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ASEAN Norms—Argument Yielding to Change*

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1. How to understand the changes in the ASEAN norms

When ASEAN is viewed for the institution it presents, one frequently noted characteristic is the standards it sets for itself. Specifically, ASEAN has traditionally observed such norms as are necessary for respecting the sovereignty of its members, for example refraining from any interference in members' internal affairs and reaching decisions by consensus. Decision by consensus has basically been an unwritten law, but the principle of non-interference in internal affairs is a central norm confirmed in such important ASEAN documents as the Zone of Peace, Freedom and Neutrality (ZOPFAN) Declaration of 1971 and the Treaty of Amity and Cooperation (TAC) in Southeast Asia signed in 1976.

Today, ASEAN has established itself as a success, and it is frequently cited as standing second only to the European Union as a successful example of regionalism and as the most notable example of success in applying regionalism to developing countries. In such cases, many analysts point to its norm for respect of sovereignty as being the most important factor in its success. This standard for respect of sovereignty has come to be called the "ASEAN Way" and is an indispensable factor in any analysis of the organization. In other words, by making mutual respect for the sovereignty of other members under all circumstances a strict standard for all, the ASEAN member states have been able to develop mutual trust and build regional peace.

The basis for such regional peace is not an insistence on some sort of universal ideal; instead, that basis is pragmatism seeking to bring stability in international relations throughout the region through mutual restraint from interference in the internal affairs of any other member. ASEAN was designed first of all to place no burden on its participants and to avoid any confrontation between member states, and that has become ASEAN's traditional stance.

Looked at in this way, we could likely hold that setting a regional norm for "correct" domestic governance in light of proffered ideals such as democracy and human rights would be an important deviation from the order that had been maintained up to that point based on a norm of respect for sovereignty. This is because the stabilization of international relations through member states' mutual non-interference is contradictive to criticism of a specific member state's failure to respect human rights or its failure to move toward democratization. We can, in a way, form a continuum of political and institutional norms, taking these two contrasting situations (i.e., on the one hand abiding by a standard of respect for

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sovereignty including the principle of non-interference in domestic affairs, on the other hand applying a standard that can call into question a state's domestic governance in terms of advancement of democracy and human rights) as the opposite poles of the continuum. The primary aim of this chapter is to describe the changes in ASEAN norms along such a continuum. In recent years, the goal of ASEAN has come to be seen as promoting human rights and democratization following the model set forth in the ASEAN Charter. In that sense, we can say that with the coming of the 21st century, ASEAN's traditional norm for respect for sovereignty has entered a period of tectonic change. Then, when did such shifts in ASEAN norms begin? Which of ASEAN's member states are promoting these changes, and which oppose them? What were the causes behind such shifting norms? This chapter will attempt to clarify the answers to such questions.

At this point, the focus is directed to Myanmar's ASEAN membership, where its internal affairs such as democratization and human rights are internationally viewed as problematic. In other words, where Myanmar is concerned, discussion of norms within ASEAN is not just a symbolic policy discussion but rather tends to address the concern of how to intervene there. This chapter thus would like to look in particular at two points, the transition in ASEAN members' policies toward Myanmar and attempts to set up important norms within ASEAN, thereby examining the changes in ASEAN's traditional norms.

2. The source and adoption of ASEAN's traditional norms

The need for a standard on respect for sovereignty

Before looking at the changes in the norm on respect for sovereignty, let us first turn back to the time of ASEAN's establishment and succinctly examine the source of ASEAN's norms and their adoption.

What we need to clarify first is that such ASEAN principles as non-interference in internal affairs have both "external" and "internal" contexts. "External context" would refer to regions outside of Southeast Asia and in particular to the United States and the Soviet Union and other powerful countries outside the region. At the time of ASEAN's formation, all of its original members except Thailand were newly developing states which had achieved independence only after World War II, and they had a history of colonization and interference by powers from other regions. Moreover, ASEAN was established in 1967, at the height of the Cold War, and the ASEAN member countries were greatly concerned about interventions by the major powers. Thus the ASEAN states together directed outward their insistence on the principle of respect for sovereignty, including non-interference in domestic affairs, territorial integrity, and sovereign equality, in the attempt to prevent arbitrary interference in their domestic affairs by extra-regional powers. This is the external context of the norm for respect for sovereignty.

At the same time, however, the ASEAN member states also gave importance to mutual respect for sovereignty among their own. This, in other words, was the "internal context" of respect for sovereignty that will be our concern in this chapter. We can broadly divide the period since ASEAN's establishment in 1976 into two different sets of circumstances in regard to how the importance placed on the norm of respect for sovereignty served as a standard regulating the members' interactions with each other. First, the ASEAN members, attaining their independence only after WWII, were "weak states," a term which refers to states which are still in the process of state building and are still greatly concerned about achieving stable governance. The most obvious characteristic of weak states is that the country's government senses the greatest threats as coming from within, or identifies that its most pressing concern must be to stabilize the country domestically and proceed with state building. The ASEAN member states sought to overcome their own instability and establish the legitimacy of their rule through the social and economic development of their own countries. For the governments of ASEAN's original members, security was a domestic problem, one which had to be addressed on the domestic level.

The second set of circumstances would be at the intra-regional level, i.e., confrontation among the various countries of Southeast Asia. The formation of Malaysia in 1963 was a source of major friction in the international relations of countries in the region. For example, Indonesia looked on the establishment of Malaysia as a British imperialist plot against Indonesia to be addressed by confronting Malaysia through “Konfrontasi” diplomacy. The Philippines claimed territorial rights to part of Sabah and therefore stood against Malaysia. Singapore, after its disagreements with the central government grew increasingly more intense, finally split off to become independent from Malaysia. There are various other examples as well, testifying to the confrontational nature of the international relations in the region before the advent of ASEAN.

If we look at both the domestic and regional levels and their interplay, we see that at the time of ASEAN’s formation, all of its original member states were beset by an urgent need to deal with threats from within, and each state faced the danger that attempts to curb its domestic threats could be disrupted by conflicts with its neighbors. Since each of these states was faced by the same problem, each likewise shared a common incentive to remove the impediment of conflict with its neighbors so as to push forward with state building, the matter of greatest importance. In other words, since these countries’ major concern was building domestic order, they found the motivation to make that possible by creating this regional structure called ASEAN to stabilize their international relations.

These countries were thus acting “rationally,” a point which they all stressed, when they sought to create the regional institution called ASEAN to establish norms such as the principle of non-interference and territorial integrity as the rules to govern their international relations, applying reciprocity to stabilize intra-regional international relations and permit the member countries to concentrate on state building. It was precisely this urgent need to deal with state building which impelled them to seek stability by applying more traditional or conservative norms in their international relations. Such norms as non-interference in internal affairs, territorial integrity, and sovereign equality were widely accepted concepts also included in the United Nations Charter, but the circumstances discussed above gave these principles an added edge of importance for the ASEAN countries.

Adoptions of the norms

Two of ASEAN’s most basic and most important documents deal directly with such fundamental matters. The principle of respect for sovereignty was clearly stated and seemed to show general acceptance in the TAC and the Declaration of ASEAN Concord adopted by the 1st ASEAN Summit in 1976. Article 11 of the TAC states that “The High Contracting Parties shall endeavour to strengthen their respective national resilience in their political, economic, socio-cultural as well as security fields in conformity with their respective ideals and aspirations, free from external interference as well as internal subversive activities in order to preserve their respective national identities,” predicated on recognition of respect for sovereignty, in such forms as the principle of non-interference in internal affairs, as the basic principle. The terms of that article also directly indicate that ASEAN, while a regional body, also has an interest in matters within its member countries. In addition, the Declaration of ASEAN Concord also states that “Each member state resolves to eliminate threats posed by subversion to its stability, thus strengthening national and ASEAN resilience,” another clear statement that as a regional institution, ASEAN has a concern for the domestic stability of its members. In short, ASEAN, despite its regional nature, still has a very strong concern for the domestic order of its various members, and it thus stresses the norm of respect for sovereignty in such forms as the principle of non-interference in internal affairs.

We thus can say that ASEAN’s traditional norms were put in place during the latter half of the 1970s. Until the first half of the 1990s, those norms were not called into question. None of the ASEAN members

resorted to use of force in their international relations and still maintained their stability, and domestically, each was able to move forward with state building. Even looking at the varieties of problems handled during this period, the norm of respect for sovereignty was not viewed as causing any particular problems. In other words, during the 1980s when the ASEAN members showed their opposition to Vietnam's invasion of Cambodia and collectively lobbied against it, and these members took the first steps in seeking serious economic cooperation with each other, bringing stability to international relations among the ASEAN members moved from the very forefront of their concerns into the background. Thus, little if any dissention was heard on whether the principle of respect for sovereignty should stand as a rule for the ASEAN member states.

ASEAN was not, however, the only example of such a structure of norms. Principles regarding non-interference in internal affairs and territorial integrity, for example, are included in the charters or founding declarations of the Organization of African Unity, the Arab League, and other regional organizations of developing countries. Such similarities exist because, just as with ASEAN, these organizations consisted of newly independent states and served as a means to reciprocity between governments similarly faced by the demands of state building. As mentioned above, this structure of ASEAN norms is referred to as the "ASEAN Way," which is frequently described as being unique to ASEAN. But be it the principle of non-interference in internal affairs or reaching decisions through consensus, such norms are the general rules in regional organizations of developing countries. What is, therefore, particularly interesting when looking at the ASEAN norms is the question of why the norm of respect for sovereignty which has been widely applied by many regional organizations should have been called the "ASEAN Way" and viewed as unique to ASEAN. Let us examine that question in the following section.

This section has examined the source and acceptance of respect for sovereignty in ASEAN. In summary, the first reason is that the domestic problems of member states are of strong concern to the regional organization and, in ASEAN's case, the respect for sovereignty is not merely copied from the UN Charter but is specifically in the context of developing countries which are "weak states." Second, although ASEAN's norms are frequently viewed as being unique to ASEAN, they are instead found in general in regional organizations of developing countries.

3. Disputes arise over norms

Disputes with Europe and the US

The ASEAN norms suddenly were spotlighted when, during the early 1990s, disagreements developed with Europe and the United States. More specifically, the norms attracted attention during ASEAN's confrontation with Europe and the United States over sanctions against Myanmar.

The military regime which appeared in Burma in 1988 attracted international censure by placing Aung San Suu Kyi under house arrest the following year and refusing in 1990 to recognize the results of the general elections. ASEAN, however, adopted a uniform position which differed from the European and US censure of the military regime. From 1991 through 1993, the annual ASEAN Post Ministerial Conference (PMC) saw repeated direct confrontations between parties on either side of the issue. Europe and the United States insisted that Myanmar be sanctioned and isolated, and urged ASEAN to apply pressure to restore civilian government. ASEAN, in contrast, continued to insist that a calm dialogue must be continued, a process ASEAN characterized as "constructive engagement."

"Constructive engagement" was originally the term that Thailand applied to its intervention with Myanmar at the end of the 1980s, but the term was adopted for ASEAN policy starting with the PMC in 1992. It is important to note that despite the implications of constructive engagement, it was seen in Asia as in keeping with the principle of non-interference which Asian countries repeatedly argued toward

Europe and the United States. From early on, it had been frequently pointed out that there was little incentive per se for ASEAN members to try to intervene for a change in Myanmar's domestic human rights situation. For its part, Myanmar did not take constructive engagement as an attempt to bring about domestic change. In this sense, it is incorrect to look at constructive engagement in the context of intervening (or interfering) in domestic affairs.

It is interesting to note that just as "constructive engagement" was used as a justification for policy toward Myanmar based on the principle of non-interference, the terms "the ASEAN way" or "the Southeast Asian way" came into use in much the same context. For example, sources in the Malaysian government in 1992 said in justifying ASEAN constructive engagement that "We prefer to do things quietly, the ASEAN way, so as to give face to the other side," while sources in the government of Indonesia said that "We are telling them very quietly, in a Southeast Asian way, without any fanfare, without any statement" (*Straits Times*, August 26, 1992).

As mentioned in the preceding section, the norm of respect for sovereignty can be found in general in regional organizations of developing countries and is not something unique to ASEAN. Through discussions with Europe and the United States, however, ASEAN members have claimed that this was their own particular way of doing things, despite it representing such a very common standard, thus enshrining this approach as the norm for ASEAN, i.e., "the ASEAN way." In that sense, just as in the case of "Asian values," the concept of an ASEAN way represents rhetoric based on the strategy of authoritarian Asian countries which choose to promote regional norms rather than universal concepts such as democracy and human rights. Thus the ASEAN way represented ideals which stand in contrast with human rights and democracy as well as being compatible with authoritarian regimes for domestic government.

By the middle of the 1990s, ASEAN had won a fair degree of recognition of its norm for respect for sovereignty through ASEAN member countries' participation in Asia-Pacific Economic Cooperation (APEC) and the ASEAN Regional Forum, broad regional institutions which encompassed the ASEAN states, since in taking part in these, the ASEAN countries insisted on applying their traditional courses of action. Up to this point, even though argument may have taken place with non-ASEAN countries over standards, there had never been argument within ASEAN among its member states regarding how ASEAN standards should be handled. During the second half of the 1990s, however, voices came to be heard among the ASEAN members seeking reform of the traditional norms.

The problem of ASEAN membership for Myanmar and argument over regional norms

During the first half of the 1990s, problems arose between ASEAN and Europe and the United States over how to deal with Myanmar, which in turn led to confrontation over Myanmar during the second half of that decade sparking the debate regarding norms. In this case, however, the confrontation was not ASEAN vs. Europe and the United States. When Myanmar applied to become a member of ASEAN, Europe and the United States were joined by ASEAN members Thailand and the Philippines in seeking to have the matter put off.

In 1995, Myanmar signed on the TAC, and when it was given ASEAN observer status in 1996, it also applied for membership. About two months after this formal membership application, however, in late September 1996, a large number of Myanmar's democratic activists were detained and student protest demonstrations were contained by force. In response, Thailand and the Philippines expressed their strong concern over quickly awarding Myanmar with ASEAN membership, and they called for a reexamination of constructive engagement, insisting that democratization and human rights be taken into account in membership.

Thailand and the Philippines were the only countries to protest membership for Myanmar, and each

had moved toward democratization earlier than other countries in the region. As a result of their progress toward democracy, the foreign policy process was not controlled solely by part of their elites but was open to influence by the legislatures, public opinion, NGOs and the like. It was such groups, using their new influence on the foreign policymaking process, who raised their voices in calls for changes in constructive engagement toward Myanmar and a delay in its ASEAN membership. In addition, the two governments also had the incentive to press their case that they were also members of the international community of democratic states. This insistence from Thailand and the Philippines, however, did not stand in the face of thorough opposition from Singapore, Malaysia, Indonesia, and new member Vietnam, and as scheduled, in July 1997, Myanmar was able to join ASEAN.

Following Myanmar's membership, Thailand and the Philippines sought ways to intervene in Myanmar's domestic problems and, in 1998, even challenged the very principle of non-interference in an argument over "flexible engagement." Beginning in June 1998, Thailand's Foreign Minister Surin Pitsuwan argued repeatedly in speeches and on other occasions against stringently abiding by a principle of non-interference in internal affairs, insisting that where necessary there should be involvement in a member country's domestic affairs and supporting the concept of flexible engagement. This concept was an ambitious attempt to offer a substitute for the principle of non-interference, but it generated opposition from all ASEAN members except the Philippines. The dispute over flexible engagement was the first example in ASEAN history of argument among ASEAN members directly involving ASEAN's fundamental ideals. In the end, thanks to the thorough opposition from the other ASEAN members, "flexible engagement" was replaced by the almost meaningless term "enhanced interaction." To all extents and purposes, this represented an end to Thailand's and the Philippines' attempts at change.

As discussed above, the countries in ASEAN had been able to develop an environment of neighborly friendliness up to that point by mutually adopting a posture of respect for sovereignty. In that respect, for Thailand and the Philippines to embark on intervention in a fellow member's domestic human rights and democratization was a major challenge to ASEAN's greatest success, achievement of stability in international relations within the region. Indeed, Indonesian Foreign Minister Ali Alatas criticized Surin's proposal at the July 1998 meeting of ASEAN Ministerial Meeting (AMM) of foreign ministers, saying that permitting interference in internal affairs would mean a "return to the situation before ASEAN was born, with a lot of suspicion, a lot of tension" (*Far Eastern Economic Review*, August 6, 1998, p. 24). Those member states which had supported the existing norms censured the Thai and Philippine proposal as being against ASEAN's principle of non-interference and not in keeping with the ASEAN Way. A great many statements were made around that time which reconfirmed members' support for ASEAN fundamental ideals. One of the more pointed statements came from Singapore's Foreign Minister Jayakumar, who at the July 1998 AMM pointed out that the ASEAN family had remained strong even when members had, at various times, had bilateral disputes. He said that had been possible because the ASEAN Way had been to conduct discussions privately with the minimum of formal organization and aiming always at consensus, always stressing the peaceful resolution of the conflict (*Straits Times*, July 25, 1998). Another statement by a spokesperson for Vietnam's Ministry of Foreign Affairs said that the fundamental principles of ASEAN were consensus, consultation, and non-interference in internal affairs (*Tounan Ajia Geppou* [Southeast Asia Monthly], July 1998, p. 195). As a result of such strong opposition, the argument over norms during the second half of the 1990s ended with the traditional norm of respect for sovereignty still firmly in place.

Following the "flexible engagement" dispute

The stance of firmly supporting the traditional ASEAN norms continued for a while even after the

dispute over flexible engagement was wrapped up. For example, at the AMM in 2000, there was debate on setting up a regional human rights institution within ASEAN. Agreement had earlier been reached at the 1993 AMM on creating a forum for discussing human rights problems, but little was done to make this possible. In 2000, however, the AMM was presented with a formal proposal for an “ASEAN human rights commission,” including the specific activities and prerogatives of such a commission. The discussion that was directed at this matter found an active group and a more passive group among the ASEAN members. Here again, the more assertive members were Thailand and the Philippines. Deeming, for example, that improvement in human rights was a necessary part of ASEAN’s comprehensive development, these two members called for the early establishment of such a commission. The more passive members once again centered on such recent members as Vietnam and Laos, who predictably pointed to the principle of non-interference as their reason for opposing the proposal, and in the end no progress was made toward developing such a system for human rights.

Since 1999, ASEAN has basically continued to defend Myanmar in the international community. Even after joining ASEAN, Myanmar increased its suppression of the National League for Democracy, and the situation worsened as, in September 2000, Aung San Suu Kyi was placed under house arrest for a second time. In part through the mediation efforts of Razali Ismail, a special emissary appointed by UN Secretary-General Annan, she was set free in May 2002. At this stage, the international community was also hoping for improvement in Myanmar’s domestic human right and democracy issues.

Thus, despite pressure from Europe and the United States, ASEAN did its best not to make any mention of Myanmar’s internal affairs. When comments were made, they were much like the mention of Myanmar in the 2001 AMM joint communiqué: “We noted encouraging developments in the Union of Myanmar and appreciated the efforts of the Government of Myanmar towards these developments and reiterated our support to the on-going process of national reconciliation in this country.” At the 2002 AMM, after the release of Aung San Suu Kyi, the draft communiqué included language to the effect that ASEAN welcomed the release of Aung San Suu Kyi and looked forward to development of national reconciliation. Myanmar raised objections that this interfered in its internal affairs and in the end, all mention of Myanmar’s domestic problems disappeared. The joint communiqué did note: “We reaffirmed the usefulness of informal open and frank dialogue amongst ASEAN to address issues of common concern to the region.” This can be interpreted as reflecting the usefulness of the constructive engagement mentioned above, whereby ASEAN and its members maintained a temperate course without condemning or isolating Myanmar.

4. Modification of the traditional norms

Hardening policy on Myanmar and aspiring to communities

The event which generated a change in the support for traditional norms came in Depayin, Myanmar, in May 2003, when a mob attacked a group of democracy activists and Aung San Suu Kyi was again sentenced to house arrest. The Depayin attack became a turning point for ASEAN policies toward Myanmar. For the first time since its admission to ASEAN, Myanmar was openly subjected to voices of dissatisfaction from fellow ASEAN members.

At the June AMM, the ASEAN states castigated Myanmar and took the unusual hard line of calling for reopening the dialogue on democratization. In the joint communiqué, members said that “we urged Myanmar to resume its efforts of national reconciliation and dialogue among all parties concerned leading to a peaceful transition to democracy.” The media noted that ASEAN had broken down strict adherence to its long-held principle of non-interference in members’ internal affairs (Straits Times, June 21, 2003). There were, however, efforts by some of the foreign ministers to find balance between intervention

in Myanmar and non-interference in internal affairs, such as Singaporean Foreign Minister Jayakumar's statement that this had not been interference in internal affairs and that the principle of non-interference continued. Later, Singapore and Malaysia basically continued to cite this sort of compromise position.

In July, Malaysia's Prime Minister Mahathir castigated Myanmar by stating that if the situation in Myanmar did not change, it should be expelled from ASEAN. Then in September, Indonesian Foreign Minister Alatas was sent to Myanmar as a special envoy. During the latter half of the 1990s, Singapore and Indonesia had staunchly refused to interfere in Myanmar, but come 2003, these two countries themselves began to raise Myanmar's domestic problems. It is particularly interesting that Alatas in 1997 and 1998 had been the instigator of concerted opposition to the proposal by Thailand and the Philippines. Behind this change in Indonesia's position we can see Suharto's resignation as president in 1998 and progress toward democratization.

Since Myanmar's violation of human rights could become a cause of discord between ASEAN and the international community, ASEAN members were justified in trying to avoid it. As seen in the preceding section, however, during the latter half of the 1990s ASEAN had only hoped for Myanmar's voluntary internal efforts to improve human rights, and it had taken no steps to pressure Myanmar to move toward democracy or to delay its admission to ASEAN membership. The Depayin massacre, however, served to make clear that Myanmar had made no progress toward such goals, and this no doubt had caused great anger for Malaysia and President Mahathir, supporters of Myanmar's ASEAN membership during the second half of the 1990s.

While changes in the ASEAN position toward Myanmar began to appear, voices were also raised at the October 2003 ASEAN Summit extolling ASEAN's goal of becoming an integrated regional community. A new effort was made to establish ASEAN's norms and standards in the form of the Declaration of ASEAN Concord II.

Viewed in terms of the norms and standards, Concord II was significant in two major respects. One would be that this was probably the first time that the term "democratic" appeared in an official ASEAN public document. It stated that ASEAN's purpose was "to ensure that countries in the region live at peace with one another and with the world at large in a just, democratic and harmonious environment." This is the only reference to democracy. But although this was only a single word, it is possible to imagine all of the behind-the-scenes argument which must have preceded this definition of the position ASEAN should take toward a member's domestic system.

Indeed, there was fierce contention among the member countries over this one word. The composition of the two sides is interesting. In favor of leaving "democratic" in the document were the Philippines, Thailand, Indonesia, Malaysia, and Cambodia; opposed were Vietnam, Laos, and Myanmar, new member countries which had joined ASEAN only during the 1990s. Indonesia was particularly active in its support of the word. It is also worth special note that since 2000, there had been great vacillation in the position of Thailand and Cambodia, which at times appeared to support the principle of non-intervention and at times seemed to back democratic norms. Whatever the case, it is worth stressing here that the structure of those countries supporting the norm of respect for sovereignty versus those supporting the new ideals (human rights and democracy) clearly differs greatly from the structure during the 1998 contention over "flexible engagement." In other words, it was the new members which began to stress maintaining ASEAN's traditional way of doing things which had over the years turned into accepted norms of behavior, while in a very convoluted fashion, the original members started to support changes in the traditional ways.

On the one hand, Concord II serves to reconfirm such traditional norms as the principle of non-interference and consensus decisions, and it was the first time that decision by consensus, which had been

an unwritten rule, was set down on paper. In that sense, Concord II seems a compromise between those who wanted to carry on the traditional norms and those who sought to introduce democratic norms.

Also significant is how Concord II makes even clearer the custom of differentiating among the various norms for behavior depending on the specific issue. Concord II lauds the creation of three separate ASEAN communities in the region, a security community, an economic community, and a socio-cultural community. This also means that, by establishing three separate communities depending on the specific concerns, the norms for behavior can be differentiated depending on the specific issue at hand. While respect for sovereignty can be maintained in the area of security, it is also possible in the economic area in particular for assenting countries to take action first, which represents the first priority being placed on application of the “ASEAN minus X” approach.

Concord II remained ambiguous in a variety of ways, but the following year, 2004, it was taken up at the ASEAN Summit and put in more specific terms as the Vientiane Action Program (VAP). The section Shaping and Sharing of Norms includes reference to “a democratic, tolerant, participatory and open community,” suggesting that promotion of democracy was gradually taking root in ASEAN. In the VAP draft, Indonesia supported inclusion of a rather audacious reference to the regular holding of democratic elections, but objection of member countries caused this to be removed. In addition, the ASEAN Security Community Plan of Action adopted at that Summit includes the rather strong language that “ASEAN Member Countries shall not condone unconstitutional and undemocratic changes of government.”

As can be seen from the above, ASEAN norms have started to change since Concord II. References to human rights or democracy were once sidetracked by rhetoric such as “Asian style” or the “ASEAN Way,” but now such references were being raised by ASEAN itself.

Drawing up the ASEAN Charter

Since 2005, ASEAN has experienced a number of transitions in the norms it espouses, through (1) criticism of Myanmar becoming routine and (2) democracy and human rights being more clearly cited as ASEAN norms.

More specifically, a problem arose in 2005 regarding which country would serve as the ASEAN chair. The problem was that from the second half of 2006, Myanmar was scheduled to serve as chair for ASEAN in general as well as a number of ASEAN-related conferences which would include countries from outside the region. The United States and the European Union, however, were vigorously opposed to this. Vietnam and Laos stubbornly maintained that ASEAN should not bend to foreign pressure, but the various other member countries heard opinions from their national legislatures, media, and civic groups that Myanmar should resign from becoming chair in 2006. In addition, legislators from a number of ASEAN countries’ parliaments formed the ASEAN Inter-Parliamentary Myanmar Caucus (AIPMC) which created a sense of regional unity across national boundaries.

Indonesia, the Philippines, Malaysia, and Singapore made their own approach to Myanmar, with the result that at the July 2005 AMM, Myanmar stated that it wished to concentrate on domestic matters and resigned from the chair. Thus Myanmar offered the most reasonable of reasons and resigned of its own volition, and the matter could be laid to rest without sullyng the traditional norm of non-interference in internal affairs. Later, in December of that year, the chairman’s communiqué from the ASEAN Summit called for democratization of Myanmar and the release of detainees and determined to send a delegation to inspect the state of democratization there.

Further, in 2007 an incident occurred which brought the ASEAN countries to an even harder line toward Myanmar. In August through September 2007, large demonstrations took place there calling for democratization, and the demonstrations were suppressed. This situation attracted international

attention, and ASEAN members were critical as well. At the informal AMM in September, members laid out a stream of criticism, and the chair, Singapore, used the unusually severe term “revulsion” to castigate Myanmar’s actions. AIPMC, mentioned above, also sent letters to the leadership of the ASEAN member states and to China and India as well, asking them to exert pressure on Myanmar to reform.

As we have seen, the criticism of Myanmar’s human rights problems which surfaced following the events in Depayin in 2003 became completely routine during this period. In a sense, we could say that in less than ten years, there was a major change in the situation involving ASEAN’s norms.

As Myanmar’s domestic democratization and human rights conditions turned into problems to be raised in ASEAN, work also moved ahead on an ASEAN charter. The charter was to be a document once more laying out clearly ASEAN’s goals and principles, and it was also extremely important in terms of setting norms. In the Declaration on the Establishment of the ASEAN Charter issued in December 2005, promotion of democracy had already been specified as one of ASEAN’s goals, and at the unofficial AMM of April 2006, further changes were discussed, including reconsideration of the principle of non-interference. Such developments gave hope that the ASEAN Charter would offer more than just the conventional principle of respect for non-interference in members’ internal affairs or the simple mention of democracy and human rights as ASEAN norms; it was hoped that the charter would offer ways to realize such goals.

At an earlier stage in preparations for drawing up a charter, an Eminent Persons Group (EPG) had been formed of ten knowledgeable persons from the ASEAN member states, and this EPG presented the 2006 Summit with a report including some rather in-depth contents. This report included raising the promotion of democracy as one of ASEAN’s goal, in addition to which it clarified three points: (1) that the principle of non-interference applied only to relations with countries outside of the region; (2) that sanctions could be applied for violation of ASEAN’s goals and principles, including expulsion; and (3) that decisions would primarily be reached by consensus, but in the event that consensus could not be achieved, decisions would be by voting, except on certain sensitive subjects (to be specified by the Summit). Of these three, points (2) on sanctions and (3) on voting in particular were included with an eye to Myanmar’s domestic problems.

Later a high-level task force (HLTF) of ten persons representing ASEAN member governments carried forward the work of devising a charter. On three separate occasions the AMM raised the HLTF deliberative process, giving specific instructions on contents of the HLTF deliberations, which shows how strongly the HLTF, unlike the EPG, reflected the thoughts and confrontations of the various governments. Another problem was posed by the ASEAN human rights commission, which was not included in the EPG report, and here again positions broke into two camps, the original ASEAN members and the newer members. Regarding the section on sanctions, the new members such as Myanmar were joined by Singapore and Thailand in showing reluctance over changes in this respect. And throughout this whole process, the two ASEAN members which consistently viewed norms on democracy and human rights as very important were Indonesia and the Philippines, two countries which had relatively advanced democracy in the region.

Following this process of deliberations among the members with their differing concerns, a new ASEAN Charter was signed at the 2007 Summit, one which differed considerably from the EPG report. There is no change in the praise for the value of democracy and human rights. Still, (1) the Charter makes clear how the principle of non-interference pertains to member countries’ domestic problems; (2) sanctions are in effect put off for later consideration; and (3) reaching decisions through consensus is retained, all in all, maintaining continuity with ASEAN’s traditional ways of operation. As such, the Charter stands as a compromise between those members trying to change ASEAN’s norms (mainly the original members) and those trying to retain the traditional methods (mainly the newer members). In other

words, while the promotion of democracy and human rights is cited as one of ASEAN's principles, in order to protect the interests of those members which were negative toward such changes, mainly the newer members, the Charter reaffirms the principle of non-interference and consensus decision making as a kind of safety valve. In short, a member country can use these practices as a kind of shield to protect itself against decisions that would not be in its interest. Also worth noting in the ASEAN Charter is the question of an ASEAN human rights commission, the specifics of which are left undecided.

Interpreting the ASEAN Charter

Given the contents of the ASEAN Charter as described above, just how should we evaluate it in terms of change and continuity of ASEAN norms? As we have seen in our examination of the changes in norms as applied to the principle of non-interference and to human rights and democracy, the ASEAN Charter is a rather ambivalent document. On the one hand, it cites the promotion of democracy and human rights as ASEAN goals and decides on establishment of an ASEAN human rights commission, while it also stresses the norm of respect for sovereignty in such forms as non-interference in countries' internal affairs.

Such contents have raised voices of disappointment among NGOs in the region, the legislatures of various democratic nations, and public opinion deeming that the Charter does nothing more than giving priority to the traditional norms. Viewed objectively, such interpretations do seem justified. First, the Charter omits some matters raised in the EPG report. This is not to say that in some cases, the EPG report does not run far ahead of reality in audaciously seeking unachievable results. Rather more importantly, second, while it had been hoped that the Charter would provide the practical ability to promote democratic norms, such hopes were betrayed by the results: gutted provisions for sanctions, the consensus decision making system being put off for later, and the ASEAN human rights commission left an unknown quantity. In short, it is not effective because it merely points to the norms without offering ways to realise them. Third, there has been no change in the situation already described in the VAP or plans for a security community. In short, there is little or nothing innovative in the Charter. The only important change would be on establishment of an ASEAN human rights commission, but many have expressed doubt whether this would be effective, and the Philippines, Indonesia, and Thailand have openly expressed their disappointment (*The Nation*, November 19, 2007). The focus of their disappointment is that in the event of infringement on human rights or setbacks for democracy on any major scale in member states, in the end ASEAN has no means or prerogative to act in response as a regional organization.

It is also very interesting to look at how this ASEAN Charter signed at the ASEAN Summit of 2007 went about being ratified, which sheds some light on how to interpret the Charter. In other words, the more conservative countries ratified it quickly, whereas countries with a more advanced level of democracy were slower to ratify. The Philippines and Indonesia, for example, viewed ASEAN as taking an ambivalent stance toward human rights issues and saw little room for bringing improvement in Myanmar's domestic problems, and these situation as well as the fact that Aung San Suu Kyi was still under house arrest, caused these two members to be highly critical of the Charter.

In other words, the Charter's contents were hard to accept for those parties which sought to promote human rights and democracy above and beyond the traditional norms. As another example, in 2008 the government of Myanmar was beset by the damage from cyclone Nargis, but it was slow to accept aid since it feared that aid from Europe and the United States would involve interference in its internal affairs; the reason that it became willing to accept outside aid via ASEAN was likely because it calculated that ASEAN would not put Myanmar under too much pressure. That is how Myanmar continues to view the existence of ASEAN.

The document next in order of importance to the Charter would be the ASEAN Political-Security

Community Blueprint which was submitted to the ASEAN Summit held in late February and early March 2009. Rather unusual for a document that deals with ASEAN political-security affairs, this blueprint makes no mention of the principle of non-interference in internal affairs. Although it might be possible to see this as bringing further changes in ASEAN norms, where the subject of promoting democracy is in fact touched upon, specific measures to promote it remained ambiguous. We could thus say that ASEAN norms remain shifting between traditional norms on respect for sovereignty and the norms for democracy and human rights, shifting within a range of forms which can satisfy the new members which abhor change.

Also, since the ASEAN Charter contains nothing specific regarding the discretion and duties of an ASEAN human rights commission, that is one job for the present. In addition, the ASEAN Intergovernmental Commission on Human Rights (AICHR) Operating Rules was adopted at the July 2009 AMM, which set the basic nature and responsibilities of the human rights organization and which took effect in October. AICHR operations, however, do not include studying human rights abuses in the member countries or protection of human rights; ultimately, it was permitted to do no more than further promotion of human rights through educational and promotional activities. Indonesia and the Philippines offered the criticism that while the AICHR can conduct activities to promote human rights, it is powerless to deal with actual violations.

5. Factors in the changing norms and ASEAN norms today

We have examined the way norms have changed in ASEAN above. Since Myanmar's 2003 Depayin incident and on through the 2005 question of its chairmanship and its 2007 suppression of demonstrations, it has become routine to raise Myanmar's domestic problems in ASEAN. Democracy and human rights have even become clearly established as "ASEAN norms." In comparison to ASEAN's traditional approach of seeking stability in the international relations among ASEAN members by placing the principle of non-interference in members' internal affairs above all else, the emerging recognition that the domestic governance of member states is an area for involvement by ASEAN in its role as a regional institution is of great significance.

If we turn our attention to the factors involved in such changes in ASEAN's norms, what comes to mind first is concern for ASEAN's international image. For instance, Singapore and Malaysia are among the ASEAN members which have been negative toward changing the ASEAN norms per se, but out of concern for Myanmar's domestic problems bringing harm to ASEAN's international reputation, these two members have been critical of such problems. Even a cursory glance at other regional bodies in the international community reveals that the European Union, the Organization of American States, and the African Union all cite democracy and human rights as among their standards, and we could say that it is entirely normal for regional organizations to call into question its members' domestic governance. Given such examples, it seems meaningful that ASEAN, which has at times been criticized for "protecting Myanmar," has seen including democracy and human rights among its own norms as a way of appealing to the outside world.

When we consider, however, that as noted above ASEAN member countries can at times be in sharp confrontation in their opinions about ASEAN norms, democratization in the member states would then seem all the more important as a factor in the changing ASEAN norms. In its early days, ASEAN seemed most significant as an opportunity for foreign ministers to gather for discussion, and for that very reason, ASEAN was criticized as concentrating only on the most elite elements of its member states. Democratization in its members, however, began to change this situation. Among the changes which took place were that in those countries which achieved greater democracy, the legislatures and public

opinion began to exert greater influence on foreign policy; NGOs became more active and, by forming ties throughout the region, began to address ASEAN itself; and networks of legislators around the region such as AIPMC became active as well. In addition, since 2003 the foreign policy of Indonesia's government, which has actively supported democracy and human rights, has also been aimed at having a domestic appeal. That is to say, with the advance of democracy primarily in the original ASEAN members, the foreign policy making process has become more complex there, which in turn has been an important factor in bringing changes in the norms of ASEAN as a regional institution.

We cannot, however, look only at the changes. It was hoped that the ASEAN Charter would give effective force to efforts to promote democracy and human rights, but instead, the Charter contains nothing more than the traditional respect for the member states' sovereignty.

In summary, ASEAN's norms today consist in pointing to the norms for human rights and democracy and leaving the situation there, without providing any way for such norms to be put into effect. Future consideration of such matters in ASEAN will likely focus on building specific mechanisms for furthering such norms, whether the mechanisms take the form of monitoring or of actual sanctions, in the face of stubborn opposition from Myanmar and the other more conservative countries.

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