

## An EU Model for ASEAN?

Written by Reuben Wong

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The Association of Southeast Asian Nations (ASEAN) continues its move towards greater institutionalization of the organization's rules and procedures. An ASEAN Charter was signed on its 40<sup>th</sup> anniversary (on 20 November 2007) to make it a more rules-based organization. An ASEAN Inter-governmental Commission on Human Rights (AICHR) was established in October 2009. In ASEAN's *de facto* capital, Jakarta, which hosts the ASEAN Secretariat, a Committee of Permanent Representatives from the ASEAN member states has been set up. This was followed by the setting up of an ASEAN Commission on the Rights of Minorities, in March 2010. The leaders of ASEAN signed an ASEAN Human Rights Declaration drafted by the AICHR on 18 November 2012 (ASEAN 2012)

Against the backdrop of ASEAN's institutionalization,[2] some scholars have recently suggested that this process can be attributed to the influence of the European Union (EU) as a 'model power' (Jetschke 2009; Zielonka 2008; Lenz 2008, 6; Jokela 2009, 39-40). The received wisdom is that European integration has succeeded in building a system of governance based on freedom, human rights, the rule of law and democracy, which have brought peace and prosperity to a region once devastated by wars between European states. EU policy practitioners often suggest that the European Union's experience holds important lessons for the wider world, and that the EU should be proactive in promoting its model, not as a superpower, but as a "model power" (Miliband 2007; Zielonka 2008, 482-484).

This paper argues that the EU *does* exert some influence over ASEAN, but merely as a point of reference, *not* as a model power. As a reference point, the EU does not exert the kind of soft-power attraction or emotional affect that a 'model power' induces in an actor (Nye 1990, 2004; Zielonka 2008). Instead of working on the emotional register, the reference point appeals to the rational, utility-maximizing calculations of the actor. Although it lacks a security presence in Southeast Asia—especially *vis-à-vis* competing powers in the region such as the US and China (Nuttall 1990; Stares and Régaud 1997; Wong 2006; Zielonka 2008; L.H. Yeo 2010)—the EU has exercised a disproportionate influence on the institutional design and evolution of one of Asia's key organisations, ASEAN. But the EU's influence is not an active one; the EU essentially serves as a *passive* reference point for ASEAN. At most, the EU's influence on ASEAN can be thought of as that of a point of reference whereby the former exercises some agenda-setting and attractive power, mainly through ASEAN's attempts to learn from the EU's experience for its own institutionalization.

### ASEAN Charter (2007)

The obvious and arguably most important example of this referencing is the framing of the ASEAN Charter in 2007. This paper disagrees with scholars who reduce ASEAN's institutionalization to an imitation of the EU form without the substance (eg. Jones and Smith 2002; Jetschke 2009). Some in ASEAN have acknowledged that the EU *has* served as an "inspiration" and reference for ASEAN's own modernization (G. Yeo 2007, 11). The former ASEAN Secretary-General Rodolfo Severino has suggested that like Europe, a regional consciousness in ASEAN "must first aim at the integration of the regional economy" (Severino 2008, 104). And a regional economy can emerge only if agreements on economic integration are followed. The ASEAN Charter is thus important to "promote compliance with ASEAN commitments, not only in the economic field, but also on security, the environment, and communicable diseases" (Severino 2008, 106).

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The story behind an important case of ASEAN's institutionalization—the framing of the ASEAN Charter—is instructive. The High-level Committee appointed by the ASEAN leaders to draft the Charter made study visits to Berlin and Brussels in March 2007 (Koh et al 2009, 211). In accounts and reflections on the 10 months and 13 meetings that went into the making of the ASEAN Charter (February-November 2007), almost half the participants—a High-level Task Force of 10 national representatives assisted by the ASEAN Secretariat—wrote of how the EU was a useful reference for regional reconciliation and integration. Others have argued that the EU is an “inspiration” but not a “model” (Chalermphanupap 2009, 132-133; Acharya 2009, 496). The ASEAN secretariat, meanwhile, has pointed out that ASEAN boasts a few characteristics that make it superior to the EU:

The ASEAN Charter (only 53 pages) is much shorter than both the aborted Treaty Establishing a Constitution for Europe (482 pages) and its replacement the Reform Treaty (around 250 pages); there is a single working language (English) in ASEAN; the ASEAN motto; and the ASEAN anthem. ... The EU could only dream of using one official language, and it had to drop the proposed motto “United in diversity” and proposed anthem “Ode to Joy” .... because some of the EU members saw them as trappings of a “super European State”.

Indeed, ASEAN officials have frequently claimed that they closely studied EU developments in order to avoid the same mistakes and pitfalls. It was in this vein that the ASEAN Eminent Persons Group (EPG) decided to visit Brussels in 2006, and the Task Force in April 2007—despite the failure of the Constitutional Treaty in 2005. Singapore's Foreign Minister George declared that the “Eminent Persons appointed by the ASEAN Leaders received excellent briefings on the European Union in Brussels which influenced them in the way they crafted their recommendations” (G. Yeo 2007, 11).

Ong Keng Yong, who was the serving Secretary-General when the ASEAN Charter was being drafted, opined that the EU model was based on devotion to “institution-building and the rule of law”, a political commitment that was missing in ASEAN. The Charter was *not* “an over-riding rules-based regime, wherein the Southeast Asian tradition of consensus decision-making is devalued prematurely”. The adoption of the Charter signalled that “a rules-based paradigm is being delivered in ASEAN, but it will take several more years for it to be ingrained” (Ong 2008).

Furthermore and for the first time in ASEAN's history, the human rights conditions in ASEAN's member states matter and can be reviewed by a regional human rights body.

### **ASEAN Inter-governmental Commission on Human Rights (AICHR) (2009)**

The ASEAN Inter-governmental Commission on Human Rights (AICHR) was launched on 23 October 2009, in accordance with Article 14 of the ASEAN Charter (ASEAN 2009). It is formed of ten government representatives, one from each member state. It works under terms of reference agreed by ASEAN's member states, which describe AICHR's key purpose as “to promote and protect human rights and fundamental freedoms of the peoples of ASEAN.” AICHR held its first official meeting in Jakarta in March 2010.

The very mention of the Commission in the ASEAN Charter, and its actual establishment in 2009, were epochal when one considers the strong resistance of ASEAN states to the idea of universal human rights as recently as the 1990s. At that time, Singaporean and Malaysian leaders led the ‘Asian Values’ debate, which challenged the universal credentials of ‘Western’ notions of human rights (Tang 1995; Christie and Roy 2001). Notwithstanding this history of antipathy to the notion of universalism, a regional *informal* working group on human rights was established soon after the 26th annual ASEAN Ministerial Meeting in Singapore in 1993. The primary objective of the working group was the establishment of an inter-governmental human rights mechanism in Southeast Asia. The foreign ministers, supported by NGOs, regional think-tanks and the governments of Thailand and the Philippines, agreed that ASEAN should consider establishing an appropriate regional mechanism for human rights.[3]

But progress was slow until the fall of Suharto in Indonesia after the 1997 financial crises, and the rise of democratization forces in major states such as Indonesia, Thailand and the Philippines. A draft agreement on the establishment of an ASEAN Human Rights commission was promulgated in July 2000, and this text was the subject of workshops for a regional mechanism on human rights in ASEAN, held annually since 2001. The workshops

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brought together government officials, NGOs, scholars and members of national human rights commissions.

The job of the Commission is to promote human rights, but it has no power to investigate governments or impose sanctions. As such, the launch of the AICHR in Thailand was greeted by some civil rights groups with disbelief and incredulity. A statement distributed by the Thai government said the commission would “promote and protect human rights by promoting public awareness and education”. Thai Prime Minister Abhisit acknowledged concerns that the commission’s scope was too limited but said it was part of an “evolutionary” process. “The issue of human rights is not about condemnation, but about awareness, empowerment and improvement. ... We shall not only demonstrate to the world that human rights is a priority but also show them realistic and constructive ways to deal with it”, said Abhisit (*New York Times* 2009).

In short, the issue-area of human rights has seen a significant breakthrough in terms of its formalization as human rights was explicitly expressed in the Charter, and an actual regional human rights commission has been formed. Although the AICHR continues to have many detractors and critics even within civil society in ASEAN (*The Online Citizen* 2010; *The Diplomat* 2012), the unanticipated establishment of this regional human rights body in 2009—which has no equivalent in the European Union[4]—further illustrates the creativity of policy makers in Southeast Asia in fashioning new institutions that respond to local demands.

### Conclusion

ASEAN has institutionalized to the extent that member states have ceded more centralization functions to the organization. However, there is little evidence that these states are *intentionally* empowering ASEAN with an independence function, even though ASEAN is already functioning as a norm-creating organization (Katsumata 2006).

While the framing and signing of the ASEAN Charter increased, *prima facie*, the *formality* of the organization, it has simply strengthened ASEAN as a norms-based organization rather than as a rules-based one. In other words, ASEAN under the new 2007 Charter continues to be an informal organization based on norms, albeit norms which are now codified in a Charter whose creation was the most serious attempt in ASEAN’s history at becoming a rules-based organization. Analyses by Anja Jetschke, David Martin Jones and others, which argue that light institutionalism remains the order of the day, are accurate to the extent that they highlight ASEAN’s aversion to supranational institutions that may impinge on individual state sovereignty. But these explanations—whether Jetschke’s ‘sociological institutionalism’ or Jones’ ‘sovietology’ of ASEAN studies—fail to account for the serious advances made in ASEAN’s institutionalization, beyond mimicry for the sake of international legitimacy.

In particular, how does one explain the Human Rights Commission, a body that was not even mentioned in the EPG proposal but was conceived under Article 14 of the ASEAN Charter? The formulation of the Commission that eventually appeared in the ASEAN Charter went far beyond even the EPG’s 2006 recommendations and was certainly not a lowest-common denominator decision (to use the terminology and logic of inter-governmentalism).

ASEAN finds itself today on the cusp of a transformation where there is no simple blueprint (external or internal) for it to follow. The EU ‘model’—if one understands it to represent economic integration as a means towards political reconciliation and integration—has never looked particularly relevant or meaningful to ASEAN’s culture of non-interference in the context of newly independent states at disparate levels of economic development, which jealously guard their sovereignty and are wary of the many outstanding territorial claims between them.

In fact, when one considers the crises that have hit the European Union since the rejection of the EU Constitution in 2005 and the financial crises that have rocked European banks and governments since 2008, one would be hard put to make the case that the ASEAN Charter was simply a mimicry of a failed European document. Comparisons between the EU and ASEAN should not simply assume that other regional organisations are ‘learning’ from the EU; all regional organizations are actively looking for solutions to their problems of collective action and policy coordination between member states (Rosamund and Warleigh-Lack 2011; Camroux 2011).

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The EU's power over ASEAN looks decidedly underwhelming in the light of its inability to either coerce or attract ASEAN towards concluding a second-generation Trade and Cooperation Agreement; in fact, the EU's willingness to abandon its principles to accommodate ASEAN's preferences and demands on the negotiation of an EU-ASEAN FTA, and on protocol for Myanmar's presence in EU-ASEAN meetings despite EU bans on visas for Myanmar's leaders (up to January 2012), suggests that very little of the EU's latent power is exercised in its interactions with ASEAN (Robles 2008; Wong 2012). The lack of coordination between the European Commission and the major Member States with significant interests in Southeast Asia; the inability of the EU to stand firm on non-material interests (that is, human rights and democracy promotion) when its economic interests are at stake; and the weak (albeit growing) attraction to the normative values that the EU espouses—these have in the past conspired, and continue today, to reduce the salience of the EU as a “model power” for ASEAN. At this point, the EU is simply another regional organization that can serve as a reference point for ASEAN's past and future institutionalization.

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[2] Taking 'institutions' to mean 'a set of rules and norms pertaining to the region, its actors and its activities, that have regulative, constitutive and procedural functions' (Duffield 2007, 2), then the long-term trend of ASEAN having more rules and norms through legal agreements and instruments over its member states' economic, political and even human rights activities is a sure sign of the increasing importance of institutions in ASEAN's day-to-day functioning (Kahler 2000; Roberts 2010).

[3] Over the years, this working group grew to become an informal coalition of individuals and groups working with government institutions and NGOs involved in the promotion and protection of human rights. See Caballero-Anthony 2005, 247.

[4] Although, arguably, the extra-EU Council of Europe plays an even greater role, in cooperation with the European

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Court of Justice, in promoting and protecting norms and human rights in EU states.

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