

**The Political Chemistry of the Institutionalization of Human
Rights in ASEAN**

By

Robert Marius Craciun

Submitted to

Central European University

Department of Political Science

In partial fulfillment for the degree of Master in Arts in Political Science

Supervisor: Tamas Meszerics

Budapest, Hungary

(2012)

Abstract

The aim of this paper is to explain the regional institutionalization of human rights in the Association of Southeast Asian Nations. A suited, compatibilistic version of new institutionalism, provided by S. Bell in 2011, is used to find the cause for the 2009 inauguration of the controversial ASEAN Intergovernmental Commission on Human Rights. M. Archer's 1995 cyclic frame of the (dialectical) cohabitation of actors and institutions guides the analysis of: each member state's initial circumstances (in the first phase of the cycle), the domestic-level interactions within each member state and the regional-level interaction between the ten states (in the second phase of the cycle), and finally the regional crystallization of institutions (i.e. the elaboration of the third phase of the cycle).

This paper succeeds to provide a theoretically consistent explanation for each veto powered member states' agreement to institutionalize human rights in the ASEAN. The employed framework allows for case-fit explanations that are more precise than what the international relations doctrines of realism, liberalism and constructivism provide. Furthermore, while these doctrines fail to explain Singapore's and Myanmar's surprising pro-votes, this framework reveals the causes for a. Singapore's shift from the role of protector of Asian values to its compromise to form the AICHR and b. Myanmar's successful persuasion by its fellow member states, as a slight evolution of the non-interference principle of the ASEAN integration unit.

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INTRODUCTION

The Association of South-East Asian Nations was formed in 1967 by Indonesia, Malaysia, Philippines, Singapore and Thailand, “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”¹. Since then Brunei Darussalam, Vietnam, Laos, Myanmar and Cambodia joined the ASEAN². In the Treaty of Amity and Cooperation from 1976 and later in the Bali Concord II of 2002, the character of the ASEAN was established as a non-interventionist one, the sovereignty of member states being intended to be left intact³ during the process of integration. This principle has been called “the ASEAN way”⁴, the phrase suggesting not only that it is at the defining core of the integration unit, but also that it is unique in its importance for the ASEAN. After the 1997 Asian financial crisis this principle was re-assessed, but not substantively changed.⁵

The formation of a human rights (HR) *mechanism* was agreed as a common medium term goal, with the formation of a HR *body* representing an immediate objective in the ASEAN Charter of 2007⁶. It is puzzling how this happened in a unanimity rule driven group which also contained at the time authoritarian governments, with very little if any respect for HR, such as

¹ The ASEAN Declaration <http://www.aseansec.org/1212.htm> (accessed on the 4th of May 2012)

² In 1984, 1995, 1995, 1995, 1999, respectively

³ David Martin Jones, “Security and Democracy: The ASEAN Charter and the Dilemmas of Regionalism in South-East Asia”, in *International Affairs*, 84:4, 2008, P. 735 -756, P. 735

⁴ Hadi Soesastrop, “Regional Integration in East Asia: Achievements and Future Prospects”, in *Asian Economic Policy Review*, 2006, pp. 215-234, P. 219

⁵ Douglas Webber, “Two Funerals and a Wedding? The Ups and Downs of Regionalism in East Asia and Asia Pacific after the Asian Crisis” in *Comparative Regional Integration* ed. Finn Laursen, Ashgate, 2003, P. 136

⁶ Charter of the ASEAN, <http://www.aseansec.org/21069.pdf> (accessed on the 4th of April 2012)

Myanmar⁷. At the time of the analyzed decision, the political regimes included an autocratic military junta (Myanmar), attempts of democracies (Philippines, Indonesia, Malaysia, Cambodia, Singapore and Thailand), monarchic sultanate (Brunei) and communist states (Vietnam and Laos)⁸. What is also argued to be important for the ability to take common decision in ASEAN is the level of economic development: Cambodia, Laos, Myanmar and Vietnam being the group of countries which are the least economically developed⁹. Myanmar, the Philippines and Thailand are all in the top two categories (out of five) of offenders¹⁰.

Fulfilling the plan, on the 20th of July 2009 the ASEAN Intergovernmental Commission on HR was formed “to promote and protect HR and fundamental freedoms of the peoples of ASEAN”¹¹. The problem is that this was not a full success, the institution being compared to a “toothless tiger”, meaning that it is unable to protect HR of citizens, having only an advisory role. Nonetheless the potential for representing a first step on a (intentionally/unintentionally) slippery slope is recognized¹². The question of what this institution actually succeeded or failed to accomplish will not remain unanswered. Besides the question of “Why did the ASEAN member states –some of whose authoritarian governments regularly violate HR – unanimously decide to form this intergovernmental commission?” the current paper will necessarily first have to answer “what are the defining characteristics of this institution?”.

⁷ Catherine Renshaw, “Understanding the new ASEAN Intergovernmental Commission on HR: the Limits and Potential of Theory” working paper hosted by the *Berkley University Press*, 2010, pp. 1-21, P. 16

⁸ Jones, “Security and Democracy: The ASEAN Charter and the Dilemmas of Regionalism in South-East Asia”, P. 754

⁹ Jones, “Security and Democracy: The ASEAN Charter and the Dilemmas of Regionalism in South-East Asia”, P. 746

¹⁰ Worst offenders between 2006 and 2009, Gibney, M., Cornett, L., & Wood, R., *Political Terror Scale 1976-2006*. Data Retrieved, from the Political Terror Scale Web site: <http://www.politicalterroryscale.org/> (accessed on the 13th of May 2012)

¹¹ Terms of Reference of AICHR, <http://www.asean.org/DOC-TOR-AHRB.pdf> (accessed on the 23rd of March 2012)

¹² Michelle Staggs Kelssall “The New ASEAN Intergovernmental Commission on HR: Toothless Tiger or Tentative First Step” in *Analysis for the East-West Center*, no. 90, 2009, pp. 1-8, P. 1

The former question is puzzling given that some of the actors who agreed to form a HR institution are their notorious violators who did not make significant efforts for improving the situation at a domestic level. The later question places more weight on the actual nature of the institution, and it tries to find causes, answering the disappointment of anyone who places intrinsic or indirect value on HR. This case study's main relevance consists in the effort of finding ways to promote the respecting of individual rights across the globe, given that the institution is a first important step in a highly diverse and violation-rich environment.

The importance of this research is however wider and it can be seen as at least fourfold. Firstly it is important to understand how the members of an integration unit can reach common decisions in areas in which they have so diverse stand-points. Secondly, but still relative to the regional development of the ASEAN, answering the research question can provide an insight in the incremental adaptation of the non-interference principle in the ASEAN to the requirements of a highly interdependent world, given that the goal is also to protect HR (something which would require intervention in the way a member state treats its citizens). To be more specific, given that Myanmar (the most notorious offender in HR from ASEAN) accepted the formation of the AICHR it might turn out that its veto power was de facto diminished, if the assessment of the outcome (the formation of the AICHR) will show deviation with the sovereign will of this state. The third factor of importance of this research is that given the high number of regional integration units (and highly diversity among them), there is a need for policy recommendations for how to handle diversity between member states valuing their sovereignty. Given the stated ASEAN non-interference principle if we find answers for this integration unit, it is highly probable that they will work also in cases where the goal of maintaining sovereignty is not placed in front of regional integration or at least it is less vociferated than in this case. A forth

contribution is found in this research's informative potential to the members of the civil society in SE Asia: understanding why the AICHR was formed and became what it is, can provide the means for efficacy of the civil society in relation to the state of affairs in the polities they are part of.

Methodologically, this is an interesting case in which both culture and structure was influencing the outcome and was influenced by the creation of an institution which is at first sight at contradiction with both cultural and structural legacies in ASEAN. The Asian values claim to counter the universal individual HR values and the area of HR was not tackled earlier by ASEAN institutions¹³.

On theory that could apply well in the case of ASEAN joining international treaties on HR is provided by Andrew Moravcsik. He claims that states in transition to liberal democracies adhere to these treaties to protect the democratic momentum, locking down the democratizing preferences¹⁴. Whether this will be suited to entirely explain the AICHR's formation is doubtful given that veto players who were not even in a transition phase toward democracy agreed (for example Myanmar). However, it might prove to be useful in grasping at least part of the motivations in the cases of transitional member states.

The subject of ASEAN states' attitude towards institutionalizing the promotion and protection of HR has been tackled by a large number of researchers, but as I will argue they had a limited vision signaled also by the fact that their work developed in a centrifugal way, providing rather different answers to the same question. In 2008, Ha Duy Phan attributed the

¹³ Diane K. Mauzy "The HR and 'Asian values' debate in Southeast Asia: Trying to clarify the key issues" in *The Pacific Review*, 10:2, 1997, pp. 210-236

¹⁴ Andrew Moravcsik, "The Origins of HR Regimes: Democratic Delegation in Postwar Europe", *International Organization*, Vol. 54, 2000

success of including the formation of a HR body as an immediate goal in the Charter to the pressure exercised by Indonesia, Philippines, Malaysia and Thailand and the NGOs within these countries, but attributes the failure to develop a proper mechanism to the “national HR practices, political liberalization and regime security in each country”¹⁵. This research was performed before the formation of the AICHR, but provides an account of the evolution of the attitudes of member states towards HR institutionalization. However it does not account for cultural factors which were advocated by member states as an excuse for relativism in applying universal HR in South East Asia¹⁶, and dissected by Amartya Sen in 1997, who advocated the weakness of their argument¹⁷. In contrast, Diane K. Mauzi, in the same year, stresses that the values in a society influence the government’s and society’s attitude towards HR¹⁸. One author that combines historical and rational factors with cultural factors is Li-ann Thio, in her 1999 paper¹⁹. However, even disregarding the fact that all of these works are completed before the formation of the AICHR, there is still the problem of them not providing an explanation which takes in appropriate consideration besides the historical, rational choice and cultural factors, also the role of the actors’ perception of the roles they play.

There are more recent international relation studies which are focused exactly on the AICHR’s creation²⁰. However, they all tend to choose a tradition (in its strong, incompatible

¹⁵ Hao Duy Phan, “The Evolution Towards an ASEAN HR Body” in *Asia – Pacific Journal on HR and the Law*, 2008, volume 9, issue 1, pp. 1-12, P. 12

¹⁶ Singapore, Malaysia, Indonesia, Vietnam. Source: “U.S. Rejects Notion That Human Rights Vary With Culture”, by Elaine Sciolino, *The New York Times*, <http://www.nytimes.com/1993/06/15/world/us-rejects-notion-that-human-rights-vary-with-culture.html> (accessed on the 4th of May 2012)

¹⁷ Amartya Sen, “What Lee Kuan Yew and Li Peng don’t understand about Asia. HR and Asian Values” in *The New Republic*, July 14, 1997, pp. 33-40

¹⁸ Mauzy “The HR and ‘Asian values’ debate in Southeast Asia: Trying to clarify the key issues”

¹⁹ Li-ann Thio et. al, “Implementing HR in ASEAN Countries: “Promises to keep and miles to go before I sleep””, 1999, pp. 1-75

²⁰ For a review see Catherine Renshaw, “Understanding the new ASEAN Intergovernmental Commission on HR: the Limits and Potential of Theory” working paper hosted by the *Berkley University Press*, 2010, pp. 1-21

sense) beforehand and to apply it to the case (i.e. without allowing insights from other approaches). As Renshaw reviews²¹, realist, liberal and constructivist scholars contributed *separately* to our understanding of the formation of the AICHR.

She first pinpoints the realist tradition which argues that, as rational actors, ASEAN members, after a cost benefit analysis, gave in to the pressure (canalized through trade or force relations) of great powers. However this gives not answer neither to the same reaction of states that are trade dependent and states that are less or independent on trade with western states, nor to the agreement of states like Singapore and Myanmar, both rigid to western pressure.

Liberal theories enter the domestic games at play and describe how institutions disseminate norms and facilitate cooperation. What they consider significant in the decision of states to create the AICHR (at all and in this form) is the influence of regional and domestic NGOs. They account for the strong role of the countries that already had national HR institutions working before the decision. They were prepared by their autonomous but domestic NGOs for the idea of a regional body. This however does not explain the same vote of more liberal states (Indonesia, Thailand, Philippines, Malaysia) coupled with the decision of more authoritarian states (Cambodia, Laos, Vietnam, Brunei, Myanmar).

One insight is provided by the sociological institutionalist approach of Katsumata²². She further argues that the formation of the AICHR was a result of institutional isomorphism, happening when in a normative climate in which legitimacy is signaled by certain norms and those seeking acceptance in the community emulate them. Thus ASEAN tried to save its

²¹ Renshaw, "Understanding the new ASEAN Intergovernmental Commission on HR: the Limits and Potential of Theory"

²² Hiro Katsumata, "ASEAN and Human Rights: Resisting Western Pressure or Emulating the West?", in: *The Pacific Review*, 2009, pp. 619-637.

credibility after its incapacity to deal with HR violations in Myanmar, internal conflicts, terrorism, and the 1997 financial crisis. As Renshaw discusses²³, there are two bifurcations possible here: the ASEAN actors superficially mimic the norms of others, but do not change their identity or they negate their previous identity and assume a new one. The problem here is that this can not explain (for example) Singapore's behavior, a country that was totally opposed to the imperialism of western ideology.

The solution to the problem can be seen as progressing on two distinct lines: firstly it might be the case that one theory can explain the vote of each ASEAN member state and secondly it might turn out that each had different mechanisms at work prior to their unanimous decision. In both cases the literature describe above fails to provide a consistent answer.

If the first is true, the problem is not necessarily that none of the mentioned works managed to reconcile their completely different explanations, but rather that they all employed such a strong and inflexible version of their traditions that the same question, not only is answered with a different logic, but receives totally different answers. Finding the correct answer, a goal of each tradition, appears to be very hard - at least in this case – without some interchange in the theoretical realm which guides the empirical conclusions. They all have strong points which are hard to totally discard, but I argue that given their pre-dedication to one line of argumentation in a very rigid way, which all share, they do not manage to capture the dialectical coexistence of institutions, ideas and actors, or to compare or reconcile at least partially their answers. I think that synthesis, defined as the combination of thesis and antithesis in the

²³ Renshaw, "Understanding the new ASEAN Intergovernmental Commission on HR: the Limits and Potential of Theory" working paper hosted by the *Berkley University Press*, 2010, pp. 1-21

Hegelian dialectical process whereby a new and higher level of truth is produced²⁴, would benefit both the explanation of this case and generally, the approaches of political scientist and international relations scholars. This position starts a line of argumentation which will continue throughout the methodological chapter, and will converge with Stephen Bell's version of new institutionalism. If the later is true, namely that different member states acted the same way for different reasons, than the case must be dissected into 10 different analyses of veto powered actors. This paper's stance will incorporate both possibilities through the bellow described framework.

In order to be able to provide an explanation that is both theoretically consistent and suitable to each case (member state's decision to agree with the formation of the AICHR) a compatibilistic new institutionalist framework will be applied. This is placing this thesis somewhat closer to the "projections" category distinguished by Philippe Schmitter. Differently from puzzles, Schmitter considers projections to be research topics which are confident that certain approaches are well fit and adequate to apply to cases which have not yet been explored using them²⁵. Thus, the answer to the research question - Why was the AICHR formed? - will be provided using the framework of new institutionalism, in its compatibilistic form as advocated by Stephen Bell²⁶ (allowing historical, rational choice, social and constructivist insights). Political scientists contributed greatly to the theoretical debate and managed to enrich our

²⁴ The Free Dictionary, <http://www.thefreedictionary.com/synthesis> (accessed on the 2nd of May 2012)

²⁵ Philippe C. Schmitter, "Conceptual Analysis and Research Design for Politologists", European University Institute and Central European University, , P. 5

²⁶ Stephen Bell, "Do We Really Need a New "Constructivist Institutionalism" to Explain Institutional Change" in *Cambridge University Press*, 2011, pp.883 - 906

understanding of institutionalism with its overarching potential²⁷, and, as I try to show in this paper, they also managed to provide a framework which can contribute to what can also be regarded as international relations explanations. To connect the suited new institutionalist approach with the observed data on the case, Margret Archer's cyclic vision of the institution-agency interaction will be used and described in more detail further on.

Given the chapter length discussions, the description of the theoretical framework, the methodology to be used and the motivation for it will not be further detailed in this introductory part. Chapter 2 and 3 will provide the cyclic analytical history of the AICHR formation. The former will cover the period before the 1993 common ASEAN resolution on the regional HR aim, while the later will start from the previous resolution (elaboration) and continue with the analysis until the member states legally obliged themselves to form the AICHR. As it will be shown further on, from 2007 until 2009 the position on a regional HR institution of member states did not evolve significantly (as portrayed in the toothless characterization of the body); consequently the presentation of the final elaboration (the Terms of Reference of the AICHR) will be treated in the conclusion.

²⁷ For example: Peter A. Hall and Rosemary C. R. Taylor, "Political science and the three new institutionalisms", in *Political Studies*, 1996, vol. 44, issue 4, pp. 936-957 and Stephen Bell, "Do We Really Need a New "Constructivist Institutionalism" to Explain Institutional Change" in *Cambridge University Press*, 2011, pp.883 - 906

Chapter 1. The Methodology

Describing the methodology will start from the further meta-theoretical debate and continue, in the second subchapter with the procedure by which the framework will be linked to the observation of the AICHR formation.

1.1 The Meta-theoretical Approach

The ongoing evolution of new institutionalism is characterized by the lively debate and contest between its branches, which generated a cleavage between compatibilistic and non-compatibilistic approaches. The first group of scholars believes that the approach gathers its explanatory power from its different branches: historical institutionalism (HI), rational choice institutionalism (RCI) sociological institutionalism (SI) and constructivist institutionalism (CI). This group is heterogeneous in what concerns the number of the sub-divisions and which sub-divisions they understand as compatible, but they all have in common a synthetic attitude, meaning that they consider that the contradictions between the different traditions can bring an integrated, superior meta-theory²⁸.

This subchapter will focus on portraying an umbrella version of new institutionalism by drawing on the literature and connecting it with additional arguments. A reasonably full taxonomy and description of new institutionalist sub-divisions would necessitate a wide and deep

²⁸ See for example: Peter A. Hall and Rosemary C. R. Taylor, "Political science and the three new institutionalisms", in *Political Studies*, 1996, vol. 44, issue 4, pp. 936-957 and Ira Katznelson and Barry R. Weingast, "Intersections Between Historical and Rational Choice Institutionalism" in *Preferences and Institutions. Points of Intersection Between Historical and Rational Choice Institutionalism*, ed. Ira Katznelson and Barry R. Weingast, New York, Russel Sage, 2005

enterprise much more resource consuming than this paper would allow. Thus this subchapter will focus on describing the guiding principles of one compatible form of new institutionalism, as presented by Stephen Bell²⁹.

It is important to note before arriving to Bell's position (which will be adopted in this paper) that the main argument for the compatibility of new institutionalism's branches is the enrichment of the analysis with causal and scope conditional factors, as it is pointed out by Katznelson and Weingast, in their 2005 book:

The richer the story within which it is set and the more persuasive the attribution of preferences to actors, the more convincing is the selection of a given institutional game. Likewise, particular games played by particular agents with ascribed preferences can help drive and guide historical accounts of particular circumstances or longer-term dynamics³⁰

If one accepts that individual actions depend also on their interpretation of their environment and the roles they play in it, as a constructivist insight, one can easily understand the connection Bell sees between historical institutionalism and constructivist institutionalism. The following quotation explains Bell's position:

Ultimately, however, in a more dynamic historical sense, the approach here *does not give primacy* to agents, institutions, structures or ideas, but instead holds each to be mutually constitutive in a dialectic manner... Moreover, ideas do not operate in a vacuum but are instead embedded in a historical context and need institutional support to be effective. Hence, and this is what is missing from the recent constructivist institutionalist (CI) accounts, the impact of such institutional (or indeed wider) structural environments means that agents' choices are not made on a tabula rasa. Agents and environments interact and mutually shape one another over time. When Hey and Rosamond argue that what matters is the ideas that actors hold about the context in which they find themselves rather than the context itself, they *adopt and either/or approach and overlook this crucial dialectic interaction*.³¹ (Emphasis added)

²⁹ Bell, "Do We Really Need a New "Constructivist Institutionalism" to Explain Institutional Change"

³⁰ Ira Katznelson and Barry R. Weingast, "Intersections Between Historical and Rational Choice Institutionalism" in *Preferences and Institutions. Points of Intersection Between Historical and Rational Choice Institutionalism*, ed. Ira Katznelson and Barry R. Weingast, New York, Russel Sage, 2005, P. 5

³¹ Bell, "Do We Really Need a New "Constructivist Institutionalism" to Explain Institutional Change"

In 2011 Stephen Bell presents the theoretical contest between the recent constructivist institutionalism and neo institutionalism's three traditional branches³², but also provides another contribution which relates to the understanding of *institution change and statis*. In order to argue that only the strongest version of historical institutionalism is rightfully deemed incompatible with a robust account of institutional theorizing, and that the outcome of the clash between a less sticky version of HI and CI can have a beneficial result, Bell arrives at a core problem in new institutionalism. In, what he calls its strongest interpretation³³, HI describes institutions as deterministic and inertial. The problem here, noted by the Bell, is that this view of institutions does not allow for an explanation of change but rather of continuity – when institutions do change critically, the approach can only attribute causality to exogenous shocks but when a strong juncture is not happening it explains the institutional outcome as determined by path dependency. While this rigidity of institutions and of the approach itself is certainly easy to criticize, there is something perhaps even more fundamental behind this at stake:

Institutions are an independent variable and explain political outcomes in periods of stability; but when they break down [during “crisis”], they become the dependent variable whose shape is determined by the political conflicts that such breakdown unleashes³⁴

This issue signals further the real problem to be tackled by all branches of new institutionalism: a consistent account of the relationship between agency and institutions, which is considered here as dialectical and ongoing in times of institution formation, validation and change (critical or minor). Thus I argue that the stagnation of institutions, when change is not observable, is in essence the result of the same dialectical coexistence of institutions and agents.

³² Bell, “Do We Really Need a New “Constructivist Institutionalism” to Explain Institutional Change”

³³ Bell, “Do We Really Need a New “Constructivist Institutionalism” to Explain Institutional Change”, P. 890

³⁴ Kathleen Thelen and Sven Steinmo, “Historical Institutionalism in Comparative Perspective” in *Structuring Politics. Historical Institutionalism in Comparative Perspective*. ed. Steinmo, S.; Thelen, K.; Longstreth, F., Cambridge University Press, 1992, P. 15

The dichotomy between stasis and change is thus belittled by this approach. As Bell also stresses: “By setting up a dualism between change and stasis, such approaches [HI and CI] also set up a dualism between agency and structure. Crises allow for agency, while ‘normal’ institutional life does not, or at least, radically limits it”.³⁵

Archer, in her framework proposing envisioning social life as cycles formed from (i) structural and cultural constraints manifesting in (ii) socio-cultural interaction between agents which leads to (iii) elaboration³⁶. Making a decision (of constructing an institution, in the hereby analyzed case) is best defined by the term elaboration, which includes creation, change or stasis. Thus, elaboration is recognized within the theoretical framework of this paper as the crystallization of the resolution of processes in phase (i) and (ii). Thus it can be deduced that institutional change is on the same continuum as institutional stagnation and formation, and that what really should guide researchers is the grasping of the dialectical relationships between actors and institutions, in the process of cohabitation and (re) systematization within a society. Furthermore, elaborated institutions are constantly in the chain of causality and whether they are independent or dependent variables is a matter of the research question (the time borders of the analyzed cycle), as with any other variable, given that after their crystallization they will affect the next cycle of interaction.

The tailored institutionalism, proposed by Bell, which would already include this valuable insight, considers both agents and institutions malleable. His understanding adopts the principles listed below, together with their interpretation, when necessary:

³⁵ Bell, “Do We Really Need a New “Constructivist Institutionalism” to Explain Institutional Change”, P. 897

³⁶ Margaret S. Archer “Realist Social Theory: The Morphogenetic Approach”, *Cambridge University Press*, 1995

Institutions can influence agents not only through constraints but also through opportunities;

Focus on agency within institutional and wider structural settings, as being influenced (but not determined) by the environment. The lack of determinism is hereby understood as acknowledging a certain degree of freedom of actors, responsible also for the unpredictability of social elaboration. In a dynamic perspective, the relationship between structure, institution, agent and ideas is “mutually constitutive in a dialectic matter”³⁷

The influences are part of a “*two way* dialectical inter-action between agents and institutions”³⁸(Emphasis added):

- a. Institutional influences are constructed (perceived) by agents through ideational processes and choices (i.e. how they creatively perceive their environments and roles). These subjective and inter-subjective perceptions represent the constructivist insight that Bell accepts and describes as institutions being “navigated and negotiated”³⁹;
- b. Institutions that are more consolidated over time (i.e. with smaller elasticity to agents actions) will have real influence on agents (Bell’s example: going to jail after a crime);

However, ideas are also shaped by H, RC and S contextual factors;

Bell’s framing includes also that normality is characterized by the ontological primacy of institutions over individuals, given that they shape their thoughts and behavior; In rare situations agents can overthrow, deny and form new institutions. The current approach does not find the labeling of the two events as normal and not normal or the attribution of frequency to the two events useful for the theoretical understanding of the coexistence of institutions, ideas and actors. This is merely useful as an illustration of the acknowledged extreme cases of low and high elasticity of institutions to actors’ actions. However, the elasticity depends on the empirical efficacy of actors. In this case the formation of the AICHR depends on the acceptance of each member state (without denying the influences of existing institutions) and given that unanimity rule is the institutionalized decision making rule at the association level the regional elasticity is lower in this case than in cases where common decisions can be made using a qualified majority rule, for example.

The dualism between *change* and *statis* is perceived as implying dualism between agents and structures, and is thus belittled. The view that crises allow for agency and that normal times diminish the actors’ role is critiqued as being over-interpreted and over-used in analysis. Institutions always adapt, but we can rarely see large junctures. This thesis considers change and statis to be on the same axis. Both extremes are rarely to be found and they manifest for small periods, but consuming the attention of researchers. Actors constantly affect institutions, be this in the form of approval and confirmation,

³⁷ Bell, “Do We Really Need a New “Constructivist Institutionalism” to Explain Institutional Change”, P. 891

³⁸ Bell, “Do We Really Need a New “Constructivist Institutionalism” to Explain Institutional Change”, p. 891

³⁹ Bell, “Do We Really Need a New “Constructivist Institutionalism” to Explain Institutional Change”, P. 891

minor transformations (for example through re-interpretation of roles), or critical change. The present paper considers that they can do this directly or indirectly, for example through: encapsulating them in larger institutions; adding in their structure a new institution with endemic characteristics; creating or modifying relations between them. As already presented, the term “elaboration” is considered in this paper to suffice in describing the outcome under a new institutionalist analysis, not finding useful the approach of building different type of explanations for analyzing the selected cases of elaboration of creation, change and statis.

Incremental forms of institutional adaptation are: layering, conversion and bricolage⁴⁰. This is useful to note at this point, as in the conclusion of this paper, it could be possible to observe that by creating the AICHR, the ASEAN itself is adapting.

Paraphrasing Archer, Bell writes: “agents, institutions and structures...[are] mutually constitutive over time, producing emergent new properties via repeated cycles of interaction that are distinguishable from original elements – a process akin to political chemistry”⁴¹. This paper will try to assess such cycles in the process of ASEAN member states arriving to the adoption of the AICHR.

1.2 The Analytical Framework

The methodology to be applied in order to answer the research question has to be preceded by evaluating and assessing the nature of the AICHR, mainly by describing the characterizing dimensions on which the institution has been criticized and praised in the literature. To continue with the analysis, the second step will require delimitating the cycle/cycles of interaction between institutions and actors.

For each cycle the initial positions of member states, together with *the institutional contingencies* will be assessed, *the socio-cultural interaction* will be described and *the elaboration* will be explained. These three phases correspond to Archer’s view of a cycle’s components, which will be noted as phase (i), (ii) and (iii) for practical reasons. The

⁴⁰ Siobhan Harty, “Theorizing Institutional Change” in *New institutionalism: theory and analysis*, University of Toronto, 2005, pp. 51-80

⁴¹ Bell, “Do We Really Need a New “Constructivist Institutionalism” to Explain Institutional Change”, P. 899

circumstances of each member state will be analyzed and assessed together with their perceptions of them, as they will influence the construction of the preferences of each veto player and the actors' interaction and the elaboration resulting from there. Given the fraternal silence between ASEAN member states in what regards the HR inter-state deliberations⁴² phase (ii) will lack the data to be analyzed – there are just a few observable discussions of this kind; mostly the resolutions are made public.

The formation of the AICHR has taken place in the regional open system of the ASEAN. Given the unanimity rule within the association, each member state will be treated as a distinct actor. Analytically, their counterparts in the international arena will be treated as outside this system, but given the international relations between states, their influence will be included as structural contingents (manifesting through trade, direct foreign investments and aid). They also enter in cultural interaction with ASEAN member states, as do the South East Asian NGOs (being considered as discussion partners in the formation of a regional HR mechanism⁴³) and the United Nations (its closest representative being the UN HR Regional Office for South East Asia).

In phase one, each member state's matrix of institutions, which affect their positions on proposed developments in the HR area will be described. Archer proposes two separate dimensions to characterize the relationship between the institutions: *the closeness of the ties between them (the necessity – contingency axis)* and *the level of compatibility between them (the compatibility – incompatibility axis)*. To illustrate the first axis she exemplifies the relationship

⁴² Li-ann Thio et. al, "Implementing HR in ASEAN Countries", 1999, p. 2

⁴³ 10 Facts about ASEAN HR Cooperation, by Mr. Termsak Chalermpananupap, <http://www.aseansec.org/HLP-OtherDoc-1.pdf> (accessed on 2nd of March 2012)

between a government and a command economy as a necessary tie and the government and a (ideally) free market as a loser, contingent tie. On the second axis institutions can help others actions, being complementary or can hinder them being incompatible (for example socialist elite would hinder a free market)⁴⁴. These two dimensions, portrayed as taking dichotomous values (but implied that there is a continuum between them) form two two-by-two matrixes, one for structural factors (table 1) and one for cultural ones (table 2), with each box representing a distinct situational logic (SL). In other words, judged on the line of necessity and compatibility, the relations between the institutions that affect actor's circumstances yield different logics for the upcoming phase (ii) of social inter-action, thus affecting the phase (iii) – elaboration.

⁴⁴ Archer "Realist Social Theory: The Morphogenetic Approach", P. 216

Table 1. Structural Situational Logics

Cultural institutions	Necessary relation	Contingent relation
Incompatibility	<i>Correction</i>	<i>Alignment</i>
Compatibility	<i>Insulation</i>	<i>Opportunism</i>

Source: Archer, "Realist Social Theory: The Morphogenetic Approach"

Table 2. Cultural Situational Logics

Structural institutions	Necessary relation	Contingent relation
Incompatibility	<i>Compromise</i>	<i>Elimination</i>
Compatibility	<i>Protection</i>	<i>Opportunism</i>

Source: Archer, "Realist Social Theory: The Morphogenetic Approach"

The illustration of each situational logic will be presented with mostly hypothetical and simplified examples⁴⁵.

A. Structural SLs (Table 1.)

To understand the logic of *protection* one could imagine a country with a large surplus of natural resources (scarce at the international level), with a geographic positioning in significant international trade hub. The surplus and the positioning are in a close and compatible relation which induces the SL of protection of the national priority (and thus capital allocation) for international trade of the resources. The unions of the producers, transporters and exporters would all suffer from a re-allocation of resources to invest in sectors which would grant more

⁴⁵ For a full presentation and empirical illustration see Archer "Realist Social Theory: The Morphogenetic Approach", pp. 218-246

self-sufficiency at a national level, and the gains from it would not be easy to quantify and predict.

Compromise would be induced if in the same country a new government would raise the export custom tax to an unacceptable threshold which would reduce exporter's revenue below operational costs. In this case a compromise between the economic agents and the economic policy makers would be the prevailing SL.

Archer describes *elimination* as a situational logic exemplified by invasion or war and as antithetic to the situation when compromise entails the preservation of divergent preferences or interests. However what she describes as a logic of inflicting as much damage as possible to the opponent institution⁴⁶ is more endemic to war (and elimination seems to actually be a collateral damage from what she presents) than to two incompatible and contingent institution in a system. Alignment, presented as the induced logic in the case of cultural institutions same relation appears (at least from this theoretical point of view) to be best characterizing also the logic of structural relationships. If in our example the know-how of producing (or extracting) the natural resource abundant in the country could be sold only by also sending some engineers to the buying country for local analysis and expertise, it is hard to see how the elimination of the production sector in our country or the total fleet and elimination of experienced engineers would take place, or that a good offer from the buying country would be turned down. It is more likely that the work force would be divided between engineers that leave and remain in the country and the division of the know-how would also take place between the part to be sold and the part to be kept for a competitive advantage.

⁴⁶ Archer "Realist Social Theory: The Morphogenetic Approach", P. 226

Opportunism could arise in the hypothetical example if a neighbor country would arrive at a superior level of processing of the natural resources held by our exemplified case. The presence of this investment option would enter a contingent and compatible relationship with the protection of the capital allocation for exports. The opportunity to invest in acquiring technology (perhaps through raw material compensations) would be present. This would differentiate from the protection logic by the re-allocation of part of the capital (or natural resources in the case of compensation) from raw natural resources export to processing and export of processed goods.

B. Cultural SLs (Table 2.)

Correction can be exemplified by the relation of the idea of primacy of the individual with the idea of primacy of the group. In the case of the Asian values debate, Asian states see an antagonism between the two and thrive to re-formulate the Universal Declaration of Human Rights under a regional umbrella in the ASEAN (the planned ASEAN declaration on HR), mainly by placing the two ideas in balance by adding the affiliated duties to the rights of the individual⁴⁷.

Just where a relation stands on the continuum between incompatibility and compatibility depends in part on the subjective interpretation of actors. If John Stuart Mill's utilitarian theory⁴⁸ is added to the worldview of actors it is easy to see the two previously rival ideas as being compatible. This is one explanation of the *insulation* of the idea of primacy of the individual in the HR institutions on both sides of the Atlantic.

⁴⁷ This is to be seen in the 1993 declaration on ASEAN states after their 26th Annual Ministerial Meeting.

⁴⁸ Which considers that the total utility of the group is best increased by each individual pursuing personal utility add citation

Archer exemplifies the situational logic of *alignment* as the relationship between secular rationalism and religious beliefs. In this example is easy to see how actors holding the first belief do not feel constrained to relate to the second group of actors, but the vice-versa is a more delicate issue. Secular actors (A) will, Archer assumes, align to agnosticism, but with a condition: “this kind of contradiction is only activated if someone else insists on counterpoising B”⁴⁹. However, this insistent attitude would place the ideas in a more necessary relation. The point is that by looking at the box of alignment it is easy to see different values on the necessary – contingent continuum (total lack of possibility of cohabitation, contingent relation and over this point, total independence – i.e. the relationship between secularism and religious ideas if none interfere with the practices and beliefs of others) and also that the level reached on this axis depends highly on actors’ mobilization of ideas (which in turn can depend on structural factors). Moreover it appears that remaining in this box is actually really hard: the relationship seems on a slippery slope on both directions (necessary and independence).

Archer describes *opportunism* as a situational logic during which cultural synthesis can take place if a cultural entrepreneur notices and uses the possibility⁵⁰. Apparently this was the case in Vietnam where Confucianism, Buddhism, Taoism and ancestor worship were seen as compatible and contingent. However it is doubtful that sedimentation of the mixed religious ideology took place without framing this compatibility as necessary.

In parallel, the structural and cultural circumstances of each actor are formed by, on one hand the situational logic and on the other the specific outcomes these logics bring in each case. Determining the situational logic and outcomes for each case will be done by borrowing from the

⁴⁹ Archer “Realist Social Theory: The Morphogenetic Approach”, P. 227

⁵⁰ Archer “Realist Social Theory: The Morphogenetic Approach”

history in the literature⁵¹ and by assessing their international economic ties (which are accompanied by unwelcomed but real pressure from partners to adjust HR practices⁵²), using the United Nations Commodity Trade Statistics Database⁵³ and data from The World Bank⁵⁴. Furthermore, As Archer stresses the congruity between structural and cultural circumstances also needs to be assessed and handled by the analyst, which will ultimately bare causal weight in the formation of the cluster's preferences.

There are two modifications to this borrowed analytical framework of Archer's designed for phase one. The first one is an additional emphasis on a constructivist insight derived from the new-institutionalist approach accepted in this study, namely that the circumstances of each member state or group of member states will enter in a two-way dialectical relation, manifesting one way as real and the other way as perceived contingencies. This implies that the levels of necessity and compatibility between certain institutional contingencies are also influenced by the subjective or inter-subjective perceptions that actors hold regarding these contingencies and the relation between them.

The second one is a reduction from the implications of Archer's view. While she treats structural institutions relationship in parallel to cultural institutions relationship, thus resulting in four possible parallel situational logics, this paper does not commit to the idea that these two categories of institution first inter-act among themselves and later with each other. I argue that depending on each case, cultural and structural institutions can inter-act and produce influences on actors before the same type of institutions do.

⁵¹ Various sources are consulted including law, history and political science contributions

⁵² Li-ann Thio et. al, "Implementing HR in ASEAN Countries", 1999, P. 19

⁵³ UN Comtrade, <http://comtrade.un.org/> (accessed on the 19th of April 2012)

⁵⁴ The World Bank Data, <http://data.worldbank.org/indicator/all?display=default> (accessed on the 19th of April 2012)

These two modifications will increase the flexibility and fitness of the framework to the analyzed case, and should theoretically produce an accurate answer to the research question. They also imply that the two parallel four-set situational logics from each matrix carries a rigidity which is unnecessary to adopt. Thus Archer's theoretical assumptions and elaboration on each situational logic (compromise, protection, elimination and opportunism in the case of relations between structural institutions and correction, insulation, alignment and opportunism in the case of relations of cultural institutions) is belittled by what is considered as an a priori guideline: the two dimensions provided by Archer - closeness and compatibility.

In phase two the interaction of the veto players has to be analyzed. Archer correctly notes that while the resources and their connection to vested interest groups determine the bargaining positions, the negotiating strength is a multilateral concept which can be determined only by the relation between the actors⁵⁵. In the process of debate on the course of action to be taken within a group, actors carrying structural and cultural contingencies and their bargaining position (determined by both real and perceived positions) can re-group and re-align⁵⁶. During the analyzed cycle, in phase (ii), the groups of member states can re-align, adapting to their contingencies and opportunities provided by their circumstances (described in phase (i)), and can re-define their preferences regarding the regional development in the HR area.

The selection of the analyzed cycle is merely depending on the researcher's agenda to analyze a certain elaboration as a dependent variable, but the cyclic interaction is ongoing and can be separated in a multitude of time frames. The process within the cycles contains simultaneous sub-cycles. In our case it would be analytically fit to depict three distinct cycles,

⁵⁵ Archer "Realist Social Theory: The Morphogenetic Approach", P. 301

⁵⁶ Archer "Realist Social Theory: The Morphogenetic Approach", P. 302

each ending with the following elaborations that result from *phase three*: the first cycle with the declared ASEAN stance at the Vienna World Conference on HR in 1993, the second cycle with the 2007 inclusion of the goal to form a HR body in the ASEAN Charter, and the third cycle with the final studied elaboration of the formation of the AICHR, inaugurated in 2009. However, given the length restrictions on the detail of analysis, this paper will consider one main cycle which has no pre-set lower historical limits (given that structural or cultural influences can prove to manifest until 2009, even if they are “old” ones) and ends with the elaboration of the analyzed institution. The dynamic dialectical relationship between institutions and actors will provide an analytical history of the formation of the AICHR.

Archer’s description of the process contains that while the transition between phase (i) and phase (ii) is made through the analysis of vested interest and situational logics deriving from them, the transition from phase (ii) to phase (iii) is working through exchange transactions and power. In the same way that situational logics are “emergent properties”⁵⁷ and not determining forces, power is not the only factor at play during phase (ii) and this allows for different types of interaction: “the confluence of desires, power-induced compliance, and reciprocal exchange”⁵⁸. To these the possibility of manipulation will be added, given that during the analysis this possibility was signaled.

Following the described umbrella approach of new institutionalism and suitable methodology, this paper will attempt to explain the formation of the AICHR, its shape, and if it will be the case, its meaning as an evolution sign of the ASEAN itself. This however can be done

⁵⁷ Margaret Archer “Realist Social Theory: The Morphogenetic Approach”, P. 296

⁵⁸ Archer “Realist Social Theory: The Morphogenetic Approach”, P. 296

only after dedicating chapter 2 to the analysis of an earlier cycle of institutional genesis/elaboration.

Chapter 2. Explaining the 1993 Convergence of Desires

This chapter will focus on the evolution of ASEAN member states' stance on HR until the Vienna Conference. Their stance in this international forum and their declaration at the 26th AMM will be treated as elaborations in the cycle representing the analyzed period. However, given that this cycle will cover the earliest historical insights in the region, the contextualization will include the situations of all the states in the region, even those who were not ASEAN members yet by the time of the analyzed elaboration of 1993, in order to maintain a consistent chronologic analysis throughout the thesis. Not just the political contextualization, but also the other analyzed aspects under the other subchapters of this chapter (early institutional properties, post WW II context, the cultural relativism debate, the economic development debate, the actors' respect of HR analyzed and related to their trade dependency on the US and the simultaneous process of regional integration) will be referred to in chapter three, which will contain the analytical history from 1993 to 2009. Naturally they will first and foremost serve as the basis for the explanation of the 1993 elaboration, presented in subchapter 2.7.

2.1. Early Historical and Cultural Properties

In order to understand and explain the formation of the analyzed institution one has to spare no efforts in understanding first the particularities of the region. In "Understanding Contemporary Asia Pacific"⁵⁹ a constant parallel between the South East countries (the region referring to the ASEAN countries) and the northern neighbors characterizes the work of the

⁵⁹ Katherine Palmer Kaup, "Understanding Contemporary Asia Pacific", Boulder, Colo. : Lynne Rienner Publishers, 2007

contributors. This book, an interdisciplinary collection aimed to fundament scholars understanding of the region, served as the starting point and guideline for my contextualization.

From the early-historical review of Palmer two important conclusions can be drawn. The first one refers to the pre-colonial condition of states in the SE Asian region, while the second is a cultural early cultural influence evaluation.

Firstly it is important to note that kings, chiefants and emperors ruled the territories of SE Asia, divided by unstable and spurious borders before colonization. Central and South Vietnam was the only stable region as the Champa Kingdon ruled the afferent territories since 192 CE. However it was only in 938 BCE when the northern part was unified into the first proper independent Vietnamese state.

Secondly, regarding cultural influences on political philosophy it is important to stress that in all of the Asia-Pacific, with no lesser extent in the SE region, the family was and is a very important unit, the welfare of the individual being subordinated to the group. Patriarchal dominance of the family and generally the group reflecting in a centralized state ideology are in the character of Confucianism, playing an important role in Vietnam. Vietnam is also the only state from the SE Asian region influenced significantly by this ideology. Even the Buddhism found in this country was a different than in other countries in the region. The Buddhists there follow the mahayana branch, unlike the ones predominant in Thailand and Burma, who mostly stick with the oldest form of it – Theravada (this branch gave more merits to individuals for personal achievements and also allowed for their personal salvation to be separated from the god-king type of ruler). The other regions, constituting today's ASEAN states, differed in incorporating religious values in political philosophy. Instead of the Chinese model with

centralized bureaucrats and rigid Confucian ideology they found it easier to follow the spiritual influence Hinduism, Buddhism and Islam, which met better local needs⁶⁰.

It was important to stress these early properties, especially in light of Palmer's primordial assessment: the historical memory and attachment of people in this region of the world tends to be longer than what is commonly the case in western societies⁶¹.

2.2. Political Contextualization in the Post WW II Period

The description of the political development in SE Asia for the post WW II period will rely on Katherine Palmer's work⁶². There is one general observation she finds appropriate for all Southeast Asian nations. As response to the economically devastating effects of the Second WW and the colonial era, which left behind arbitrarily drawn borders and a weak sense of national cohesion, South East Asian countries filled the vacuums with authoritarian and centralized state institutions. The author uses three labels to characterize and categorize the essence of the political developments in each state: communism, military rule and "restricted democracy"⁶³.

The challenge of maintaining unity in a diverse environment was common to all states in the region, but in Indonesia (composed of 17000 islands) and Malaysia (where ethnic distinctions strongly influenced politics) this task proved particularly difficult. However, together with Singapore, Thailand and Philippines, these countries were the closest to democracy.

⁶⁰ Palmer, "Understanding Contemporary Asia Pacific", P. 54

⁶¹ Palmer, "Understanding Contemporary Asia Pacific", P. 3

⁶² Palmer, "Asia Pacific Politics", in "*Understanding Contemporary Asia Pacific*", pp. 77-112

⁶³ Palmer, "Asia Pacific Politics", in "*Understanding Contemporary Asia Pacific*", P. 78

Judging from Jones's analysis, Vietnam together with Cambodia, Laos and Myanmar, constitute the group of countries with the lowest standards of life, rule of law adherence, GDP and respect for HR in ASEAN. From this group of four, Laos and Cambodia, tighter with Vietnam, were also exposed to communist governance.

Brunei is perhaps the hardest to locate within these labels, as the sultanate is under the monarch's ruling power. Sir HASSANAL Bolkiah is both the chief of state and the head of the government. Since his accession in 1959 there were no elections held.

Except for the economically isolated and Myanmar (military junta), the increase in importance of international trade since the 1980s, dragged along pressure on the states' conformity with the international political norms. Even in the countries manifesting tendencies to model their politics on western-type democratic rule, the Asian cultural influences were not abolished. Two factors are considered to have prohibited liberal democracy in the case of communist and military-rule states, and to have shaped the politics in the case of quasi democracies: the supremacy of the group over the individual and the strong hierarchical character of social stratification. The first made the justification of state building aiming for the protection of the liberties of the individual hard to absorb, while the second, as a vertical orientation of links, made the horizontal associations required form party politics, NGOs and generally civil society hard to achieve.

The political contextualization presented in this subchapter helps to understand how HR were neglected during the general instability characterizing the region. However there are two open ended debates that need to be settled before moving on: the invoked Asian values' incompatibility with the universality of HR and the "develop now – clean up later" attitude.

2.3. Cultural Relativism Versus Universality of HR

There has been a debate in the ideational arena and Thion summarizes it well:

The ASEAN response was also, in part, presented as a bulwark against the undesirable social problems rife in permissive Western societies, which, marked by excessive individualism and contentiousness, are viewed as products of excessive freedom unchecked by a strong sense of civic responsibility. By contrast, ASEAN spokesmen characterize societies based on "Asian values" as disciplined, group-oriented rather than atomized, and valuing duty to the community over the assertion of individual rights. These societies are further said to feature consensus-seeking and a deferential respect for public officials and institutions in the interests of public harmony. Critics contend that such arguments smack of an apology for misuse of power by authoritarian governments. The "Asian values" school has mounted a counter-offensive, critiquing HR as a Western, ethnocentric imposition, hypocritically championed by Western states whose own HR records are remiss not only in terms of their former colonial practices but also their contemporary "home" states of affairs.⁶⁴

Sen has a critical reaction to the cultural counter force arguments against HR institutionalization in Asia⁶⁵. When analyzing the cultural relativist position she argues against its validity, invoking several arguments:

The diversity of Asia itself (SE Asia has both Chinese and Indian influences);

The western culture had itself numerous elements which advocated order and discipline over individual rights – the questions is actually whether Asian, as western culture, contained over the years elements championing individual rights. When analyzing the Indian influence through Buddhism, Sen notes that this religion has placed great value on freedom. Early thinker Ashoka was providing arguments for egalitarianism, universal tolerance and forgiveness, while Kautilya was considering freedom to be appropriate for upper classes. Furthermore, 16th century Moghul emperor Akbar was advocating religious tolerance while the Inquisition took place in Europe.

⁶⁴ Li-ann Thio et. all, "Implementing HR in ASEAN Countries", 1999, p. 3

⁶⁵ Sen, "What Lee Kuan Yew and Li Peng don't understand about Asia. HR and Asian Values"

Singapore famously declared in 1995 that it is “not a client state of America”⁶⁶, and this attitude was interpreted by Sen as responsible from the triggering of the cultural relativism debate in HR. Finally, her conclusion is concisely presented in the following quotation:

To conclude, the so-called Asian values that are invoked to justify authoritarianism are not especially Asian in any significant sense. Nor is it easy to see how they could be made, by the mere force of rhetoric, into an Asian cause against the West⁶⁷

2.4. Economic Development Versus HR

Besides this cultural influence, a related, rational one is observed by Thio. ASEAN are advantaged by a “develop now, grant HR later” strategy. This implies that before a certain threshold of economic development is reached by a country, granting HR would hinder the economic development of the group. Sen however, correctly assesses in her review that the connection between authoritarian systems and economic growth is highly dependent on other circumstances and that most studies find a negative relation⁶⁸. However, the reality which is criticized by Sen, remains that the most underdeveloped ASEAN countries (Cambodia, Laos, Vietnam and Myanmar) were led to treat HR as a lower order priority.

2.5. Political Terror and Trade Dependence

In parallel to the regional commitment to the formation of a HR institution, it is useful to observe the actual practices of member states. They reveal on one hand real and real time actions

⁶⁶ Sen, “What Lee Kuan Yew and Li Peng don’t understand about Asia. HR and Asian Values”, P. 39

⁶⁷ Sen, “What Lee Kuan Yew and Li Peng don’t understand about Asia. HR and Asian Values”, P. 40

⁶⁸ Sen, “What Lee Kuan Yew and Li Peng don’t understand about Asia. HR and Asian Values”

of countries behind the declared preferences to promote HR and on the other the gap to be filled between actions and declarations. The political terror scale measures the violations of HR on an axis from 1, representing exceptional violations, to 5 indicating the spread of violations to the whole population⁶⁹. This indicator is considered to be the only serious attempt to provide a consistent data base containing annual reports of states' human rights practices, useful for comparative agendas⁷⁰.

It is important to note that this variable focuses on the state-citizen axis and thus does not indicate for example how the Muslim society respects women's rights, but rather the data focuses on political violence. Both elements are included in the general concept of HR, as indicated in the Universal Declaration on HR. It is however an acknowledged limitation of this paper that a more rigorous and comprehensive delimitation of concepts related to HR and the indicators that attempt to measure performances of states, was not undertaken.

The practices of each member state can be observed in a dynamic perspective in the following figures (1-10), all containing data extracted from the PTS⁷¹. The actors' score on the PTS will then be related to their dependency on US external trade, which will be presented in figure 11⁷².

⁶⁹ Mark Gibney, Linda Cornett and Reed Wood, *Political Terror Scale 1976-2006*. Data Retrieved, from the Political Terror Scale Web site: <http://www.politicalterror scale.org/> (accessed on the 21st of May 2012)

⁷⁰ Human Security Report 2005, *Simon Fraser University*, P. 77
<http://www.hsr group.org/human-security-reports/2005/overview.aspx> (accessed on the 14th of May 2012)

⁷¹ Gibney et. all, *Political Terror Scale 1976-2006*, <http://www.politicalterror scale.org/> (accessed on the 21st of May 2012)

⁷² In the brackets next to each actor's name in figure 1-10, the correlation coefficient between the US trade dependency and the PTS is presented.

Figure 1. Brunei's PTS evolution

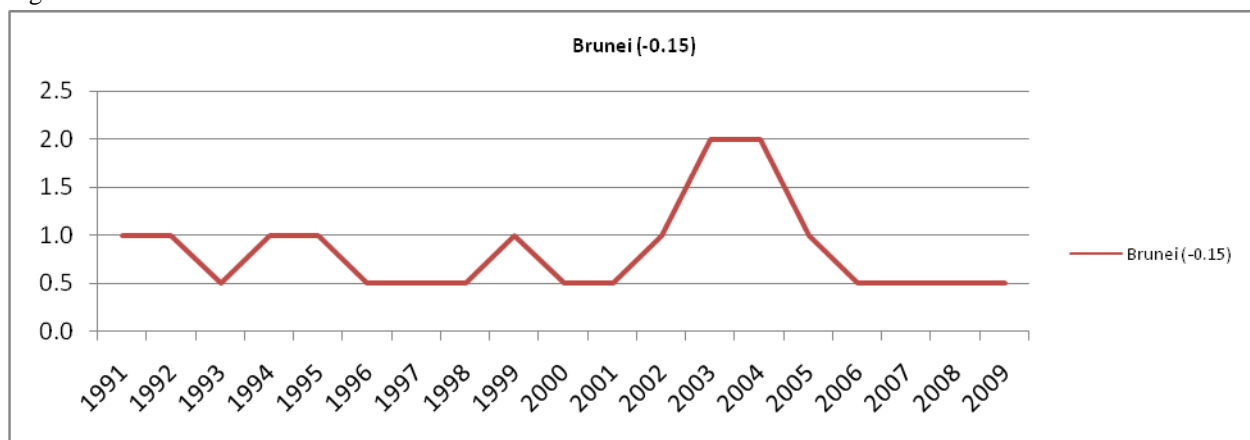


Figure 2. Singapore's PTS evolution

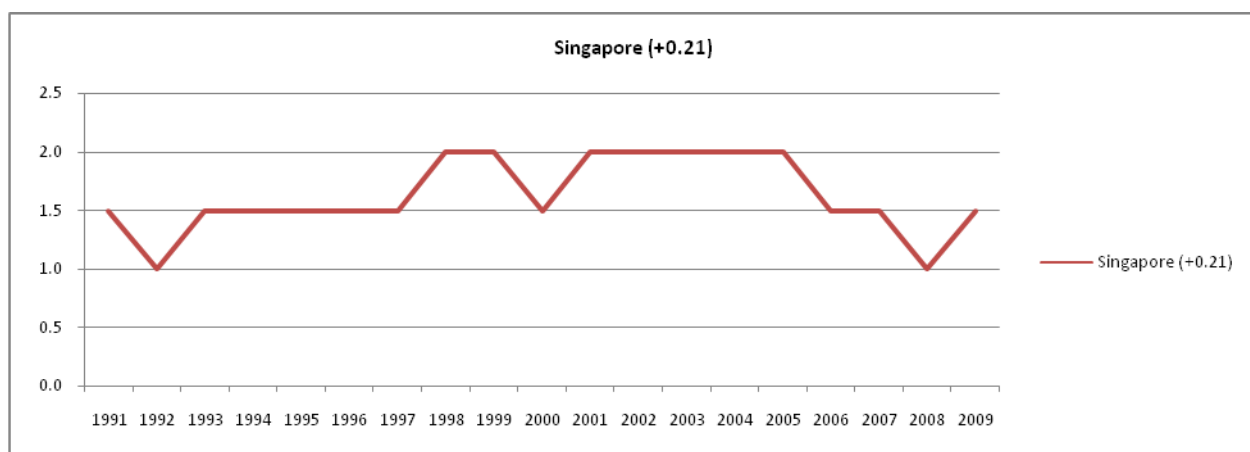


Figure 3. Thailand's PTS evolution

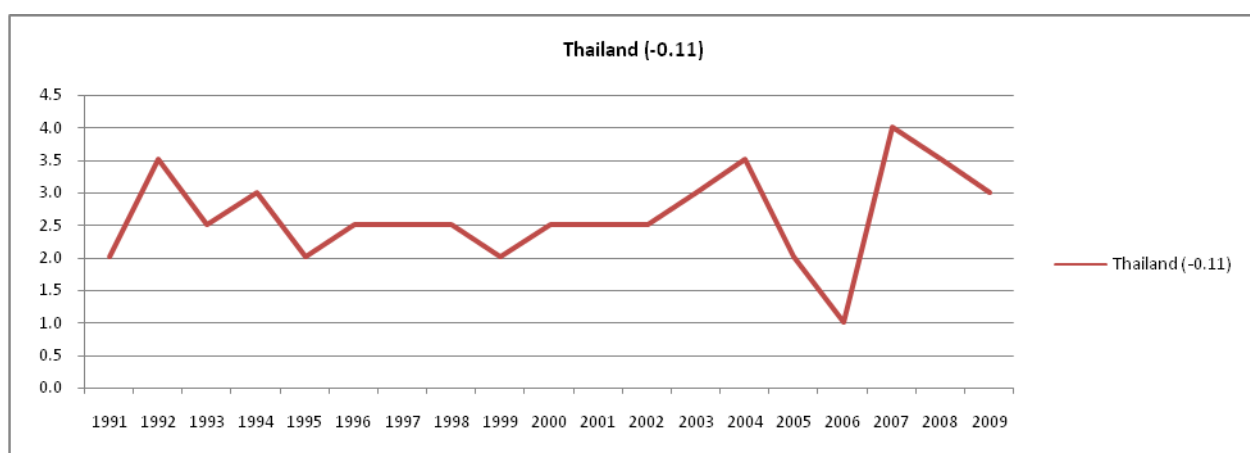


Figure 4. Laos's PTS evolution

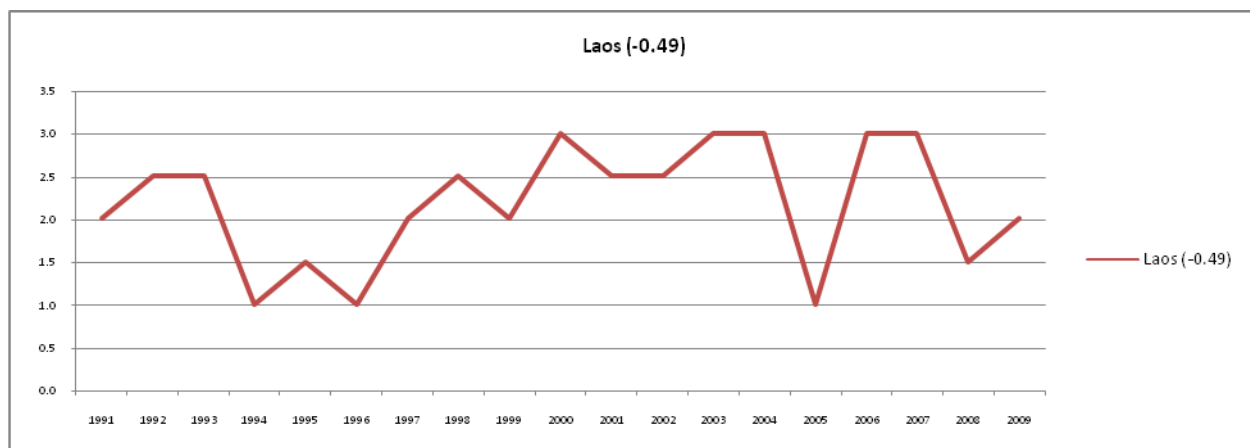


Figure 5. Malaysia's PTS evolution

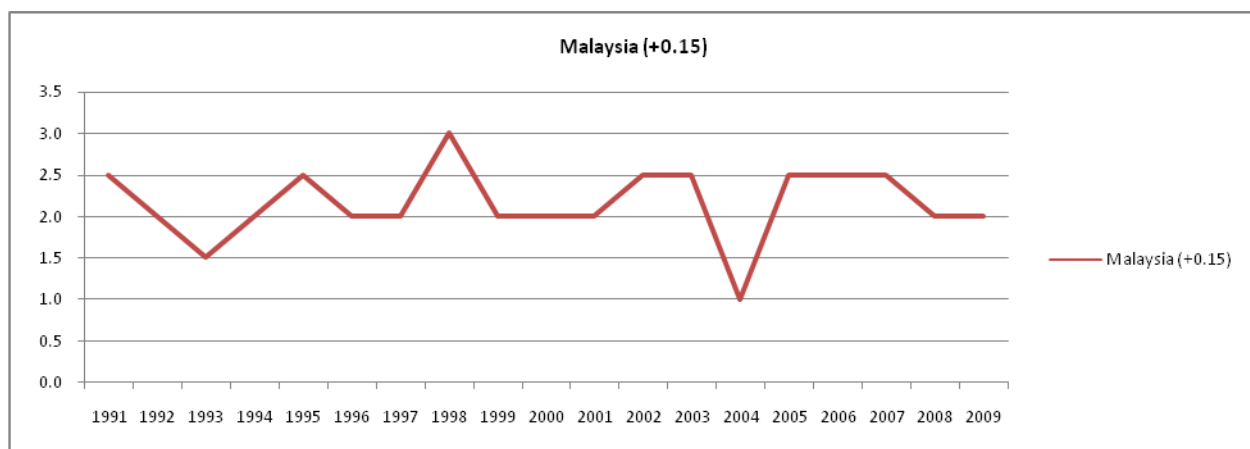


Figure 6. Vietnam's PTS evolution

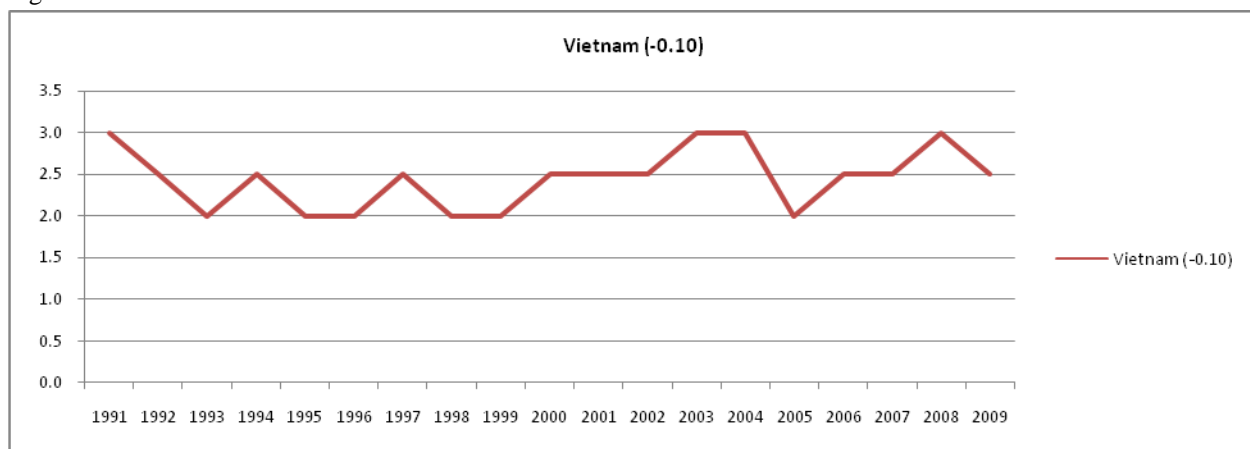


Figure 7. Cambodia's PTS evolution

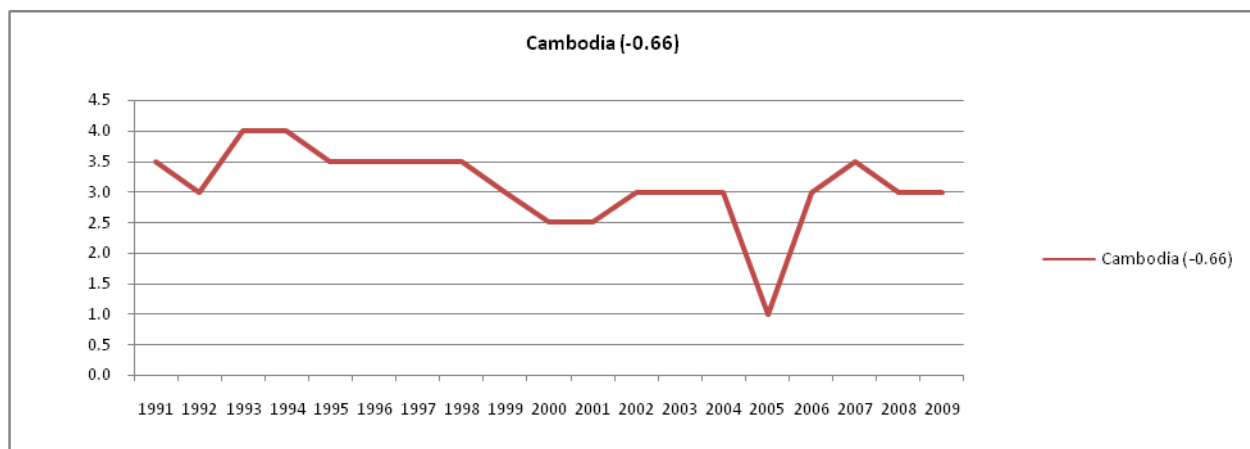


Figure 8. Indonesia's PTS evolution

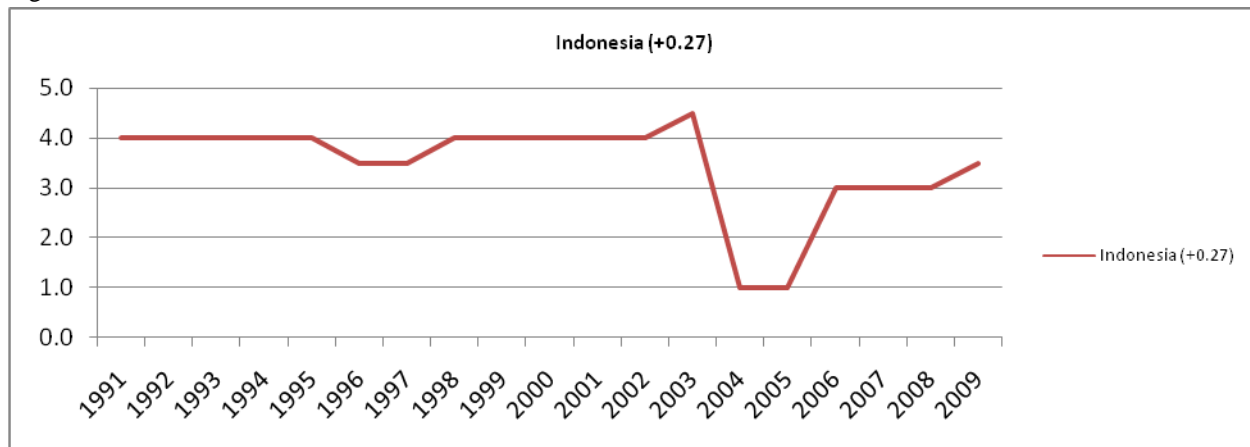


Figure 9. Philippines's PTS evolution

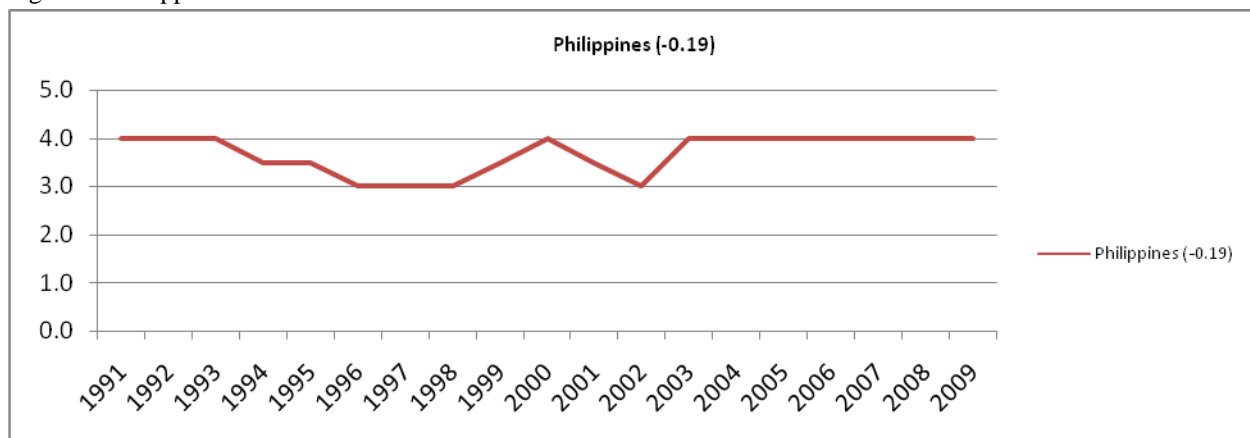
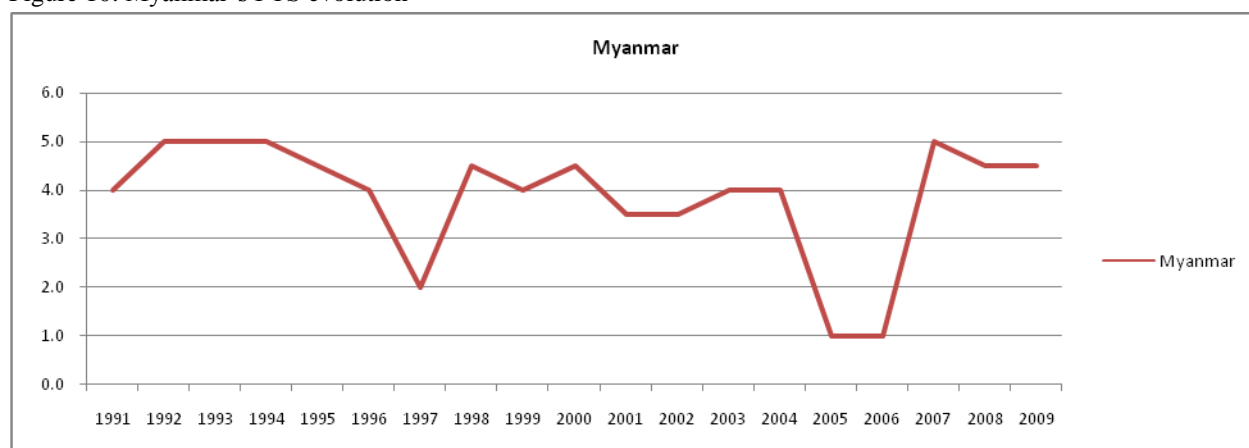


Figure 10. Myanmar's PTS evolution

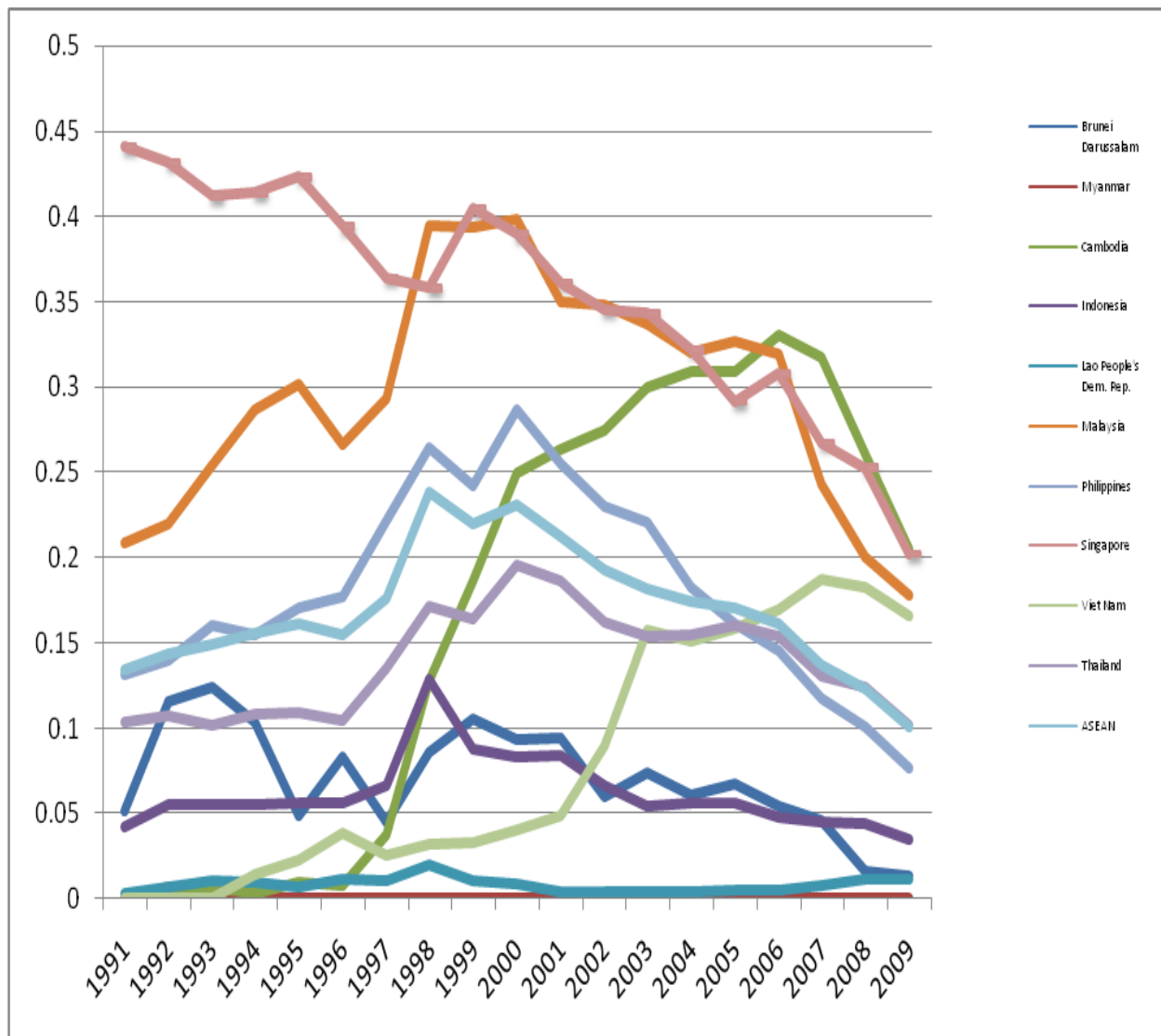


The year 1991 has been chosen as a starting point given that this should be both a year in which trade liberalization (started in ASEAN member states since the 1980s, except Myanmar) should have had the theoretic effect on HR practices and a year which is assumed to be used as a self-assessment point for ASEAN member states' preparation for the 1993 Vienna Conference.

In the works trying to explain the formation of the AICHR or more generally ASEAN states' attitudes towards a regional HR mechanism there has not been a quantitative analysis of the member states' dependence on the external trade with the US, the major pressing country. Using data from the UN (for the trade values) and the World Bank (for the GDP values)⁷³ the proportion between the total external trade (including imports and exports) and the GDP of the member state is a good indicator of how important the ties are for the economy of the pressured country.

⁷³ UN Comtrade <http://comtrade.un.org/> and The World Bank Data, <http://data.worldbank.org/indicator/all?display=default> (both accessed on the 19th of April 2012)

Figure 11. The evolution of ASEAN states' US trade dependency



The general trend is a growth of dependence on US trade ties until 1998, when the average ASEAN dependency reached its maximum of quasi 24%, followed by a decrease since the entrance in the third millennium. There are three exceptions from this trend. Regarding the period before the Asian crisis, Singapore is an outlier in the sense that its dependency was decreasing even before the depression. Regarding the post-crisis period Cambodia and Vietnam

both stand out as continuing to increase their dependency on trade with the US, until 2007, when they join the decreasing trend.

If grouped in three categories (low dependency 0%-5%, medium 6%-20% and high 21% or more) it can be observed that before the Vienna Conference only Myanmar, Cambodia, Vietnam, Laos (the more constant and less dependent state) and Indonesia (as a border-lien case) were in the weak dependence group.

The hypothesis that trade dependency with the US decreases the HR practices of ASEAN member states can be analyzed comparing the percentage between trade and GDP with the scores on the PTS of each member state between 1985 and 2009. This yields 25 statistical cases for each country, which confirm the expected negative relationship only for Brunei, Cambodia, Laos, Philippines, Thailand and Vietnam, as observable in the figures presenting the evolution of the PTS of each actor.

2.6. HR in the Context of Regional Integration

Understanding the formation of the AICHR would not be possible without briefing first the path of the ASEAN itself. Thio's presentation of this evolution is useful to grasp the circumstances relevant to the HR attitudes evolution. In 1967, the five non communist countries⁷⁴ were united by fear of not being able to maintain this character, and by the traumatizing experience of the long colonial occupation that manipulated their politics and economies for centuries.

⁷⁴ Indonesia, Thailand, the Philippines, Malaysia, and Singapore

Since its formation, in the Declaration of ASEAN Concord, the association stated as its primary goal to be derived from the member states primordial fight against poverty, hunger, disease and illiteracy⁷⁵. These goals are all part of what HR presuppose. Promoting social justice and economic development was seen as a way to offer an alternative to communist factions' ideologies, and the fact that this led to the eventual focus on HR in ASEAN is not that surprising. However, an early move in this direction was assessed as dangerous by the regional policy makers. Under the group priority tradition, an early awakening of people's consciousness in this area could have had disruptive influences on the still fragile member states' domestic authority⁷⁶. Moreover, as Jones also notes in 2008, the strong insistence of the ASEAN to establish democratic rule and respect for HR, would have, at that point in time, destabilizing results "because it would mark a democratizing fault-line between less and more developed ASEAN states", this going against the very aim of unity in the region⁷⁷.

Vietnam's invasion of Cambodia in 1979 and its announced plan in the following year, to "liberate" SE Asia, was the manifestation of the communist forces against which the ASEAN was to offer a protection. This external threat was without a doubt a major catalyst of the demand for unity within the group. The success of reversing the invasion of Cambodia, culminating with the 1991 settlement strengthened ASEAN reputation⁷⁸. Before the Vienna Conference the ASEAN widened only with the acceptance of Brunei in 1984.

⁷⁵ Declaration of ASEAN Concord, <http://www.aseansec.org/1216.htm> (accessed on the 19th of April 2012)

⁷⁶ Li-ann Thio et. al, "Implementing HR in ASEAN Countries", 1999, P. 6

⁷⁷ Jones, "Security and Democracy: The ASEAN Charter and the Dilemmas of Regionalism in South-East Asia", P. 756

⁷⁸ Webber, "Two Funerals and a Wedding? The Ups and Downs of Regionalism in East Asia and Asia Pacific after the Asian Crisis", P 133

In this period reaching until the 1993 Conference we can observe that civil society became active in the HR before the ASEAN has accepted to include it on their agenda. Duy Phan, in his review of the main stages in the evolution towards the HR body of the association, mentions the Regional Council of HR in Asia (RCHRA) as an NGO who addressed the union of the Southeast Asian states in 1983. However, their “Declaration on the basic duties of ASEAN Peoples and Governments” did not even manage to enter the ASEAN agenda. This attitude, or lack of it, shows that the proposal was premature, in the eyes of all the member states. Only the UN General Assembly showed serious preoccupation concerning the Southeast Asian situation, before the RCHRA’s proposal. It started issuing a series of resolutions pressing for a regional mechanism since 1977. By the end of 1990, eight resolutions were already targeting the same goal, without any significant reaction from the countries they were aimed at⁷⁹.

Thio’s detailed review of the HR issues in ASEAN confirms the neutral stance, which remained unchanged until 1993, when a juncture in the attitude of ASEAN states happened. Since its foundations, “ASEAN member states display an antipathy towards critical scrutiny of their HR records”⁸⁰, whether it came from the UN, the US Department of State or NGO’s like Amnesty International or HR Watch. However, during the 1993 world conference, ASEAN member states welcomed the idea of universal definition of HR but stressed the need for case-fit domestic application and implementation, defending thus sovereignty by arguing for the importance of domestic economic, social and cultural differences.

⁷⁹ Duy Phan, “The Evolution Towards an ASEAN HR Body”, P. 2

⁸⁰ Li-ann Thio et. al, “Implementing HR in ASEAN Countries”, 1999, p. 2

This ambivalence was allowed by The Vienna Declaration favoring participation before integrity of the de facto implementation of all the provisions⁸¹. A month after the 1993 Vienna HR Conference, at the 26th Annual Ministerial Meeting (AMM), the need for an inter-governmental level institution was expressed (point 1). Two more things were stated: the disapproval of tying HR practices to international commercial relations (point 2) and the importance of keeping a balance between the rights of the person and those of the community (point 3)⁸². These resolutions will be the first elaboration to be analyzed.

2.7. Explaining the Elaboration of the Declaration Upon the 26th Annual Ministerial Meeting

Prior to the declaration in 1993 of the common goal to form an ASEAN HR institution there were no documented debates found between the member states, but the array of institutions affecting each member state before this event has to be assessed in order to pinpoint the circumstances that will further influence them in the process of agreeing on the formation of the AICHR. The solution to this problem is to adapt the cyclic vision to the available data. Each country's array of institutions will be analyzed (phase (i)) and each country's preferences for the 1993 elaboration (phase (iii)) will be connected with the situational logics arising from the mentioned array. This implies that phase (ii) – the socio-cultural inter-action – is considered at the domestic level of each member state. Given the necessity of brevity, the previous contextualization of the political situation in each country and the different scope of this paper

⁸¹ Suzannah Linton, "ASEAN States, Their Reservations to HR Treaties and the Proposed ASEAN Commission on Women and Children" in *HR Quarterly*, Vol. 30, No. 2, 2008, pp. 436-493, P. 445

⁸² Joint Communiqué of the Twenty-Sixth ASEAN Ministerial Meeting in Singapore, 23-24 July 1993 http://www.aseanhrmech.org/downloads/1993_Joint_Communique.pdf (accessed on the 4th of April 2012)

institution with the respect for HR and it is surprising that Brunei scored the lowest on the PTS. This can be explained by the fact that the undemocratic government enjoys a high legitimacy. Given the oil resources the country has the possibility to fully subsidize education and medical treatment while perceiving no individual taxes. This allows for the legitimacy evident from the fact that the last revolution here was in 1962. Since then the legitimately perceived monarchy and the respect for HR cohabitate in this compromise induced from their necessary but incompatible relation. The trade ties with the US have been in a relatively strong necessary relation (the correlation coefficient is -0.15), the medium US trade dependency facilitating the respect for HR.

Brunei is a good case to show that even a state with Islamic Law is not necessarily tied to the violations of HR consisting in state aggression towards citizens (as measured by the PTS). This cultural factor is however tied and incompatible with the adherence to non-political universal HR obligations, as signaled by the fixed reservations Brunei had to Convention on the Elimination of Discrimination against Women (CEDAW) and Convention on the Rights of the Child (CRC), considered as being basic conditions of the universal HR advocates⁸³. Regarding the 1993 elaboration, the solution to form a regional HR institution can be seen as a middle way (a *compromise*) Brunei is willing to choose between the international universal HR and the ones that can be form in a regional declaration with two other Islamic Law states (Singapore and Malaysia).

Singapore

⁸³ Linton, "ASEAN States, Their Reservations to HR Treaties and the Proposed ASEAN Commission on Women and Children", P. 482

Singapore's developed economy is highly dependent on its skilled labor force and in this context it is hard to envision a high score on the PTS. The country has the highest total external trade/GDP percent in the world and this belittles its inclusion in the high dependency on US trade category devised in this paper. Moreover the tie between the PTS and this indicator is inexistent, the correlation coefficient being positive. In fact if the US trade of Singapore would be reported to its total external trade the dependency on US trade would be observed as significantly lower. This low dependency on US trade is in a necessary but compatible relationship with its culturally specific treatment of children⁸⁴, which allows for the encapsulation of the later. Lee Kuan Yew was the world's longest serving prime minister (1959-1990) and the co-founder of the People's Action Party which dominates the politics of the country. The party shares Yew's anti-colonial sentiments resulted from the self-perception as a vulnerable country in comparison to US imperialism. Since Yew step-down he has been filling the position of Minister Mentor, formalizing thus his passed on experience and convictions to the ruling elites. His understanding of political philosophy incorporates two central elements: he believes that the culture of a country can mark its destiny more than its economic or political status and that in the US "The expansion of the rights of the individual has come at the expense of orderly society"⁸⁵.

To conclude with Singapore's stance before the 1993 elaboration, the three cultural specificities of the supremacy of the group, Islamic Law and the specific treatment of children and women are all in a necessary and compatible relation, leading to the *protection* of the

⁸⁴ Linton, "ASEAN States, Their Reservations to HR Treaties and the Proposed ASEAN Commission on Women and Children", P. 482

⁸⁵ *A conversation with Lee Kuan Yew*, by Fareed Zakaria, in *Foreign Affairs*, <http://www.foreignaffairs.com/articles/49691/fareed-zakaria/a-conversation-with-lee-kuan-yew>, (accessed on the 23rd of May 2012)

balance between individual rights and group objectives. This balance which is also perceived as vital by the ruling elites has been in a necessary but compatible relation with the low US trade dependency, leading to the protection of the idea of social order before individual rights. Singapore's firm position is in line with the second and third points of the 1993 elaboration.

Thailand

Thailand's unstable polity⁸⁶ was characterized by Mydans in 2006 as caught in a "cycle of constitution, election, corruption and coup"⁸⁷. Its military regime was interrupted during the 1993 elaboration by the 1992 student riot causing the PTS to reach the score of 3.5 in that year. Thailand claims that its society has embedded cultural properties that influence the treatment of women⁸⁸. Its medium US trade dependency is negatively correlated with its PTS, with a rather low coefficient, but judging by the rocketing on the later indicator in periods of coup (1992 and 2006), the effect of the US pressure is actually arguably higher, than what is seen in this correlation. The compromise of country's adherence to CEDAW, but coupled with initial reservations can be understood as the outcome on the necessary and incompatible relation of the trade dependency and society's view on the treatment of women.

This reserved attitude is a good proxy for the country's agreement to enter a closer, regional institution of HR that can give more weight to the diversity of member states' traditions. In turn, this need of a close HR institution is in a contingent and compatible relation with Thailand's need of democratic stability. The more democratic government of 1993 seems to have

⁸⁶ Palmer, "Understanding Contemporary Asia Pacific"

⁸⁷ *Thailand Reinterprets the Rules of Democracy, Again*", by Seth Mydans, *New York Times*, September 20, http://www.nytimes.com/2006/09/21/world/asia/21thailand.html?_r=1&pagewanted=all (accessed on the 15th of May 2012).

⁸⁸ Linton, "ASEAN States, Their Reservations to HR Treaties and the Proposed ASEAN Commission on Women and Children", P. 482

taken advantage of the *opportunity* (as a situational logic resulting from the earlier mentioned relation) to consolidate a democratic path.

Malaysia

The need for unity in the circumstances of ethnic diversity and British colonial manipulation was solved balancing federal governance with a powerful monarch (until the 1994 changes in the constitution). Similarly to the other Islamic Law countries, for Malaysia the middle way of a regional HR institution was appealing. The high US trade dependency with a low influence on the PTS was in a necessary and incompatible relationship with the HR practices in this country. The 1993 declaration was a *compromise* in the case of Malaysia. [2007 alignment – Linton, Good will]

Indonesia

In the year of the analyzed elaboration the Indonesian National HR Institution was formed. This has to be viewed in the context of Suharto's New Order regime. This was marked by high corruption, nepotism, an authoritarian rule using the military to control democratic upheavals but good relations with the US which had major FDI in this country. The high diversity was handled with a centralized polity and coupled with the hierarchical social stratification, imported from India. The United Development Party (the second biggest party) was forced to pause its Islamic ideology during 1993, until 1998.[use later]

Indonesia is seen as the quasi hegemon in ASEAN and Suharto as the strongest promoter of the integration. Its preference for accelerated integration has its roots in the scope of the formation of the ASEAN and it is in a contingent and compatible relationship with the formation

of the NHRI in 1993 and with the inner (Council of Human Rights in Asia) and outer (UN and US) pressure to form a regional HR institution exercised on all ASEAN states. The situational logic of opportunism prevailed – i.e. Suharto took the opportunity to promote this agenda at the 26th AMM. Its low dependency on US trade but high dependency of US FDI did not influence the PTS score of Indonesia but entered in a necessary and compatible relation with its goal to strengthen the integration and take advantage of the *opportunity* to do so at the time of the analyzed elaboration, thus protecting its close relationships with the US.

Philippines

With the military autocratic regime removed, by 1993 Fidel V. Ramos was the second elected president since 1986. As the only predominantly Christian country in ASEAN and close diplomatic relations with the former occupier US, Philippines was less antagonist with western culture. By 1987 the NHRI was already established, as the first of its kind in the SE Asian region. All these factors are in a necessary and compatible relationship with the country's medium dependence on US trade and high elasticity of PTS to it (which supports the necessity of the tie), leading to the preference to *protect* and institute HR at a regional level also. Moreover Ramos's path of personal development (he was educated in Manila and the US and his father was the co-founder of the Liberal Party) and beliefs catalyzed the above described relationship.

The 26th AMM declaration meant different things for the six member states, but their preferences overlapped into the three mentioned points of their common stance. The pressure to regionally protect the HR of their citizens coupled with the need for unity (coming from the reasons for the creation of the association and the observed interdependence of Singapore and Malaysia, due to the water shortage in the former) are additional association level influences

which have to be related to the individual situational logics presented in this subchapter. Overall these two common contingencies together with the preference of each member state to go for the middle, regional institutionalization were in a compatible relationship with two situational logics: the opportunity to advance and grow the reputation of the association and the protection of regional independence and cultural values. This led to the elaboration of 1993, representing more a common desire than a straightforward goal, or even less an achievement.

Chapter 3. The Road Towards the AICHR

3.1. Assessing the AICHR Within the ASEAN

The current elaboration under analysis is the formation of the AICHR. This subchapter aims to assess the dependent variable which will then be explained. In order to grasp what the nature of the AICHR was in 2009, when it was formed, it is useful to relate this institution to its place within the association itself. This will be done by first assessing the role of the AICHR within the planned ASEAN HR mechanism and second by assessing the relation it hold with the ASEAN way of non interference. Thirdly the subchapter will look for dimensions found to be relevant from a comparative perspective with other regional HR institutions.

Paving the way

Both the AICHR and the planned mechanism are elaborated institutions reflecting what Karl Deutch sees as a condition of an integration unit to advance. The ASEAN has been considered a relatively unsuccessful case of integration so far. Judging by a general definition of integration, formulated by Karl Deutsch - as a sense of community, institutions and practices strong and widespread enough to assure a long time reliable expectance of peaceful change in the society – the ASEAN has indeed not accomplished this aim⁸⁹. The conditions that the same author proposes for integration units to be mature are:

- a. Compatibility of major values relevant to political decision-making;

⁸⁹ Finn Laursen, "Theoretical Perspectives on Comparative Regional Integration" in *Comparative Regional Integration* ed. Finn Laursen, Ashgate, 2003, pp. 3-30, P. 5

- b. The capacity of the participating political units or governments to respond to each other's needs, messages, and actions quickly, adequately, and without resort to violence;
- c. Mutual predictability of behavior (which however is closely related to second condition).⁹⁰

The second and third conditions necessitate in our case that the foreign ministers of ASEAN member states manage to attain their goal of solving disputes among member states without recurring to violence. The first one is problematic given the large diversity and discrepancies between the political organization types of the member states (as this will be presented in the following parts of the paper). One thing, which is at the core of the values which are relevant for decision making, is each member state's respect for the basic HR, including civil, political, economic, social and cultural rights. I consider that without uniformity in this area, it is highly unlikely that the member states of the association will be able to take major decisions together, that will change their current conditions, and this will in turn (as also stressed by Deutsch) will impede the integration efforts of ASEAN. The AICHR and the planned HR mechanism could both provide the necessary uniformity of common values laid down in the first condition. When talking about HR uniformity, one probably assumes the upgrade of the conditions in the states that are at the top of the abuse list. Theoretically a downwards trend of the more abuse free nations would also provide for the uniformity needed for the integration to succeed. The fact that these two possibilities exist reveals that not only a uniform position towards HR would constitute a condition for further common decision making but also that the uniformity has a pre-condition itself. As revealed by the Asian values – Western values debate, one key aspect is an incompatibility in major values regarding the primacy of the individual versus the primacy of the group. The ASEAN states are divided on their positions within these

⁹⁰ Laursen, "Theoretical Perspectives on Comparative Regional Integration", P. 5

two extremes, as signaled by their different attitudes towards the universal applicability of individual HR, revealed in the discussions during the Vienna world Conference on HR and different inter-actions in the international arena.

Given from one side the differences between the liberal international interpretation of HR (giving primacy to individual rights) and from the other side the large differences within ASEAN members states themselves the ASEAN mechanism aims to find a common regional voice. This is not to say that the ASEAN HR mechanism will have to choose from the dichotomy between individual or group primacy to fundament their conceptualization of the basic HR of the peoples of the ASEAN. Rather the case is that these are the two competing ideas that will clash with other diverse cultural and structural influences. The elaboration resulting from this clash will however constitute what is seen as a second step in completing the ASEAN HR mechanism – the elaboration and adoption of a regional HR declaration. The AICHR is merely the first step in this mechanism and has to be analyzed accordingly.

The Terms of Reference of the AICHR⁹¹ establish the institution as a consultative body of the ASEAN, which in a non-confrontational manner is to aim (on the long run) to promote and protect HR in the region. However, the functions of promotion and protection are acknowledged to be currently at the latitude of each member state. The immediate mandate of the commission includes developing strategies of promotion and protection at a regional level, raise awareness of HR among the ASEAN members' citizens, constitute a link between national, regional and international entities concerned with HR and develop a common regional approach on HR. The latter function aims to fundament the aim of formulating the ASEAN declaration on HR, as a

⁹¹ Terms of Reference of AICHR <http://www.asean.org/DOC-TOR-AHRB.pdf> (accessed on the 13th of April 2012)

next step in the HR mechanism envisioned by the member states and at the same time an important aspect in the first condition for an integration to be successful. Thus this section led this paper to consider an important dimension of the AICHR its capacity to homogenize HR policies of member states through a centripetal process of socialization.

Interference

According to international law scholar Tan Hsien-Li, the AICHR does not possess power of investigation or hearing of complaints, but merely to make thematic analyses on topics agreed by all ASEAN members. Moreover, given economic scarcity, the institution is intended to do complementary work to the already institutionalized reporting of HR practices to the UN, in order to avoid repetition⁹². I believe that these two characteristics can better explain the toothless metaphor. In the internal, regional arena, the AICHR cannot complement the responsibility of member states to respect individual liberties of citizens and in the outer arena, the institution cannot directly control the relations of the ASEAN or their member states with the UN. What it can do, as already illustrated, is to help the socialization of member states among them, with their inner regional civil society and with the international society.

Michelle Staggs Kelsall considers the potential of the AICHR to serve as a lobbying forum as one important consequence of this socialization opportunity. She places high hopes of improving HR practices in this way, and she poses this advantage as a reply to the disappointment of commentators of the AICHR who place HR improvements above the maintenance of sovereignty of ASEAN states. The AICHR is compatible with the direct non-interference principle and the way that this institution can influence the affairs of a member state

⁹² Tan Hsien-Li, "The ASEAN Inter-Governmental Commission on Human Rights. Institutionalizing Human Rights in Southeast Asia", Cambridge University Press, 2011, P. 76

is to reform its worldview during inter-change of ideas. Thus in what concerns sovereignty, this can be left intact during the activity of the AICHR. What a further question can constitute is whether the planned mechanism, which is intended to both promote and *protect* HR, can cohabitate with the ASEAN way. Thus, the second characteristic that requires explanation is that the AICHR's toothless *functioning* does not necessitate interference, if the understanding of this concept is perceived as the direct limitation of member states' sovereignty.

Comparative perspective

The AIHR's characteristics can be assessed also by comparing it to other regional HR institutions. Kelsall's work⁹³ is serving as support for this endeavor. At this early stage of HR institutionalization in ASEAN there is one general comparative peculiarity that arises from the comparison with the African Commission and Court of Human and Peoples' Rights, the European Court of HR, the Inter-American Court of HR and the League of Arab States: HR Charter. Unlike the later institution, the AICHR has the goal to protect HR and not just to promote them. This aim of protection is showing the ambitious future that the mechanism will try to build. Given that this paper is a case study, this difference suffices as a comparative perspective.

This subchapter allows for the research question to be more specific: why did the member states unanimously decide to form the AICHR as a gateway to socialization and definition of a common regional position and as a first step for a planned protective mechanism but without the capacity to investigate member states' affairs and to receive direct appeals from HR violations victims?

⁹³ Michelle Staggs Kelsall "The New ASEAN Intergovernmental Commission of HR: Toothless Tiger or Tentative First Step?" in *Asia Pacific Issues, Analysis from the East-West Center*, no. 90, 2009, pp. 1-8

3.2. The Analytical History of the AICHR Formation

3.2.1. ASEAN and HR Between the 1993 Declaration and the Financial crisis

In the following two years a Colloquium in HR (organized by the ASEAN Institute of Strategic and International Studies) as well as a series of meetings sponsored by the Friedrich Naumann Foundation and the Law Association for Asia and Pacific kept the focus on the idea and desire explained chapter 2. These meetings served as a socialization forum from which the Regional Working Group for ASEAN HR Mechanism emerged in 1995. Since then, the Working Group (WG) served as a constant dialogue partner for the ASEAN, and its activities accompanied the formation of the AICHR, acting as a vital tie between the political representatives of ASEAN and civil society. The workgroup is a forum comprised of national work groups which in turned are formed by parliamentary HR commissions, other representatives of the governments, the academia and NGOs⁹⁴. They were supported by the Friedrich Naumann Stiftung, the US State Department, the Norwegian HR Fund, the Canadian International Development Agency and the Asia Foundation, and became represented by national working groups in Cambodia, Indonesia, Malaysia, the Philippines, Thailand and Singapore.

In the year that the WG was founded Vietnam became joined the ASEAN. It is ironic how economic considerations gained momentum (given the arguable resolution of the ideological debate between liberal democracy and communism marking the end of the Cold War) and allowed for the prior enemy to join the association. Laos and Myanmar joined in 1997 and in 1999 the ASEAN 10 vision was reached with the entrance of Cambodia. Its admission

⁹⁴ Working Group for an ASEAN Human Rights Mechanism, <http://www.aseanhrmech.org/aboutus.html> (accessed at 20th of April 2012)

was postponed due to a coup, just 16 days before the upcoming admission planned also for 1997. The instability of the regime did not allow for an unanimous trust among ASEAN members, in the country's capacity to be a reliable member – which had to accept the so far treaties, agreements and declarations, and to be able to carry out the economic development plans – a tremendous task if a government's stability jeopardizes its ability to function. Compared to this, the earlier infamous admission of Myanmar, made possible by the stability of the government's control, was justified by the group as an alternative way to deal with the military junta and its violations of human rights.

Right after the 1997 Asian financial crisis and the two country widening of the association, the character of non interference of the ASEAN was challenged by Thai and Malaysian representatives and supported by the Philippines⁹⁵. Thailand saw a gentle shift as needed in order to cope with the increased inter-dependency of states, and it proposed it in the form of “flexible engagement”. This supposed member states to have the right to express their opinions in an open fashion and directly on domestic matters which have a trans-national resonance. Others were concerned that this would signal open gates for international pressures and that the within group fraternal collaboration would be damaged. Particularly Laos, Vietnam and Myanmar were especially trying to protect their authoritarian regimes by arguing against the new principle⁹⁶. Using the EU vocabulary, “vertical integration” appeared to be blocked by recent “horizontal integration”. The debate ended with the resolution of maintenance of the nonintervention policy, but discarding the “flexible engagement” was made in favor of a different, but less intrusive concept of group relations. “*Enhanced interaction*” was the name of

⁹⁵Li-ann Thio et. all, “Implementing HR in ASEAN Countries”, 1999, P. 26

⁹⁶ Webber, “Two Funerals and a Wedding? The Ups and Downs of Regionalism in East Asia and Asia Pacific after the Asian Crisis”, P. 136

the label, and to illustrate it, ASEAN went back to its attitude towards Myanmar – holding extensive discussion with authorities regarding the domestic governance situation. Apparently this does not differ from the initial constructive engagement, but the semantic re-definition and the discussion preceding them suggest discontent with the absolute noninterference policy. Thailand did not stop pushing for a juncture, and after the 1998 detention of the Deputy Prime Minister of Malaysia, Anwar Ibrahim, the Philippines and Indonesia showed in practice the same attitude. Expressing the concern that the charges against Ibrahim are being handled unfairly, President Estrada of the Philippines declared that “HR and due process of law transcend national boundaries”. Together with president Habibie of Indonesia, Estrada even showed hesitation at attending a conference in Malaysia, as a part of their taking a position in a domestic issue one of the member countries⁹⁷. Naturally, these are not to be seen as policy junctures, but solely as a possibly momentum building expression of shifting tendencies of the ASEAN way. The elaboration of the principle of enhanced interaction can be seen as the result of a correction (of the non-interference principle) situational logic derived from the necessary and incompatible relation between the propensity to strengthen vertical integration and the incompatibility of basic values of member states (a condition to continue an integration process⁹⁸).

Besides the effect of highlighting the high inter-dependency of the member states, after the 1997 financial crisis resentment against the IMF’s management of it, and implicitly the US’s influence in this (which was perceived as being a major one), characterized the ASEAN member

⁹⁷ Li-ann Thio et. al, “Implementing HR in ASEAN Countries”, 1999, P 27 and 28

⁹⁸ Laursen, “Theoretical Perspectives on Comparative Regional Integration”, P. 5

states reactions⁹⁹. This has served as an augmentative factor of the anti-colonial feelings of the countries in the region, manifesting also in the universality of HR debate.

The WG kept the tie with the ASEAN officials by meeting yearly and consistently suggesting as a first step advancement toward a HR mechanism, the formation of an ASEAN HR body¹⁰⁰. Thio also remarks that at an incipient stage, in 1998, when the WG was formally recognized as an ASEAN dialogue partner, at the Thirty-First Annual Ministerial Meeting in Manila, it already took a firm position and urged the ASEAN to plan different forms the mechanism might take, particularly to form a commission as a first step and to think about future steps. Supplementing the working group's webpage¹⁰¹ with Duy Phan's detailed evaluation of the crucial interaction between the WG and ASEAN officials and other scholars' contributions, a time table of the evolution towards the ASEAN inter-governmental HR institutions can be discerned.

⁹⁹ Webber, "Two Funerals and a Wedding? The Ups and Downs of Regionalism in East Asia and Asia Pacific after the Asian crisis", P. 127

¹⁰⁰ Duy Phan, "The Evolution Towards an ASEAN HR Body", P. 4

¹⁰¹ <http://www.aseanhrmech.org/aboutus.html> accessed at 20th of April 2012

3.2.2. From Economic Crisis to the Legal Commitment to Form the AICHR

2000 The Working Group submits a Draft Agreement for the Establishment of the ASEAN HR Commission to ASEAN senior officials. According to Duy Phan, the following functions were proposed to be undertaken by the commission: “preparing reports on HR, investigating its own initiative petitions, and communicating with states and individuals or groups about allegations of HR violations”¹⁰², in a complementary fashion. This meant that only after the local solutions are proved insufficient, the commission is to be addressed. However, the Draft Agreement, as the Working Group meetings themselves, were merely “noted with appreciation” by the Foreign Ministers in their joint communiqués. (Bangkok)

2001 Despite the disappointment after the lack of real response from ASEAN officials, the Working Group organizes its first Workshop on an ASEAN HR Mechanism attended by representatives of governments, NHRIs, and CSOs. (Jakarta)

Subsequent workshops are held in Manila (2002, 2007), Bangkok (2003, 2009), Jakarta (2004), Kuala Lumpur (2006), and Singapore (2008). The workshops are jointly organized by the Working Group, a host ASEAN state (through its foreign ministry) and its NHRI (if any).

2002 Noting that the ASEAN’s “prolonged silence on the issue implies that the governments are not yet ready to opt for a HR body”¹⁰³, as the first step towards a mechanism, the WG lowered the expectations in its next proposal. This advocated informative programs,

¹⁰² Duy Phan, “The Evolution Towards an ASEAN HR Body”, P. 4

¹⁰³ Duy Phan, “The Evolution Towards an ASEAN HR Body”, P. 6

education on this topic, and the formation of WGs in each ASEAN member state. Even in this form, the ASEAN only politely acknowledged the proposals importance.

2005 At the 11th ASEAN Summit, country leaders agreed to draft a Charter for the ASEAN that “will confer a legal personality to ASEAN and determine the functions, develop areas of competence of key ASEAN bodies and their relationship with one another in the overall ASEAN structure”¹⁰⁴. The Kuala Lumpur Declaration on the Establishment of the ASEAN Charter establishes an Eminent Persons Group (EPG) to consider the possibility of a HR mechanism, to examine and review the ASEAN structure, areas of cooperation, principles and goals which were stated up to that point in the agreements, treaties and declarations of the association, and as a conclusion, to give “bold and visionary” recommendations for the ASEAN Charter. (Kuala Lumpur)

Although, this can be considered as an important change in the attitude of the ASEAN, Malaysia proposed the establishment of a mechanism only in the member states who would be ready for the change.

2006 The EPG submits its report to the ASEAN Summit, including the recommendation for the inclusion of the idea of a HR mechanism in ASEAN. (Manila) (Throughout the year, the EPG consulted parliamentarians, ministers, the academe, and civil society to get ideas on the Charter.)

In parallel, the WG and other NGOs also were consulted by the High Level Task Force, in charge with the overall drafting of the Charter. The WG held several meeting with the national

¹⁰⁴ ASEAN, Kuala Lumpur Declaration on the Establishment of the ASEAN Charter, 12th of December 2005, <http://www.aseansec.org/18030.htm> (accessed on the 26th of April 2012)

officials of different states and also the ASEAN Foreign Ministers. NHRI of Malaysia, Indonesia, the Philippines and Thailand also urged the HLTF to include HR provisions in the Charter¹⁰⁵.

In December, at a roundtable hosting national government officials, national HR institutions, representatives of civil society, representatives of the ASEAN Secretary and representatives of UNESCO as well as the supporters of the WG, Malaysia's proposal was assessed by the foreign minister of Indonesia . H.E. Dr. N. Hassan Wirajuda agreed with the proposal for establishing a mechanism from which member states can opt out. He also expressed that the goal of an ASEAN community cannot be achieved in his view without promotion and protection of basic HR. More importantly for the union itself, he stated that the "the meaning of the noninterference principle has evolved in ASEAN particularly since gross HR violations are not anymore merely domestic issues"¹⁰⁶. The Philippines and Thailand were the other two countries that felt ready for a mechanism, but after the group of four discussed the matter, there were no actions taken in this direction. However *these were the four member states who advocated strongly on the inclusion in the Charter of the legal obligation of ASEAN to form a HR body, and the success must be also, in big part, attributed to them*¹⁰⁷. This alignment of the four countries favoring an immediate HR institution with the possibility for other member states to opt out is a critical phase in the process of socio-cultural interaction of ASEAN states.

¹⁰⁵ Duy Phan, "The Evolution Towards an ASEAN HR Body", P. 10

¹⁰⁶ Second Roundtable Discussion on Human Rights in ASEAN: Challenges and Opportunities for Human Rights in a Caring and Sharing Community (2006, Indonesia), http://www.aseanhrmech.org/conferences/summary_of_proceedings_final.pdf (accessed on the 26th of April 2012)

¹⁰⁷ Duy Phan, "The Evolution Towards an ASEAN HR Body", P. 12

2007 ASEAN adopts the Cebu Declaration on the Blueprint of the ASEAN Charter; ASEAN Leaders endorse the EPG Report to the High Level Task Force (HLTF) created to draft the Charter. (Cebu)

ASEAN NHRIs (Indonesia, Malaysia, Philippines and Thailand) formalize support for a regional mechanism by signing a Declaration of Cooperation which includes a provision on recommending steps that could be taken in establishing an ASEAN HR mechanism to their respective governments. (Bali)

The signing of the ASEAN Charter at the 40th anniversary of the association, conferred for the first time legal personality to the union, distinctly from that of the member states. Besides marking the so far achievements and stating the existing principles and objectives, it stated the following new goals: “to strengthen democracy, enhance good governance and the rule of law, and to promote and protect HR and fundamental freedoms, with regard to rights and responsibilities of member states of ASEAN”¹⁰⁸. If not contradictory, this can at least be seen as ambivalent, related to the non interference principle: “the promotion of HR and democracy ultimately trumps the sovereign authority of the state”¹⁰⁹. Jones’s assessment on the effect of promotion is considered by this paper as slightly exaggerated in its deterministic nuance, but the protection function would definitely need intervention. He also considers the incompatibility of non intervention and the substance of the Charter as more of a dilemma than a solution for ASEAN. The proposal of the EPG to strengthen the ASEAN’s implementation capacity of its decision, echoed in the Charter in the form of “enhanced dispute settlement mechanism” and “a

¹⁰⁸ ASEAN Charter, article 1:7, <http://www.aseansec.org/publications/ASEAN-Charter.pdf> (accessed on the 27th of April 2012)

¹⁰⁹ Jones, “Security and Democracy: The ASEAN Charter and the Dilemmas of Regionalism in South-East Asia”, P. 738

formula for flexible participation”¹¹⁰. The former acknowledges the mechanism, but the Summit shall resolve unsettled disputes by it, while the later allows for opt-outs from the economic commitments.

Article 14 of the ASEAN Charter mandates the establishment of an ASEAN HR body “in conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of HR and fundamental freedoms”. (Singapore)

*This is to be seen also as a result of Foreign Ministers of Malaysia, Thailand, Singapore, Indonesia, Brunei and the Philippines successful persuasion of Myanmar, Laos, Cambodia and Vietnam to accept the article*¹¹¹. As it will be explained later in this subchapter, this grouping can be seen as the reaction to the inter-action between the member states following the 2005 Malaysian proposal.

Following the 2006 alignment which posed the member states in two groups, each with homogenous preferences in the HR area: the four countries ready for an immediate institution (including the opt out option of the rest of member states) and the six actors opposing the inclusion of the legal bind in the Charter. In 2007, the re-alignment in six, respectively four member teams necessitates explanation. Given the one year distance between the two groupings, it is highly unlikely that the second one was caused by the change in institutional constraints. This second realignment in 2007 and the elaboration of article 14 of the Charter in the same year should be understood as the results of the second phase of the cyclic process: socio-cultural interaction. Before assessing the evolutions in it, the update of the structural and cultural array of

¹¹⁰ Jones, “Security and Democracy: The ASEAN Charter and the Dilemmas of Regionalism in South-East Asia”

¹¹¹ *Myanmar withdraws objections to SE Asia rights body*, by Manny Mogato, <http://www.reuters.com/article/worldNews/idUSSP28331120070730> (accessed on the 23rd of May 2012)

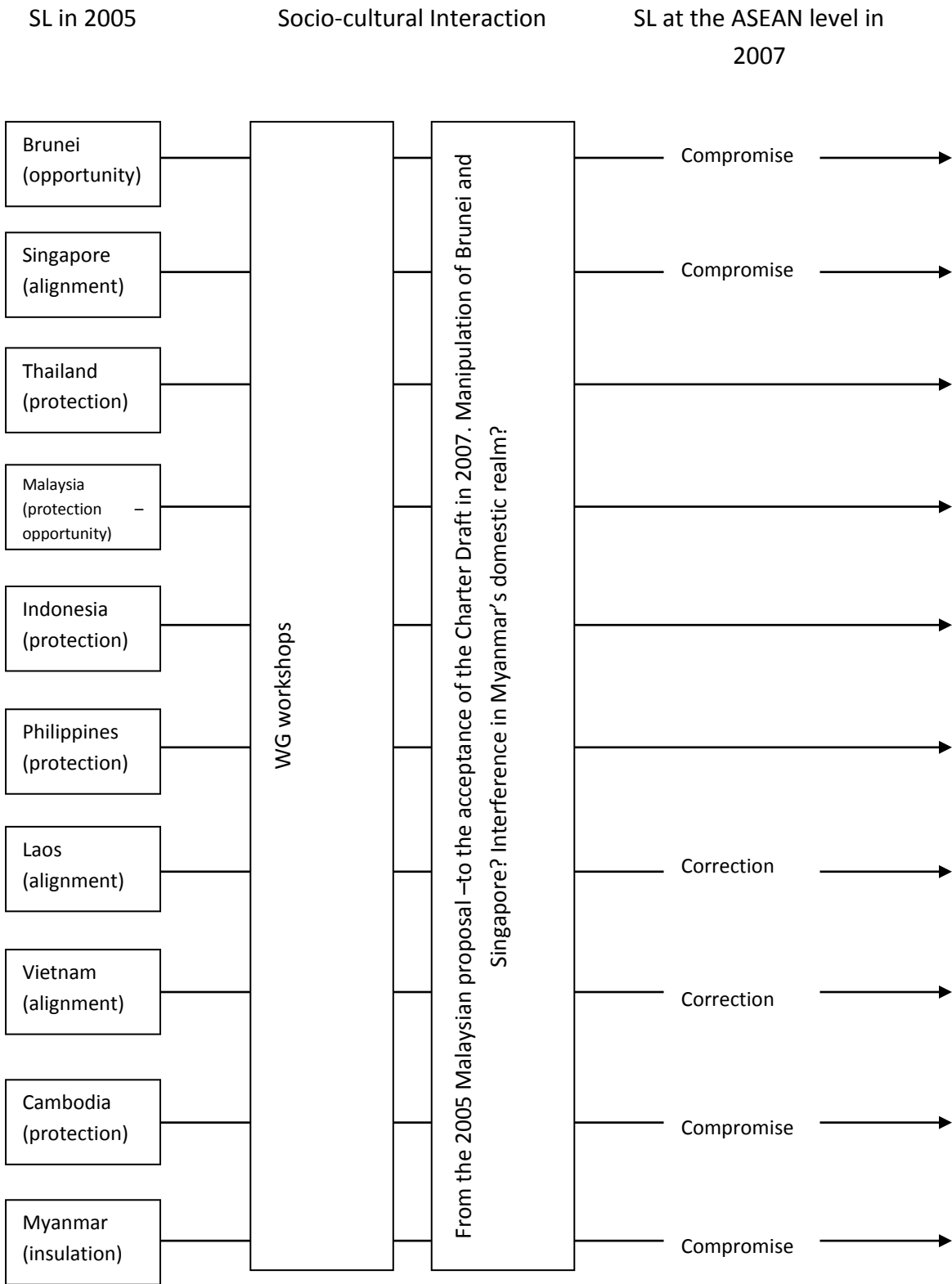
institutions affecting each state has to be done. The update will be done in 2006, the year which is hereby considered phase (i) of a new cycle. Given the need for parsimoniousness, the circumstances (phase (i)) of the countries that did not change their position (Thailand, Indonesia, Malaysia and Philippines) will not be updated. The analysis yields, at the end of this chapter, the process illustrated in figure 13.

Brunei

One major change in Brunei's circumstances is the revival of the BIMP-EAGA economic zone, in collaboration with Philippines, Malaysia and Indonesia. The sub-region is extremely rich in natural resources and was a strategic point in international trade since the silk route. While this increased the need for regional unity, Brunei entered the low dependency on US trade category by the time of the first alignment of 2006, a change which decreased the outside pressure to conform to HR standards. However, this actor also reduced its PTS to 0.5.

The previously reached compromise to join the 26th AMM declaration clashed in a relatively necessary and incompatible relation with this decrease of pressure and the lack of incorporation of HR propensities in the worldview of elites, signaled by the fact that during the socialization in the WG meetings Brunei failed to establish a NHRI. This would have led Brunei to the situational logic of the protection of its 1993 desire if it was not for the low in PTS (which made protection of HR a closer and less costly target for Brunei) and the increased economic interdependency brought by the revival of the BIMP-EAGA economic zone. While the former induced a protection of the 1993 desire logic, the later transformed the circumstances to allow

Figure 13 Cycle II



the *opportunity* to stall the proceedings in HR regional institutionalization, perhaps looking for side-payment type of deals or merely conserving the comfortable status quo

Singapore

Despite the resentment it held towards the US after the 1997 financial crisis, Singapore and the US signed a free trade agreement in 2003 and formalized its bilateral defense and security relations two years after that. In 2006 it had a merely 1.5 score on the PTS. Similarly to Brunei, the socialization process did not result in a NHRI formation and the logic to stall with the proceedings in the regional HR area was used, slowing the momentum. However, in Singapore's case the earlier protective situational logic evolved in a *alignment* one (given that the US relations became incompatible but contingent to its earlier position) in the group of stalling countries. This observation is in line with the country being an opinion leader of the group of countries in resistance to HR institutionalization.

Laos

In the single party socialist state of Laos the communist ideology of elites found a cultural and major trade partner in Vietnam. Laos is the country with the most benefits to reap from ASEAN trade, but this is in a relatively tied and incompatible relation with its socialist ideology and its observed position shows that the country was not prepared for a compromise just yet, especially not before Vietnam. This stall was in line with the idea held by underdeveloped states in the region that HR can wait until economic development passes a certain threshold. The country faced the logic of *alignment* to the opposing to HR institutionalization group.

Vietnam

Since the entrance in the third millennium Vietnam's US trade dependency grew to a medium level one. The country accepts the some pressure to the HR domain (the correlation coefficient is a negative 0.1). However, during the low dependency period, the nationalist feelings and the cultural properties of Confucianism, perceived in antagonism with western ideological imperialism, together with the low correlation coefficient stood in a necessary and compatible relation. The situational logic arising was until the start of the third millennium a protective and encapsulating one. Before the hereby analyzed elaboration however, Vietnam's entrance in the medium level dependency category became incompatible with the above properties, but remained perceived contingent (as the low coefficient shows) until peer pressure from ASEAN states convinced the country to agree with the elaboration in the 2007 charter. From 2006 to 2007 the situational logic moved from *alignment* to *compromise*, together with the move on the necessary-contingent axis.

Cambodia

Cambodia has been operating de jure under a democratic government since 1993. ASEAN's help in countering the Vietnamese invasion in 1991 gave it a reason to favor regional integration. These two properties were strongly tied and compatible with the actor evolving into a highly dependent on US trade nation and with the strong influence this had on the PTS (-0.66). The situational logic was in 2006 to favor regional HR institutionalization (to *protect* the regional goal stated in 1993) but given the economic underdevelopment and the lack of infrastructure to support the building of a NHRI, Cambodia was not ready for the immediate institutionalization proposed by Malaysia in 2006.

Myanmar

Myanmar has the strongest reservations to HR advancements. The *insulation* of religious culture and state ideology are results of their necessary and compatible tie with the lack of western trade dependency.

As Archer acknowledges power is not the only factor at play during phase (ii) and this allows for different types of interaction: “the confluence of desires, power-induced compliance, and reciprocal exchange”¹¹², to which manipulation was added as another possibility. The ten actors entered the inter-action phase with the above situational logics. Malaysia’s proposal to create the planned institution with an opt out possibility is a deviance from the original desire, which was explained as the 1993 elaboration. Before the proposal the association was split in Malaysia, Philippines, Thailand and Indonesia preferring the option to proceed with the desired goal in 1993 (option A) and Brunei, Singapore, Vietnam, Cambodia, Laos and Myanmar preferring to stall the proceedings (option B). Malaysia’s proposal introduced the proceeding of the four countries in a opt out institutionalization (option C). Arguably during this phase of actor interaction Brunei and Singapore weighted option A against option C and came to favor the former. The majority preference of B, expressed earlier by six countries was split in two actors preferring A to C (and B to C) and Cambodia, Laos, Vietnam and Myanmar preferring B before A and A before C. This interaction suggests that the splitting the majority manipulation situation (as presented by Maoz¹¹³) possibly characterized the hereby analyzed phase (ii). However a detailed analysis is needed to support this young argument.

¹¹² Archer “Realist Social Theory: The Morphogenetic Approach”, P. 296

¹¹³ Zeev Maoz, “Framing the National Interest: The Manipulation of Foreign Policy Decisions in Group Settings”, in *World Politics* Vol. 43, October 1993, pp. 77-110.

While the change of preference in the situation of Singapore and Brunei, in the context of peer pressure (deliberately defined so vaguely) can be understood from either the above paragraph, or the compromise logic derived from the addition of the regional integration momentum (from which Singapore had additional reasons not to lag, given its water dependency on Malaysian resources), the shift of preferences of the four hesitant member states needs to be separately explained. Cambodia came to a compromise between its properties favoring option A and the gap between the desire and the possibility to institutionalize the respect of HR. Whether this required side payments from other members has to be further investigated, but so far there is no such evidence in the literature. For Vietnam the situational logic of correction of its stance on regional HR integration prevailed in 2007, when the country also joined the World Trade Organization. This shows the supremacy of economic considerations over the cultural and political structural properties. Laos had a similar motivation, its dependency on inter-ASEAN and especially Vietnam trade dragged this actor along the general trend. Myanmar's acceptance can only be understood as stemming from peer pressure, a form of integration drive delimited earlier by ASEAN states from the classic interference principle. The ASEAN can consider this as a second success after the 1991 aid of Cambodia's invasion. It appears that the desire to remain in the ASEAN and not to be left behind in the integration process has entered a necessary and incompatible relation with Myanmar's stance on HR. This is an interesting case of what the ASEAN calls nowadays "enhanced interaction". Further research should clearly situate this in the pooling of sovereignty during regional integration area of study.

CONCLUSION

In 2008, the year of the ratification of the Charter, the ten ASEAN Foreign Ministers created a High Level Panel (HLP) to draft the Terms of Reference (ToR) for the ASEAN HR body. In the next year the ToR was accepted and the *AICHR was formed as a as a first step representing the forum of socialization and definition of a common regional position but without the capacity to investigate member states' affairs and to receive direct appeals from HR violations victims*. This characterization of the institution yields a broader understanding of its nature, which is relevant both for the ASEAN integration and the HR institutionalization process in Southeast Asia. However the assessment of the AICHR shows that the toothless metaphor is correct in observing that related to the 2007 elaboration, the creation of the ASEAN body has not represented de facto deviance from the status quo institutionalized by the ASEAN Charter, two years before.

This is not to say that during its operation the AICHR will not be able to assure serious improvements. The case is just that the cycle of inter-action between 2007 and 2009 carried the situational logics and resolution described in the earlier cycles. In other words, if we take the example of Myanmar, between its legal commitment to form a regional HR body and the inauguration of it, there were *no substantive deviances in its preference*, given that the Terms of Reference of the ACIHR establish the body as a consultative one. This distant, general observation, stopping at the substantial level could be improved by further research.

So far each member state was treated as a distinct actor in this analysis (given the veto power they possess). The individual explanations are presented in the two chapters of analysis

(chapter 2 and chapter 3) and illustrated in figures 12 and 13. At this point however, the 2007 legalization of the ASEAN's identity together with the overall picture provided by the detailed analytical history of this thesis allows for a complementary generalized version of the explanation of the formation of the AICHR. The persistence of the primacy of social order is stressed and insulated in the regional conception on HR given the relatively necessary and definitely compatible relationship of the Asian cultural tendency to favor the group before the individual with the endangered national unity (as a general problem in the region). The level of the necessity of this tie seems to depend on one hand on the force of anti-imperialistic ideas (especially in the case of Singapore and Myanmar). On the other, the counter-force of US trade dependency (high and pressuring in Cambodia and Philippines) is attempting to untie this necessary relationship and drift the situational logic from *protection* of Asian values into the logic of *opportunity* for ASEAN states to: on one hand continue the vertical regional integration and on the other to integrate in the western ideological arena of HR, in order to continue to reap the benefits of the globalized economy. This opportunity situational logic has not been perceived yet at a regional level, perhaps with the exception of the Philippines. Gloria Macapagal Arroyo's 2007 declarations are in line with the above logic:

An ASEAN community is going to be anchored first and foremost on economic integration, with a focus on social justice and raising the standard of living in the region.

It is about creating a dynamic force in Asia to maximize the benefit of globalization. Too much *has been* made of our diversity as a barrier. Our diversity *is* strength and not a barrier to an East Asian union. (Emphasis added to show the transition from past to present tense)¹¹⁴

¹¹⁴ Myanmar Agrees to Human Rights Body, CNN, <http://edition.cnn.com/2007/WORLD/asiapcf/07/30/asean.reut/index.html> (accessed on the 22nd of May 2012)

From this declaration the worldview of Arroyo can be assessed as holding the idea that regional integration is not anymore incompatible with the diversity within and between member states.

The introduction mentioned also the goal of observing whether an adaptation of the institution of the ASEAN itself would be necessary in the process of the HR institutionalization. There are two hints supporting a positive answer.

Firstly, the ASEAN managed to de-facto finely deviate from the absolute non-interference principle in its success to pressure Myanmar into accepting the elaborations explained in this thesis. Whether the 2005 Malaysian agenda proposal served in practice as a manipulative situation, is at this point an open ended question. If it was the case or not is interesting (it could have been decisive in shifting the majority which preferred the 2007 elaboration) but it does not produce an answer to Myanmar's acceptance of the institutionalization of HR. Flexible engagement has done its homogenizing-of-member-states'-positions job.

Secondly, if the AICHR will manage to accomplish its intended rolling trajectory it will help strengthen the first condition (as formulated by Deutch) for the ASEAN's integration to progress and provide an alignment situational logic between the states ready for the unanimity rule to the adapted or a compromise situational logic which can again alter the non-interference principle. Both of these situational logics are hypothesized assuming that Myanmar's (as the strongest HR violator) internal evolution will not lead meanwhile to the incorporation of the idea to respect individual HR of its citizens. The first situational logic should in theory prevail if the regional promotion and protection of human rights will be perceived to enter a contingent

relationship with the non interference principle. However, it is more likely that this will be perceived as an interventionist function and thus as a necessarily tied relationship.

It is however intended for the ASEAN to continue on its consultative and consensus seeking path and will thus allow for time to further socialize and develop a confluence of preferences between ASEAN member states. This intended goal is an alternative to the forced confrontation and institutional re-elaboration and it is explicitly stated in the Charter:

Strengthen democracy, enhance good governance and the rule of law, and to promote and protect HR and fundamental freedoms, with regard to rights and responsibilities of member states of ASEAN¹¹⁵

Being highly aware of the risks of sovereignty transfer (partly from the observation of the European Union's integration process) can in theory allow for the ASEAN way to be continued with minor junctures, as that of the constructive engagement or enhanced interaction. However, the fact that this adaptation came after the external shock of the economic crisis signals that the association's path is slightly elastic (apparently less elastic than the EU integration path) to exogenous circumstances.

¹¹⁵ ASEAN Charter, article 1:7, <http://www.aseansec.org/publications/ASEAN-Charter.pdf> (accessed on the 27th of April 2012)

BIBLIOGRAPHY

- Archer, Margaret S., "Realist Social Theory: The Morphogenetic Approach", *Cambridge University Press*, 1995
- Azra, Azyumardi, "Bali and Southeast Asian Islam: Debunking the Myths" in *After Bali: The Threat of Terrorism in Southeast Asia*, editors Kumar Ramakrishna and See Seng Tan, 2003
- Bell, Stephen, "Do We Really Need a New "Constructivist Institutionalism" to Explain Institutional Change" in *Cambridge University Press*, 2011
- Duy Phan, Hao "The Evolution Towards an ASEAN HR Body" in *Asia – Pacific Journal on HR and the Law*, 2008, Vol. 9, Issue 1
- Hall, Peter A. and Taylor, Rosemary C. R., "Political science and the three new institutionalisms", in *Political Studies*, 1996, Vol. 44, Issue 4
- Harty, Siobhan, "Theorizing Institutional Change" in *New institutionalism: theory and analysis*, University of Toronto, 2005
- Hill, Ron D., "Asia Pacific: A Geographical Preface", in *Understanding Contemporary Asia Pacific*, ed. Katherine Palmer Kaup, Lynne Rienner Publishers, 2007
- Hsien-LI, Tan, "The ASEAN Inter-Governmental Commission on Human Rights. Institutionalizing Human Rights in Southeast Asia", Cambridge University Press, 2011
- Jones, David Martin, "Security and Democracy: The ASEAN Charter and the Dilemmas of Regionalism in South-East Asia", in *International Affairs*, 2008, Vol. 84, Issue 4
- Kamel, Lorenzo, "Rational Choice and New Institutionalism, a Critical Analysis" in *Eurostudium*, 2009
- Katsumata, Hiro, "ASEAN and Human Rights: Resisting Western Pressure or Emulating the West?", in: *The Pacific Review*, 2009
- Katznelson, Ira and Weingast, Barry R., "Intersections Between Historical and Rational Choice Institutionalism" in *Preferences and Institutions. Points of Intersection Between Historical and Rational Choice Institutionalism*, ed. Ira Katznelson and Barry R. Weingast, New York, Russel Sage, 2005
- Kelsall, Michelle Staggs, "The New ASEAN Intergovernmental Commission of HR: Toothless Tiger or Tentative First Step?" in *Asia Pacific Issues, Analysis from the East-West Center*, 2009, no. 90
- Laursen, Finn, "Theoretical Perspectives on Comparative Regional Integration" in *Comparative Regional Integration* ed. Finn Laursen, Ashgate, 2003
- Linton, Suzannah, "ASEAN States, Their Reservations to HR Treaties and the Proposed ASEAN Commission on Women and Children" in *HR Quarterly*, 2008, Vol. 30, No. 2
- Maoz, Zeev, "Framing the National Interest: The Manipulation of Foreign Policy Decisions in Group Settings", in *World Politics*, 1993, Vol. 43

Mauzy, Diane K., "The HR and 'Asian values' debate in Southeast Asia: Trying to clarify the key issues" in *The Pacific Review*, 1997, Vol. 10, Issue 2

Moravcsik, Andrew, "The Origins of HR Regimes: Democratic Delegation in Postwar Europe", *International Organization*, 2000, Vol. 54

Palmer Kaup, Katherine, "Understanding Contemporary Asia Pacific", Boulder, Colo. : Lynne Rienner Publishers, 2007

Ramcharan, Robin, "ASEAN's HR Commission: Policy Considerations for Enhancing its Capacity to Protect HR", in *UCL HR Review*, 2010, Issue 3

Renshaw, Catherine, "Understanding the new ASEAN Intergovernmental Commission on HR: the Limits and Potential of Theory" working paper hosted by the *Berkley University Press*, 2010

Schmitter, Philippe C., "Conceptual Analysis and Research Design for Politologists", European University Institute and Central European University

Sen, Amartya, "What Lee Kuan Yew and Li Peng don't understand about Asia. HR and Asian Values" in *The New Republic*, 1997

Soesastrop, Hadi, "Regional Integration in East Asia: Achievements and Future Prospects", in *Asian Economic Policy Review*, 2006

Thelen, Kathleen and Steinmo, Sven, "Historical Institutionalism in Comparative Perspective" in *Structuring Politics. Historical Institutionalism in Comparative Perspective.* ed. Steinmo, S.; Thelen, K.; Longstreth, F., Cambridge University Press, 1992

Thio, Li-ann, et. all, "Implementing HR in ASEAN Countries: "Promises to keep and miles to go before I sleep"", 1999

Webber, Douglas, "Two Funerals and a Wedding? The Ups and Downs of Regionalism in East Asia and Asia Pacific after the Asian Crisis" in *Comparative Regional Integration* ed. Finn Laursen, Ashgate, 2003

Web resources

10 Facts about ASEAN HR Cooperation, by Mr. Termsak Chalermpananupap, <http://www.aseansec.org/HLP-OtherDoc-1.pdf> (accessed on 2nd of March 2012)

A conversation with Lee Kuan Yew, by Fareed Zakaria, in *Foreign Affairs*, <http://www.foreignaffairs.com/articles/49691/fareed-zakaria/a-conversation-with-lee-kuan-yew>, (accessed on the 23rd of May 2012)

ASEAN Intergovernmental Commission on Human Rights Launched, http://www.aseanhrmech.org/downloads/Human_Rights_Herald_Jan2010_Issue.pdf (Accessed on 5th of May 2012)

ASEAN Progressive Muslim Movement recommendation for the 15th ASEAN Summit, <http://www.violenceisnotourculture.org/content/asean-progressive-muslim-movement-recommendations-15th-asean-summit> (accessed on the 5th of May 2012)

Charter of the ASEAN, <http://www.aseansec.org/21069.pdf> (accessed on the 4th of April 2012)

CIA The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/> (accessed on the 18th of April 2012)

Declaration of ASEAN Concord, <http://www.aseansec.org/1216.htm> (accessed on the 19th of April 2012)

Gibney, M., Cornett, L., & Wood, R., *Political Terror Scale 1976-2006*. Data Retrieved, from the Political Terror Scale Web site: <http://www.politicalterrorscale.org/> (accessed on the 21st of May 2012)

Human Security Report 2005, *Simon Fraser University*, P. 77
<http://www.hsrgroup.org/human-security-reports/2005/overview.aspx> (accessed on the 14th of May 2012)

Joint Communiqué of the Twenty-Sixth ASEAN Ministerial Meeting in Singapore, 23-24 July 1993, http://www.aseanhrmech.org/downloads/1993_Joint_Communique.pdf (accessed on the 4th of April 2012)

Myanmar Agrees to Human Rights Body, CNN,
<http://edition.cnn.com/2007/WORLD/asiapcf/07/30/asean.reut/index.html> (accessed on the 22nd of May 2012)

Myanmar withdraws objections to SE Asia rights body, by Manny Mogato,
<http://www.reuters.com/article/worldNews/idUSSP28331120070730> (accessed on the 23rd of May 2012)

Second Roundtable Discussion on Human Rights in ASEAN: Challenges and Opportunities for Human Rights in a Caring and Sharing Community (2006, Indonesia), http://www.aseanhrmech.org/conferences/summary_of_proceedings_final.pdf (accessed on the 26th of April 2012)

Singapore, Malaysia, Indonesia, Vietnam. Source: “U.S. Rejects Notion That Human Rights Vary With Culture”, by Elaine Sciolino, The New York Times,
<http://www.nytimes.com/1993/06/15/world/us-rejects-notion-that-human-rights-vary-with-culture.html> (accessed on the 4th of May 2012)

Terms of Reference of ASEAN Intergovernmental Commission on Human Rights,
<http://www.asean.org/DOC-TOR-AHRB.pdf> (accessed on the 23rd of March 2012)

Thailand Reinterprets the Rules of Democracy, Again”, by Seth Mydans, *New York Times*, September 20,
http://www.nytimes.com/2006/09/21/world/asia/21thailand.html?_r=1&pagewanted=all (accessed on the 15th of May 2012)

The ASEAN Declaration <http://www.aseansec.org/1212.htm> (accessed on the 4th of May 2012)

The Free Dictionary, <http://www.thefreedictionary.com/synthesis> (accessed on the 2nd of May 2012)

The World Bank Data <http://data.worldbank.org/indicator/all?display=default> (accessed on the 19th of April 2012)

UN Comtrade, <http://comtrade.un.org/> (accessed on the 19th of April 2012)

Working Group for an ASEAN Human Rights Mechanism, <http://www.aseanhrmech.org/aboutus.html> (accessed at 20th of April 2012)