienna Convention on Diplomatic Relations or in accordance with the national law of the ASEAN Member State concerned.

CHAPTER VII

DECISION-MAKING

ARTICLE 20

CONSULTATION AND CONSENSUS

1. As a basic principle, decision-making in ASEAN shall be based on consultation and consensus.

2. Where consensus connot be achieved, the ASEAN Summit may decide how a specific decision can be made.

3. Nothing in paragraphs 1 and 2 of this Article shall affect the modes of decision-making as contained in the relevant ASEAN legal instruments.

4. In the case of a serious breach of the Charter or non-compliance, the matter shall be referred to the ASEAN Summit for decision.

ARTICLE 21

IMPLEMENTATION AND PROCEDURE

1. Each ASEAN Community Council shall prescribe its own rules of procedure.

2. In the implementation of economic commitments, a formula for flexible participation, including the ASEAN Minus X formula, may be applied where there is a consensus to do so.

CHAPTER VIII

SETTLEMENT OF DISPUTES

ARTICLE 22

GENERAL PRINCIPLES

1. Member States shall 343ndeavor to resolve peacefully all disputes in a timely manner through dialogue, consultation and negotiation.

2. ASEAN shall maintain and establish dispute settlement mechanisms in all fields of ASEAN cooperation.

ARTICLE 23

GOOD OFFICES, CONCILIATION AND MEDIATION

1. Member States which are parties to a dispute may at any time agree to resort to good offices, conciliation or mediation in order to resolve the dispute within an agreed time limit.

2. Parties to the dispute may request the Chairman of ASEAN or the Secretary-General of ASEAN, acting in an ex-officio capacity, to provide good offices, conciliation or mediation.

ARTICLE 24

DISPUTE SETTLEMENT MECHANISMS IN SPECIFIC

INSTRUMENTS

1. Disputes relating to specific ASEAN instruments shall be settled through the mechanisms and procedures provided for in such instruments.

2. Disputes which do not concern the interpretation or application of any ASEAN instrument shall be resolved peacefully in accordance with the Treaty of Amity and Cooperation in Southeast Asia and its rules of procedure.

3. Where not otherwise specifically provided, disputes which concern the interpretation or application of ASEAN economic agreements shall be settled in accordance with the ASEAN Protocol on Enhanced Dispute Settlement Mechanism.

ARTICLE 25

ESTABLISHMENT OF DISPUTE SETTLEMENT MECHANISMS

Where not otherwise specifically provided, appropriate dispute settlement mechanisms, including arbitration, shall be established for disputes which concern the interpretation or application of this Charter and other ASEAN instruments.

ARTICLE 26

UNRESOLVED DISPUTES

When a dispute remains unresolved, after the application of the preceding provisions of this Chapter, this dispute shall be referred to the ASEAN Summit, for its decision.

ARTICLE 27

COMPLIANCE

1. The Secretary-General of ASEAN, assisted by the ASEAN Secretariat or any other designated ASEAN body, shall monitor the compliance with the findings,

recommendations or decisions resulting from an ASEAN dispute settlement mechanism, and submit a report to the ASEAN Summit.

2. Any Member State affected by non-compliance with the findings, recommendations or decisions resulting from an ASEAN dispute settlement mechanism, may refer the matter to the ASEAN Summit for a decision.

ARTICLE 28

UNITED NATIONS CHARTER PROVISIONS AND

OTHER RELEVANT INTERNATIONAL PROCEDURES

Unless otherwise provided for in this Charter, Member States have the right of recourse to the modes of peaceful settlement contained in Article 33(1) of the Charter of the United Nations or any other international legal instruments to which the disputing Member States are parties.

CHAPTER IX

BUDGET AND FINANCE

ARTICLE 29

GENERAL PRINCIPLES

1. ASEAN shall establish financial rules and procedures in accordance with international standards.

2. ASEAN shall observe sound financial management policies and practices and budgetary discipline.

3. Financial accounts shall be subject to internal and external audits.

ARTICLE 30

OPERATIONAL BUDGET AND FINANCES

OF THE ASEAN SECRETARIAT

1. The ASEAN Secretariat shall be provided with the necessary financial resources to perform its functions effectively.

2. The operational budget of the ASEAN Secretariat shall be met by ASEAN Member States through equal annual contributions which shall be remitted in a timely manner.

3. The Secretary-General shall prepare the annual operational budget of the ASEAN Secretariat for approval by the ASEAN Coordinating Council upon the recommendation of the Committee of Permanent Representatives.

4. The ASEAN Secretariat shall operate in accordance with the financial rules and procedures determined by the ASEAN Coordinating Council upon the recommendation of the Committee of Permanent Representatives.

CHAPTER X

ADMINISTRATION AND PROCEDURE

ARTICLE 31

CHAIRMAN OF ASEAN

1. The Chairmanship of ASEAN shall rotate annually, based on the alphabetical order of the English names of Member States.

2. ASEAN shall have, in a calendar year, a single Chairmanship by which the Member State assuming the Chairmanship shall chair:

(a) the ASEAN Summit and related summits;

(b) the ASEAN Coordinating Council;

© the three ASEAN Community Councils;

(d) where appropriate, the relevant ASEAN Sectoral Ministerial Bodies and senior officials; and

© the Committee of Permanent Representatives.

ARTICLE 32

ROLE OF THE CHIARMAN OF ASEAN

The Member State holding the Chairmanship of ASEAN shall:

(a) actively promote and enhance the interests and well-being of ASEAN, including efforts to build an ASEAN Community through policy initiatives, coordination, consensus and cooperation;

(b) ensure the centrality of ASEAN;

© ensure an effective and timely response to urgent issues or crisis situations affecting ASEAN, including providing its good offices and such other arrangements to immediately address these concerns;

(d) represent ASEAN in strengthening and promoting closer relations with external partners; and

© carry out such other tasks and functions as may be mandated.

ARTICLE 33

DIPLOMATIC PROTOCOL AND PRACTICES

ASEAN and its Member States shall adhere to existing diplomatic protocol and practices in the conduct of all activities relating to ASEAN. Any changes shall be approved by the ASEAN Coordinating Council upon the recommendation of the Committee of Permanent Representatives.

ARTICLE 34

WORKING LANGUAGE OF ASEAN

The working language of ASEAN shall be English.

CHAPTER XI

IDENTITY AND SYMBOLS

ARTICLE 35

ASEAN IDENTITY

ASEAN shall promote its common ASEAN identity and a sense of belonging among its peoples in order to achieve its shared destiny, goals and values.

ARTICLE 36

ASEAN MOTTO

The ASEAN motto shall be: "One Vision, One Identity, One Community"

ARTICLE 37

ASEAN FLAG

The ASEAN flag shall be as shown in Annex 3.

ARTICLE 38

ASEAN EMBLEM

The ASEAN emblem shall be as shown in Annex 4.

ARTICLE 39

ASEAN DAY

The eighth of August shall be observed as ASEAN Day.

ARTICLE 40

ASEAN ANTHEM

ASEAN shall have an anthem.

CHAPTER XII

EXTERNAL RELATIONS

ARTICLE 41

CONDUCT OF EXTERNAL RELATIONS

1. ASEAN shall develop friendly relations and mutually beneficial dialogue, cooperation and partnerships with countries and sub-regional, regional and international organisations and institutions.

2. The external relations of ASEAN shall adhere to thepurposes and principles set forth in this Charter.

3. ASEAN shall be the primary driving force in regional arrangements that it initiates and maintain its centrality in regional cooperation and community building.

4. In the conduct of external relations of ASEAN, Member States shall, on the basis of unity and solidarity, coordinate and 349ndeavor to develop common positions and pursue joint actions.

5. The strategic policy directions of ASEAN's external relations shall be set by the ASEAN Summit upon the recommendation of the ASEAN Foreign Ministers Meeting.

6. The ASEAN Foreign Ministers Meeting shall ensure consistency and coherence in the conduct of ASEAN's external relations.

7. ASEAN may conclude agreements with countries or sub-regional, regional and international organizations and institutions. The procedures for concluding such agreements shall be prescribed by the ASEAN Coordinating Council in consultation with the ASEAN Community Councils.

ARTICLE 42

DIALOGUE COORDINATOR

1. Member States, acting as Country Coordinators, shall take turns to take overall responsibility in coordinating and promoting the interests of ASEAN in its relations with the relevant Dialogue Partners, regional and international organisations and institutions.

2. In relations with the external partners, the Country Coordinators shall, inter alia:

(a) represent ASEAN and enhance relations on the basis of mutual respect and equality, in conformity with ASEAN's principles;

(b) co-chair relevant meetings between ASEAN and external partners; and

© be supported by the relevant ASEAN Committees in Third Countries and International Organisations.

ARTICLE 43

ASEAN COMMITTEES IN THIRD COUNTRIES

AND INTERNATIONAL ORGANISATIONS

1. ASEAN Committees in Third Countries may be established in non-ASEAN countries comprising heads of diplomatic missions of ASEAN Member States. Similar Committees may be established relating to international organisations. Such Committees shall promote ASEAN's interests and identity in the host countries and international organisations.

2. The ASEAN Foreign Ministers Meeting shall determine the rules of procedure of such Committees.

ARTICLE 44

STATUS OF EXTERNAL PARTIES

1. In conducting ASEAN's external relations, the ASEAN Foreign Ministers Meeting may confer on an external party the formal status of Dialogue Partner, Sectoral Dialogue Partner, Development Partner, Special Observer, Guest, or other status that may be established henceforth.

2. External parties may be invited to ASEAN meetings or cooperative activities without being conferred any formal status, in accordance with the rules of procedure.

ARTICLE 45

RELATIONS WITH THE UNITED NATIONS SYSTEM AND

OTHER INTERNATIONAL ORGANISATIONS AND

INSTITUTIONS

1. ASEAN may seek an appropriate status with the United Nations system as well as with other sub-regional, regional, international organisations and institutions.

2. The ASEAN Coordinating Council shall decide on the participation of ASEAN in other sub-regional, regional, international organisations and institutions.

ARTICLE 46

ACCREDITATION OF NON-ASEAN MEMBER STATES TO

ASEAN

Non-ASEAN Member States and relevant inter-governmental organisations may appoint and accredit Ambassadors to ASEAN. The ASEAN Foreign Ministers Meeting shall decide on such accreditation.

CHAPTER XIII

GENERAL AND FINAL PROVISIONS

ARTICLE 47

SIGNATURE, RATIFICATION, DEPOSITORY AND ENTRY INTO FORCE

1. This Charter shall be signed by all ASEAN Member States.

2. This Charter shall be subject to ratification by all ASEAN Member States in accordance with their respective internal procedures.

3. Instruments of ratification shall be deposited with the Secretary-General of ASEAN who shall promptly notify all Member States of each deposit.

4. This Charter shall enter into force on the thirtieth day following the date of deposit of the tenth instrument of ratification with the Secretary-General of ASEAN.

ARTICLE 48

AMENDMENTS

1. Any Member State may propose amendments to the Charter.

2. Proposed amendments to the Charter shall be submitted by the ASEAN Coordinating Council by consensus to the ASEAN Summit for its decision.

3. Amendments to the Charter agreed to by consensus by the ASEAN Summit shall be ratified by all Member States in accordance with Article 47.

4. An amendment shall enter into force on the thirtieth day following the date of deposit of the last instrument of ratification with the Secretary-General of ASEAN.

ARTICLE 49

TERMS OF REFERENCE AND RULES OF PROCEDURE

Unless otherwise provided for in this Charter, the ASEAN Coordinating Council shall determine the terms of reference and rules of procedure and shall ensure their consistency.

ARTICLE 50

REVIEW

This Charter may be reviewed five years after its entry into force or as otherwise determined by the ASEAN Summit.

ARTICLE 51

INTERPRETATION OF THE CHARTER

1. Upon the request of any Member State, the interpretation of the Charter shall be undertaken by the ASEAN Secretariat in accordance with the rules of procedure determined by the ASEAN Coordinating Council.

2. Any dispute arising from the interpretation of the Charter shall be settled in accordance with the relevant provisions in Chapter VIII.

3. Headings and titles used throughout the Charter shall only be for the purpose of reference.

ARTICLE 52

LEGAL CONTINUITY

1. All treaties, conventions, agreements, concords, declarations, protocols and other ASEAN instruments which have been in effect before the entry into force of this Charter shall continue to be valid.

2. In case of inconsistency between the rights and obligations of ASEAN Member States under such instruments and this Charter, the Charter shall prevail.

ARTICLE 53

ORIGINAL TEXT

The signed original text of this Charter in English shall be deposited with the Secretary-General of ASEAN, who shall provide a certified copy to each Member State.

ARTICLE 54

REGISTRATION OF THE ASEAN CHARTER

This Charter shall be registered by the Secretary-General of ASEAN with the Secretariat of the United Nations, pursuant to Article 102, paragraph 1 of the Charter of the United Nations.

ARTICLE 55

ASEAN ASSETS

The assets and funds of the Organisation shall be vested in the name of ASEAN.

Done in Singapore on the Twentieth Day of November in the Year Two Thousand and Seven, in a single original in the English language.

For Brunei Darussalam:

HAJI HASSANAL BOLKIAH

Sultan of Brunei Darussalam

For the Kingdom of Cambodia:

SAMDECH HUN SEN

Prime Minister

For the Republic of Indonesia:

DR. SUSILO BAMBANG YUDHOYONO

President

For the Lao People's Democratic Republic:

BOUASONE BOUPHAVANH

Prime Minister

For Malaysia:

DATO' SERI ABDULLAH AHMAD BADAWI

Prime Minister

For the Union of Myanmar:

GENERAL THEIN SEIN

Prime Minister

For the Republic of the Philippines:

GLORIA MACAPAGAL-ARROYO

President

For the Republic of Singapore:

LEE HSIEN LOONG

Prime Minister

For the Kingdom of Thailand:

GENERAL SURAYUD CHULANONT (RET.)

Prime Minister

For the Socialist Republic of Viet Nam:

NGUYEN TAN DUNG

Prime Minister

Source: ASEAN. 2008. The ASEAN Charter. Jakarta: ASEAN Secretariat.

Annex I

ASEAN Sectoral Ministerial Bodies

I. ASEAN POLITICAL-SECUITY COMMUNITY

1. Asean Foreign Ministers Meeting (AMM)

- ASEAN Senior Officials Meeting (ASEAN SOM)

- ASEAN Standing Committee (ASC)

- Senior Officials Meeting on Development Planning (SOMDP)

2. Committee on the Southeast Asia Nuclear Weapon-Free Zone (SEANWFZ Commission)

- Executive Committee of the SEANWFZ Commission

3. ASEAN Defence Ministers Meeting (ADMM)

- ASEAN Defence Senior Officials Meetings (ADSOM)

4. ASEAN Law Ministers Meeting (ALAWMM)

- ASEAN Senior Law Officials Meeting (ASLOM)

5. ASEAN Ministerial Meeting on Transnational Crime (AMMTC)

- Senior Officials Meeting on Transnational Crime (SOMTC)

- ASEAN Senior Officials on Drugs Matters (ASOD)

- Directors-General of Immigration Departments and Heads of Consular Affairs Divisions of Ministries of Foreign Affairs Meeting (DGICM)

6. ASEAN Regional Forum (ARF)

- ASEAN Regional Forum Senior Officials Meeting (ARF SOM)

II. ASEAN ECONOMIC COMMUNITY

1. ASEAN Economic Ministers Meeting (AEM)

- High Level Task Force on ASEAN Economic Integration (HLTF-EI)

- Senior Economic Officials Meeting (SEOM)

2. ASEAN Free Trade Area (AFTA) Council

3. ASEAN Investment Area (AIA) Council

4. ASEAN Finance Ministers Meeting (AFMM)

- ASEAN Finance and Central Bank Deputies Meeting (AFDM)

- ASEAN Directors-General of Customs Meeting (Customs DG)

5. ASEAN Ministers Meeting on Agriculture and Forestry (AMAF)

- Senior Officials Meeting of the ASEAN Ministers on Agriculture and Forestry (SOM-AMAF)

- ASEAN Senior Officials on Forestry (ASOF)

6. ASEAN Ministers on Energy Meeting (AMEM)

- Senior Officials Meeting on Energy (SOME)

7. ASEAN Ministerial Meeting on Minerals (AMMin)

- ASEAN Senior Officials Meeting on Minerals (ASOMM)

8. ASEAN Ministerial Meeting on Science and Technology (AMMST)

- Committee on Science and Technology (COST)

9. ASEAN Telecommunications and Information Technology Ministers Meeting (TELMIN)

- Telecommunications and Information Technology Senior Officials Meeting (TELSOM)

- ASEAN Telecommunication Regulators' Council (ATRC)

10. ASEAN Transport Ministers Meeting (ATM)

- Senior Transport Officials Meeting (STOM)

11. Meeting of the ASEAN Tourism Ministers (M-ATM)

- Meeting of the ASEAN National Tourism Organisations (ASEAN NTOs)

12. ASEAN Mekong Basin Development Cooperation (AMBDC)

- ASEAN Mekong Basin Development Cooperation Steering Committee (AMBDC SC)

- High Level Finance Committee (HLFC)

13. ASEAN Centre for Energy

14. ASEAN-Japan Centre in Tokyo

III. ASEAN SOCIO-CULTURAL COMMUNITY

1. ASEAN Ministers Responsible for Information (AMRI)

- Senior Officials Meeting Responsible for Information (SOMRI)

2. ASEAN Ministers Responsible for Culture and Arts (AMCA)

- Senior Officials Meeting for Culture and Arts (SOMCA)

3. ASEAN Education Ministers Meeting (ASED)

- Senior Officials Meeting on Education (SOM-ED)

4. ASEAN Ministerial Meeting on Disaster Management (AMMDM)

- ASEAN Committee on Disaster Management (ACDM)

5. ASEAN Ministerial Meeting on the Environment (AMME)

- ASEAN Senior Officials on the Enviornment (ASOEN)

6. Conference of the Parties to the ASEAN Agreement on Transboundary Haze Pollution (COP)

- Committee (COM) under the COP to the ASEAN Agreement on Transboundary Haze Pollution

7. ASEAN Health Ministers Meeting (AHMM)

- Senior Officials Meeting on Health Development (SOMHD)

8. ASEAN Labour Ministers Meeting (ALMM)

- Senior Labour Officials Meeting (SLOM)

- ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers

9. ASEAN Ministers on Rural Development and Poverty Eradication (AMRDPE)

- Senior Officials Meeting on Rural Development and Poverty Eradication (SOMRDPE)

10. ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD)

- Senior Officials Meeting on Social Welfare and Development (SOMSWD)

11. ASEAN Ministerial Meeting on Youth (AMMY)

- Senior Officials Meeting on Youth (SOMY)

12. ASEAN Conference on Civil Service Matters (ACCSM)

13. ASEAN Centre for Biodiversity (ACB)

14. ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre)

15. ASEAN Earthquakes Information Centre

16. ASEAN Specialised Meteorological Centre (ASMC)

17. ASEAN University Network (AUN)

Source: ASEAN. 2008. The ASEAN Charter, Annex 1. Jakarta: ASEAN Secretariat.

Annex II

Entities Associated with ASEAN

I. Parliamentarians

ASEAN Inter-Parliamentary Assembly (AIPA)

II. Business Organisations

ASEAN Airlines Meeting

ASEAN Alliance of Health Supplement Association (AAHSA)

ASEAN Automotive Federation (AAF)

ASEAN Bankers Association (ABA)

ASEAN Business Advisory Council (ASEAN-BAC)

ASEAN Business Forum (ABF)

ASEAN Chamber of Commerce and Industry (ASEAN-CCI)

ASEAN Federation of Textiles Industries (AFTEX)

ASEAN Furniture Industries Council (AFIC)

ASEAN Insurance Council (AIC)

ASEAN Intellectual Property Association (ASEAN IPA)

ASEAN International Airports Association (AAA)

ASEAN Iron & Steel Industry Federation

ASEAN Pharmaceutical Club

ASEAN Tourism Association (ASEANTA)

Federation of ASEAN Economic Associations (FAEA)

Federation of ASEAN Shippers' Council

US-ASEAN Business Council

III. THINK TANKS AND ACDEMIC INSTITUTIONS

ASEAN-ISIS Network

IV. ACCREDITED CIVIL SOCIETY ORGANISATIONS

ASEAN Academics of Science, Engineering and Technology (ASEAN CASE)

ASEAN Academy of Engineering and Technology (AAET)

ASEAN Association for Clinical Laboratory Sciences (AACLS)

ASEAN Association for Planning and Housing (AAPH)

ASEAN Association of Radiologists (AAR)

ASEAN Chess Confederation (ACC)

ASEAN Confederation of Employers (ACE)

ASEAN Confederation of Women's Organisation (ACWO)

ASEAN Constructors Federation (ACF)

ASEAN Cosmetics Association (ACA)

ASEAN Council for Japan Alumni (ASCOJA)

ASEAN Council of Teachers (ACT)

ASEAN Federation for Psychiatric and Mental Health (AFPMH)

ASEAN Federation of Accountants (AFA)

ASEAN Federation of Electrical Engineering Contractors (AFEEC)

ASEAN Federation of Engineering Organisation (AFEO)

ASEAN Federation of Flying Clubs (AFFC)

ASEAN Federation of Forwarders Associations (AFFA)

ASEAN Federation of Heart Foundation (AFHF)

ASEAN Federation of Land Surveying and Geomatics (ASEAN FLAG)

ASEAN Federation of Mining Association (AFMA)

ASEAN Fisheries Federation (AFF)

ASEAN Football Federation (AFF)

ASEAN Forest Products Industry Club (AFPIC)

ASEAN Forestry Students Association (AFSA)

AEAN Handicraft Promotion and Development Association (AHPADA)

ASEAN Kite Council (AKC)

ASEAN Law Association (ALA)

ASEAN Law Students Association (ALSA)

ASEAN Music Industry Association (AMIA)

ASEAN Neurosurgical Society (ANS)

ASEAN NGO Coalition on Ageing

ASEAN Non-Governmental Organisations for the Prevention of Drugs and Substance Abuse

ASEAN Oleochemical Manufacturers Group (AOMG)

ASEAN Orthopaedic Association (AOA)

ASEAN Pediatric Federation (APSF)

ASEAN Para Sports Federation (APSF)

ASEAN Ports Association (APA)

ASEAN Thalassaemia Society (ATS)

ASEAN Valuers Association (AVA)

ASEAN Vegetable Oils Club (AVOC)

Asian Partnership for Development of Human Resources in Rural Asia (AsiaDHRRA)

Committee for ASEAN Youth Cooperation (CAYC)

Federation of ASEAN Consulting Engineers (FACE)

Federation of ASEAN Public Relations Organisations (FAPRO)

Federation of ASEAN Shipowners' Associations (FASA)

Medical Association of Southeast Asian Nations Committee (MASEAN)

Rheumatism Association of ASEAN (RAA)

Southeast Asia Regional Institute for Community and Education (SEARICE)

Southeast Asian Studies Regional Exchange Program (SEASREP) Foundation

Veterans Confederation of ASEAN Countries (VECONAC)

V. OTHER STAKEHOLDERS IN ASEAN

ASEANAPOL

Federation of Institutes of Food Science and Technology in ASEAN (FIFSTA)

Southeast Asian Fisheries Development Centre (SEAFDEC)

Working Group for an ASEAN Human Rights Mechanism

Source: ASEAN. 2008. The ASEAN Charter, Annex 2. Jakarta: ASEAN Secretariat.

Annex III

ASEAN Flag

The ASEAN Flag represents a stable, peaceful, united and dynamic ASEAN. The Colours of the Flag – blue, red, white and yellow – represent the main colours of the flags of all the ASEAN Member States.

The blue represents peace and stability. Red depicts courage and dynamism. White shows purity and yellow symbolizes prosperity.

The stalks of padi represent the dream of ASEAN's Founding Fathers for an ASEAN comprising all the countries in Southeast Asia bound together in friendship and solidarity. The circle represents the unity of ASEAN.

The specification of Pantone Colour adopted for the colours of the ASEAN Flag are:

Blue: Pantone 19-4053 TC

Red: Pantone 18-1655 TC

White: Pantone 11-4202 TC

Yellow: Pantone 13-0758 TC

For the printed version, the specification of colours (except white) will follow those for the colours of the ASEAN Emblem, i.e.:
Blue: Pantone 286 or Process Colour 100C 60M 0Y 6K

Red: Pantone Red 032 or Process Colour 0C 91M 87Y 0K

Yellow: Pantone Process Yellow or Process Colour 0C 0M 100Y 0K

The ratio of the width to the length of the Flag is two to three and the size specifications for the following Flags are:

Table Flag: 10 cm x 15 cm

Room Flag: 100 cm x 150 cm

Car Flag: 10 cm x 30 cm

Field Flag: 200 cm x 300 cm

Source: ASEAN. 2008. The ASEAN Charter, Annex 3. Jakarta: ASEAN Secretariat.

Source of Picture: http://www.flags.net/ASEA.htm

Annex IV

ASEAN Emblem

The ASEAN Emblem represents a stable, peaceful, united and dynamic ASEAN. The colours of the Emblem – blue, red, white and yellow – represent the main colours of the crests of all the ASEAN Member States.

The blue represents peace and stability. Red depicts courage and dynamism. White shows purity and yellow symbolizes prosperity.

The stalks of padi represent the dream of ASEAN's Founding Fathers for an AEAN comprising all the countries in Southeast Asia bound together in friendship and solidarity. The circle represents the unity of ASEAN.

The specification of Pantone Colour adopted for the colours of the ASEAN Emblem are:

Blue: Pantone 286

Red: Pantone Red 032

Yellow: Pantone Process Yellow

For four-colour printing process the specifications of colours will be:

Blue: 100C 60M 0Y 6K (100C 60M 0Y 10K)

Red: 0C 91M 87Y 0K (0C 90M 90Y 0K)

Yellow: 0C 0M 100Y 0K

Specifications in brackets are to be used when an arbitrary measurement of process colours is not possible.

In Pantone Process Colour Simulator, the specifications equal to:

Blue: Pantone 204-1

Red: Pantone 60-1

Yellow: Pantone 1-3

The font used for the word "ASEAN" in the Emblem is lower-case Helvetica in bold.

Source: ASEAN. 2008. The ASEAN Charter, Annex 4. Jakarta: ASEAN Secretariat.

Source of Picture: http://www.asean.org/asean/about-asean/asean-emblem