

# ***Comparing the European Union and ASEAN – lead model versus idiosyncratic institution-building***

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***By:***

**Dr Bernhard Stahl, University of Passau (GER);**

**Contact: [bernhard.stahl@uni-passau.de](mailto:bernhard.stahl@uni-passau.de)**

Does Southeast Asia follow the European example? At first glance, there are striking similarities between the European Union (EU) and Association of Southeast Asian Nations (ASEAN): Since their inauguration (1956 and 1967 respectively) both organizations succeeded to ban war as a political option. In addition, the two use similar expressions to label their institutions and policies. Not at least, both organizations suffer from attributed political crises in recent years. By introducing a heuristic model for the comparison of regionalisms the organisations' differences and similarities will be systematically examined. On an analytical level, some categories for comparison are generated. In a plausibility probe, the model is then applied to the EU and ASEAN in order to demonstrate its usability. Subsequently, the findings will be interpreted with the help of current IR-theories.

## 1. Introduction

Does Southeast Asia follow the European example? At first glance, there are striking similarities between the European Union (EU) and Association of Southeast Asian Nations (ASEAN): Since their inauguration (1956 and 1967 respectively) both organizations succeeded to ban war as a political option. In addition, the two use similar expressions to label their institutions and policies. Not at least, both organizations suffer from attributed political crises in recent years. The analytical question raised here is whether we can observe similar patterns in both regional organizations?

Comparative regionalism studies suffer from certain deficiencies.<sup>1</sup> On the one hand, theoretical approaches have hardly been applied to regionalism.<sup>2</sup> This might be attributed to the observation that the main theoretical schools – realism, liberalism, social-constructivism and radicalism – are mainly grouped around differences of ontology (e.g. conflict, cooperation, actors in world politics) and epistemology (e.g. rationale of political science, causality). In the theoretical debates, hence, comparative regionalism does only play a niche role. Consequently, most theoretical approaches are under-specified when it comes to the similarities and differences of regional institutions. For instance, liberalism rightfully assumes that there is a need for regional institutions in order to economize on transaction costs. But it cannot contribute much to the puzzle why evidently the European Union (EU) brought about supranationalism and the ASEAN and Mercosur have not.

On the other hand, area studies seem to be over-specified. The most famous example in this regard stems from the research on the EU which immunized itself by denoting their research object being “*sui generis*”. This has led to a de facto separation of research communities.<sup>3</sup> Moreover, regionalisms around the world are usually examined by recalling how they came into being and how they developed over time, i.e. their history. Historical accounts, though, tend to over-state peculiarities and idiosyncracies but systematically neglect commonalities. This is enhanced by an implicit or explicit cultural bias, the observation that history-driven analyses are prone to culture-bound explanations. Not at least, one may add that comparative regionalism shares the fate of most comparative studies in political science: marginalization.<sup>4</sup> What is largely missing in the studies of regionalism are classifications and analytical models to compare different regionalisms with a set of reliable categories. What would be conceptual requirements for such an endeavour?

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<sup>1</sup> See for a recent assessment: Lombaerde, P. et al 2010: The problem of comparison in comparative regionalism; in: *Review of International Studies*, 36, pp. 731-753.

<sup>2</sup> For an exception: Wunderlich, Jens Uwe 2007: *Regionalism, Globalisation and International Order. Europe and Southeast Asia*; Ashgate.

<sup>3</sup> Sbragia, Alberta 2008: Review Article: Comparative Regionalism: What might it be?; in: *JCMS Vol 46, Annual Review*, pp. 29-49, p. 31.

<sup>4</sup> Sartori, Giovanni 1994: Compare Why and How. Comparing, Miscomparing and the Comparative Method; in: Dagan, M./Kazarcigil A. (eds): *Comparing Nations: Concepts, Strategies, Substance*; Blackwell, pp. 14-34.

First, such an approach has to be simple and parsimonious. This means that the categories should not encompass any institutional detail but focus on the main institutional modalities.

Second, classification should be flexible enough to come to terms with very different regionalisms, be it very complex organizations such as the EU or very loose institutions such as APEC<sup>5</sup>.

Third, the proposed categories should be able to analyse change. So the categories may be used for dynamic (how has the EU developed since the Amsterdam treaty?) as well as horizontal comparisons (how can the ASEAN and the EU be compared?).

Finally, the proposed categorizations should be pre-theoretical. At first glance, this may sound unusual since classifications could be derived from theories. Yet most classical taxonomies used in political science are pre-theoretical (e.g. liberal v. illiberal democracies; parliamentary v. presidential systems). Not at least, such a pre-theoretical classification could be open to theoretical explanations of all kinds.

After having introduced the heuristic model in general I will subsequently apply the model to the EU and the ASEAN. Why these two regionalisms? The EU has attracted most research and is, beyond doubt, the most advanced regional organization. The Association of Southeast Asian Nations enjoys the interest of researchers as well as the global public for three reasons. First of all, its members – together with other Far East economies – are seen as exemplary cases of economic advancement, even after the Asian Economic Crisis at the end of the 1990s. Secondly, for forty years these states have succeeded in avoiding armed conflicts amongst themselves.<sup>6</sup> Thirdly, the fact that most of these states attained both with government types which only correspond to western-democratic ideas to a limited extent, provokes the discussion regarding the universal applicability of the western-democratic development model in general as well as the validity of western norms in particular. Of course, I cannot examine the two regionalisms in detail here. For conceptual reasons only, I will treat the EU in a rather sketchy, general manner in this paper. This is justifiable since the basic institutional characteristics of the EU are widely known. Subsequently, I will examine the ASEAN in some more depth stressing similarities and differences vis-à-vis the EU. By so doing, this study will serve as a “plausibility probe” gaining some preliminary insights in comparative regional institution-building. These insights will be discussed in the end with the help of some theoretical considerations.

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<sup>5</sup> See Aggerwal, V.K./Kwei, E. 2006: Asia-Pacific Cooperation (APEC). Transregionalism with a new cause; in: Hänggi, H. et al (eds): Interregionalism and International Relations, Routledge, pp. 67-84.

<sup>6</sup> This is the reason ASEAN is also known as a “Security Community“, see Acharya, Amitav 1998: Collective identity and conflict management in Southeast Asia, in: Adler, Emanuel/Bernett, Michael (Ed.): Security Communities, Cambridge, p.198-227.

## 2. Comparing regionalisms - a model<sup>7</sup>

Admittedly, the term “region” entails many meanings and is not used consistently in the literature.<sup>8</sup> My understanding here is pragmatic to the extent that I will analyze regions by examining institution-building. Indeed, this does some injustice to regions without institutions (e.g. the “Middle East”) which are systematically excluded. Yet my argument is that regions without institutions only exist in a geographical but not in a political or sociological sense. In this regard, the Middle East is a political “non-region”. Linking institutions to regions also implies that “regionalization” foremost means “institutionalization”.<sup>9</sup> “Institutionalization” is understood here as a “*ubiquitous process of regulating interaction amongst world-political actors by peaceful means.*” In the course of such a process a behavioral change of the actors in favor of a more coordinated conduct may be observed. “Ubiquitous process” simply means that the process is dynamic and takes place all over the world. However, it implies that such a process knows no beginning and no determinable end. A “world state” or a “security community” therefore seems possible, yet they are not a necessary outcome. This also implies that the analysis does not presuppose where a region ends. “Peaceful” in this context means without the use of physical force – thus excluding empires. “Interaction” indicates the fact that mutual goal-oriented or habitual actions exist. Unilateral actions differ in that actors have no intention of committing themselves, no shared terms exist (no “we” and “the others”), and no bilateralism is ascribed by third parties. “Interaction” causes increased (in a relative dynamic comparison) communication of at least two actors. The “interaction” is “regulated”. This refers to all conventions, norms, principles, organizations, and establishments which either have a conscious or sub-conscious impact on the reciprocal conduct. “World-political actors” are natural or juristic persons and international legal personalities, groups or organizations, which operate worldwide and this worldwide operation is ascribed to them as their primary task. “World-political” shall be understood in a wider sense than “international” or “intergovernmental.” The term “international,” although very common, suggests that the number of relevant actors is limited to (state) nations. “Coordinated” in this context means that the process is mutual. Acting therefore always implies acting together with someone, or interacting. Overall this means that every coordinated action takes place at least with the approval of another government.<sup>10</sup> The attribution given by third parties is the

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<sup>7</sup> The following model is taken from Stahl, Bernhard (1998): Warum gibt es die EU und die ASEAN? Faktoren weltpolitischer Institutionalisierung in vergleichender Analyse; Nomos, pp. 107-116.

<sup>8</sup> See, for instance, Björn Hettne’s and F. Söderbaum’s grasp of “regionness”. Hettne, B./F. Söderbaum (2002): Theorising the rise of regionness, in: Breslin, S. et al (eds.): New Regionalisms in the Global Political Economy; Routledge.

<sup>9</sup> Wunderlich speaks of “regionalization” as “a drive for more formal regulatory mechanisms and regional governance” (op.cit, p.3).

<sup>10</sup> Without a doubt “approval” of the action of a government by another government is not always a clear criterion. Should Government A, for example, declare that in the future it will permit students from State B to study at

only plausible possibility to discern whether a certain action may be considered “coordinated.” This takes place taking into account that even such an attribution is determined by interests. A “coordinated” action by one party should imply “committing-oneself.” This implication of committing oneself will have the consequence that such actions always include a promise regarding one’s own behavior in the future. In a sense this will result in an increased predictability of behavior. Institutionalization therefore defines a group, a “within” and a “without” which over a period of time can develop an influencing character which may then be expressed in similar values and patterns of ideas. “Institutionalization” thus denotes a process of increasing predictability of world-political actors’ behavior, especially as perceived by third parties.

### *The categories*

In the following, I will propose six categories which shall help to compare regionalisms. The following properties of institutionalization – “sphere of interaction”, “degree of interaction”, “goals and policy areas,” “external effects,” “decision-making,” and “enforcement” are all viewed as indicators of an institution’s development. First, it seems necessary to determine the sphere of interaction within the institutionalization. This sphere of interaction shall on the one hand indicate the number and the status of participants (who takes place in the institutionalization and in what position: governments, organizations, parties, etc.). The following question concerns those addressed, i.e. who is affected or committed by the institution. This defines the sphere in which the institutions are recognized and thus also concerns aspects of territoriality and matters of jurisdiction. On the one hand, this differentiation enables one to differentiate between participants and observers in a session. On the other hand, participants may under certain circumstances take part in negotiations, but then do not participate in the actual resolutions, which they supported.

Second, the goals of institutionalization are important. This does not refer to the basic motivations and strategic intentions of actors – this should be left to theories - but rather refers to the declaratory common goals of the institution itself. Additionally, they encompass the contents of the institutionalization, policy and so-called “issue areas.” This aspect expresses the approach that analyses of institutionalizations will have varying results, depending upon whether the area of policy is “security” or “prosperity.” It is therefore interesting which policy areas are included in the process

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A’s own universities, initially it will be difficult to determine whether this was a unilateral or a coordinated action. As long as Government B does not offer a statement which may be interpreted, in the end it is up to the reevaluation by a third party to achieve clarity. If third parties interpret the action between A and B as “coordinated,” one may assume that it was indeed coordinated. Analysis will initially not be able to determine what happened behind the scenes in each individual case. Government B may have threatened or even blackmailed Government A. It is equally likely that, unbeknownst to the public, this was part of a much larger package deal or it may have taken place on the basis of a kind of “tacit consent.”

of regulating as well as which policy areas are (explicitly!) left out. The contents, i.e. the policy areas of an institutionalization, are set in order to effectively narrow down the analysis.

Third, the “degree of interaction” describes how frequently participants meet and on the other hand refers to “structure- and agency building.” A new body, such as an arbitration court, usually influences the degree of interaction and can alter the quality of an institutionalization.

Fourth, every institution generates “external effects.” This analyses to what extent a newly established regional institution affects third parties. On the one hand, this triggers direct physical effects of an institution (e.g. embargoes) on third parties. On the other hand, indirect results emerge because of the institution’s role model character or voluntary adherence of the institutionalization agreements by third parties.

Fifth, a qualitative aspect of institution-building touches upon decision-making and more precisely refers to formal mechanisms of finding a consensus or reaching an agreement. This aspect includes for example the right of initiative and voting procedures (unanimity, majority rule).

Finally, the “enforcement” of joint actions plays a role. This not only includes the pervasion of measures, which determines whether the agreements at hand are merely non-binding declarations of intent or whether they resemble documents of law, which have immediate effects on the citizens of the member states. In addition, it must be considered to what extent the ability to review and implement the agreed regulations is guaranteed and who holds responsibility (“ability to sanction”). In this context it is also of relevance whether the regional institution is principally reversible (withdrawal barriers, “opting-out” articles, etc.).

### **3. Applying the categories – the European Union and ASEAN**

#### **3.1. Sphere of Interaction**

This category touches upon the spacial aspect of the region under study. It might be useful here to speak of “layers” meaning different institutions which are over-lapping and “circles” which denote subsequent spaces of decreasing interaction. In Europe, many institutional layers can be observed. The inter-governmental organizations OSCE and the Council of Europe encompass all countries of Europe. In security terms, most European countries – with the notable exception of neutral and non-aligned states - adhere to NATO. The institutional core represents the EU which has been building several institutional circles around herself. Possible “candidates” and “pre-ins” are making up the first circle, these countries are privileged to join the EU one day. This first circle stands for the “widening” of the union and its enlargement policy is held to be the EU’s most successful foreign policy tool.<sup>11</sup> For accepting a new

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<sup>11</sup> Sedelmeier, U. 2005: Eastern enlargement; in: Wallace, H./Wallace, M./Pollack, M. (eds.): Policy-making in the EU; 5<sup>th</sup> ed., OUP, pp.401-428.

member, the EU sets certain adaptation requirements prior to the beginning of the membership – the Copenhagen criteria (1993) - and then continually extends the catalogue of expected ‘homework tasks’ (the so-called ‘*acquis communautaire*’) by means of association agreements and “pre-accession strategies.” In the case of the EU this has the drawback that membership can only be effected after ten to fifteen years of negotiation. In identity terms, candidates have to become similar to the old members by enormous efforts. A second circle receives special treatment by the EU without granting it the option of membership – the so-called “European Neighborhood Policy”. A third circle is embedded in the “External relations” of the union be it in the form of special partnerships (USA, Russia) or inter-regional relations. Over time, even the EU core has been transformed into different “opt-in” and “opt-out” policy spheres. A famous example for an exclusive one is the Eurozone, examples for inclusive ones are the Schengen space or missions of the Common Security and Defence Policy (CSDP).

The observation of layers and circles is very similar to Southeast Asia. Institutionally, SEA became a region when the Association of Southeast Asian Nations (ASEAN) was founded in August 1967. In shape of the so-called Bangkok Declaration Thailand, the Philippines, Indonesia, Singapore, and Malaysia built ASEAN after several failed attempts.<sup>12</sup> Upon gaining independence, the state of Brunei joined ASEAN in 1984 and Vietnam became a member in July 1995. Two years later two of the three remaining states of Indochina – Laos and Myanmar (Burma) - joined. Cambodia, whose membership had already been agreed upon, was suspended following civil war-type clashes<sup>13</sup> and only became the tenth and to date last member in April 1999. Both Papua New Guinea and Sri Lanka were denied membership. The regional tie was already underlined in the founding declaration – and confirmed in the ASEAN Charter 2007 – stating that the Association “*is open for participation to all states in the South-East Asian Region*”.<sup>14</sup> The Association continues to struggle with the issue of East Timor, but permitted it to participate in the ASEAN Regional Forum (ARF). However, due to the clashes in Dili in 2006 and 2008, the topic remains on the agenda.<sup>15</sup>

One might characterize the different circles with catch phrases such as ‘joint action’, ‘benevolent behavior’, and ‘having a say.’ The sphere of ‘joint action’ in this case implies ASEAN membership. A

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<sup>12</sup> For many observers, ASEAN therefore represents little more than an “*extension and amalgamation of prior attempts to create regional institutions.*” Crone, Donald K. 1983: *The ASEAN States. Coping with Dependence.* New York, p.36; about ASEAN’s historic roots see: Narine, Shaun 2002: *Explaining ASEAN: Regionalism in Southeast Asia.* Boulder (Co), p.9ff.

<sup>13</sup> For more regarding the issue of the Indochinese expansion: Takeshi, Takano 1999: *The ASEAN-10 and Regional Political Relations*, in: Sekiguchi, Sueo/Noda, Makito (Ed.): *Road to ASEAN-10. Japanese Perspectives on Economic Integration.* Tokyo/New York, p.16-36, here: p.21ff; Kraft, Herman Joseph p. 2000: “ASEAN and Intra-ASEAN relations: weathering the storm?”, in: *The Pacific Review* 13,3, p.453-472.

<sup>14</sup> Declaration of Bangkok, fourth point.

<sup>15</sup> See the discussion regarding East Timor’s membership: Severino, Rodolfo C. 2006: *Southeastern Asia in search of an ASEAN Community. Insights from the former ASEAN Secretary-General.* Singapore, p.75-82.

second circle, that of 'benevolent behavior' was created by the *Treaty of Amity and Cooperation* (TAC, 1976). Signatory states outside the original ASEAN context - Papua New Guinea, Vietnam, Laos, Cambodia (1995), India and China (2003), Australia, Japan, France, Russia, New Zealand, and South Korea have committed themselves to the *Code of Conduct* of the Association, however without being able to actively help shape it. The third realm of interaction is that of 'having a say,' which encompasses the Post-Ministerial Conferences (PMC) which take place following the ASEAN meetings. Since 1994 these have taken place within the framework of the ASEAN Regional Forums (ARF) and have since developed into the East Asian Summit, which first took place in 2005.

The joining of Myanmar reveals the problematique of ASEAN's enlargement policy.<sup>16</sup> The gruesome repression by the military regime in Naypyidaw – the leading example of which is the fate of the winner of the Nobel Peace Prize, Aung San Suu Kyi who endured long-term arrest – led to an international isolation of the regime and a loss of prestige for ASEAN. The political situation escalated once more in former Burma in September 2007, when mass protests took place and the regime continued to stay in power despite fervent international criticism including ASEAN members. The regime increased resentment when in May 2008 it refused to accept international help for the hundred thousand people who had been deprived of their livelihoods by a cyclone in the Irrawaddy Delta. It took three weeks until ASEAN, at the meeting on May 19<sup>th</sup>, was able to convince the junta in Myanmar of the necessity to accept aid supplies from neighboring states.<sup>17</sup> Myanmar will continue to present a problem for ASEAN, neither the membership in ASEAN nor international boycotts have so far had any noteworthy effect on the military regime.<sup>18</sup> When in February 2008 the junta announced a possible constitutional referendum as well as general elections, this was largely interpreted as a tactical maneuver. The example of Myanmar shows that the lack of explicit membership criteria had a negative effect on the association's reputation. The socialization effects of the membership remain minimal.

### 3.2. Goals and Policy Areas

When the European Community for Steel and Coal was founded in 1950 its goals were merely economic and sector-specific. The Roman treaties expanded the scope of action to issue areas such agriculture, competition, trade, balance of payments and transport. Goals were to achieve a customs union and a "common market". In most aspects, the European Communities were very successful but the common market remained incomplete which led to a *relance* in form of the Single Market

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<sup>16</sup> See membership in general: Than, Mya 2005: Myanmar in ASEAN. Regional cooperation experience. Singapore.

<sup>17</sup> "Forcing help on Myanmar", in: Economist May 24, 2008, p.20-21 and "A modest opening", in: Economist May 22, 2008, p.69.

<sup>18</sup> Reger, Markus 2007: "Viel Sanktion, wenig Wirkung? Die Burmapolitik der Europäischen Union", in: Südostasien 1, p.33-35; Buchsteiner, Jochen 2008: "Keine Lösung für Burma-Konflikt" in: FAZ from 02/01/2008 p. 5.



programme thirty years later.<sup>19</sup> In the TEU (1992), almost all functional issue areas were covered comprising regional policy, R&D, environment, health, consumer protection and culture. The core project aimed at establishing a monetary union with a single currency. In addition, formerly loose institutional arrangements which had existed outside the communities (Justice and Home Affairs, Foreign Policy) were incorporated in the newly created framework of the “European Union”. The goal of European integration – “an ever closer union” (TEU preamble) remained vague but alluded to a more political agenda.<sup>20</sup> The Lisbon treaty (in force since 2009) stayed with the “ever closer union” but has become much more explicit on basic rights and political aspirations. For instance, the new Article 2 TEU speaks of the dignity of man, freedom, equality, rule of law, democracy, human rights and non-discrimination.

The goals stated in the Bangkok Declaration in 1967 indicate a focus on common policies in the economic and cultural sectors. The founding document of ASEAN lists the following goals:<sup>21</sup>

- To accelerate the economic growth, social progress and cultural development [...],
- To promote regional peace and stability [...],
- To promote active collaboration and mutual assistance [...],
- To provide assistance [...] in form of training and research facilities in the educational, professional, technical and administrative spheres,
- To collaborate [...] for the greater utilization of their agriculture and industries, the expansion of their trade [...],
- To promote South East Asian studies,
- To maintain close and beneficial cooperation with existing international and regional organizations [...].

At its summit in Kuala Lumpur (1977) ASEAN reacted to the world economic struggles by agreeing on the establishment of rice reserves, an emergency petroleum supply program as well as swap arrangements in case of balance of payments difficulties. In addition to this it was also agreed to cooperate more closely with neighboring states as well as the EU. Furthermore, since then there have been regular joint foreign political statements by the ASEAN-states. The Declaration of Singapore in

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<sup>19</sup> See, for many, Pedersen, T. 1992: Political change in the European Community. The Single European Act as a case of system transformation, in: *Cooperation and Conflict* 27, 1, pp. 7-44.

<sup>20</sup> Dinand, Desmond 2005: *Ever closer union? An introduction to the European Integration*; 3<sup>rd</sup> ed., Lynne Rienner and Palgrave/Macmillan.

<sup>21</sup> Abridged version of section 2, sub-section 1-7 of the Bangkok Declaration.

1992 resulted in an institutional improvement:<sup>22</sup> The three adopted documents are evidence of an expansion of policy areas as well as the spectrum of goals of the Association:

1. the Singapore Declaration,
2. the Framework Agreement on Enhancing ASEAN Economic Cooperation,<sup>23</sup>
3. the Agreement on Common Effective Preferential Tariff (CEPT).

It was decided that cooperation in security matters should be extended, ASEAN institutions should be strengthened, and a Southeast Asian free trade zone (AFTA) should be established.

The heads of state agreed to institutionalize talks with dialogue partners in the area of security policy. Two years later this was achieved in the shape of the ASEAN Regional Forums (ARF). In the following years the summit statements were mainly content with praising what had been reached so far. A further “strengthening” of the institutionalization could not be agreed upon at the ninth ASEAN summit in Bali in October 2003.<sup>24</sup> The ‘*ASEAN Community*’ as it exists today is based upon three pillars:

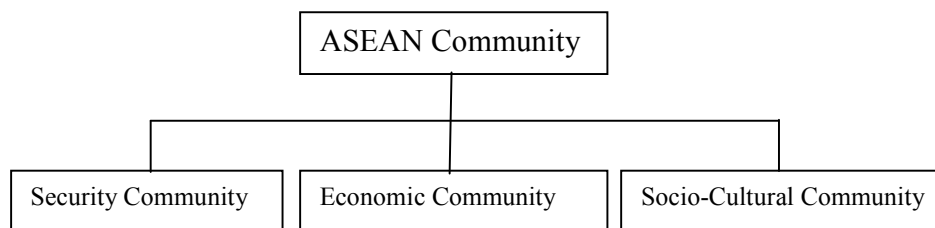


Fig 1: The Pillar Structure of ASEAN (graph by author)

The *ASEAN Security Community* in this case incorporates all goals and institutions agreed upon to date (TAC, ZOPFAN, SEANWFZ, ARF). A special focus was put upon peaceful conflict resolution with the explicit rejection of employing or threatening force, respecting the sovereignty of the individual states, the principle of non-intervention in the affairs of another ASEAN-member state, and the principle of consensus regarding decision-making.

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<sup>22</sup> See Stahl 1998, 209ff.

<sup>23</sup> The exact content of AFTA is printed in: Nasution, Anwar 1993: Open Regionalism: The Case of ASEAN Free Trade Area, in: Moellers, Wolfgang./Mahmood, Rohana (Ed.): ASEAN: Future Economic and Political Cooperation; Proceedings of the Conference on ASEAN: Kuala Lumpur, November 13-15, 1992, Institute of Strategic and International Studies. Malaysia, p.11-23, here: p.18-23.

<sup>24</sup> See ASEAN Secretariat 2006a: Declaration of ASEAN Concord II (Bali Concord II) (<http://www.aseansec.org/15159.htm>), 09/04/2009. For the analysis see: Smith, Anthony L. 2004: “ASEAN’s Ninth Summit: Solidifying Regional Cohesion, Advancing External Linkages”, in: Contemporary Southeast Asia 26,3, p. 416-433.

Under the influence of 09/11 and the attacks by terrorist groups in Southeast Asia, the heads of state underlined the following areas of action:<sup>25</sup>

- the development of common norms and values,
- the security of sea routes,
- the spread of weapons of mass destruction,
- terrorism and transnational crime,
- defense cooperation,
- cooperation with the United Nations.

The second pillar of the *ASEAN Community* contains the regulations of economic cooperation. Similar to the security policy area, the *ASEAN Economic Community* includes the already existing, guiding agreements. Die *ASEAN Economic Community* is

*„the realization of the endgoal of economic integration as outlined in the ASEAN Vision 2020, to create a stable, prosperous and highly competitive ASEAN economic region in which there is a free flow goods, services, investment and a freer flow of capital, equitable economic development and reduced poverty and socio-economic disparities in year 2020.“*<sup>26</sup>

Whilst the goals of the policy areas of the first and second pillars were elaborated and substantiated with specific “*plans of action*” in the following years, the contents of the third pillar - ‘*Socio-Cultural Community*’ – remained vague. The idea of a socio-cultural community was only introduced into the negotiations quite late and was intended to avoid ASEAN from appearing to only deal with security and economic issues. Existing agreements as well as challenges in the areas of education, health, culture and environment are mentioned.<sup>27</sup> The evaluation of the former ASEAN Secretary General Severino is clear: “*It is a hodge-podge of generalities, suffers from a dearth of specifics, has no timelines, and lacks focus.*”<sup>28</sup>

Four years later the cooperation in this area would be improved, namely in shape of the ASEAN Charter, which had previously been mentioned in the Vientiane Action Plan (2004). A working group of ‘*Elder statesmen*’ devised a draft, which was then passed on occasion of the 40<sup>th</sup> anniversary of the founding of ASEAN. At the 13<sup>th</sup> summit in Singapore in November 2007, the ten agreed, “*to establish (...) the legal and institutional framework for ASEAN.*”<sup>29</sup> The Charter, which will come into effect following the respective national ratification, summarizes the state of institutionalization so far in a clear manner. Though previous documents continue to be valid, in case of inconsistency, the Charter prevails

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<sup>25</sup> Severino 2006, p. 356.

<sup>26</sup> ASEAN 2006a: Declaration of ASEAN Concord II, Point B., Sub-point 1.

<sup>27</sup> ASEAN 2006a: Declaration of ASEAN Concord II, Point C.

<sup>28</sup> Severino 2006, p.368.

<sup>29</sup> The ASEAN Charter, ASEAN Secretariat, Jakarta 2007, Preamble, p. 3.

(Art. 52). It is remarkable that article 1 (7) poses an explicit commitment to democracy, *good governance, rule of law*, and human rights, even if, “*with due regard to the rights and responsibilities of the Member States.*” And in addition to the ‘four freedoms‘ of the ASEAN Economic Community (goods, services, investment, and capital) these have been extended to include “*business persons, professionals, talents and labour*“ (Art.1, Clause 5). And adhering to multilateral trade rules is stipulated as well (Art.2 Clause 2n) Furthermore, the Charter strengthens the ASEAN identity: the Association is given the status of a legal entity, a flag, a motto (“*One vision, one identity, one community*“), an emblem, a hymn and even an ASEAN day (August 8<sup>th</sup>).

### **3.3. Degree of interaction and agency building**

Both regionalisms share a long tradition of “valleys and hills” regarding institution-building: Intense periods of negotiations and new institutionalization were followed by “dark ages”. For the EU, the breath-taking decisions of the 1950s needed 30 years to be digested before the Single European Act (1986) initiated a new phase of activity. In retrospect, the Maastricht treaty (TEU, 1992) represents the institutional peak since the two following treaties (Amsterdam, Nice) just sought to amend the Treaty of the European Union. The Constitutional treaty, then, was still-born and could hardly be saved in form of the Lisbon treaty (2009).<sup>30</sup> In the last decade, the union entered a consolidation phase. Recent events such as the Greek crisis and Denmark’s, France’s and Italy’s moves to put the Schengen space into question signal that the EU has serious problems to hold her level of integration. The most prominent difference with regard to agency-building lies in the extent of ASEAN’s and the EU’s institutionalization. Whilst the EU sought a supranational element from the very start – in the shape of the European Commission -, ASEAN held on to the intergovernmental principle. Monnet’s and Schuman’s plan to create a “High authority” in the 1950s which would be independent from the members states was revolutionary and has not been copied until today despite its widely perceived merits.

Similarly to the European experience, ASEAN needed some time for consolidation after its Bangkok declaration in 1967. When ASEAN was founded three of its five founding members did not entertain diplomatic ties to one another, though this should be regarded as a “minimum standard of trust” for institution building.<sup>31</sup> The first years of ASEAN were characterized by such a state of mistrust and

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<sup>30</sup> Piris, J.-C. 2010: *The Lisbon treaty: A legal and political analysis*, CUP, pp. 7-70

<sup>31</sup> Anand, Ram Prakash 1981: Introduction, in: id./Quisumbing, Purificacion. V. (Ed.): *Asean. Identity, Development and Culture*. Quezon City, p.xxii- xxvii, here: p.xii.

mutual suspicion that the mere survival of the institution may be seen as an achievement.<sup>32</sup> The founding of ASEAN was indeed an “*act of faith*.”<sup>33</sup>

The years following ASEAN’s founding show that it took a lot of effort to maintain the approved status of institutionalization. The institutionalization achievements were at first eyed with skepticism:<sup>34</sup> “*ASEAN became entangled in its numerous committees and endless discussions about priorities and petty disputes about national parity*.”<sup>35</sup> Until 1973 only eight ministerial summits took place. Another eight years went by before the ministers of economic affairs met for the first time. Nine years after the Bangkok Declaration, at the first meeting of the heads of state in Bali, the *Treaty of Amity and Cooperation (TAC)* as well as a *Declaration of ASEAN Concord* were passed. These include:<sup>36</sup>

- an agreement on mechanisms of peaceful conflict resolution,
- renunciation of the threat or use of force,
- establishment of a “*High Council*” for dispute settlement in regional cases,
- the intention to jointly conduct large-scale projects,
- an agreement on mutual tariff preferences, by creating a zone of preference (*Preferential Trading Arrangement = PTA*),
- establishment of a central ASEAN Secretariat in Jakarta.

At first the foreign ministers met regularly once a year at alternating venues – in alphabetic order of the member states – and decided upon political or economic measures to take. The ASEAN Charter (2007) now calls for at least two meetings of foreign ministers per year (as *ASEAN Coordinating Council*). This ministerial summit was intended to be the highest body within ASEAN and a meeting of heads of state was initially not considered. The first time they met was in Bali, nine years after the founding. These summits of the heads of state, which at first only took place sporadically and beginning with the nineties took place every three years (1976, 1977, 1987, 1992, 1995, 1998, 2001), set the stage for the ensuing *institution-building*. In the meantime the heads of state also started meeting for informal summits (1996, 1997, 1999, 2000), so that in 2001 it was established to have annual meetings. During the course of time

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<sup>32</sup> Leifer, Michael 1989: *Asean and the Security of Southeast Asia*. London/New York, p.52.

<sup>33</sup> Kumerloeve, Arnd D. 1986: *Ansätze ausserökonomischer Kooperation der Asean-Staaten*. Manuscript. Bochum, p.76.

<sup>34</sup> This is the tenor in: Choy, Li Chong 1981: *Open Self-Reliant Regionalism: Power for ASEAN's Development*. Occasional Paper No.65 of the Institute of Southeast Asian Studies, Singapore; Jorgensen-Dahl, Arnfinn 1976: “ASEAN 1967-1976. Development or Stagnation?”, in: *Pacific Community* 7, p.519-535, p.519. For a more differentiated approach see Crone 1983, p.40, who characterizes the period 1967-75 as “*not wasted but unpolitical unsuspecting work*”.

<sup>35</sup> Dauth, Jürgen 1979: “ASEAN - die Gemeinschaft der südostasiatischen Nationen“, in: *Aus Politik und Zeitgeschichte* 8, p.31-45, p.32 [my translation].

<sup>36</sup> Feske, Susanne 1991: *ASEAN - Ein Modell für regionale Sicherheit: Ursprung, Entwicklung und Bilanz sicherheitspolitischer Zusammenarbeit in Südostasien*. Baden-Baden, p.143f and Rust, Walter L. 1985: *ASEAN - Regionale Zusammenarbeit im Schatten der Großmächte*. Frankfurt/M. amongst others, p.20f.

ministers from other departments began to meet and the frequency of their meetings as well as the functional distinction has increased. Up until 2005 the frequency fluctuated between an annual meeting of the established *Councils* such as Economic and Foreign ministers and a biennial meeting or only when necessary for the others.<sup>37</sup> When the first formal summit of the ministers of defense took place in 2006 this was celebrated as an institutional occasion and consequently the *ASEAN Defense Sectoral body* was created which directly reports to the heads of state. According to the principle of dividing the ASEAN Community into three sections, it was agreed that the *Political-Security Community Council*, *Economic Community Council* and *Socio-Cultural Community Council* should also meet at least twice per year.

ASEAN developed initiatives in various policy areas,<sup>38</sup> though the weak central organization allowed for only 30% of these proposals to actually reach the implementation phase.<sup>39</sup> The de-centralized, rotating organization was an inhibiting factor. Each member state has an own 'National ASEAN Secretariat' whose directors meet every two months to coordinate measure which have been agreed upon. In 1976 it was decided to introduce an ASEAN-Secretariat in Jakarta. The Secretary General (currently Surin Pitsuwan, former Thai Foreign Minister) is the head of the Secretariat and is selected by the foreign ministerial conference from the member states according to alphabetic rotation for a term of five years. While the national secretariats together with the "Director Generals of the ASEAN Office" dominated the central secretariat, especially regarding allotment of means and information flow<sup>40</sup> this trend has been reversed based upon the formal upgrading and provision of resources. It was the GATT Uruguay Round (1986-94) which showed that ASEAN suffered from deficiencies when it came to presenting a joint, coherent foreign policy to the outside. And so a strengthening of the central ASEAN Secretariat was agreed upon. On the one hand this took place by means of promoting the Secretary General to the rank of a minister and at the same time the resources were increased.<sup>41</sup> Furthermore, the Secretariat was allowed to recruit its own employees, thereby no longer depending so much on national diplomats. By 2008 the number of employees had increased to about 100.<sup>42</sup>

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<sup>37</sup> ASEAN Annual Report 2004/2005, p.10.

<sup>38</sup> The following offer an overview of the various individual policies up until the 1980s: Sopiee, Noordin/Chew, Lay See/Lim, SiangJin 1987 (Ed.): ASEAN at the Crossroads. Obstacles, Options and Opportunities in Economic Cooperation. Kuala Lumpur. For a more current overview: Siddique, Sharon/Kumar, Sree (Ed.) 2003: The 2nd ASEAN Reader. Singapore.

<sup>39</sup> Pushpanathan, Sandram 2007: Option: Growing Stronger and Maybe Wiser After 40, for NST Online 08/10/2007 ([www.aseansec.org/20831.htm](http://www.aseansec.org/20831.htm)), [03/13/2008].

<sup>40</sup> Suh 1990, p.40.

<sup>41</sup> It should be mentioned that up until then the Secretariat had all of seven (!) employees who all dealt with economic affairs. Ravenhill, John 1995: "Economic Cooperation in Southeast Asia: Changing Incentives", in: Asian Survey XXXV, 9, p.850-866, p.861.

<sup>42</sup> ASEAN Secretariat 2008: The ASEAN Secretariat: Basic Mandate, Functions and Composition ([www.aseansec.org/11856.htm](http://www.aseansec.org/11856.htm)), [06/20/2008].

The external representations also experienced an institutional dynamic: In order to effect the external representation of ASEAN, it was decided to introduce an ASEAN-Troika at the ministerial level – most likely adhering to the European model – in November 2007 in Manila.

### 3.5. Decision-making

In the European Union, decision-making procedures are very complex and vary depending on the issue area.<sup>43</sup> Until today, important decisions which belong to the core of statehood are taken unanimously (e.g. decisions on new members, on security and defence, on taxes). In most policy areas, particularly in the economic realm, decisions are taken with a majority of votes in the Council of the EU where the governments' representatives have a say. The quorum of weighted votes is around 55% but there are transitional arrangements and additional requirement options.<sup>44</sup> Yet *in praxi*, most of the “EU laws” are voted for unanimously. Very substantial is the right of initiative which holds the European Commission. It creates a continuous inflow of initiatives and legislation into the EU machinery. When the Commission launches a proposal the European Parliament comes in to amend and approve it before the Council can finally vote on it. In a complicated, iterating shuttle procedure well-woven compromises are drafted which become “EU laws” – directives and regulations which are mandatory for the entire EU. Not at least, the European Court of Justice (ECJ) serves as the last resort for any breach of law on behalf of the EU actors.

In the ASEAN case, even after a history of 40 years of institutionalization, unanimity continues to be the basic principle of decision-making. The ASEAN Charter explicitly defines the association as an “inter-governmental organization” (Art. 3), reliant on the joint will of the governments. The so-called *High Court*, as envisioned in the Bangkok Declaration, and whose rules of procedure were only laid down 34 (!) years later, was never appealed to. Member states preferred to take disputes to the International Court of Justice in The Hague.<sup>45</sup> The principle of unanimity requires heads of state and ministers to demonstrate an increased willingness to compromise. Apart from the unanimity principle, it is important to take informal decision-making processes as well as cultural practices of the region – the so-called “ASEAN way” - into account.<sup>46</sup>

- Seeking compromises,
- Principle of consensus,

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<sup>43</sup> Nugent, N. 2003: The government and politics of the EU; 5<sup>th</sup> ed., Palgrave, pp. 331-365.

<sup>44</sup> See Hofmann, A./Wessels, W. 2008: Der Vertrag von Lissabon – eine tragfähige und abschließende Antwort auf konstitutionelle Grundfragen?; in: integration 1/2008, [http://www.iep-berlin.net/fileadmin/website/09\\_Publikationen/integration\\_2008/Wessels\\_Hofmann.pdf](http://www.iep-berlin.net/fileadmin/website/09_Publikationen/integration_2008/Wessels_Hofmann.pdf) [10/8/2011].

<sup>45</sup> In the case of the dispute between Indonesia and Malaysia regarding the Sipadan Islands, the ICJ decided in favor of Kuala Lumpur in 2002, see. Severino 2006, p.14.

<sup>46</sup> Thambipilai, Pushpa 1985: Asean Negotiation Styles: Asset or Hindrance?, in: ders./Saravanamuttu Jayaratnam (Ed.): ASEAN Negotiations: Two Insights. Singapore, p.3-28, p.11; Haas 1989, p.6-9.

- Neighborhood support<sup>47</sup>,
- One-on-one talks,
- Feeler technique,
- Nobody leads principle,
- Agreeing first, details later.

These principles – most likely of Arabic origin – mainly originate from Malayan village communities.<sup>48</sup>

For example “*seeking compromises*” in this context means:

*“that a leader should not act arbitrarily or impose his will, but rather make gentle suggestions of the path a community should follow, being careful always to consult all other participants fully and to take her views and feelings into consideration before delivering his synthesis-conclusion.”*<sup>49</sup>

On the way to reaching this consensus it is of great importance to employ the so-called “*feeler technique*” as well as to adopt a discreet manner, i.e. adhere to the “*nobody leads principle.*” The manner of negotiation within the ASEAN structure has developed a momentum of its own: “*Before every decision each state would fathom the positions of the other member states through informal talks and then according to the principle of finding a common denominator would a priori include these in the own national opinion making process.*”<sup>50</sup>

A discussion at the higher level only takes place, if an agreement seems possible. Questions which are clearly controversial are delegated to the committees and remain there until a change of opinion has taken place. The principle of consensus means that decisions can only be made unanimously. And in order to save face, no proposal which might require a state to use its veto power will ever be put to a vote. The “*feeler technique*” plays a vital role in reaching an agreement; in this case the initiating party extensively explores the partners’ positions before launching an official proposal.<sup>51</sup> Any expression of discord is thereby avoided. In 1980 a slight modification of the voting procedure was made: To prevent members from having to vote “yes” in matters which in no way concerned them, the so-called *ASEAN-minus-One-Principle* was introduced. Should one state have no explicit objections, four votes would suffice to reach an agreement (de facto an abstention).

### 3.6. Enforcement

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<sup>47</sup> Additionally the terms “*neighbourliness*”, “*kinship*” and “*brotherhood*” are listed. Solidum, Estrella 1981: The Role of Certain Sectors in Shaping and Articulating the Asian Way, in: Anand/Quisumbing (Ed.), p.130-148, p.137f.

<sup>48</sup> Although reference is mainly made to Indonesian traditions, it should be noted that the equivalent can be found in Malaysia and the Philippines. Solidum 1974, p.83 Footnote 83.

<sup>49</sup> Feith, Herbert 1962: The Decline of Constitutional Democracy in Indonesia. Ithaca, p.40, quoted in Jorgensen-Dahl 1976, p.529.

<sup>50</sup> Kumerloeve 1986, p.42 with reference to the headline story of FEER from 04/18/1984, p.23ff.

<sup>51</sup> Thambipilai 1985, p.14.



Enforcement of multiple arrangements represents a standard problem of international agreements.<sup>52</sup> The EU system basically relies on three safeguards to assure enforcement of agreements. First, the European Commission acts like a “guardian” of the treaties having the right to bring any member state to the court. In areas such as competition law it is even entitled to indict transnational companies for the abuse of market power and the creation of cartels. Second, as mentioned above, the ECJ serves as the final arbiter in case of juridical conflict. Third, the standard form of signing “treaties” makes most agreements enforceable. Yet in some policy areas such as the CSDP the ECJ remains outside the jurisdiction and the Commission plays on equal footing with the member states. For instance, the bid of “coherence” in foreign policy cannot be enforced by any EU actor, its achievement depends on the behavior of the member states.

For ASEAN, it is striking that the formal documents are generally “*declarations*.” In contrast to legally binding contracts under international law, these declarations are not binding and therefore produce no enforceable obligations for the signatory states.<sup>53</sup> The only form of enforcing commitment is therefore created through a certain degree of group pressure or the threat of losing face owed to the respective cultures. The principle of unanimity as well as the absence of possibilities of sanctions allow for an increasingly significant role of individuals at the heads of state. This fits right in with the higher degree of personalization which Southeast Asian politics have been diagnosed with in general; which has the effect that foreign policy is more dependent upon the respective governments than for example in Europe or the Up.<sup>54</sup> For a long time ASEAN lived on the personalities which were at the head of its member states: Suharto, Lee Kuan Yew and Mahathir influenced the policies of the Association in the 1990s and the first years of the 21<sup>st</sup> century. Their withdrawal from the political stage could mean a weakening of ASEAN in the future. The emphasis on individual personalities also means that at first ASEAN was a true “*élite affair*.”<sup>55</sup> Southeast Asian elites share an ambivalent attitude towards the West: Asian-nationalist thinking on the one hand and technocratic-free market positions on the other. The latter is mostly due to the fact that very many political and economic decision-makers graduated from schools in Western countries.

### 3.7. External effects

While the European Communities owed legal personality right from the start, the European Union only became an international actor in legal terms with the enforcement of the Lisbon treaty. Hence, regarding

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<sup>52</sup> Larsen, Finn 2010: Regional integration: some Introductory Reflections; in: Laursen, F. (ed): Comparative Regional Integration. Europe and Beyond; Ashgate, pp. 3-20, p. 4.

<sup>53</sup> Feske 1991, p.142.

<sup>54</sup> Feske 1991, p.26.

<sup>55</sup> Parreñas 1989, p.51.

trade relations the European Commission acted on behalf of the union, either as EC representative or by the member states' mandate. Beyond doubt, the EU has become a great power in trade relations acting on equal terms with the US. In security policy, the EU's external representation is more complex. Until the Amsterdam treaty (1999), a so-called troika consisting of three member states under the guidance of one member state holding the "presidency" acted externally on the union's behalf. In particular the Yugoslav imbroglio demonstrated that this system lacked effectiveness. Since 1999, a "High Representative" (HR) coordinates the member states' actions, even serving – since the Lisbon treaty – as a Commissioner at the same time.<sup>56</sup> This organizational innovation led to more consistency and stability of EU foreign policy - making it also more effective at times (e.g. in the Macedonian crisis 2001). But the HR could not avoid complete foreign policy disaster due to divergent foreign policies of the member states (e.g. Iraq 2003).

Whilst ASEAN was hardly registered at the beginning,<sup>57</sup> by the mid-1990s it was regarded as one of the "most successful experiments in regionalism in the developing world".<sup>58</sup> It was able to produce significant achievements in its external relations.<sup>59</sup> For instance, ASEAN is given credit for having contributed to putting an end to the Cambodia Conflict.<sup>60</sup>

In 1971 a security-political concept was developed for ASEAN, namely the so-called ZOPFAN (*Zone of Peace, Freedom and Neutrality*), in which neutrality is understood to imply that foreign powers will refrain from any interference in the region.<sup>61</sup> A successful development was achieved in 1995 at the 5th summit in Bangkok with the implementation of a nuclear-weapon-free zone in Southeast Asia (SEANWFZ). The states agreed that they would refrain from developing, constructing or acquiring nuclear weapons.<sup>62</sup> However it is left up to each signatory state whether or not to permit ships or

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<sup>56</sup> Wessels, W./Bopp, F. 2008: The Institutional Architecture of CFSP after the Lisbon Treaty – Constitutional breakthrough or challenges ahead?; Challenge – the changing landscape of liberty and security, Research paper No. 10 (June), [http://kms1.isn.ethz.ch/serviceengine/Files/ISN/57235/ipublicationdocument\\_singledocument/ab3e4678-8358-4b80-b334-47a1997f69e5/en/CP010+The+Institutional+Architecture.pdf](http://kms1.isn.ethz.ch/serviceengine/Files/ISN/57235/ipublicationdocument_singledocument/ab3e4678-8358-4b80-b334-47a1997f69e5/en/CP010+The+Institutional+Architecture.pdf). [10/8/2011]

<sup>57</sup> ASEAN is not even mentioned in a standard work for Southeast Asia in 1981. See Hall, Daniel E. G. 1981: *A History of Southeast Asia*. New York.

<sup>58</sup> Acharya, Amitav 1993: *A New Regional Order in Southeast Asia: ASEAN in the Post-Cold-War Era. The Factors and Policy Responses that Will Shape ASEAN's Contribution to Regional Security and Order*. Adelphi Paper No.279. London, p.3; also: Dosch 1996, p.119.

<sup>59</sup> Feske 1991, p.147. For ASEAN's role in the Cambodia Conflict see: Haacke, Jürgen 2003: *ASEAN's Diplomatic and Security Culture. Origins, Developments and Prospects*. New York, p.81-110; Alagappa, Muthiah 1993: "Regionalism and the Quest for Security: ASEAN and the Cambodian Conflict", in: *Journal of International Affairs* 46,2, p.439-469.

<sup>60</sup> Acharya 1993, p.14. This opinion is controversial, see Huxley, Tim 1990: "Asean Security Co-operation - Past, Present and Future", in: Broinowski (Ed.), p.83-111, p.90; Suh 1990, p.186f.

<sup>61</sup> Feske 1991, p.158f.

<sup>62</sup> Singh, Bilveer 2000: *Asean, the Southeast Asia Nuclear-Weapon-Free-Zone and the challenge of denuclearisation in Southeast Asia: problems and prospects*. Canberra Papers on Strategy and Defence, 138. Canberra; Mützenich, Rolf 1997: *Kernwaffenfreiheit in Südostasien*, in: *Zeitschrift für internationale Fragen* 4/97, 48th Vol., p.390-400, p.391f.

airplanes equipped with nuclear weapons from third party countries in their territory – this clause was included to oblige US interests in particular.

Since the 1980s ASEAN has successfully established itself as an international organization.<sup>63</sup> The USA's behavior towards ASEAN is exemplary of ASEAN's foreign political progress: Up until 1977 the US treated the organization with polite indifference, since then the two parties have developed a regular dialogue and in April 2008 the USA was the first great power to appoint an ambassador to ASEAN. This also applies to the relations with the European Union, which in 2007 culminated in an "enhanced partnership." In addition to cooperation in the areas of security and economic politics, this also encompasses topics such as energy security and climate change.<sup>64</sup>

Though ASEAN is conferred legal personality by its Charter (Art. 3), it is not specified what this implies for example regarding external relations. It should be mentioned that the term "ASEAN" seems to have a positive connotation, for there is no other explanation why the name has become so popular beyond the actual institution. Many private or semi-official associations, initiatives or companies have made use of the "*magic of the ASEAN name*"<sup>65</sup> and employed it for their own purposes. Two interesting examples shall be mentioned here. The ASEAN Inter-Parliamentary Organization (AIPO) whose members are parliamentarians from national parliaments, serves as a forum for an exchange of information. This organization, similar to the comparatively weak position of the respective national parliaments, in no way represents a basis for regional national representation, all the more so because it is not part of the official ASEAN structure.<sup>66</sup> The other example is that of a multilateral forum where representatives of police departments from member states have regularly exchanged information about common problems in the region since 1981.<sup>67</sup>

#### 4. Conclusions

Let us now resume some of the findings in the following table.

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<sup>63</sup> Leifer 1989, p.152.

<sup>64</sup> See the "EU-ASEAN: Nuremberg Declaration on Enhanced Partnership" from 03/15/2007, [http://www.eu2007.de/de/News/download\\_docs/Maerz/0314-RAA2/0315NurembergDeclaration.pdf](http://www.eu2007.de/de/News/download_docs/Maerz/0314-RAA2/0315NurembergDeclaration.pdf) [05/17/2008].

<sup>65</sup> Haas 1989, p.284.

<sup>66</sup> Haas 1989, p.15 a. 141f.

<sup>67</sup> Haas 1989, p.143f.

<b>Criteria for institutionalization</b>	<b>ASEAN</b>	<b>European Union</b>
Sphere of Interaction (membership criteria)	geography, stability	democracy, civilizational criteria, adoption of community continuance, conditionality, geography
Policy areas	security, economic cooperation, socio-cultural community	community policies (economy etc.), foreign and security policies, justice and domestic (integrated in community policies)
Degree of interaction/agency-building	intergovernmental, Secretariat for coordination, tendency towards bureaucratization at a low level	intergovernmental and supranational (Commission, European Court of Justice, Parliament) vast bureaucratization, also in the area of intergovernmental policy areas
Decision-making	principle of unanimity with option of abstention	qualified majority as a rule, unanimity on sensitive pol. issues
Enforcement	only cultural and social incentive for <i>compliance</i>	Europ. Court of Justice and Commission as arbitrator and preserver of community interests
External impact	institutionalized talks with great powers (ASEAN+3, ARF), otherwise marginal	increased perceptibility due to High Representative, otherwise complex external representation with some impact (e.g. foreign trade)

Source: table by author

Let us start the pattern-matching exercise with a look at the commonalities. The analysis has revealed striking similarities. Both organizations do not economize on goal-setting. They both have started with an emphasis on economic goals, yet over time goals have become more general as well as political. Moreover, an increasing number of issue areas were drawn under the institutional umbrella. This strongly supports the classical neo-functional spill-over hypothesis.<sup>68</sup> The “usual sequence”, though, entailed economic issues first and defence issues last. This, in turn, also gives some credit to Hoffmann’s classical critique on neo-functionalism stating that “high politics issues” tend to be immune to spill-overs.<sup>69</sup>

A second common feature touches upon the experience of valleys and hills in institution-building over time. The overlapping of “valleys”, for instance the 1970s, and “hills”, for instance the beginning of the

<sup>68</sup> Haas, E. B. (1968): *The Uniting of Europe; Stanford (Cal.)*.

<sup>69</sup> Hoffmann, S.(1983): *Reflections on the Nation State in Western-Europe Today; in: Tsoukalis, L. (ed.): The European Community - Past, Present and Future; Oxford, pp.21-38.*

1990s, seems to underline the importance of external factors for institution-building. In a realist vein, both organizations have to adapt to the same constraints of the international system e.g. the world economic crisis in the 1970s and the end of the Cold War for the 1990s.<sup>70</sup> Yet, whether we can recur on single factors here remains debatable since we can find competing external factors for each case (for ASEAN e.g. the Chinese threat in the 1970s and the staggering GATT negotiations 1990-93). In a social-constructivist light, such “formative events” may trigger a readiness for change which leads to a “critical juncture” for a country or organization.<sup>71</sup>

Yet, the ever-growing demand on institutional amendments, the prodigious proliferation of committees and sub-bodies looks more internally driven. This may apply more to the EU than to the more extraverted ASEAN. Overall, though, agency-building followed internal constraints i.e. the goals of the member states and are not apt to match external challenges. Therefore, external effects remain limited. Theoretically speaking, domestic policy approaches come to the fore which can explain idiosyncratic institution-building.<sup>72</sup>

The most prominent difference lies in the decision-making and enforcement procedures of the organizations. Whilst the EU sought a supranational element from the very start – in the shape of the European Commission -, ASEAN held on to the intergovernmental principle. The organizational design of ASEAN therefore remains too weak to develop an own initiative comparable to that of the EU Commission. ASEAN remains a forum of cooperation for national decision-makers and by no means represents a herald for supranational structures. In contrast to the EU, the consolidation of the community exclusively takes place by means of including more and more policy areas in the ASEAN process over time. Admittedly, there is a cautious tendency to strengthen the General Secretariat, though it will continue to adhere to the intergovernmental decision-making process. Whether this very modest trend will live up to the EU’s “Brusselisation” i.e. the build-up of intergovernmental foreign policy units in Brussels, remains to be seen. The fact that ASEAN institutions are operated by national decision-makers who are dependent upon instructions from their respective national governments, speaks in favor of caution. Moreover, incentives given by an independent judiciary remained absent, for no court of arbitration, recognized by all states, exists; the *High Council* which was introduced in 1976 to settle disputes, was never materialized. Therefore there is no ‘*integration by law*’ within ASEAN. This has two further implications. First of all, the institutional weight of the European

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70 Waltz, K. N. (1979): *Theories of International Politics*; Reading (Mass.).

71 Marcussen, M. et al. (1999), *Constructing Europe. The Evolution of French, British and German Nation-State Identities*, in: *European Journal of Public Policy* 6 (4): pp. 614-633.

72 Milner, H. (1997): *Interests, Institutions, and Information. Domestic Politics and International Relations*; Princeton (NJ).

Community Law and the Commission's initiative role imparts a comparatively enduring and continuous integration achievement. ASEAN, by contrast, is more 'top-heavy' and requires incentives from the 'top.' The exit of the great leading personalities such as Suharto, Mahathirs, and Lee Kuan Yew from the regional stage, give reason to worry that this resource will be lacking for the further development of ASEAN. Secondly, this also means that the development of ASEAN depends upon the convergence of national foreign policies, which also applies to the effectiveness of other international organizations. Yet this aspect momentarily does not look promising: The states are drifting apart in both economic policies as well as in the area which the governments refer to as "*good governance*." In a social-constructivist reading, the respective diverging national identities still dominate the emerging regional one.<sup>73</sup>

A further essential difference concerns the sphere of interaction, more specifically the criteria for permitting new members. The EU sets certain adaptation requirements prior to the beginning of the membership and then continually extends the catalogue of expected 'homework tasks' (the so-called '*acquis communautaire*') by means of association agreements and "pre-accession strategies." In the case of the EU this has the drawback that membership can only be effected after more than ten years of negotiation. ASEAN, in contrast, hopes for a socialization effect of a state after becoming a member and has hardly any requirements for the membership. ASEAN candidates can remain as they are: Hardly any changes in society and politics are needed for accession. So ASEAN inherits the political and developmental deficits of each new member – which the case of Myanmar clearly shows. Put bluntly, ASEAN is a status quo community whereas the EU is an achievement community. Following identity theory, both regionalisms share the peculiarity of separating themselves from their respective past. In the European case, though, it is the experience of the two world wars and the holocaust while in SEA it is the experience of colonialism, dependency and occupation. It is therefore noteworthy with which candor ASEAN cultivates its collective symbols: Flag, hymn, an ASEAN day, legal personality – all this can be found, unchallenged, in the ASEAN Charter. The European discussions circling these elements of European identity in dispute over the Constitutional treaty and their elimination from the Lisbon Treaty therefore, by comparison, seem overwrought.

The comparison drawn in regards to enlargement policies has revealed the 'status quo community' character of ASEAN. Each Southeast Asian state which could prove a certain degree of stability was allowed to join the Association. While each applicant country must undertake efforts to adapt in a

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<sup>73</sup> For the latter, see Nischalke, Thomas 2002: "Does ASEAN measure up? Post-Cold war diplomacy and the idea of regional community", in: *The Pacific Review* 15,1, p. 89-117.

long process prior to becoming a member of the EU, ASEAN, in stark contrast, has no democratic or civilizational standards. The goals formulated in the ASEAN Charter - *rule of law* and *good governance* are declaratory goals to beautify the external image; declarations of intent without binding force. It remains to be seen, however, whether such pronouncements might result in *unanticipated consequences*, social forces at home which could increasingly remind and evaluate governments accordingly – which is what East European governments faced as a consequence of the Helsinki Accords. Indeed, the ASEAN runs the risk of stumbling in the same expectations-capabilities gap which had been used to denote the persistent failures in EU crisis management.<sup>74</sup> The incapacity to solve recent crises – considering the violent clashes around the Preah Vihear temple and the tensions in the South Chinese sea – are cases in point here.

So our – admittedly preliminary – findings regarding ASEAN following the EU model show an ambivalent picture. For sure, there are common features and with no doubt, ASEAN “copied” denominations and some institutional ideas from the EU. Yet stark differences remain which speak in favor of idiosyncratic institution-building. It is therefore also an institutionalization *sui generis*.

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<sup>74</sup> Hill, Christopher 1993: *The Capability-Expectations Gap, or Conceptualizing Europe's International Role*, in: *Journal of Common Market Studies* 31:3, p. 305-328.