

# **Origins of Supranationalism: Crisis and Democratisation in Southeast Asia**

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**Abstract**

The increase of ASEAN tasks and functions has risen to a point where human rights have become enshrined in a regional commission. How can this be explained considering the history of straight up human right abstinence and abuses throughout the history of the member states. I hypothesise in this thesis that the recent democratisation of regimes of ASEAN member states caused supranationalism in the form of the creation of the ASEAN Intergovernmental Commission for Human Rights. In order to consolidate the new democracy, regimes may pursuit locking them in into supranational institutions. This will prevent the democratic regime from falling back to authoritarian rule, since it's citizens rights are protected by a higher authority, out of reach of the direct power of the regime. Results suggest this theory may hold validity in the ASEAN region where recently democratised states are more likely to support supranational institutions than the long term democracies or authoritarian states. This means change in direction and norms in ASEAN is the result of democratisation of member states that are using ASEAN as vehicle for domestic political goals.



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## Abbreviations

AHRB	ASEAN Human Rights Body
AICHR	ASEAN Intergovernmental Commission on Human Rights
ASEAN	Association of Southeast Asian Nations
ASEAN-ISIS	ASEAN-Institutes of Strategic and International Studies
CSIS	Centre for Strategic and International Studies
EPG	Eminent Persons Group
HRB	Human Rights Body
IMF	International Monetary Fund
ECHR	European Court of Human Rights
EU	European Union
UN	United Nations
HLTF	High Level Task Force
ASC	ASEAN Security Community
PoA	Plan of Action





## I. Introduction

The administrative growth of the Association of Southeast Asian Nations (ASEAN) expanded since the 1990s, but especially in the first decade of the millennium. ASEAN grew into a stronger and deeper regional cooperation seen from agreements on nuclear weapon-free zone (1995), the ASEAN Investment Area (1998), and the ASEAN Concord II (2003). Specifically, the Declaration of ASEAN Concord II commences with: “An ASEAN Community shall be established comprising three pillars, namely political and security cooperation, economic cooperation, and socio-cultural cooperation that are closely intertwined and mutually reinforcing for the purpose of ensuring durable peace, stability and shared prosperity in the region;”. The ASEAN Charter presents symbols of embodying we-feeling, regionalism and identity for its members.

At its commencement, the ASEAN Charter’s first pillar, the Security Community (ASC), also envisioned a human rights body and a change in norms from non-interference and consensus decision-making to human rights, long considered a taboo. Indonesia has been suggested as the driver for this change motivated by its domestic security concerns rather than international politics. The ASEAN Intergovernmental Commission on Human Rights (AICHR) was also seen as aimed at Indonesian domestic politics (Wong, 2016; Jetschke, 2009; Jetschke & Burilkov, 2016; Ryu, 2011, 2014).

Indonesian initiatives within ASEAN illustrate a theory that a regime having recently gone through a transformation from autocratic leadership to democratic governance may attempt to construct supranational security regimes to secure its domestic democratisation agenda. So, the supporters of supranational institutions are less likely to be established democracies nor autocratic regimes, but rather, uncertain new democracies with its own domestic political motives. In this thesis, I answer the following research question: “*Are newly democratised regimes in Southeast Asia more supportive of constructing supranational institutions in ASEAN than established democracies or undemocratic regimes?*” My thesis will not only contribute to an explanation for the origin and mechanism that created the ASEAN Charter. But also highlight that growth in supranational security institution building likely has its origins in securing domestic politics. I find that there are indications for the AICHR intended as a vehicle for security of domestic Indonesian politics.



## II. Background

In 2007 the ASEAN Intergovernmental Commission on Human Rights (AICHR) was key component of the steps taken with the implementation of the ASEAN Charter to change the human rights practices in Southeast Asia. A surprising step for ASEAN after years of looking away or even denying human rights as seen from the bad record of human rights in Southeast Asia (Ciorciari, 2012).

The Second Generation Tigers or Tiger Cub Economies in Southeast Asia was a group of countries that relied on export driven economic growth while maintaining dubious histories of human rights. Despite the fact that the export driven growth has, compared to other types of economic growth, obvious potential to be used by western trade partners to take a position to enforce human rights norm changes (Finnemore & Sikkink, 1998). In reality the opposite happened. Just like it did back in 1972 with “Nixon going to China”. Trade got priority over human rights. It is interesting to see what motivates regimes in Southeast Asia for the creation of human rights bodies at supranational level.

The discourse to oppose human rights within the Southeast Asia Region was consolidated in the “Asian values” debate. “Asian values” opposed the normative United Nations human rights pressure. By discarding human rights as a western phenomenon the regimes would not have to live up to them. “Asian values” has two main lines of argument. Firstly, situational uniqueness: because human rights were a product of western enlightenment ideals they did not fit the Southeast Asian region which had different cultures. Secondly, sequential promotion of human rights: wherein political stability and economic development are given priority over human rights or need to be balanced with them (Ryu, 2011, 2014). It is important to note that normative differences did not harm the growing economies or caused problematic diplomacy with the rest of the world (in fact the diplomatic ties grew warmer). The rejection of human rights in nearly all Southeast Asian regimes lasted until the Asian financial crisis of 1998.

In the 1990s ASEAN expanded with new member states that had authoritarian and communist regimes. These regimes were no longer considered threatening to the liberal member states. These new member states still lagged in their economic performance. Partnership would be mutually beneficial after the cold war had ended (Allison, 2016). With the accession of Vietnam (1995), Laos, Myanmar (1997) and Cambodia (1999), ASEAN went up to 10 member states and now includes every country in the region except for East Timor and Papua New Guinea.

In the early summer of 1997, the Asian financial crisis hits the region causing severe economic and subsequent political tension. The Chiang Mai Initiative (2000) created a system where limited funds were created by local Asian states to support each other in case of need (Best, 2010). However, the availability of such funds could not cover a crisis of the size that the region had experienced by far. With growing political interest in creating cross border security, the willingness for regionalism grew (Ibid.).

Since the distrust in the solutions offered by World Bank and the International Monetary Fund (IMF) had grown (Sharma, 1998), the Asian financial crisis influenced general receptiveness for regionalism and was therefore a cause for the creation of the ASEAN Charter.

The crisis also led to attention of the demands by the citizens' wellbeing and resulted in the loss of "Asian values" in political debates. Different norms now gained potential because of the norm crisis in the region. Functioning democratic norms, good governance and human rights were now seen as norm for functioning states (Sukma, 2009a) and gaining credibility due to the crisis.

Against this backdrop, AICHR was born. it has six roles, namely to:

1. develop strategies to promote human rights;
2. develop an ASEAN human rights declaration;
3. provide advisory services and technical assistance;
4. engage and consult with ASEAN entities and civil society;
5. obtain information on the human rights promotion and protections;
6. develop common approaches and positions on human rights.

These six goals seem to indicate that the AICHR indeed entails a functioning, active promotor for the expansion of human rights in the region (Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights, 2009).

### III. Methodology

#### III.1. Analytical Framework

Institutionalism, in international relations theory, can be described as the power vested in institutions to influence people and politics. Such institutions, in turn can be described as “humanly devised constraints that structure political economic and societal interactions.” (North, 1993). With emergence of “New Institutionalism” (March & Olsen, 1983), Explanatory theory on European integration emerged and moved away from traditional international relations theories (liberalism and constructivism) towards development of the theory of liberal intergovernmentalism (Moravcsik 1993).

In liberal intergovernmentalism the institutions function as credible commitments between the key players: the sovereign states. Liberal intergovernmental theory focusses on regime behaviour as the result of its motivations to pursue interests in maintaining particular public goods and economic interests; but most importantly, domestic political institutions. Institutions matter! Democratic innovations of formerly autocratic regimes have shown to be vulnerable in the first stages because of the uncertainty over the new democratic political system that has not had time to embed itself in the society. A dismantled autocratic regime gives an option for failure of maintaining democratic practise. The uncertainty of a power vacuum leads to insecurity and weak institutions. The limited functioning of the new democracy mechanisms of the recently democratized regime (because of relative unfamiliarity of knowledge and experience) gives space to an option of failure of the new politics. In liberal intergovernmental theory, political uncertainty leads to the pursuit of security in the form of supranational enforcement mechanisms. Institutions that get ‘locked in’ in a higher legal authority will have a higher likelihood of succeeding and strengthening into a functioning and strong democracy.

Delegating the power to maintain human rights order, insulates the politics and ties the hands of future governments. Therefore, the effect of recent democracy on the construction of supranational entities are likely to have a positive causal relationship. Moravcsik (2000) finds that the regimes that were driving force behind the development ECHR (European Court for Human Rights) in 1959, were the states that acquired democracy recently but still had unstable regimes with chance of reverting to autocratic regimes. These (such as Germany, Italy and Austria) were the regimes that benefitted the most from the ECHR. The findings in Moravcsik’s research are checked to other possibilities of the following explanatory variables:

1. *Support for general European federalism;*
2. *Experience of being invaded by Germany;*
3. *Whether or not the country has had a colonial empire;*
4. *Strong parliamentary sovereignty tradition;*

None of these give alternative explanations for the regimes support for the ECHR. In addition, the reasoning in national political debate, often voiced that the ECHR could stabilize “domestic threats from the totalitarian right and left. Hereby stabilizing internal aggression” (Moravcsik, 2000).

In addition to the liberal intergovernmental theoretical explanations for the AICHR, there are several alternative views on the case. The origins for supranationalism in ASEAN can be viewed as constructivist (Dosch, 2008). In this perspective the AICHR origins are explained as an independent “grassroots” civil society organisation which was given more freedom to influence Indonesia’s politics and subsequently ASEAN policy (2008). Dosch’s example indicates that a civil society’s influence is rising in Myanmar and does not entail details in the commencement of AICHR in Indonesian think tanks. Ryu (2011) claims liberal intergovernmentalism does not explain the origins of the AICHR for two reasons. Firstly, There are no known indications (in the form of written documentation on domestic politicians accounts for defending the AICHR) for a politically strategic value of the AICHR to domestic politics of Indonesia. Secondly the toothless AICHR can not perform checks on domestic politics of the member states. While Ryu’s claims are true for the outcome, it does not rule out liberal intergovernmental motivation and historical domestic political threats.

Comparisons between the blocs of European Community (EC) and later the European Union (EU) and ASEAN are often unequal: The EU would lead and ASEAN follows (Jetschke & Murray, 2012; Katsumata, 2009, 2011). Such snobbery has not been academically discarded since Murray (2010) or nuanced by Wong (2012). Comparative regionalism often followed a biased path wherein ASEAN would get its legitimacy from the fact that its institutions resembled that of the bigger and older EU. Such comparisons are often the outcome of biased perspectives and are not constructive methods for study (Murray, 2010). This paper shall attempt to capture a new angle by focussing on an internal factor that is shared by both blocs individually with no empirical correlation. Making this paper not comparative to the EU, but rather inspired by European Integration theory.

## **III.2. Operationalisation of Variables**

In the framework and operationalisation of variables we have the variables of *newly democratised regimes in Southeast Asia* and *supportive to the construction of supranational institution of ASEAN*. These form different types of variables but are supposed to have a causal relationship.

### **III.2.1. Operationalisation of “Recent Democracy”**

In the Economist Democracy index, a large number of nations are ranked by their level of democracy. The Economist, a British classical liberal economic journal, has statistical data that is used in academic research for its qualities of accurate, pure and equal ranking of almost all nations by a single method. The

datasets range from 2006 towards present. Data from before 2006 is not available. So called “experts” are surveyed in a 0 or 1 answer, or in a 0-, 0.5- or 1 answer, depending on the question. The amount of “experts” and their identity or vocation are not public. The sums are added within each category (there are four categories: Electoral Process and Pluralism; Functioning of Government; Political participation and Political Culture) than divided by the total of the questions. There are four questions considered so important that if they score 0, it lowers the total score of the country. These are "Whether national elections are free and fair"; "The security of voters"; "The influence of foreign powers on government"; "The capability of the civil servants to implement policies". The four categories are then combined and divided to create an average that decides its place on the index. Then there are classifications of the entire ranking. Countries are classified as full democracies (score 8-10), flawed democracies (score 6-7.9), hybrid regimes (score 4-5.9) or authoritarian regimes (score below 4) (Economist, 2012). Based on the scores, these 4 types of regimes are distinguished. The regimes involved in the decision making process of the ASEAN Charter vary between the lowest three types. They will be used as such in this research.

Since the index started in 2006 it gives us an indication for the status at the time of the development of the ASEAN Charter (1998-2003). The criteria used by the Economist will be set against the status of the regimes in the time period before 2006. A shift in democratic status will portray the change in regime. Because of the lack of data from before 2006 we have to reason ourselves, based on verified sources, what the index score of the various member states would be in the years between 1997 and 2006. An example of such reasoning would be as followed: The index does not include Brunei. It is an absolute monarchy; therefore it would not classify as a flawed democracy. It will fail at the penalty scores in: “The capability of the civil service to implement policies” and “Whether national elections are free and fair”. Because of the penalty that these score contribute to the total index score Brunei will be considered a autocratic regime.

Ex-post coding of existing indexes is problematic since it does not follow the entirety of the Economist index measurement on various levels. It only follows an interpretation of the questions asked by the Economist towards their experts. Judging from a researchers position to create more workable data, influences the objectivity of the research. Ex-post coding unreliability will have to be taken into account in the quality considerations of this research project. The choice was made to reason, as clearly as possible, how the penalty scores are justifiably classified for the outcomes in the index score in order to curb the unreliability. This study seeks to measure only if a regime it would get a score low enough to classify it as authoritarian or not. This research project does not seek an entire ex-post coding to recreate an earlier version of the index. A regime has to fall in the category of hybrid democracy or authoritarian regime before 1998 and classify as flawed democracy or full democracy from 1998 onwards to classify it as newly democratic.

### III.2.2. Operationalisation of “Support for Supranational Institutions”

The variable of support for supranational institutions can vary from active to resistant. The scale will follow four levels of support. The levels of support are designed for this research only. Since none of the existing models were sufficiently applicable. At the first level (most supportive) there is initiative: Active initiation that consist of the efforts of regimes to initiate the development of supranational institutions. The second level is marked by lukewarm support. Passive and moderate support on the basis of nominal support without undertaking actions to actively develop supranational institutions. Passive support usually entails support of another regime’s initiative. On the third level is the middle ground. A regime on the third level will show passive abstinence. Indicated by the absence of stances of regimes or regimes that do not express a particular stance. They will not give information whether a regime is in favour or against developing a supranational institution. There is no expression of support for the initiative nor expression of prevention of its development. Finally, the fourth and lowest level consists of preventing or blocking the initiative. Regimes in this category are resistant regimes that are actively opposing supranational institutions, preventing the supranational institution from being developed. The support or willingness of a regime for the supranational institution (binding agreements overruling their sovereignty) can be classified in these four levels ranging from most supportive to outright hostility (See table 1). While supportive regimes will strive for construction of the supranational human rights body, the opposition will prevent, strain or block the creation of the supranational human rights body.

Table 1: Levels of support

<b>Level of support</b>	<b>Characteristics</b>
Initiative	Efforts for initiative/creation
Nominal lukewarm support	Moderate nominal support for initiative/creation
Middle ground	No response
Opposition	Prevent or block initiative/creation

To capture the supportiveness to supranationalism more precisely we can employ an exhaustive list of operationalised indicators to indicate the level of support. We can identify positions in official documents which are stating such levels of support. We can also find indications in the outcomes of interventions, negotiations and diplomacy. There are also nuances and strategic stances in foreign policy and diplomacy. Studies have shown demonstrable political influence in powerful agenda setting in ASEAN summits. Hosting of the ASEAN summit and bargaining efforts in meetings are potentials for influencing the outcome to the host’s agenda (Suzuki, 2014). All of these operational indicators can be considered evidence of an active, passive or resistant regime.



### **III.3. Supporting Methods**

In-depth analysis in a style of process tracing and case study research has to be carried out to subsequently find the motives behind the (lack of) support in order confirm or reject the hypothesis. In researching the background of member states' stances and position formulation in debates and discussions we can define internal motivations.

### **III.4. Considerations**

Downsides of this analytical framework include the narrowness of the definitions. The decision of choosing the AICHR as a case for supranationalism narrows the definition. However, maintaining a precisely defined, narrow definition will give us a stronger, more detailed and operational outcome. Human rights is an exceptional field to demonstrate supranationalism in an excellent way because it has little value for member states on the short term. The gains of delegating sovereignty on the issues of human rights are theoretical and normative. Having a regime's powers delegated to supranational level means that the conclusions are more reliable and generalizable since other theories lack such mechanisms.

The AICHR is an unsuccessful human rights mechanism which creates another downside to this research. As a failure of an organisation it seems out of place for a research topic. The process that the AICHR followed during its creation can give us a lot of useful information on decision making and the potential for supranationalism by regional cooperation. Dysfunctioning institutions yield insights as valuable as investigating successful institutions. The AICHR's outcome may not be the success it aimed for, the motivation and development of the AICHR is the main bulk of this research paper rather than the outcome. This is a deductive driven research project with a theoretical hypothesis in the first place. Outcomes can however be of influence to empirical situations. It gives us information on actors' motivations, particular circumstances and general likeliness of the emergence of supranationalism in certain contexts rather than explaining a success story.



## IV. Analysis

### IV.1. Empirical Findings

This chapter makes an analysis of the various member states' democratisation, supranational support and motivations.

#### IV.1.1. Analysis of “Recent Democracy”

The countries that score low throughout the time frame of the research are scores of 1.71 (Myanmar, 2006), 2.10 (Laos, 2006) and 2.75 (Vietnam, 2006). Myanmar has a notorious low score on index and has to the present not lived up to many requirements to score higher. An exemplary downside to their record was ignoring the outcome of the 1990 elections and arresting the opposition in order for the military junta to maintain control (Mantel, 2010). Relaxations came only after the ASEAN Charter and the AICHR. Both Laos and Vietnam are ruled by a Communist Party exclusively and therefore they disqualify as Democracies. Cambodia surpasses the 4 points bar to a hybrid democracy with a 4.77 score but still ranks low. In these undemocratic regimes free political elections, press, and peoples initiatives are non-existent. Cambodia made changes and innovations in the 1990s. After the Paris Peace Agreement in 1991, that formally ended the dictatorship, Cambodia had its first elections in 1993 (Mantel, 2010). These improvements to its democratic standard have been upheld throughout the time frame of this research and maintained current level without fallback. Because of its formally competitive elections, it gets a higher score than the lowest three. Because of the fact that these elections are unfree and unfair; the nations weak rule of law; Its media restriction (Ibid.) and lack of government neutrality, Cambodia's status had been undemocratic through the decision making steps of the AICHR of this research. It acts conservative and careful in the international context. Democracy in Singapore scores low on the index (5.89, 2006). A hybrid regime rules the city state with autocratic power. Having competitive elections are a plus but like most hybrid regimes it lacks a proper civil society (Mantel, 2010), a free press and the right of organisation. Singapore ranks as hybrid regime and has more or less been stable in that category from 1998 until 2003. With the highest GDP per capita in the region and impressive social services for a Southeast Asian, non-democratic country it is somewhat an odd one out as an autocratic regime. The elections nonetheless do not have a big impact on political diversity. Silencing the political opposition through a complex informal social punishment system, categorises Singapore as undemocratic (Mantel, 2010). The absolute monarchy of Brunei Darussalam (not on the Economist Democracy index) does not support democratic innovations and human rights. It has since its independence from Malaysia not improved on democratic innovations apart from a single election in 1962 and to the dismay of human rights watches, adopted nationwide Sharia law in 2014 (BBC, 2017).

In the categories for long term democratic regimes, Malaysia and the Philippines score sufficient. Thailand fell in and out of the category of the flawed democracy throughout the late 20<sup>th</sup> century because of various coup d'états (Taylor & Kaphe, 2014). At the time of the Asian financial crisis it qualified as a flawed democracy since its 1992 reforms (Matthews, 2006). Like Indonesia, Thailand had reforms in 1998 as a result of the crisis. The coup d'état in 2006 left Thailand focussed on domestic matters causing it no longer actively taking a stance in the development of the ASEAN Charter. Thailand was during the 2006-07 intermezzo of military rule "reluctant to speak out, even though it generally has strong views on human security and the enhanced role played by civil society organizations" (Kavi 2007 in Dosch, 2008). The military junta even expressed opposition to the inclusion of democratic principles in the ASEAN Charter (ibid.). The military regime also likely affected Thailand's place on the index. In 2006 it had a score of 5.57 (Hybrid). A relatively low score compared to 2011 (6.55: flawed democracy). Thailand has had various coup d'états prior 1998, which seemingly indicates it might be less strong as a democracy. These were however arguably often related to the goal of eliminating authoritarian power gains. For example, Thai prime minister, Thaksin Shinawatra, was overthrown with the 2006 military coup after protests and political crisis caused by his autocratic tendencies and abuse of power (BBC, 2011). In this context, the many coups make a possible contradictory argument that Thailand is actually a democratically tough and lively country. One of the most successful, multicultural, democratic federal republics (Democracy index, 2012) is Malaysia. It has a history of hard and active democracy with competitive elections on federal level. However, a lack of media freedom and lack of freedom of assembly makes it's society restricted. With a restricted regime like that however, it has been successful in maintaining a status quo for a long time. Sufficiently enough for the Economist to rank it in the flawed democracy category (5.58). The Philippines had been democratic, albeit turbulently, since a peaceful uprising in 1989, which lead to the departure of president Ferdinand Marcos (ABS-CBN, 2017), and have the longest record of formally supporting human rights in the region while the "Asian Values" was supported by almost all other regimes until 1998 (Palatino, 2016, Ryu, 2011, 2014).

Table 2: Democracy index of Southeast Asian states in 2006 (green: democratic, yellow: hybrid, red: undemocratic)

State	2006 score	2006 rank	2011 score	2011 rank
Brunei	-	-	-	-
Cambodia	4.77	105	4.87	105
East Timor	6.41	65	7.22	42
Indonesia	6.41	65	6.53	60
Lao PDR	2.10	155	2.10	156
Malaysia	5.85	81	6.19	71
Myanmar	1.71	163	1.77	161
The Philippines	6.48	63	6.12	75
Singapore	5.89	84	5.89	81
Thailand	5.57	90	6.55	58
Vietnam	2.75	145	2.96	143

The only regime with a transitional democracy is Indonesia which went from an undemocratic authoritarian regime to the most democratic state in Southeast Asia. After the fall of president Suharto, the longest sitting president with 31 years in office, Indonesia turned into a functioning democracy almost over night. Internal changes as a result of social unrest after the 1997 Asian financial crisis created the third largest democracy in the world. Also with the fall of Suharto, East Timor gained independence from Indonesia again in 2002 after 27 years of occupation. East Timor has been successfully building a continuous democracy after a start under UN supervision (Galbraith, 2003). East Timor is also a successful transitional democracy but not a member state of ASEAN yet. East Timor has had no part in the development of the ASEAN Charter. Indonesia's relatively low score of 6.41 in the Economist Democracy index could possibly be influenced by the high levels of corruption (which is not documented or measured in the Economist Democracy index). Indonesia has improved by the standards of the Democracy index but remains odd because of the fact that it does not have a on-again off-again relationship of death and rebirth of democracy as the other states had. Its sudden change and slightly unsuspected success in democratic practise after the transition make the nation an excellent example as a case in the experiment of the liberal intergovernmental theory.

#### **IV.1.2. Analysis of “Support for Supranational Institutions”**

The highest levels of support were coming from Indonesia. In the theoretical classification (of table #1) Indonesia categorize in the first and strongest level of policy support (see applied in table #3). Indonesia initiated the eventual AICHR with its interests for reforms in ASEAN. Hereby, Indonesia changed the norm for human rights and the norm for regionalism (Acharya, 2009). Indonesia also played a role in the preparations of the decision making. Exemplified by hosting the chair of the ASEAN summit and setting the agenda in the meetings (Collins, 2013). Indonesia also prepared the working paper and instructed the Eminent Persons Group (EPG, Working group to make recommendations on the ASEAN Charter; see also Chapter VI.1.3. on page 17) on their tasks.

At all these points Indonesia had chances to influence the outcome of each process which was turned to their advantage in the development of the charter, indicating Indonesia’s agenda (Suzuki, 2014). Suzuki demonstrates in an empirical study on the power of the ASEAN Chair: the likeliness of the chair finding agreement on their own proposals is high. Suzuki also demonstrates that the chair sometimes does not succeed in doing so mainly because of not being able to grasp the “contract zones”. We can see the effect of chairing the summit on the ASC proposal during the Bali II summit (ASEAN Concord II). It was successfully negotiated with an agreement. However the resulting feasibility of the human rights issue was not to its liking because it was toned down in the various rounds of decision making. The steps after ASEAN Concord II led eventually to a weak and hollow organisation.

The lesser but still outspoken support was coming from Malaysia and the Philippines. Thailand showed ambiguous stance and seemed to be too busy domestically, to actively engage with ASEAN matters most of the time. The categorisation (as shown in table #1) would therefore place Malaysia and the Philippines as generally being in the second category of the support levels (See below table #3). While the support was nominal and symbolic it was genuinely supportive the human rights body (HRB), but they did not actively take a bold stance to protect it. The Philippines was a human rights promotor even when the rest of Southeast Asia was still focussed on “Asian Values” interpretation of human rights (Ryu 2011, 2014). The Philippines with its history in human rights could not have been opposed to the creation of AICHR. At a crucial point in the negotiations, namely managing the approval for the clause on the establishment of a regional human rights body (Dosch in Collins, 2013), the Philippines took a stronger stance than it had earlier, made it the second most active pro-charter regime. Steps that Malaysia never took.

Singapore and Brunei did not take a reported stance in any of the sources They were member states with no particular stance in the matter and did not get involved in taking sides during the heated discussions. Thailand, with its irregular contributions to the heated discussions did not have a clear stance

on the topic either. Lack of reported stances categorized Singapore, Brunei and Thailand in the third level of support on the scale (table #2).

Strongest opposition came from the more recent member states of Cambodia, Laos, Vietnam and Myanmar. These authoritarian regimes, at every point in the development and decision making procedure, attempted to block and close down negotiations. Interference at such a late point in the decision making procedure, created a deadlock for the new policy. It should be noted that the strongest opposition was entirely due to the least democratic regimes (category 4 support; table #2). Eventual bargaining mellowed the opposition a bit and the unanimous foreign ministries stance was to maintain the human rights body, to the representatives' surprise (Koh 2009; see also Chapter IV.1.3. page 17). The unanimous directive from the foreign ministries lead to a reluctant acceptance by Cambodia, Laos, Myanmar and Vietnam (Koh, 2009, Ryu, 2011; 2014).

Taking an overview of situation, the result was to be expected. However, no earlier response from the opposition was given and no informal fast track preparation for the decision making was proposed during the preparations of the charter. Apart from the changes made in the Senior Officials Meetings (intended to discuss relevant issues under the Political-Security pillar and to prepare outcome documents, see also Chapter IV.1.3. Page 16) between June and August 2003; which lead to the ASC Plan of Action (PoA). The design of the ASC-PoA was given to Indonesia. The political dominance of Indonesia and the Philippines combined chose to focus on the prestigious charter and human rights body. This caused eventual acceptance of it, however this was at the expense of proposed majority voting structure.

Table 3: Level of support to the AICHR versus regime type in ASEAN.

<b>Level of support</b>	<b>Functioning flawed democracy, continuing from 1998 onwards</b>	<b>Transitional/Uncertain democracy from 1998 to 2007</b>	<b>Authoritarian or hybrid regime</b>
<b>(1) Initiative</b>	-	Indonesia	-
<b>(2) Lukewarm Support</b>	The Philippines, Malaysia	-	-
<b>(3) Middle Ground/No Stance</b>	-	-	Singapore, Thailand, Brunei
<b>(4) Resistant</b>	-	-	Cambodia, Laos, Myanmar, Vietnam

### IV.1.3. Supporting Findings

The transformation of Indonesia's regime commenced with the sudden resignation of president Suharto after 32 years on 21 of May, 1998, following the financial crisis of 1997. With immediate follow up of vice president Habibie, the restrictions on press, media, and political organisation were loosened to make his plans for early elections credible. With the military power behind president Habibie's office, the peace was retained until the election of new president, Abdurrahman Wahid. From his election onwards, democracy was maintained and elections were held regularly. This resulted in four stages of intensive constitutional amendments supporting new democratic innovation. Leaving only 11% of the original constitution intact (Roberts, 2015). After these democratic innovations, the Ministry of Foreign Affairs had more leeway in setting its policies.

Delegating decision-making was a new move in Indonesia's approach to foreign policy. Indonesia was clearly tied to domestic political agendas and less sensitive to ASEAN solidarity than it traditionally was (Dosch, 2008). Rizal Sukma, an academic at the Centre for Strategic and International Studies (CSIS) in Jakarta, was asked by the Indonesian Ministry of Foreign Affairs to advise on "reclaiming Indonesia's strategic centrality" (Collins, 2013).

Sukma presented a concept paper to the ministry on March 20, 2003. This was called "Towards an ASEAN security community" and became better known as the Deplu paper (after *Departemen Luar Negeri*: The Indonesian Ministry of Foreign Affairs) (Ibid.). In the Deplu paper relatively radical ideas about cooperation and supranational solutions were brought forward in the form of practical measures based on a we-feeling of the region. Sukma had been influenced by academics on regionalism in Asia such as Acharya (2009). The paper contained 75 concrete steps and included ASEAN as the vehicle to which Indonesia would have subscribed to secure its position in the region. The Deplu paper contained suggested changes in ASEAN to be made by Indonesia in regards to the two original core principles; non-interference and consensus decision making. The non-interference principle hampered the road to supranational governance. The consensus decision-making principle meant that the lowest common denominator ruled. Therefore these principles had to be abandoned in order for ASEAN to grow in importance. The Deplu Paper also prescribed an independent human rights body for ASEAN.

After adaptations within the Indonesian Ministry of Foreign Affairs, the Deplu paper was presented to ASEAN at the Senior Officials Meeting on 13 June, 2003 and it was to become the basis for the ASEAN Security Community (ASC). It also contained a Human Rights Body (HRB) amongst others (Collins, 2013). The ASC was eventually adopted during the 9<sup>th</sup> ASEAN summit in the ASEAN Concord-II as one of three pillars of ASEAN. The other two being the ASEAN Economic Community and the ASEAN Socio-Cultural Community.



Indonesia was tasked with drawing up a plan of action for the ASC. Thereby giving Indonesia and the CSIS another opportunity to influence the ASC. The result was the ASC Plan of Action (PoA). A path of many steps and consultations in an unusually large number of meetings among senior officials. This indicates that agreement was hard to achieve (Roberts, 2010). Especially the democracy and human rights parts were not shared values between the highly diverse regimes of the member states. Several elements of the we-feeling and regionalism were kept in place in the ASEAN Socio-Cultural Community, resulting in the hollow symbols of the flag, anthem and motto. Eventually the HRB was also maintained as part of the ASC.

The Eminent Persons Group (EPG) was established at the 11<sup>th</sup> ASEAN summit on December 12, 2005. Its consisted of, mostly retired, government officials individually representing ASEAN member states. The EPG was asked to make “bold and visionary” (Alatas, 2009) “out of the box” (Gonzalez-Manolo, in Koh et al, 2009) recommendations of what the charter and future of ASEAN should look like. The need for the charter coincided with a shared problem of membership expansion and transnational security problems (environment, financial flows, counter terrorism) which would guide the EPG. The EPG consisted of individuals with highly opposing norms of the future of ASEAN (Finnemore & Sikkink, 1998). The EPG did meet with CSO’s and the ASEAN-ISIS (a network of think tanks in ASEAN including CSIS) which would leave a significant impact on the EPG report.

After the recommendations of the EPG the eventual drafting would fall to a High Level Task Force (HLTF) which was also composed of a representative per member state but acting under supervision of the foreign ministry of that particular member state. The HLTF met thirteen times in 2007. The human rights mechanism was an issue that the HLTF could not get a consensus about on their own. Therefore guidance was requested by the HLTF from the foreign ministries. The member states’ foreign ministries’ unanimous directive was that a henceforth called ASEAN Human Rights Body (AHRB) was to be established. The directive indicated a critical mass of political support for the idea of a human rights body. The foreign ministries’ directive astonished the representatives of Cambodia, Laos, Myanmar and Vietnam. Who were the members that opposed constituent change. The middle ground was kept by Brunei and Singapore. The one seeking constituent changes in ASEAN was Indonesia who was in different rounds supported by different constellations of the Philippines, Malaysia and Thailand (Koh, 2009, Roberts, 2010).

The need to include the AHRB resulted in the bargain of the implementation of the AHRB over the loss of majority voting structure that was also proposed. The majority voting structure was traded off against the inclusion of the AHRB. After heated discussions in the HLTF throughout the summer of 2007 the bargain ended up being the establishment of the human rights body, viewed as a win for Indonesia and the Philippines, despite the loss of the majority voting structure (Dosch, 2008). The conditions for the

establishment for the human rights body were not spelled out and were not as clear cut as the conditions for rejecting the majority voting structure. Necessary details of the AHRB left quite some leeway for further developments.

The next topic of discussion were the terms of reference (ToR) with regards to the AHRB, whereby Indonesia, Malaysia, the Philippines and Thailand wanted the ToR to be established after the charter had been drawn. Also they wanted the AHRB to have a monitoring status. Cambodia, Myanmar, Laos and Vietnam (CMLV) wanted the ToR to be included in the charter (and therefore drawn by the HLTF). They wanted the AHRB to only have a consultative status. Eventually the AHRB was encompassed in the charter but the ToR would be determined by the foreign ministries later on. Which was considered a small win for the human rights supporters.

The AHRB became the AICHR which remained a consultative, governmental (not independent) organisation with no tools or resources. The process and especially the end result left many highly critical. Rizal Sukma claimed strong opposition concerning the outcome of the ASC in various statements and academic literature (Sukma, 2008, 2009b in Collins, 2013). See also the appendix for a schematic recreation of the stances in the rounds of decision making.

Rizal Sukma stated that Indonesia should behave like a leader and not get stuck on the lowest common denominator in ASEAN development (2009a). While Indonesia met very little resistance in the preparational phase of the charter it went about its bold and visionary ideas on the ASEAN Charter. Not sufficiently checking the feasibility and the contract zone every now and then. Indonesia's excitement eventually concluded in a deadlock in the negotiations later on. The stances were too far apart to compromise and reach a satisfactory outcome. Currently the AICHR has become too sensitive to further develop. ASEAN itself, has grown closer since the conception of the ASEAN Charter.

## **IV.2. Conclusions**

Results give us many clues that the newly democratic Indonesia is in fact a central powerhouse: Drawing up the Deplu paper and hosting the 9<sup>th</sup> ASEAN summit (where the ASEAN Concord II was signed). Indonesia also had the power and willingness to further design and develop the ASC through guiding the EPG and strategically involving the ASEAN-ISIS. The lukewarm support from Malaysia and the Philippines (both established flawed democracies) corresponds with liberal intergovernmental theory. So does the opposition of Cambodia, Laos, Myanmar and Vietnam during the several rounds of the decision-making. Eventually toning down the ASEAN Intergovernmental Commission on Human Rights into a toothless watchdog. Suggestion for future research concerns the level of grassroots constructivist theory interfering with the results for liberal intergovernmentalism.

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## Appendix

Appendix 1: Stance of the member states in the decision making rounds

<b>Decision making round</b>	<b>Pro Human Rights Body</b>	<b>Con Human Rights Body</b>	<b>Middle ground</b>
During HLTF Negotiations (Dosch 2008)	Indonesia, the Philippines	Cambodia, Laos, Myanmar, Vietnam	Brunei, Malaysia, Singapore, Thailand
ASEAN ISIS negotiations (Dosch 2008)	Indonesia, the Philippines,		Laos, Vietnam
Protection mandate for HR body/July 19, 2009 (Collins, 2013)	Indonesia		The Phillipines, Thailand
TOR decided after HLTF/ratification (Koh, 2009)	Indonesia, Malaysia, the Philippines, Thailand	Cambodia, Laos, Myanmar, Vietnam	
July 26, 2007 (ibid.)	Indonesia, Thailand	Cambodia, Laos, Myanmar, Vietnam	Brunei, Malaysia, the Philippines, Singapore.
July 28, 2007 (ibid.)	Indonesia, Malaysia, Thailand	Cambodia, Laos, Myanmar, Vietnam	
Sept 10, 2007 (ibid.)	Indonesia, the Philippines	Cambodia, Laos, Myanmar, Vietnam	Malaysia, Thailand
Sept 13, 2007: ToR decided before ratification/ no majority voting (ibid.)	All		