

Why Create a Regional Human Rights Regime? – Refugees, Negative Externalities and Regional Human Rights Commitment in Southeast Asia

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“ASEAN’s cooperation in political development aims to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN, so as to ultimately create a rules based Community of shared values and norms.”

(Roadmap for an ASEAN Community 2009-2015, para A12)

1. Introduction

What explains why member states of a regional organization that strongly vary in their degree of democratization adopt a regional human rights instrument?¹ On November 18, 2012, members of the Association of Southeast Asian Nations (ASEAN) took the historical step of issuing an ASEAN Declaration of Human Rights. The declaration is only the last of a number of steps expressing ASEAN’s commitment to human rights. This commitment became first visible in the ASEAN Charter of 2007 promising that the regional grouping would establish its own human rights mechanism. The mechanism was eventually set up in October 2009 with the ASEAN Inter-Governmental Commission on Human Rights (AICHR). The development has surprised many observers, as Southeast Asian states vary in their degree of democracy: Fully fledged democracies are members of the organization as are states with very low levels of democratic openness. Moreover, ASEAN and individual members were quite active in the so called Asian values debate in the early 1990s, in which they promoted a relativist position on human rights emphasizing economic development to the detriment of civil and political rights (Emmerson 1995; Kausikan 1994).

International relations theories provide three crucial answers to this question: Democratization, coercion and the diffusion of democracy. Democratization is clearly a driver in ASEAN members’ activities to set up the mechanism, but it does not explain why non-

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democratic ASEAN member states consented to the establishment of the mechanism. Coercion clearly plays a role in the form of EU and US imposed sanctions against Burma/Myanmar, but these sanctions never affected ASEAN as a regional organization, nor was the majority of member states subjected to them. Normative persuasion through the activities of non-state actors (Alagappa 2004; Nesadurai 2012) and the socialization through EU-ASEAN dialogues have also influenced governments (Manea 2009), but these were also uneven and did not target all ASEAN member states. What an explanation of ASEAN's commitment requires is thus an explanation of why autocratic as well as less democratic but stable member states of ASEAN agreed to establish a regional human rights body, making a consensus on this mechanism possible.

This chapter argues that transnational refugee flows constitute a significant driver of regional human rights commitment. We argue that large and unexpected flows of refugees constitute a specific type of negative externalities influencing member states' willingness to commit to human rights on a regional level. Repressive practices of member states affect other member states of an existing regional arrangement in three ways: 1) Contiguous states are directly affected by the human rights practices of their less democratic neighbors, most importantly in terms of refugee flows. Refugee flows thus constitute a challenge to long-standing regional norms of non-interference into domestic affairs, as they create a situation of interdependent decision-making in which internal developments in one state become of concern for other governments, 2) less democratic but stable states are affected indirectly through the loss of social acceptance that the failure of concerted action means for a regional grouping. We provide a statistical test of this conjecture with data from the Association of Southeast Asian Nations (ASEAN).

In arguing that regional human rights commitment can be a collective effort toward diminishing the direct costs of human rights violations, the article makes several contributions to the existing literature. First, it challenges the most influential explanations for regional human rights commitment to date, the theory of democratic lock-in. We argue that it is the existence of transnational refugee flows rather than democratization of individual states that increase the likelihood of regional human rights commitment. Second, we provide a causal mechanism explicating how transnational refugee flows act as negative externalities of repressive practices in member states of a regional organization. Third, we contribute to the area studies literature on ASEAN, as it challenges those accounts that regard ASEAN's human rights commitment as only a window-dressing exercise for its members geared toward silencing external criticism. By

building up on and expanding an established literature on ASEAN's human rights commitment (Ciorcari 2012; Davies 2012; Doyle 2014; Katanyuu 2006; Kipgen 2012; Langlois 2012; Thio 1999), the chapter argues that an explanation has to take the endogenous incentives for ASEAN members to establish a regional human rights regime into account.

The chapter is organized as follows: The first part briefly describes the dependent variable, human rights commitment – through the issuing of the ASEAN Charter in 2007, the setting up of AICHR in 2009 and the ASEAN Human Rights Declaration in 2012 – and evaluates the extent of this commitment regarding the costs it imposes on member states and regarding ASEAN's own practice of the ASEAN Way. The second part examines a liberal intergovernmental approach (LI) to regional human rights regimes to argue that they do not fully explain ASEAN's human rights commitment. The third part develops the concept of negative externalities and demonstrates through which mechanisms, directly and indirectly, these negative externalities affect the preferences of states concerning a regional human rights mechanism. The fourth part provides a quantitative test of our major argument about an association between refugee flows and regional human rights commitment. The final part summarizes the argument.

2. Dependent Variable: Regional Human Rights Commitment

Compared to the range of regional organizations ASEAN is – together with regional organizations in the Middle East – clearly a laggard in terms of human rights commitment. ASEAN has long been regarded as an organization defending Westphalian norms of non-interference into domestic affairs and state sovereignty (but see: Jones 2007; Narine 2012). The organization has become popular for its promotion of the so called 'ASEAN Way': a specific form of cooperation emphasizing adherence to non-interference in to the domestic affairs of each other, informal rules, consensual decision-making, loose structure and conflict avoidance instead of conflict management (Acharya 1995; Acharya 2009; Narine 2012). The ASEAN Way reflects a particular collective understanding among ASEAN members that human rights will best be served by stable states. ASEAN members have enshrined in their organization a strong preference for building up "empirical statehood", to use a concept introduced by Robert Jackson (Jackson 1993).

Little seemed to indicate that ASEAN members were up to change their approach to non-interference into domestic affairs. Until 2003, the phrases 'human rights' and 'democracy' were non-existent in the official declarations issued by the ASEAN Ministerial Council and ASEAN

Summits. Member states consciously refrained from delegating competences for the promotion of human rights and democracy to ASEAN. Declarations regularly mentioned the need for economic development and therefore rights that we might call ‘second generation rights’ (economic, social and cultural rights), such as in the Declaration of ASEAN Concord (1976), the ASEAN Vision (1997) or the ASEAN Concord II (2003) but they never mentioned democracy or the promotion of civil and political rights.

However, over the course of 2003-2007 a clear commitment to human rights developed, which is also expressed in a policy of establishing regional governance institutions. In 2003, members took the unusual step of issuing the “Declaration on the Elimination of Violence Against Women in the ASEAN Region” and the “ASEAN Declaration Against Trafficking in Persons Particularly Women and Children”. In 2007, an ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers followed. While these declarations are important benchmarks as they seek to promote the protection of vulnerable groups, they also do not express a full commitment to civil and political human rights, yet. The most significant document to date on human rights is the ASEAN Charter of 2007, which came into effect in 2008. It explicitly refers to the promotion of human rights and fundamental freedoms. The ASEAN Charter is a legally binding document.

While it has been argued, that the drafting of the ASEAN Charter was at least partially triggered by the drafting of the EU Human Rights Charter (Jetschke 2009), the *direct* influence of the EU on individual provisions in ASEAN the human rights declaration is very limited to non-existent. Moreover, the Charter itself seems to mainly draw on the UN documents (Doyle 2014).

In line with the ASEAN Charter, which foresees the development of a regional human rights mechanism, the Cha-Am Hua Hin Declaration of 2009 established an ASEAN Inter-Governmental Commission on Human Rights (AICHR). The AICHR will be the overarching institution responsible for the promotion and protection of human rights in ASEAN (Association of Southeast Asian Nations 2009: art 8), and it is an institution within the ASEAN structure, not a region-wide mechanism.

The Charter, as well as all other human rights related documents also reiterate principles of sovereignty, territorial integrity (ASEAN 2008: preamble p. 2, art. 2.a), and non-interference (ASEAN 2008: preamble p. 2, art. 2.e-f). Moreover, the declarations accord member states primary responsibility to promote these norms. The ASEAN declaration on human rights

specifies specific fundamental rights, such as the right to life and the right to not being tortured (for a comprehensive evaluation, see Doyle 2014). Significantly, the declaration lists the “right to an effective and enforceable remedy” (ASEAN 2012: para 5).

Competences of AICHR

The competences of AICHR illustrate quite well ASEAN’s more general approach to regional integration, defined here as the setting up of collective structures of decision-making at a regional level (Lake 2007; Lindberg 1970). First, human rights standards are balanced against the rights of ASEAN member states. Therefore, AICHR is a consultative body (Association of Southeast Asian Nations 2010: art 3). For the implementation of human rights standards, member states remain the most important actors. If it comes to the promotion and protection of human rights, member states have delegated little hard oversight functions to ASEAN. AICHR’s mandate is to “promote and protect human rights and fundamental freedoms of the peoples of ASEAN” (Association of Southeast Asian Nations 2010: art 1, 1.1) – with due respect to the sovereignty of member states (Association of Southeast Asian Nations 2010: art 2.1). Instead of hard sanctions, learning and the exchange of experiences are encouraged.

AICHR may liaise with civil society organizations, develop strategies to encourage ratification of international legal instruments, develop capacities of member states, provide advisory services and engage in dialogue and consultation (Association of Southeast Asian Nations 2010: IV). It may further prepare thematic studies and submit annual reports. It does not have a mandate to conduct independent fact finding in member states, such as on-site visits, and no procedure for member states to submit state reports to AICHR. For its own monitoring, AICHR will have access to the state reports that ASEAN members have to submit to the UN Human Rights Council. In terms of reporting obligations, AICHR thus piggybacks on the UN Human Rights Council Universal Peer Review Mechanism.

Composition of AICHR

AICHR is constituted by governmental representatives, who are appointed by their respective governments and are accountable to their governments. They serve for three years, a term that can be renewed for another three years (Association of Southeast Asian Nations 2010: A-C). However, the representatives shall “act impartially” in accordance with the ASEAN Charter and

the Terms of Reference. According to paragraph VIII of the ToR, AICHR shall prepare a five-year Work Plan of programs and activities. Concerning funding, AICHR is primarily funded by ASEAN member states. However, an endowment fund will be established enabling “voluntary contributions” from “other sources”. These may be solely for human rights promotion, capacity building and education. Regarding reporting and advisory functions, AICHR’s competence is clearly circumscribed, leaving little room to develop a human rights protecting role that is independent ASEAN member states.

Given AICHR’s very limited mandate, one could dispute whether or not the ASEAN’s human rights commitment constitutes a decisive break with current ASEAN practices. Nicholas Doyle (2014), in a recent review of the ASEAN Human Rights Declaration drafted by AICHR, argues that because of the limited rights it guarantees and the frictions it creates with human rights obligations of the UN Conventions, fragments the human rights regime.

„The AHRD is a declaratory statement which purports to fragment the human rights norms recognized by some ASEAN States between the intra- and extra-ASEAN context. In respect of other ASEAN States, the AHRD does not achieve a local– global reconciliation but rather an ossification of their sceptical position on human rights with little evidence of ‘ novel’ rights reflecting regional particularities’. It is difficult to resist the conclusion that at present the ASEAN human rights mechanism is to play little more than a mollifying role in the societies of SEA and beyond.“ (Doyle 2014: 98)

Some of the existing literature has argued here that the fact that the human rights commitment does not impose high costs on ASEAN member states weakens the commitment in the first place (Kipgen 2012) or even demonstrates that members are using regional institutionalization as a fig leaf to cover their instrumental interest in avoiding external criticism (Doyle 2014). This literature therefore seems to infer from the lack of strong enforcement mechanisms an unwillingness to comply in the first place, an argument receiving support by some official statements. For example, the Indonesian government in one of its statements justified the need for a regional human rights body by arguing, that it would “prevent possible intervention by countries outside the organization” (RI proposing formation of ASEAN rights charter, commission 2004). However, this justification was subsequently rarely used and seemed to have addressed specifically toward Myanmar in the first place. Instead, the argument being made here that negative externalities provide a sound incentive to commit to human rights on a regional

level. Before turning to this explanation, the next section will focus on the hitherto most influential explanation to explain regional human rights regimes.

3. What Drives Regional Human Rights Commitment? – Democratic Lock-In

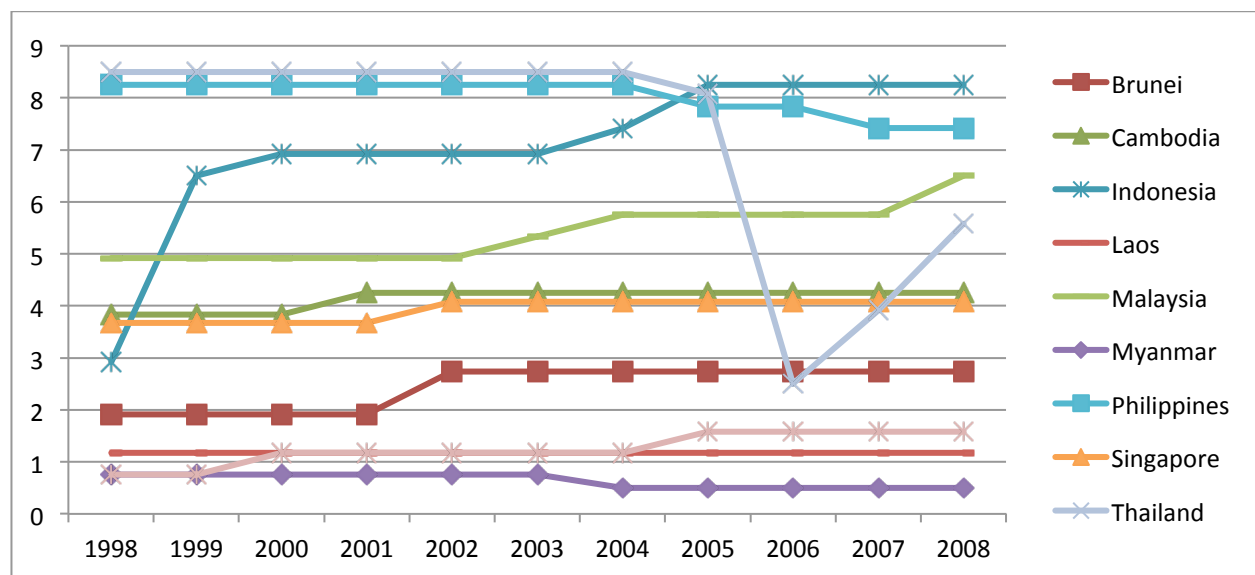
What drives regional human rights commitment? To date, the most influential answer to this question comes from liberal inter-governmental theories of international relations (LI). This approach argues that the strongest driver of regional human rights commitment is democratization and domestic politics: States commit themselves to human rights as an insurance against reverting into authoritarianism. Thus, democratizing states are the most likely drivers for regional human rights regimes (Moravcsik 1995; Simmons 2009). As Moravcsik suggests, it is neither autocratic nor democratic governments that have the greatest incentive to create regional human rights regimes. Rather, it is newly democratizing states that are the strongest promoters – and beneficiaries (Simmons 2009) – of regional human rights norms. Governments of states that have transited from authoritarian regimes to democratic ones want to embed or lock-in their state in a regional regime with the power to monitor the country's human rights practice. They are concerned about the sustainability of democracy in their country. Consequently, they are the most likely to promote human rights.

This implies that the distribution of democratizing and democratic states among member states ultimately determines whether or not regional organizations will increase its democratic governance, an argument also made for ASEAN recently by James Munro (2009). Figure 1 shows the quality of government of the ten ASEAN members between 1998 and 2008 according to the Hadenius' and Teorell's Quality of Government Dataset (Hadenius and Teorell 2007). The index ranges from 0 (least democratic) to 10 (most democratic) and is a transformation and combination of two indices, the Freedom House index and Polity IV dataset.

ASEAN member states can be divided into four categories: 1) The relatively established democracies that score comparatively high (scores to 7 to 9) on the Quality of Government Index (QoGI). These have traditionally been the Philippines and Thailand, before Thailand experienced a coup d'état and military rule. These states are – according to Moravcsik, unlikely to support a regional human rights mechanisms as these do not provide additional benefits to governments. There are the democratizing states (rapidly rising QoGI scores), since 1998 only Indonesia, which are the key drivers behind such regional mechanisms, according to LI. 3) There are highly stable states with scores in the middle-range (ranging from 3 to 6), such as Singapore, Malaysia and

Cambodia, who have little incentives to lock-in their governments into democratic reforms. Finally, there is the group of states with very low QoGI-scores (between 0 and 3), such as Brunei, Laos, Myanmar and Vietnam who cannot be assumed to have an incentive to commit to a regional human rights mechanism.

Figure 1: Quality of Government Scores for 10 ASEAN members, 1998-2008



Source 1: (Teorell *et al.* 2013)

At first glance, the empirical evidence seems to provide evidence for LI. Democratizing Indonesia and to a lesser extent democratic Philippines and Thailand were the strongest promoters of the ASEAN human rights mechanism. Surin Pitsuwan, democratic Thailand's foreign minister first advanced the concept of "flexible engagement" as an alternative to ASEAN's policy of non-intervention when Thailand had just undergone an extensive process of democratization and had politically stabilized. Ahead of the ASEAN Ministerial Meeting in 1998 Thailand promoted flexible engagement as a way to "enhance the democratization and human rights in ASEAN countries."² (Möller 1998: 1103)

It were Thailand and the Philippines that called for more openness in addressing intra-ASEAN differences during the Manila meeting of foreign ministers in July 1998 (Möller 1998: 1103). Indonesia's democratization process since 1998 gave these preferences more leverage

² Cited quotation from Narine (2002: 168)

within ASEAN. In early 2004, Indonesia, chairing ASEAN at this time, suggested the formation of an ASEAN Charter of Rights and Obligations and an ASEAN Regional Commission on Human Rights “to create a solid community” (RI proposing formation of ASEAN rights charter, commission 2004).

It was also the Indonesian government, supported by the parliament, who became the strongest advocate of an effective human rights mechanism. The parliament even delayed the ratification of the Charter making it the last to ratify among ASEAN’s members. It linked its ratification to demands that the human rights commission be independent and vested with the right to monitor human rights violations and to carry out investigations (Lohman 2008).

On closer inspection, however, the liberal explanation falls short of explaining the human rights commitment. Given the consensus principle, it is surprising that ASEAN’s autocratic members supported this move, despite its potentially negative repercussions in these countries. As James Munro reminds us: “ASEAN’s core principle of ‘consensus’ as the basis of decision-making complicated the negotiations, simply because every ASEAN member had to agree before a decision could be made.” (Munro 2009) What the liberal explanation fails to explain is why less democratic but stable regimes who have no reason to fear an authoritarian reversal, such as Singapore and Malaysia, as well as autocratic regimes such as Myanmar, Brunei, Laos and Vietnam agreed to establish a human rights mechanism.

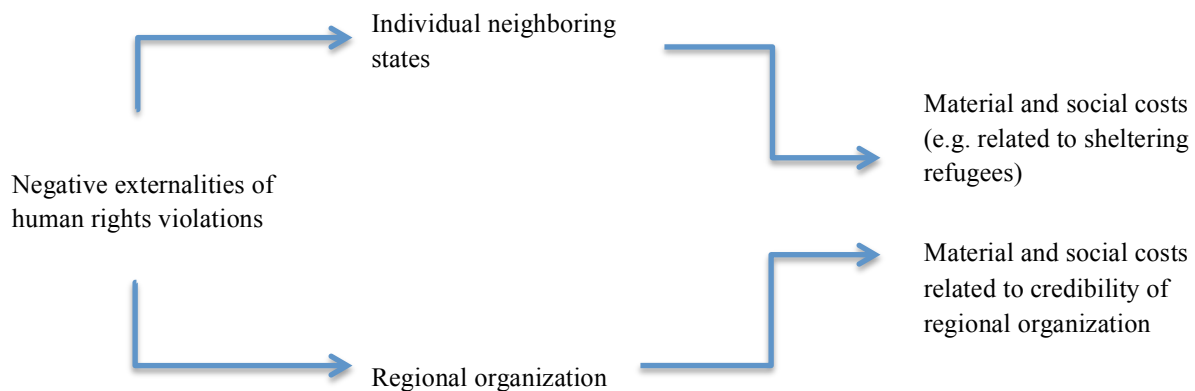
4. “Negative Externalities” as Driver for Regional Human Rights Regimes

A plausible explanation for the ASEAN Charter that is consistent with key characteristics on ASEAN members and ASEAN’s prior understanding as a regional organization, as well as the emergence of regional human rights regimes more generally includes the perception of negative externalities. In economics, “a negative externality occurs when an individual or firm making a decision does not have to pay the full cost of the decision. If a good has a negative externality, then the cost to society is greater than the cost the consumer is paying for it.”³ Negative externalities are essentially “social costs” that are carried by the society (Coase 1960; Papandreou 1994). They are defined by two conditions: First, they affect the environments that other actors are facing and, second, they are not fully compensated for or penalized (Wong 2000: 1). I use the

³ Definition according to the entry on “Negative Externality”, URL: <http://economics.fundamentalfinance.com/negative-externality.php>, last access 04 August 2011.

concept here to show why – regardless of their democratic status - it might be rational even for states socialized into norms of non-interference and sovereignty to adopt standards of legitimate governance institutions. This is the case if the negative externalities produced by human rights violations of specific governments impose considerable costs for other governments. A regional human rights commitment then is an answer to a functional demand for such an institution. This is to argue that even in an environment in which there is no strong moral commitment to human rights in the sense that actors feel obliged to promote human rights beyond their borders because they have been socialized into norms that emphasize self-reliance, the rise of regional human rights norms is nevertheless likely. In such an environment, moral obligations and commitment to universal human rights norms may generally carry less weight. Carrying weight is, however, the costs imposed on other governments by negative externalities. This is an instrumental perspective on norms holding that regional human rights norms emerge because actors believe they are instrumental for the attainment of a goal, in our case the reduction of negative externalities stemming from human rights violations (Opp 2001: 236).

This raises the question of how negative externalities translate into a decision to establish a regional human rights mechanism. Here it is argued that negative externalities can affect states or a group of states directly or indirectly (see figure 2).



In the case of direct influences, individual states will be influenced by the negative externalities produced by other states. These appear mostly as refugee flows for which countries have to bear the humanitarian costs of shelter and food; yet, they have a number of related effects that impact directly on the governments of target states, such as the spill-over of internal wars to neighboring countries, shifts in the ethnic or religious structure of society, effects on national security.

By focusing on negative externalities in the form of refugee flows produced by specific states, this article does not argue that refugees as groups of individuals are negative externalities or that

governments only see them as negative externalities. For example, the Thai and Malaysian governments have carried high costs to provide refugee groups with humanitarian relief. Although with the exception of Cambodia and the Philippines none of the ASEAN members is signatory to the UN Geneva Refugee Convention of 1951, individual governments have provided refugees with rights that come close to the rights enshrined in the Refugee Convention. More important for the argument of this article, establishing a regional human rights mechanism does not appear to be the first strategy available to deal with refugee flows. Governments are more likely to resort to unilateral strategies, first, to deal with large amounts of refugees. These strategies can be ordered on a continuum from refugee friendly policies to refugee aversive policies. A refugee friendly attitude would be to allow refugees to enter a state's territory, to set up refugee camps and provide housing and education. In the middle of the continuum one might find policies that seek to manage the flow of refugees, by choosing refugees according to ethnic, religious or political affiliations. And finally, governments may decide to close their borders altogether and to try to divert refugee flows to other countries. Our assumption here is that the choice for a particular strategy is determined by the costs that large amounts of refugee flows impose on a government. These costs vary, depending on the duration of the stay of refugees in a country. On arrival in a destination country, most of the costs relate to shelter and access to medical treatment. In the long-term, other costs begin to dominate, such as those related to the integration refugees in the labor market or the political costs related to changing the ethnic or religious composition in a country. These have to be managed by governments themselves and cannot be compensated for by international humanitarian organizations.

In the case of indirect influences, individual states will be affected through the material and social costs of not having a regional human rights standard. Regional organizations increasingly assume governance functions and hence are confronted with expectations that they assume governance roles. Failure to do so or to develop the respective capacity results in a loss of reputation to the organization, and hence produces indirect costs to member states. This is likely to occur regardless of the actual competences that have been delegated to a regional organization (Haas 2004 [1958]). So even members that are not directly affected directly by negative externalities might develop an interest in addressing human rights on a regional level, as they are sensitive to the social costs of diminishing benefits resulting of their membership in a regional club. For example, the EU financial crisis not only affects individual member states, but also the

EU and with its member states that are financially sound. In the case of ASEAN, these indirect costs are mostly felt by the autocratic but stable states such as Malaysia, Singapore, but also Cambodia and Vietnam.

This raises the questions of how negative externalities are being measured. A direct way would be to measure the real costs for affected states. However, such data is notoriously difficult to get for states that do not publish their budgets. While governments regularly complain about the costs for sheltering refugees, official figures of these costs are usually not published. However, the problems are clearly there and being reported. The chapter will therefore rely on official refugee statistics, based on the United Nations High Commissioner for Refugees (UNHCR, www.unhcr.org/statistics/populationdatabase), and reported problems with refugees. For the social reputation costs of regional groupings, the chapter will use a news count, indicating how often ASEAN is mentioned together with “human rights” between 1999-2012. Anecdotal evidence and government statements, gained through process tracing on the perception of ASEAN and human rights violating states in their grouping will provide additional evidence for the mechanism of negative externalities.

4.1 Direct effects of repressive policies: Refugee flows

One of the most significant forms of negative externalities has occurred in the form of refugees who have fled repression or military operations in their own country. Rising flows of refugees have imposed high material and social costs on particular ASEAN member states, most importantly Thailand, Malaysia and Indonesia (Kneebone 2014: 3). Malaysia and Indonesia are also known as transit routes to Australia (Kneebone 2014: 3). However, the sources of refugee flows show great variation, making refugees an issue of larger interest among ASEAN members. One interesting aspect of refugee policy in Southeast Asia is that officials rarely speak of refugees but refer to them as “irregular migration”. In Thailand, Malaysia and Indonesia, refugees and asylum seekers are referred to primarily as “illegal” or “irregular” migrants (Kneebone 2014: 3).

According to data provided by the United Nations High Commissioner for Refugees (UNHCR Statistical Online Population Database 2013) Malaysia and Thailand have traditionally been the two ASEAN member states taking the highest number of refugees. While refugees have been a recurring challenge to these two states, the flow of refugees has increased remarkably in the decade between 1999 and 2009.

In the case of Malaysia the largest numbers of refugees have come from Indonesia, the Philippines and Myanmar. The military operations waged by the Indonesian army in Aceh to fight a separatist rebellion after 2003 has prompted tens of thousands Indonesian refugees to flee to neighboring Malaysia. The number grew rapidly between 2003 and 2005, from 3,000 to 20,000 refugees (though a fairly large share might have been victims of the Tsunami that hit Aceh in 2004). Malaysia was also the target country for 45,000 from the Philippines, who have fled US-supported military operations in the Southern province of Mindanao aimed at fighting Islamist terror groups and a separatist movement. Finally, refugees from Myanmar have steadily increased, from 5,000 per year for the 1999 to 2003 period to 9,000 (2004) and 22,000 (2006) to 81,000 (2011) (UNHCR Statistical Online Population Database 2013).

For Thailand, the refugee figures are even more dramatic. Over the last two decades, Thailand has been the main target of refugees from Myanmar. According to the UN High Commissioner for Refugees, the number of refugees has increased between 1999 and 2006 from 99,000 to 132,000 in 2006, with some sources even reporting higher figures. For example, Christopher B. Roberts claims that the number of Myanmarese refugees in Thailand reached 143,474 individuals in 2003 already (Roberts 2009: 81) An additional 500,000 individuals from Myanmar are officially registered as workers, and hundreds of thousands more are believed to live in Thailand illegally as workers (Agence France Press 2007). Thailand was the target destination of refugees from Cambodia and Vietnam, as well as Indonesia, but the number of refugees has been traditionally much smaller. While only two ASEAN members act as main targets for refugees, the refugee issue affects eight ASEAN member states, who are either the source of refugees or destinations of refugees or both (as in the case of Thailand). The countries with the lowest QoGI report the highest number of refugees, namely Cambodia and Myanmar. The only two countries that were neither sources of refugees nor popular refugee destinations are Brunei and Singapore.

In the following, we test whether there is an association between refugee flows and regional human rights commitment in the case of ASEAN. Variables are constructed as follows. The dependent variables – the ASEAN charter in 2007 and the AICHR in 2009 – are binary variables intended for time-series logit. Refugee flows take two forms. The first is a simple continuous variable of the overall and per-state number of refugees. There is constant flow of refugees between ASEAN member states during the studied period, including a number of sharp

spikes due to pronounced crises such as the chaos in Myanmar in the late 2000s. Therefore, the data tends to present as plateaus, with sudden changes as refugees either flee or are later able to return. The second is a measure of crisis severity. This variable is constructed by estimating the distribution of refugee populations across all flows in ASEAN in the relevant time period. A crisis is defined as *moderate* if the resulting refugee population is less than the mean, and classified as *severe* if the resulting refugee population is greater than the mean. When differenced, this measure allows us to estimate the increase in the likelihood of ASEAN adopting human rights mechanisms as the number of moderate and/or severe crises fluctuate.

We select a number of controls standard to the regional organization literature. These include a number of intra-organizational features, such as trade, GDP, and material capabilities, as well as democratization. The literature indicates that steady democratization, especially after the end of the Cold War, is largely responsible for the increased attention to and institutional codifying of human rights and human security issues in regional organizations. Therefore, we include democratization as our first control. Data on the level of democracy of ASEAN member states is taken from the Freedom House index, then member states are categorized as either free, partly free, or not free, based on Freedom House's own criteria. Then this data is aggregated, giving a final measure of the count of free, partly free, and not free member states per year.

This data exhibits, at least to a certain degree, a broad but rather slow trend towards modest democratization, excepting dramatic events like the 2006 military coup in Thailand that abruptly ended its steady path to democracy, and led to subsequent unrest and the "silent coup" in 2009. Therefore, we difference the data. Though this means that it becomes more difficult to discern whether the level of democracy across ASEAN plays an important role in its adoption of human rights norms, it does enable the observation of whether the act of democratization itself, such as one or more states moving from not free to partly free in a short period of time, does correlate temporally. We select logit as the most appropriate method. Our dependent variables – adoption of a human rights regime – are binary categorical variables. One alternative would be seemingly unrelated regression (SUR) models, as our dataset includes multiple combinations of dependent and independent variables, including data on crisis severity and refugee population for each ASEAN member state; however, logit remains the best selection due to the binary dependent variable and our use of factor variables regarding crisis severity, especially considering we include models that incorporate all RHS variables for robustness purposes. Non-

stationarity is a common issue in time series; detected with an advanced Dickey-Fuller test (Beckett 2013), it is dealt with through differencing and detrending. To combat biases arising from heteroskedasticity, robust standard errors are used in estimation.

Results are presented in Table 1. The models are (1) 2007 total refugee population (2) 2007 crisis severity (3) 2007 refugee population by state (4) 2009 total refugee population (5) 2009 crisis severity (6) 2009 refugee population by state.

	(1)	(2)	(3)	(4)	(5)	(6)
Total refugee population	0.002** (0.001)			0.002** (0.001)		
Number of moderate crises		0.408*** (0.143)			0.877*** (0.170)	
Number of severe crises		0.811*** (0.208)			0.526*** (0.161)	
Refugees - Brunei			0.180** (0.826)			0.000 (0.001)
Refugees - Cambodia			0.083 (0.057)			0.387** (0.161)
Refugees - Indonesia			-0.060* (0.032)			-0.113* (0.038)
Refugees - Laos			0.024 (0.020)			0.121** (0.032)
Refugees - Myanmar			0.198*** (0.063)			0.091*** (0.033)
Refugees - Philippines			-0.139 (0.134)			1.086*** (0.402)
Refugees - Thailand			-0.020 (0.028)			0.888*** (0.271)
Refugees - Vietnam			0.191*** (0.047)			0.729*** (0.279)
Democratization	-0.328* (0.130)	0.077 (0.127)	-0.120 (0.025)	-0.396 (0.122)	-0.376 (0.105)	-0.092 (0.019)
Intra-ASEAN trade	-0.658 (0.609)	0.226 (0.474)	-0.169 (0.021)	-0.353 (0.599)	1.124* (0.666)	-0.010 (0.039)

Intra-ASEAN GDP	0.001 (0.000)	-0.000 (0.000)	0.000 (0.000)	0.001 (0.000)	0.000 (0.000)	0.000 (0.000)
Intra-ASEAN capabilities	1.615 (4.443)	-0.607 (2.051)	0.143 (0.150)	1.091 (6.320)	0.905 (2.056)	0.252 (0.834)
Constant	-7.345** (24.789)	-6.589** (7.280)	4.368*** (1.289)	-8.870** (30.764)	8.173*** (5.606)	1.058** (1.488)
<i>N</i>	156	155	156	156	155	156

Standard errors in parentheses

* $p < 0.1$, ** $p < 0.05$, *** $p < 0.01$

In line with our hypothesis, we find strong support for the hypothesis that refugee flows are correlated with the adoption of human rights mechanisms, indicating that refugee flows compelled the members of ASEAN to include such mechanisms in the organization. The results are robust both overall and across individual states. Of particular interest is the enduring importance of Myanmar as a regional hotspot; as expected, the vast flows resulting from the slow fall of the military regime were instrumental. However, Thailand, beset by an insurgency in the east and unable to assert full authority over the lawless north, has also instrumentalized the issue of refugees.

Our measure of crisis severity offers some insight into the actual size of the effect. By calculating odds ratios rather than coefficients, one can interpret the results to mean that the occurrence of a moderate crisis increased the likelihood of adopting a mechanism by 59% in 2007 and 40% in 2009, while that of a severe crisis increased the likelihood by 134% in 2007 and 89% in 2009.

As controls, we select democratization and a number of intra-organizational features – trade, GDP, and material capabilities – that may drive institutionalization, rather than crisis issue of refugee flows. Our controls do not, in the vast majority of cases, correlate with the adoption of a human rights mechanism, excepting a weak correlation for intra-regional trade in 2009, which may be accounted for due to the general rapid increase in trade in ASEAN in the past decade, and at least partially confirms Haftel’s (2013) findings that trade does not generally drive institutionalization.

Above, we have argued that refugee flows constitute a type of negative externalities especially affecting neighboring countries and governments. In the following and based on the secondary literature on individual ASEAN members and their refugee policies, we will process

trace how the issues of refugees has affected their calculation of a regional human rights mechanism.

3.2.2 Process Tracing: ASEAN member states and refugee crises

In the ASEAN literature, we find evidence for the effects of refugee flows on ASEAN governments. These effects go far beyond sheltering them. These effects have made human rights issues a case of interdependent decision-making, in which the policies of some governments had effects on the policies of other governments. As a consequence, the domestic human rights practices of member states could not be treated as internal affairs of these governments. These effects are particularly well documented for Thailand and Malaysia, as they have been widely reported, but also for the Philippines.

The human rights situation in some member states inflicted other types of costs related to the security of the target countries, such as militarized disputes or the burning down of embassies. As Katanjuu (2006: 827-36) reports in greater detail, a series of incidents related to the human rights situation in Myanmar has imposed high costs on the Thai government making it a major proponent for increasing the organization's human rights commitment. First, the evolving war economy involving the smuggling of drugs for weapons has developed along the Thai-Myanmar border, and imposed high costs in terms of maintaining security and order along the border on the Thai government (Roberts 2009: 84). Apart from the social problems that the availability of drugs pose in Thailand, the fight against the war economy even extended to military clashes between the Thai and the Burmese army (Katanyuu 2006: 828f). Pro-democracy activists from Myanmar have staged several events to draw attention to the human rights situation in their country. In October 1999, Burmese pro-democracy activists occupied the Burmese Embassy in Bangkok and took the Burmese ambassador hostage, triggering a militarized dispute between Thailand and Myanmar (Jetschke 2003; Katanyuu 2006: 828).

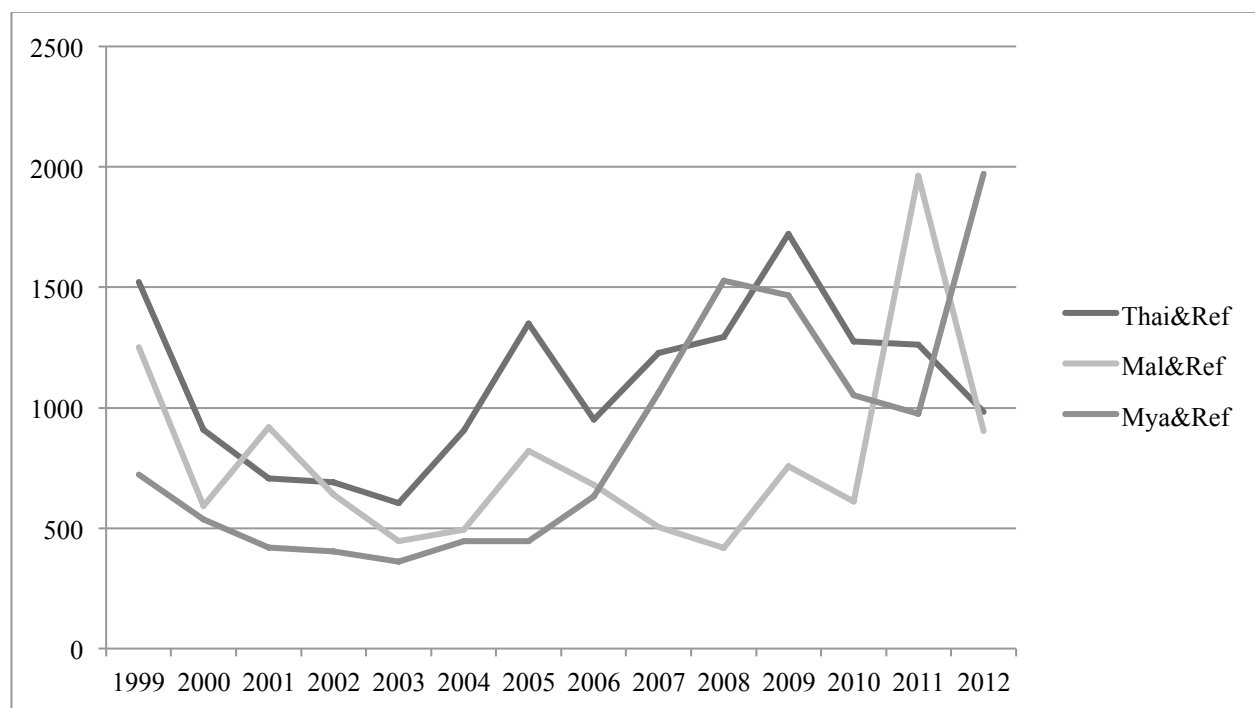
A third effect has been increased public attention and negative press reporting on the Thai and Malaysian governments related to refugees, especially from Myanmar. Both governments have repatriated refugees, but also resorted to harsher measures such as forcing refugee boats, which approached these two countries' coastal areas to return to open water. The Thai and Malaysian governments attracted considerably media attention in 2004, 2007 and 2009 because of their treatment of refugees from the ethnic minority group of Muslim Rohingyas. Both government regard members of these groups as illegal immigrants, and deny the boat people

asylum. A group of Rohingyas burnt down the embassy of Myanmar in Malaysia in 2004 (Japan Economic Newswire, 07 April 2004).

Here, it is interesting to look at the number of press reports on refugees. A search of news reports was conducted using Nexis. Identical news reports were filtered so that they show only as one news report. The search phrases were “refugees” AND “Thailand” or “refugees” AND “Myanmar” etc. A separate search was conducted looking for an association between “human rights” and “ASEAN”. The result is reported in Figure 2.

As Figure 2 shows, the topic of refugees has grown in relevance in news reports between 2004 and 2009. News reporting related to refugees has increased considerably between 2004 and 2009.

Figure 2: Number of News Reports on Refugees in 3 ASEAN Members



Source 2: Author’s compilation, based on Nexis search

Thus, negative externalities prompted those ASEAN members most affected, such as Malaysia and Thailand to seek a departure from the ASEAN Way of non-interference.

3.2.3. Indirect Effects of Negative Externalities: ASEAN’s Loss of Social Standing

Especially the group of autocratic but stable states in the regional grouping (Singapore, Vietnam, Cambodia) have been affected more by the indirect costs of Myanmar’s human rights practices

on ASEAN as a regional organization. These indirect effects are the result of two more recent developments. The first one is the global spread of human rights and democracy norms and their increasing institutionalization in the framework of regional organizations (Mansfield and Pevehouse 2006; Mansfield and Pevehouse 2008; Pevehouse 2005). As mentioned at the beginning, ASEAN as a regional organization has lagged behind developments in other regions, and the grouping's perceived unwillingness to speak up against Myanmar has made evident the distance that exists between ASEAN and a global social structure and invited criticism from outside focusing on the effectiveness of ASEAN as a regional organization (Davies 2012; Kipgen 2012). Regional organizations are confronted with expectations that they assume governance roles. So even members that are not directly affected by negative externalities might develop an interest in addressing human rights on a regional level, as they are sensitive to the diminishing benefits resulting of their membership in a regional club. These indirect costs were mostly felt by the autocratic but stable states such as Singapore, but also Cambodia and Vietnam (Katanyuu 2006).

These indirect costs have to be seen in the regional organization's efforts, since 2001, to recover from the Asian financial crisis and 'reinvent' ASEAN in an effort to position it in a global competition for Foreign Direct Investment. FDI is especially important for the poorer member states such as Cambodia, Vietnam and Laos, but also for Singapore. A corner stone of ASEAN's strategy of repositioning has been to become a community of the rule-of-law (Jetschke and Murray 2012). This is the more important, as ASEAN faces increasing competition from China and India, but sees as one of its key comparative advantages its commitment to an effective rule-of-law (Ong 2004). Human rights violations in Myanmar threatened that image, providing an incentive for these states to commit to a regional human rights regime. The US government as well as the EU repeatedly made clear that they would not meet with ASEAN if the meetings were held in Myanmar (Emmerson 2008; Hlaing 2009). This became the more important, as earlier individual attempts by governments such as the Malaysian, Singaporean and Philippine governments to influence the government in Myanmar proved to be ineffective. In 2006, these ASEAN member states, particularly Malaysia, pressured the Burmese government to refrain from assuming the chair of ASEAN. Non-cooperation by the Burmese government, especially as signified by the military suppression and killing of peaceful protests by Buddhist monks in 2007

tarnished the image of those governments within the grouping that were not directly affected by direct costs, because they lacked common borders with Myanmar (Katanyuu 2006).

Numerous statements indicate that ASEAN was collectively concerned about its international reputation. Singapore's Prime Minister Lee Hsien Long remarked in 2005 that ASEAN could "fall off the radar screen of international companies and investors" (as quoted by Katanyuu 2006: 838) if it did not comment on ongoing human rights abuses in the region. Malaysia stated that ASEAN must "convince the world" of its stance toward Myanmar in order to enhance ASEAN's credibility (as quoted by Katanyuu 2006: 840). This became especially apparent in relation to the group's standing toward Myanmar in 2007, after the military junta had fired on demonstrating Buddhist monks. This event, in the midst of celebrations for ASEAN's 40th birthday, appalled many, although the initial reaction of ASEAN members was notable because the "association's initial silence was deafening" (Emmerson 2008: 72). ASEAN's General Secretary Ong Keng Yong remarked in 2006 that "ASEAN is concerned about the impact of this issue ... on our credibility and standing," a statement that is also supported by the Malaysian foreign minister who said that "the situation in Myanmar is impacting on the image and credibility of ASEAN." (as quoted in: Ciorcari 2012: 710). During ASEAN's Ministerial meeting in preparation of the UN General Assembly meeting in New York in September 2007, Singapore's Foreign Minister George Yeo stated that "we had to take issue with a member who behaved badly and brought down the reputation of everyone" (as quoted in: Emmerson 2008: 72).

4. Conclusion

This article has suggested to include negative externalities in an explanation for the emergence of a regional human rights commitment. While negative externalities are a standard concept to explain the emergence of international regimes, they have been neglected for the establishment of the human rights regimes in particular (Donnelly 1986). However, as we have seen, negative externalities provide a plausible explanation for a group of states that share the self-interested and inward-looking worldview of ASEAN members. In a regional organization in which democracy has no intrinsic value, it is less the promotion of democracy and human rights per se that carry the day, but the damaging effects of decisions of one member state on the standing and reputation of other individual members, as well as the regional organization.

Under what conditions can this non-costly commitment be translated in real changes on the ground? One mechanism of change is clearly the very possibility of having an open

discussion on human rights. Since ASEAN's decision to establish such a mechanism, open discussion, as reflected in news reporting on the issue has grown tremendously. A count of newspaper reports mentioning ASEAN and human rights shows that the number of reports has increased, from 704 in 2004 to 2253 in 2012. Moreover, the ASEAN members Indonesia and the Philippines are currently quite keen to convey the lessons of their internal militarized conflicts to Myanmar. Several non-governmental organizations are currently facilitating informal meetings among members of governments for an exchange of experiences. Hence, under the condition that such learning can be institutionalized through existing bodies such as AICHR, there might be a chance that the human rights commitment by ASEAN member states might translate into real changes of human rights practices. Moreover, an important mechanism to translate governments' commitment into practice appears to be the commitment to grant an effective remedy for cases of human rights violations. If used by human rights groups and individuals, this standard might trigger substantial changes.

References

- Acharya, A. (1995) 'ASEAN and Asia-Pacific Multilateralism: Managing Regional Security', in: A. Acharya and R. Stubbs (eds) *New Challenges for ASEAN: Emerging Policy Issues*. Vancouver: UBC Press, pp.
- Acharya, A. (2009) *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order*, Abingdon: Routledge Chapman & Hall.
- Agence France Press. (2007) Factbox on Thailand's refugee population. Bangkok: Agence France Press.
- Alagappa, M. (2004) *Civil Society and political change in Asia: expanding and contracting*. Stanford, California: Stanford University Press.
- ASEAN. (2008) ASEAN Charter. ASEAN Secretariat.
- ASEAN Heads of States and Government of the Association of Southeast Asian Nations. (1997) *ASEAN Vision 2020*. Kuala Lumpur: ASEAN Secretariat.
- Association of Southeast Asian Nations (1976) *Declaration of ASEAN Concord*, Bali, Indonesia.
- Association of Southeast Asian Nations (2003) *Declaration of ASEAN Concord II (Bali Concord II)*, Bali, Indonesia.
- Association of Southeast Asian Nations. (2009) Cha-Am Hua Hin Declaration on the Intergovernmental Commission on Human Rights, adopted on 23 October 2009. Cha-Am Hua Hin (Thailand).
- Association of Southeast Asian Nations. (2010) Terms of Reference of ASEAN Intergovernmental Commission on Human Rights.
- Ciorcari, J.D. (2012) 'Institutionalizing human rights in Southeast Asia', *Human Rights Quarterly* 34: 695-725.
- Coase, R.H. (1960) 'The problem of social cost', *Journal of Law and Economics* 3(Oct.): 1-44.

- Davies, M. (2012) 'The perils of incoherence: ASEAN, Myanmar and the avoidable failures of human rights socialization', *Contemporary Southeast Asia* 34(1): 1-22.
- Donnelly, J. (1986) 'International Human Rights: A Regime Analysis', *International Organization* 40(3): 599-642.
- Doyle, N. (2014) 'The ASEAN Human Rights Declaration and the implications of recent Southeast Asian initiatives in human rights institution-building and standard setting', *International and Comparative Law Quarterly* 63(1): 67-101.
- Emmerson, D.K. (1995) 'Singapore and the "Asian Values" Debate', *Journal of Democracy* 6(4): 95-105.
- Emmerson, D.K. (2008) 'ASEAN's "black swans"', *Journal of Democracy* 19(3): 70-84.
- Haas, E.B. (2004 [1958]) *The uniting of Europe: Political, social, and economic forces, 1950-1957*, Notre Dame, Ind.: University of Notre Dame Press.
- Hadenius, A. and Teorell, J. (2007) 'Pathways from Authoritarianism', *Journal of Democracy* 18(1): 143-56.
- Hlaing, K.Y. (2009) 'ASEAN's pariah: Insecurity and autocracy in Myanmar (Burma)', in: D. Emmerson (ed) *Hard choices: Security, Democracy, and Regionalism in Southeast Asia*. Singapore: Institute of Southeast Asian Studies, pp. 151-89.
- Jackson, R. (1993) *Quasi states: sovereignty, international relations and the Third World*, Cambridge: Cambridge University Press.
- Jetschke, A. (2003) 'Democratization: A threat to peace and stability in Southeast Asia?', in: C. Dent (ed) *Asia-Pacific economic security cooperation. New regional agendas*. Houndmills, Basingstoke: Palgrave Macmillan, pp. 167-84.
- Jetschke, A. (2010) *Human Rights and State Security: Indonesia and the Philippines*, Philadelphia: University of Pennsylvania Press.
- Jetschke, A. and Murray, P. (2012) 'Diffusing regional integration: The EU and Southeast Asia', *West European Politics* 35(1): 174-91.
- Jones, L. (2007) 'ASEAN intervention in Cambodia: from Cold War to conditionality', *The Pacific Review* 20(4): 523 - 50.
- Katanyuu, R. (2006) 'Beyond non-interference in ASEAN', *Asian Survey* 46(6): 825-45.
- Kausikan, B. (1994) 'Asia's Different Standard', *Foreign Policy* 92(Fall): 24-41.
- Kipgen, N. (2012) 'Association of Southeast Asian Nations (ASEAN): Cooperation problems on human rights', *Strategic Analysis* 36(1): 100-11.
- Kneebone, Susan (2014) The Bali Process and Global Refugee Polic in the Asia-Pacific Region. *Journal of Refugee Studies*.
- Lake, D.A. (2007) 'Delegating divisible sovereignty. Sween a conceptual minefield', *Review of International Organizations* 2(3): 219-37.
- Langlois, A.J. (2012) 'Asian regionalism and human rights: the case of the ASEAN Intergovernmental Commission on Human Rights', in: M. Beeson and R. Stubbs (eds) *Routledge Handbook of Asian Regionalism*. Abingdon; New York: Routledge, pp. 216-25.
- Lindberg, L.N. (1970) 'Political Integration as a Multidimensional Phenomenon Requiring Multivariate Measurement', *International Organization* 24(4): 649-731.
- Lohman, W. (2008) Indonesia holds up ASEAN Charter ratification for Burmese people. Washington, D.C.: Heritage Foundation.
- Manea, M.-G. (2009) 'How and Why Interaction Matters', *Cooperation and Conflict* 44(1): 27-49.

- Mansfield, E.D. and Pevehouse, J.C. (2006) 'Democratization and International Organizations', *International Organization* 60(01): 137-67.
- Mansfield, E.D. and Pevehouse, J.C. (2008) 'Democratization and the Varieties of International Organizations', *Journal of Conflict Resolution* 52(2): 269-94.
- Möller, K. (1998) 'Cambodia and Burma: The ASEAN Way Ends Here', *Asian Survey* 38(12): 1087-104.
- Moravcsik, A. (1995) 'Explaining International Human Rights Regimes: Liberal Theory and Western Europe', *European Journal of International Relations* 1(2): 157-89.
- Munro, J. (2009) 'Why states create international human rights mechanisms: the ASEAN Intergovernmental Commission on Human Rights and democratic lock-in theory', *Asia-Pacific Journal on Human Rights and the Rule of Law* 10(1): 1-26.
- Narine, S. (2002) *Explaining ASEAN. Regionalism in Southeast Asia*, Boulder, London: Lynne Rienner Publishers.
- Narine, S. (2012) 'Asia, ASEAN and the question of sovereignty: the persistence of non-intervention in the Asia-Pacific ', in: M. Beeson and R. Stubbs (eds) *Routledge Handbook of Asian Regionalism*. Abingdon; New York: Routledge, pp. 155-65.
- Nesadurai, H., E. S. (2012) 'The ASEA People's Forum (APF) as authentic social forum: regional civil society networking for an alternative regionalism ', in: M. Beeson and R. Stubbs (eds) *Routledge Handbook of Asian Regionalism*. Abingdon; New York: Routledge, pp. 166-76.
- Ong, K.Y. (2004) 'Towards ASEAN financial integration. Remarks by Mr. Ong Keng Yong, Secretary-General of ASEAN at the Economix 2004 Conference, University of Indonesia, Jakarta, 18 February 2004'.
- Opp, K.-D. (2001) 'Social networks and the emergence of protest norms', in: M. Hechter and K.-D. Opp (eds) *Social Norms*. Cambridge: Cambridge University Press, pp. 234-73.
- Papandreou, A. (1994) *Externalities and institutions*, New York: Oxford University Press.
- Pevehouse, J.C. (2005) *Democracy from above*, Cambridge u.a.: Cambridge Univ. Press.
- Quiambao, C. (1999) A more flexible approach wins wider support, *Bangkok Post*. Bangkok.
- RI proposing formation of ASEAN rights charter, commission. (2004) *Antara*. Jakarta.
- Roberts, C. (2010) *ASEAN's Myanmar crisis. Challenges to the pursuit of a security community*, Singapore, Institute of Southeast Asian Studies.
- Simmons, B. (2009) *Mobilizing for Human Rights. International Law in Domestic Politics*, Cambridge: Cambridge University Press.
- Teorell, J., Charron, N., Dahlberg, S., et al. (2013) The Quality of Government Basic Dataset made from The Quality of Government Dataset, in: The Quality of Government Institute (ed). Gothenburg.
- Thio, L.-a. (1999) 'Implementing human rights in ASEAN countries: "Promises to keep and miles to go before I sleep"', *Yale Human Rights and Development Law Review* (1): 1-86.
- UNHCR Statistical Online Population Database (2013) 'UNHCR Statistical Online Population Database, United Nations High Commissioner for Refugees (UNHCR), Data extracted: 15/03/2013'.