

# Protection of Regional Values

## - A comparative study of EU and ASEAN

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<b><u>1 INTRODUCTION AND AIM OF STUDY</u></b> .....	<b>3</b>
<b>1.1 INTRODUCTION</b> .....	<b>3</b>
1.1.1 REGIONAL INTEGRATION AND COMMON VALUES.....	3
1.1.2 THE EUROPEAN INTEGRATION EXPERIENCE .....	4
1.1.3 ASEAN COOPERATION AND INTEGRATION .....	7
<b>1.2 AIM OF STUDY</b> .....	<b>9</b>
<b>1.3 METHOD, SCOPE AND DISPOSITION</b> .....	<b>10</b>
<b><u>2 EU</u></b> .....	<b>12</b>
<b>2.1 A MECHANISM FOR CONSTITUTIONAL DISCIPLINE</b> .....	<b>12</b>
2.1.1 BACKGROUND – FEAR OF THE OTHERS.....	12
2.1.2 DESIGN AND LIMITATIONS .....	13
2.1.3 THE HAIDER AFFAIRE AND THE TREATY OF NICE .....	15
2.1.4 APPLICABILITY AND FUNCTION .....	16
<b>2.2 A COMMUNITY OF VALUES?</b> .....	<b>19</b>
2.2.1 EUROPEAN VALUES.....	19
2.2.2 UNIVERSAL VALUES AND REGIONAL IDENTITY .....	22
<b><u>3 ASEAN</u></b> .....	<b>25</b>
<b>3.1 THE ASEAN WAY</b> .....	<b>25</b>
3.1.1 INFORMALITY AND SOFT DIPLOMACY.....	25
3.1.2 NON-INTERVENTION .....	26
3.1.3 A NEW LEGAL FOUNDATION .....	31
<b>3.2 HUMAN RIGHTS AND DEMOCRACY</b> .....	<b>32</b>
3.2.1 THE ASIAN VALUES DEBATE.....	33
3.2.2 CHANGING DISCOURSE? .....	36
3.2.3 AN ASEAN HUMAN RIGHTS BODY AND CHARTER .....	37
<b>3.3 MYANMAR</b> .....	<b>38</b>
3.3.1 “CONSTRUCTIVE ENGAGEMENT” .....	38
3.3.2 A NEW PRECEDENT .....	40
<b>3.4 ASEAN VALUES</b> .....	<b>42</b>
<b><u>4 COMPARATIVE ANALYSIS</u></b> .....	<b>44</b>
<b>4.1 A HISTORICAL PERSPECTIVE</b> .....	<b>44</b>
<b>4.2 PROTECTION OF REGIONAL VALUES</b> .....	<b>45</b>
4.2.1 THE MEANS .....	45
4.2.2 THE VALUES PROTECTED .....	47
<b><u>5 CONCLUDING REMARKS</u></b> .....	<b>51</b>
<b><u>REFERENCES</u></b> .....	<b>58</b>

# 1 Introduction and aim of study

## 1.1 Introduction

### 1.1.1 Regional integration and common values

As models of regional integration, the European Union (EU) and the Association of Southeast Asian Nations (ASEAN) are two prominent examples. Regionalisation has become an increasingly important phenomenon and can be seen as a consequence of or a reaction to the ongoing globalization process, with increased mobility of people, goods and capital beyond national borders.<sup>1</sup> Regional integration and interaction between regions also constitute an alternative to the global multilateral cooperation, as shown by the increased regional activity with regard to free trade as a consequence of the lack of progress in the multilateral trade negotiations within the World Trade Organization (WTO). If a regional organization is to integrate, i.e. moving beyond mere cooperation, there must be a shared set of standards between the member states, allowing them to confide in each other. This is particularly the case if the integration is to deepen into more sensitive areas. Furthermore, when a regional entity's policies affect areas where it can be hard for the member states to distinguish the direct economic or political gain of deeper integration, something else is required in order for the process to be viable. A shared sense of identity and solidarity in the region, founded on common values can serve as the glue of deeper integration and is necessary in order to build a true people's community or union.<sup>2</sup> Which these values are, what role they play in the integration process and how they are enforced differ widely between the EU and ASEAN. However, the question of common fundamental principles, or values, interlinked with the notion of regional identity is going to play an important role for the future course of integration in both regions.

The comparative analysis of EU and ASEAN that will be made in this thesis has to be seen against the background of the increasing interaction and mutual interest between the two regions. EU was the first dialogue partner of ASEAN and the cooperation between the regions has widened and deepened over the years. In 2007, the Nuremberg Declaration on an

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<sup>1</sup> Lindberg 2007 p 1

<sup>2</sup> Compare Ward p 260 "For a political community to flourish, to engage and to maintain the affinity of its citizens, it must project a convincing and compelling public philosophy. It must stand for certain values, legal and economic certainly, but also moral, political, perhaps even spiritual."

ASEAN-EU Enhanced partnership was signed, encompassing plans for future cooperation in the political, economic, environmental and socio-cultural field.<sup>3</sup> The economic interest of both regions to cooperate further is seen as substantial and negotiations on an ASEAN-EU Free trade agreement (FTA) have been launched, albeit without any actual negotiations this far.<sup>4</sup> In the political area, ASEAN encourages EU to play a greater role in Southeast Asia since this would create a geopolitical balance in the region.<sup>5</sup> This is mirrored by the increased European interest in Asia and ASEAN during the 90's, as reflected in several policy documents.<sup>6</sup> Furthermore, ASEAN and EU interact in multilateral fora such as the WTO, the ASEAN Regional Forum (ARF),<sup>7</sup> and the Asia-Europe Meeting (ASEM).<sup>8</sup> The interaction on a region-to-region level is supplemented by bilateral contacts between the EU and individual ASEAN member states, where renewed Partnership and Cooperation Agreements (PCA's) currently are being negotiated. ASEAN and EU thus want to develop their relations further. Differences in systems and internal values between EU and ASEAN can affect these relations, especially given the value promotion of the EU in its external policies.

### 1.1.2 The European integration experience

The formation of the European Communities (EC) and the subsequent development into the Union can only be properly assessed in the light of WWII. The EC was originally a peace project to help build confidence between the member states and consolidate the region against external threats. At the time, there was an intra-European opinion in favour of increased cooperation between the European states.<sup>9</sup> However, the idea of European Unity was not new, but had been reoccurring in Europe ever since the first modern civilizations.<sup>10</sup> Preceding the community treaties, different forms of European cooperation were formed in the aftermaths of the war. The USA was pushing for cooperation in Europe in order to safeguard their strategic interests. The Organization for European Economic Co-operation (OECC, later OECD) was set up in order to administer the Marshall aid from the USA. There was also cooperation within the defence field, notably by the signing of the North Atlantic Treaty

<sup>3</sup> <http://www.aseansec.org/20693.pdf>

<sup>4</sup> Compare e.g. COM (2003) 399 p 8ff and the status report by Lindberg 2007 p 17, showing that the trade between EU and ASEAN has increased dramatically in actual figures during the last decades, although it is declining in relative terms.

<sup>5</sup> Compare Yeo p 10f

<sup>6</sup> Towards a New Asia Strategy (1996), Europe and Asia: A strategic framework for Enhanced Partnerships (2001) and A new partnership with Southeast Asia (2003).

<sup>7</sup> ARF is a forum for dialogue on political and security matters in the Asia-Pacific.

<sup>8</sup> ASEM is a multilateral dialogue between Europe and East Asia and an open forum for global issues.

<sup>9</sup> Cramér 1994 p 48f, p 60ff

<sup>10</sup> See Cramér, EU och Europatanken – Ett rättsligt och historiskt perspektiv, for an outline of the historical and ideological background to the formation of EU as the legal entity we know today.

Organization (NATO) and within other fields through the Council of Europe. It was crucial to restabilize the relations between France and Germany after the war in order to secure the European peace. Furthermore, the post-WWII bipolar political climate made integration among Western European states, notably Western Germany, strategically important as a counter weight to the communist Soviet Union and its expansion into Eastern Europe. This was the rationale behind the setting up of the supranational European Coal and Steel Community (ECSC), binding the old enemies to peacefully cooperate within the limited field of coal and steel production.<sup>11</sup> After the failed effort to create an ambitious European political community in 1953,<sup>12</sup> the Euratom and European Economic Community (EEC) treaties were signed in 1957, marking the beginning of the EC.

The European integration is a unique and ongoing project that continually deepens and widens. This is reflected in the preamble of the Treaty Establishing the European Community (TEC) and reaffirmed in the Treaty on European Union (TEU): “Determined to lay the foundations of an even closer union among the peoples of Europe”.<sup>13</sup> Geographical enlargement is a prominent feature of the integration with 27 member states to this date and negotiations taking place with even more. Times of stagnation in the member states cooperation have been counter weighted by the activism of the European Court of Justice (ECJ), developing the unique features of supremacy and direct effect of European law.<sup>14</sup> The economic integration has been predominant during several decades, despite the political and strategic incentives for integration, with the establishment of a common market with free movement of goods, services, capital and workers and a monetary union with common currency in several member states. The political cooperation between the member states gained momentum in the 70’s, but a political union did not become a reality until the Maastricht Treaty on the European Union from 1992,<sup>15</sup> which introduced the three-pillar structure with an economic supranational pillar supplemented by the intergovernmental common foreign and security policy and police and judicial cooperation in criminal matters.

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<sup>11</sup> Cramér 1994 p 44ff, p 54f, 63ff, Craig and De Búrca p 8f. The ECSC treaty was signed in 1951 by France, Germany, Italy and the Benelux countries.

<sup>12</sup> France was weary over German remilitarization and submitted the draft treaty to its national assembly, where it was rejected. Craig and De Búrca p 10

<sup>13</sup> This is in conjunction with neofunctionalist theory of integration, according to which integration starts in less controversial areas, i.e. economic, and thereafter can spill over into more sensitive areas when it is politically possible. Compare Craig and De Búrca p 5. The preamble statement is interesting in an additional sense, as it says something about the perception of Europe as constituted of distinct people.

<sup>14</sup> Cramér 1994 p 202

<sup>15</sup> <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html>

An important factor behind this step towards deeper integration was the changing geopolitical climate after the collapse of the Soviet Union and the need to integrate a united Germany into Western Europe.<sup>16</sup> Thereafter, intergovernmental conferences have entailed important treaty revisions in Amsterdam 1997<sup>17</sup> and Nice 2000,<sup>18</sup> preparing the Union for the Eastern enlargement. Except for institutional reform, some of the more important innovations have been that provisions on the free movement of persons, covering visa, asylum, immigration and judicial cooperation in civil matters are now part of the first pillar instead of the third and that the Schengen Treaty and the related legal body on the gradual abolition on common border checks has been incorporated into the EC/EU framework.

The development of the EU is naturally not an easy or clear-cut process. Periods of rapid integration are followed by backlash and increased emphasis on national interests. It is always possible to argue that the integration process is going too far since the end-goal of the Union is not clearly defined. The rather heated and sometimes confused debate over the European Constitutional Treaty<sup>19</sup> and the subsequent rejection of the same in Dutch and French referendums reflect this discourse. At the time of this essay, a reform treaty – the Treaty of Lisbon (ToL)<sup>20</sup> - has been agreed upon and awaits national ratifications. It contains several of the innovations of the Constitution, some of the more important being institutional reforms with regard to the increased number of member states and the paradox of increased powers to both the European and the national parliaments in an attempt to decrease the “democratic deficit” of the Union.<sup>21</sup> The common foreign and security policy is strengthened.<sup>22</sup> Furthermore, there is increased focus on and clearer definitions of the values upon which the Union is founded. The European Human Rights Charter is given the status of EU primary law and the treaty also stipulates that EU shall accede to the European Convention on the protection of human rights and fundamental freedoms (The European Convention).<sup>23</sup> It is evident that European policy-makers today consider that EU should be a union based on values and that these are important in a further integration process.

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<sup>16</sup> Cramér 1994 p 148ff

<sup>17</sup> <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html>

<sup>18</sup> <http://eur-lex.europa.eu/en/treaties/dat/12001C/htm/12001C.html>

<sup>19</sup> Treaty establishing a constitution for Europe, <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2004:310:SOM:EN:HTML>

<sup>20</sup> <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>

<sup>21</sup> See the Protocol on the role of national Parliaments in the European Union and the Protocol on the application of the principles of subsidiarity and proportionality and Title II art 8-8C in the reform treaty.

<sup>22</sup> See title V ”General provisions on the Union’s external actions and specific provisions on a common foreign and security policy” (former ”Provisions on a common foreign and security policy”)

<sup>23</sup> See the reformed art 6 TEU and the new art 1a

### 1.1.3 ASEAN cooperation and integration

ASEAN was founded in Bangkok in 1967 by five Southeast Asian states: Singapore, Thailand, Malaysia, Indonesia and the Philippines. The Bangkok declaration was by no means an equivalent to the treaty of Rome, but rather a simplistic document encompassing a bare minimum set of rules to establish ASEAN and state its aim and purpose.<sup>24</sup> The explicit purposes were to accelerate economic growth, social progress and cultural development and to promote peace and stability in the region. However, it seems to be widely acknowledged that even though heavy emphasis was put on economic cooperation, the rationale behind ASEAN was political.<sup>25</sup> Rival territorial claims in the South China Sea, the Indonesian policy of *konfrontasi* and the Philippine's claims to Borneo, were all disputes threatening to deteriorate into armed conflict. The need to overcome the mutual suspicions and hostility between the member states after their independence from colonial powers and instead cooperate peacefully and solve existing disputes was thus the prime motive behind the initiative.<sup>26</sup> Also, the member states of ASEAN were able to form a common front against communist insurgency.<sup>27</sup> The Bangkok declaration needs to be seen against this background and furthermore as a potential instrument for the ASEAN countries to safeguard their interests against those of the leading world powers.<sup>28</sup>

Starting as a forum for confidence building and regional stabilization, ASEAN has over the years expanded both geographically, with the accession of first Brunei, and later Vietnam, Laos, Burma/Myanmar (hereafter Myanmar) and Cambodia (CLMV countries), and functionally, with the broadening of the scope of cooperation.<sup>29</sup> In 2003, a decision was made to establish an ASEAN Community, encompassing three pillars of cooperation, namely political and security, economic and socio-cultural cooperation.<sup>30</sup> In the realm of the today most advanced field - the economic - an ASEAN free trade agreement (AFTA) was signed in

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<sup>24</sup> ASEAN Declaration (Bangkok Declaration), 8 August 1967, [www.aseansec.org/11824.htm](http://www.aseansec.org/11824.htm)

<sup>25</sup> According to former S-G Mr Severino, the economic goals were used in the Bangkok declaration so that the association wouldn't be taken for a military pact. Seminar 24 Jan 2008 - "Southeast Asia in search of an ASEAN Community"

<sup>26</sup> Severino 2006 p 161f, Lindberg 2007 p 4, 120f

<sup>27</sup> Lindberg p 4 Whereas communist insurgency might have been a common concern to at least some of the member states, Mr Severino argues that China never was perceived as a common external threat by the ASEAN countries. Seminar - "Southeast Asia in search of an ASEAN Community". This is a difference compared to the European integration process, which is largely shaped by the perceived threat of the Soviet Union.

<sup>28</sup> Kraft p 2, Severino 2006 p 3

<sup>29</sup> Brunei Darussalam joined on 8 January 1984, Vietnam on 28 July 1995, Lao PDR and Myanmar on 23 July 1997, and Cambodia on 30 April 1999.

<sup>30</sup> Declaration of ASEAN Concord II (Bali Concord II), [www.aseansec.org/15160.htm](http://www.aseansec.org/15160.htm)

1992, with the elimination of most tariffs between the member states as a result.<sup>31</sup> There is also an ASEAN framework agreement on trade in services (AFAS) and an ASEAN investment area (IAI). According to plans, an ASEAN economic community, with a free flow of goods, services, investments and a freer flow of capital, will be launched in 2015.<sup>32</sup> A future political and security community will encompass open cooperation in trans-national problems, rather than a joint foreign policy or military alliance.<sup>33</sup> The hesitation of the member states in this area (and to some extent also within the economic realm) can be explained by their relatively recently acquired independence, mutual suspicions and the consequently great importance given the principle of non-intervention in the internal affairs of one another. Even so, it is argued that it is with regard to these issues, in preventing and handling conflicts between the member states and overcoming the mutual suspicions that the main achievements of the organization lie.<sup>34</sup> At the same time, economic integration has taken an increasingly important role in the ASEAN integration process in the last few years, perhaps implying a shift of focus in ASEAN from politics to economics.<sup>35</sup>

One of the more striking features of ASEAN regionalism is its openness and the cooperation between the region and external partners. ASEAN has eleven dialogue partners, including the EU, the US, Russia and all the major players in the region. Within the constellation ASEAN+3, dialogue between the region and China, Japan and South Korea takes place and the East Asia Summit (EAS) additionally encompasses India, Australia and New Zealand. Thus, ASEAN successfully gathers all the Asian giants, trying to position itself as the hub and driver of regional integration.<sup>36</sup> The different forums are sometimes dismissed as mere “talk shops”. This is to some extent true, but they still offer an important platform for discussion and consensus building in the region.

Most scholars seem to agree that the so called ASEAN way, with consensus as prerequisite for decisions and flexible diplomacy instead of formalized institutions and mechanisms has

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<sup>31</sup> Import duties for the six older members should be fully eliminated by 2010, and for the CLMV countries the time frame is 2015 (with certain concessions for sensitive products until 2018). (Protocol to Amend the Agreement on the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area (AFTA) for the Elimination of Import Duties, [www.aseansec.org/14184.htm](http://www.aseansec.org/14184.htm)).

<sup>32</sup> Bali Concord II, paragraph B.3. The original timeframe was 2020, but the process was speeded up, partly due to Singaporean and Thai initiatives.

<sup>33</sup> Compare Bali Concord II, paragraph A.2, where the principle of “comprehensive security” is outlined.

<sup>34</sup> Severino 2006 p 164, 208, Kin Wah, ASEAN: Facing the Fifth Decade, 2007, p 2

<sup>35</sup> Severino 2006 p 252

<sup>36</sup> “Know you ASEAN” p 43, ASEAN Vision 2020 and the ASEAN Charter art 41



served the region well and that ASEAN (at least at certain times) has been a stabilizing factor in the region.<sup>37</sup> However, these characteristics, letting the country least inclined to integrate setting the pace, have also made progress slow. There are still vast differences between the rich and the poor member states. Non-compliance with agreements is a problem and a lot of obstacles still remain in the field of economic integration.<sup>38</sup> The changing geo-political and economic climate, with tougher regional competition, first and foremost through the rise of China, together with trans-national challenges, such as pandemics, terrorism and environmental hazards, has prompted ASEAN to step up its interaction.<sup>39</sup> To meet the new challenges and keep its relevance, the 40 years old association decided to go legal. The ASEAN Charter was signed during the 13<sup>th</sup> ASEAN summit in Singapore in November 2007. The Charter was by many considered to be a disappointment with its lack of explicit mechanisms for sanctions in case of non-compliance or grave breaches against the Charter provisions. Nevertheless, it gave the association a legal standing and reaffirmed, and to some extent also redefined the fundamental purposes and principles of the organization, for the first time encompassing principles regarding states' behaviour towards their own citizens. ASEAN is at a crossroads after 40 years of cooperation, facing increased pressure both internally and externally to step up its interaction and promote human rights and other important issues. As with the EU, the question of common fundamental values and regional identity is going to be vital for the future course of integration in ASEAN.

## **1.2 Aim of study**

Through a comparative analysis, this thesis seeks to explore the different mechanisms and institutions for handling breaches against fundamental principles within the two regional organizations ASEAN and EU. Inter-linked with the issue of the legal-institutional framework is that of what values the mechanisms are designed to protect. Thus, this thesis also aims at assessing the regional integration in EU and ASEAN with regard to common fundamental values.

To this end, the following questions are asked:

- Which mechanisms are in place within the EU in order to protect and sanction common fundamental values?

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<sup>37</sup> See e.g. Severino 2006 p 35, Kin Wah p 2f and the outline in Lindberg 2006 p 101f

<sup>38</sup> Severino 2006 p 246ff

<sup>39</sup> See e.g. Framing the ASEAN Charter – An ISEAS perspective, Compiled by Rodolfo C. Severino, 2005 p 6f

- What is the background to the design of the current system?
- What is the actual scope of application?
- What values do they seek to protect?
- Which mechanisms are in place within ASEAN in order to protect and sanction common fundamental values?
  - What is the background to the design of the current system and to what, if any, extent has it been inspired by the EU?
  - What is the scope of application compared to that in the EU?
  - What values do they seek to protect?
  - How are those values similar or different to the common fundamental values of the European Union?

### ***1.3 Method, scope and disposition***

As mentioned this thesis aims at a comparative analysis of EU and ASEAN. A comparison between two systems with such great differences in history, culture, religion, economic development and domestic policies and concerns is naturally somewhat weary. Each system follows its own logic and concepts that seem alike can only be truly understood in its own context. Therefore, and as far as possible, the phenomena under scrutiny will be put within its regional context. However, these attempts to give a broader perspective will naturally be somewhat sketchy. The aim of the thesis is to explore the situations within ASEAN and EU. Thus, more detailed questions of promotion of regional values in the external relations, which plays an important role in EU foreign policy, are beyond the scope of this paper. However, some aspects of the external relations will be discussed in the concluding remarks since it is in the interaction between the EU and ASEAN that differences regarding common values can become problematic.

The method used for the analysis is first and foremost that of public international and European law. Consequently, conventions, declarations and other instruments of international law are used when applicable. These are supplemented by official publications, press material and doctrine. The research is not limited to legal literature, which is almost impossible to find regarding ASEAN. Furthermore, the field of study, i.e. values, is not an area much researched in the legal literature. Hence, literature within political science, international relations, economics, etc. is also used in order to give more substance to the issues presented.

The thesis starts with two sections on EU and ASEAN respectively, followed by the comparative analysis and concluding remarks. However, in order to avoid unnecessary repeating, there are several comparing elements also in the ASEAN section. Both the EU and the ASEAN section starts by exploring the mechanisms for protection of fundamental values. Whereas the EU mechanism has a legal basis in an article in the TEU, the ASEAN way of dealing with serious breaches is more pragmatic and a broader approach is necessary. Thereafter, the sections attempt to answer the question of what might constitute common regional values and what role they play in the integration process. For a deeper understanding of the EU and ASEAN perception and handling of fundamental values, two concrete cases are outlined, namely the “Haider affaire” in Europe and the ASEAN policy towards the repressive regime in Myanmar.

## 2 EU

### ***2.1 A mechanism for constitutional discipline***

The Treaty of Amsterdam (ToA) introduced the “sanction clause” into European law through what today is art 7 TEU.<sup>40</sup> The constituting principles of the Union were for the first time made explicit and linked to sanctions, thus subjecting the member states to an entirely new kind of constitutional discipline.<sup>41</sup> Certainly, the ECJ had scrutinized the Union’s institutions and the member states actions with regard to human rights for quite some time. However, this type of control is limited to situations where the community law is applicable.<sup>42</sup> Art 7 TEU makes it possible to politically sanction member states gross violations of common fundamental principles, regardless of the applicability of community competence or regulation.

#### **2.1.1 Background – Fear of the others**

Art 7 TEU can only be assessed with regard to the overriding ambitions of ToA - to prepare the Union for Eastern enlargement. It was evident that the political and economic changes of the enlargement would be substantial and there was a fear that the stability of the Union could be undermined.<sup>43</sup> Several of the aspiring member states were new democracies with complicated minority issues within their borders and the clause was thus a precautionary measure.<sup>44</sup> There were naturally the membership criteria that needed to be fulfilled before the accession<sup>45</sup> but the sanction clause<sup>45</sup> would ensure that a state would not fall back into undemocratic practices after the accession (or rather that such a lapse wouldn’t have to be tolerated by the fellow member states). The implication is interesting – membership in the EU was no longer seen as a guarantee for certain values such as democracy and the protection of human rights.

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<sup>40</sup> Former art F.1 ToA. There was such a clause with regard to the principle of democracy in the draft treaty on the European Union from 1984. The draft was, however, rejected.

<sup>41</sup> Compare Cramér and Wrangé p 50 It is noteworthy that this type of control often is found in federal systems, e.g. in the USA and Germany, where the principle of democracy is sanctioned in the constitution, making it possible for the federal government to intervene, should the states fail to comply. Verhoeven s. 221, 224 not 28

<sup>42</sup> Verhoeven p 225

<sup>43</sup> Neuwahl and Wheatley p 232

<sup>44</sup> Duvigneau p 75, Berzelius p 373

<sup>45</sup> The Copenhagen criteria. Art 49 TEU was introduced together with art 7 TEU, explicitly linking membership to the values in art 6 TEU.

Before the ToA, the existence of certain common principles or values within the Union had more or less been taken for granted.<sup>46</sup> Promotion of democracy, good governance and human rights had been part of the Union's external policies for some time and had become increasingly important as treaty based commitments since the 1990's,<sup>47</sup> but it was only after the fall of the Berlin wall and the realistic prospect of Eastern enlargement, together with the strengthening of undemocratic groupings in some member states, that the member states felt compelled to codify and sanctions the values internally.<sup>48</sup> The new strains on the Union challenged an important and underlying assumption for the European integration - that of mutual constitutional trust.<sup>49</sup> Such trust is fundamental in the European system where European law is recognized as the supreme law of the land. In order for the member states to accept this order and give supremacy to EU law over their own constitutions, all other member states have to abide by the fundamental principles of democracy, liberty and protection of human rights.<sup>50</sup> The legitimacy of the EU is to a great extent derived from its member states and their respect for certain fundamental principles is therefore essential.<sup>51</sup>

### 2.1.2 Design and limitations

Art 7 TEU had the following design:

1. The Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of principles mentioned in Article F(1), after inviting the government of the Member State in question to submit its observations.
  
2. Where such a determination has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Treaty to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the

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<sup>46</sup> Compare the Treaty of Maastricht art F (today art 6.1) – stating that "The Union shall respect the national identities of its member states, whose system of government are founded on the principles of democracy".

<sup>47</sup> Balfour, p 115, Neuwahl and Wheatley p 230, COM (2003)606 – The Commissions message to the council regarding art 7 TEU p 4

<sup>48</sup> Verhoeven p 218 f For example, in 1994, Berlusconi formed government with the Italian fascist party. The European Parliament issued a warning and expressed their expectations that Italy would continue to respect the values of the Union.

<sup>49</sup> The term is used by Cramér and Wrangé p 59, referring to Weiler p 14f and his notion of "constitutional tolerance".

<sup>50</sup> Cramér and Wrangé p 59

<sup>51</sup> Compare Verhoeven p 221 It is e.g. important for the democratic legitimacy of the Union that the member states that transfer powers to the Union are democratic since the decision making within EU to a great extent lies with non-elected institutions.

rights and obligations of natural and legal persons.

The obligations of the Member State in question under this Treaty shall in any case continue to be binding on that State.

3. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 2 in response to changes in the situation which led to their being imposed.

4. For the purposes of this Article, the Council shall act without taking into account the vote of the representative of the government of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 1. A qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 148(2) of the Treaty establishing the European Community.

This paragraph shall also apply in the event of voting rights being suspended pursuant to paragraph 2.

5. For the purposes of this Article, the European Parliament shall act by a two thirds majority of the votes cast, representing a majority of its members.’

The principles over which the council is given the possibility of control are those in art 6.1 TEU,<sup>52</sup> i.e. the principles of liberty, democracy, respect for the human rights and fundamental freedoms and the rule of law.<sup>53</sup> There is also an equivalent provision on the suspension of privileges under TEC.<sup>54</sup>

To this day, art 7 TEU has not been used. This is not surprising given that it was underlined during the negotiations that the provision only was to be used in extreme circumstances, such as the total collapse of a democratic regime.<sup>55</sup> There was no definition given of what would be considered as a serious and persistent violation of human rights.<sup>56</sup> The clause was at the time primarily regarded as a symbolic tool to safeguard the common principles of the Union, having deterring effect as its primary goal.<sup>57</sup> The high voting threshold would safeguard its

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<sup>52</sup> Art F ToA

<sup>53</sup> Now elaborated and renamed “values” in art 1a Treaty of Lisbon. See further section 2.2.

<sup>54</sup> Art 309 TEC

<sup>55</sup> Langrish p 15

<sup>56</sup> Although the UN Charter art 6 and the Statute of the Council of Europe art 8 can provide some guidance since the prerequisites in art 7 TEU can be found in these provisions.

<sup>57</sup> Compare CML Rev, editorial comments, *The Treaty of Amsterdam: Neither a bang nor a whimper*, p 771, *Union without constitution*, p 1110 and Verhoeven p 224, who is very optimistic about this effect of the provision, stating that the mere threat of a decision in the council on a grave and persistent breach of fundamental principles should deter undemocratic forces in the member states.

exceptional use, since unanimity would require extreme circumstances.<sup>58</sup> However, what is considered to be exceptional circumstances can change over time. This is demonstrated by the Haider affaire and the subsequent treaty revision in Nice. The affaire also put a finger on the weakness of the repressive rather than preventive nature of the clause.

### 2.1.3 The Haider affaire<sup>59</sup> and the Treaty of Nice

The Austrian Freedom Party (FPÖ), led by Jörg Haider and usually characterised a rightist and xenophobic popular party, captured 27 % of the votes in the 1999 Austrian parliamentary election. In order to form a government, the conservatives were negotiating with the FPÖ. This was not accepted by the other 14 member states of the EU (the 14), which agreed to act coordinated, but bilaterally outside the Union's institutions, in order to prevent the course of events. The 14 declared that they neither would accept bilateral official contacts with an Austrian government integrating FPÖ nor support Austrian candidates seeking positions in international organizations and that Austrian ambassadors would only be received on a technical level. When a coalition government was formed with the FPÖ despite this declaration, the 14 stated that they would never accept such a government.<sup>60</sup> It is generally assumed that the action by the 14 did not constitute an infringement of neither public international law nor EU law, even if the advisability of the action has been questioned.<sup>61</sup> The 14 justified their actions by referring to the necessity of protecting the Union's fundamental values. Nonetheless, the actions were taken without even rhetorically referring to art 7 TEU.<sup>62</sup> The sanction clause was not directly applicable to the situation since the 14 acted preventively against an anticipated (and not an existing) breach of the common values.<sup>63</sup>

Austria was naturally opposed to the 14's measures, arguing that they had no intention to violate human rights. Furthermore, they presented an idea for how the Union's fundamental values could be strengthened in handling similar situations in the future. The suggested solution, which was subsequently repeated by the "three wise men" in their report on the situation in Austria (initiated by the 14), was the incorporation of a preventive monitoring

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<sup>58</sup> Langrish p 15

<sup>59</sup> See Cramér and Wrangé *The Haider affair, law and European integration* for an assessment of the affaire with regard to both public international law and EU law.

<sup>60</sup> Cramér and Wrangé p 28f

<sup>61</sup> See Cramér and Wrangé for this analysis. Compare Neuwahl and Wheatley p 234 and Nergélius, p 372f

<sup>62</sup> Nergélius p 373, Cramér and Wrangé p 45 and 51

<sup>63</sup> Cramér and Wrangé p 44

clause in the TEU.<sup>64</sup> The suggested prevention mechanism would help to evaluate the member states commitment and performance with respect to common European values.<sup>65</sup>

The Treaty of Nice consequently introduced an important first paragraph in art 7 TEU containing the preventive function of the provision:

On a reasoned proposal by one third of the Member States, by the European Parliament or by the Commission, the Council, acting by a majority of four-fifths of its members after obtaining the assent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of principles mentioned in Article 6(1), and address appropriate recommendations to that State. Before making such a determination, the Council shall hear the Member State in question and, acting in accordance with the same procedure, may call on independent persons to submit within a reasonable time limit a report on the situation in the Member State in question.

After the treaty revision, a *clear risk* that a member state will violate the principles in art 6 TEU allows the council to take a decision. It is sufficient with a majority of four fifths to take such a decision. Sanctions are, however, not permitted under this paragraph. Another novelty is the right of initiative given to the European Parliament. The prevention and sanction clause co-exist and can be applied independently of one another. The strong political nature of the clause was somewhat lessened by the introduction of judicial control by the ECJ regarding the rules of procedure in art 7 TEU.<sup>66</sup> However, this “right to defence” does not encompass the substantial criteria, leaving the clause essentially political in its nature.<sup>67</sup>

#### 2.1.4 Applicability and function

The scope of application of art 7 is severely limited also after the Treaty of Nice. Firstly, the conditions set forth in the paragraph serve as limitations. It is systematic violations and not isolated instances of infringements that are targeted by the provision.<sup>68</sup> The fact that the violation has to be serious and persistent sets the threshold for application, leaving the less serious infringements to be dealt with by national courts, the European Court for the protection of human rights and fundamental freedoms (The European Court) or the ECJ with

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<sup>64</sup> "Report Marti Ahtisaari, Jochen Frowein, Marcelino Oreja" Paris 8 December 2000. The report found that Austria complied with the European values in art 6.1, but that FPÖ exploited and reinforced xenophobic sentiments, hence making the future development uncertain. Cramér and Wrange p 32ff

<sup>65</sup> Cramér and Wrange p 35

<sup>66</sup> Art 46 TEU

<sup>67</sup> On the contrary, the suspension of rights under the EC, ECSC and Euratom treaties could be subjected to judicial control by the ECJ in accordance with the respective provisions in the treaties. EL Rev, editorial comments, *Tulips or nettles from Amsterdam?* p 289

<sup>68</sup> COM 2003(606) p 7



regard to community law. When assessing if the criteria of the article are met, regard is given to the content, object (if it regards a particularly vulnerable group) and consequences of the measure under scrutiny. Repeated convictions in international courts for the same type of violations are indications of that the action is *persistent*.<sup>69</sup> An example of what is considered to be a *clear risk* is the instituting of a law allowing certain derogations from the rule of law in times of war.<sup>70</sup> The Haider affaire gives an indication of in what type of situations the preventive mechanism can be applied since it was designed to handle similar situations.<sup>71</sup> The application of art 7 TEU is thus not longer that theoretical, given the rise of rightist populist parties in Europe. It is noteworthy that it was the identity, rather than the actions, of FPÖ that caused the reactions.<sup>72</sup> They had not said anything objectionable in their declaration when forming government and it is unlikely that their policy on immigration would differ much from other European countries under the pressure of unemployment and xenophobic tendencies. Hence, the identity or the implicit xenophobic wishes of FPÖ was the crucial factor for the 14, setting a possible precedent for similar cases in the future.

There is also the issue of what sanctions, besides suspension of the voting rights in the Council that can be used if unanimity on the violation has been reached. These seem to be somewhat limited since due regard has to be given to the consequences for physical and legal persons. It is the state that should be targeted which makes it dubious if it is possible to suspend the citizens of the Union's rights.<sup>73</sup> It should at least be impossible to suspend the most fundamental rights of the EU citizens, such as the free movement of persons.<sup>74</sup> A possible line of argumentation is that any sanction under art 7 TEU should be institutional, rather than substantial. Examples of sanctions of this type are increased financial levies, suspension of presidency and the right to appoint commissioners.<sup>75</sup> The possibility of suspension of membership or expulsion was discussed but discarded during the Amsterdam negotiations.<sup>76</sup>

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<sup>69</sup> COM 2003(606) pp 7-8

<sup>70</sup> Ibid. p 7

<sup>71</sup> Cramér and Wrangé p 58

<sup>72</sup> Ibid p 54

<sup>73</sup> Verhoeven p 223, Langrish p 15

<sup>74</sup> Verhoeven p 223

<sup>75</sup> Langrish p 15

<sup>76</sup> Craig and De Búrca p 30, Verhoeven p 223 argues that expulsion would most likely entail negative consequences for the peace and democracy in Europe. Furthermore, expulsion would contradict the fundamental idea of integration and deprive the EU citizens of their rights under the TEU.

Furthermore, the actual importance of art 7 TEU depends on the institutions that have the task of applying it. Both the Commission and the European Parliament have a responsibility to prevent violations of the Union's values. The Commission gives momentum to their preventive role, emphasising the need for control of the member states' respect for the common values through e.g. increased dialogue between the institutions, with the Commissariat for Human Rights at the Council of Europe and with the European civil society.<sup>77</sup> The repressive role of art 7 TEU is seen as superfluous and counter productive in a Union of values.<sup>78</sup> On the contrary, the European Parliament sees the negligence to apply sanctions under the provision as unwillingness to use all means necessary to protect the Union's fundamental values.<sup>79</sup> Ultimately, in order to actually apply art 7 TEU, the Council needs to be able to take a decision, or to put it differently, there has to be a political willingness for the member states to act on an alleged violation of fundamental values. The rule itself cannot substitute a political will to act.<sup>80</sup>

The Haider affaire certainly indicates that such willingness exists and that there is some consensus with regard to common values. However, political and diplomatic concerns should keep the threshold for using the mechanisms in art 7 TEU continually high. The article contains a possibility to act, not a duty, and a diplomatic solution outside the Union's framework is always an option – especially since action under art 7 TEU is not necessarily the best way to safeguard the principles set forth in article 6.1 TEU.<sup>81</sup> This flexible, political character is underlined by the ECJ's lack of control.<sup>82</sup> To what extent there is political will to act under art 7 TEU is naturally depending on the political costs of such action. The measures against Austria were met with loud protests, notably by some of the former candidate states.<sup>83</sup>

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<sup>77</sup> COM (2003)606 pp 9-11 There are already several sources of information to exercise such control, e.g. the case law of the European Court for the protection of human rights and fundamental freedoms, reports of international organizations and NGO's and complaints by individuals to the Commission and ECJ. On the initiative of the European Parliament, a network of independent experts on human rights exists since 2002. The Commission would like to strengthen their role and coordinate it with the European Centre for the monitoring of racism and xenophobia.

<sup>78</sup> COM (2003)606 p 3f

<sup>79</sup> Resolution by the European Parliament on the communication from the Commission to the Council and the European Parliament on article 7 TEU: Respect for and promotion of the values on which the Union is based. M(2004)0309 paragraphs 4, 6-10

<sup>80</sup> Cramér and Wrangé p 59f

<sup>81</sup> Action like that taken by the 14 should be more or less pre-empted in the future after the Nice treaty revision. However, the member states still have the right to act in accordance with public international law if decision-making in the Council is blocked. Cramér and Wrangé p 53, 59, Neuwahl and Wheatley p 234f

<sup>82</sup> The Commission suggested repeatedly during the Amsterdam and Nice negotiations that the substantial conditions in art 7 TEU should be subjected to judicial control by the ECJ. The idea was however rejected. COM (2003)606 p 6

<sup>83</sup> Cramér and Wrangé p 31

It is doubtful that the member states would act in a similar manner if the stakes were higher, i.e. if one of the more influential member states was risking violation of the fundamental values.<sup>84</sup> This is problematic since the legitimacy of a measure under art 7 TEU to a great extent depends on whether it is applied consistently.<sup>85</sup> Furthermore, a future schism between the old and new member states is possible, given the low level of support among the new member states for the 14's measures.

In summing up, the sanction clause was a response to a perceived threat against the Union's common values, to be used in extreme circumstances like coup d'états. This limited function of the clause was challenged by the Haider affaire, through which the member states expressed a need to act preventively against democratically elected governments with a doubtful agenda. As a consequence hereof, the provision that primarily had been a symbol for European values, became a platform for the Union's institutions preventive work to monitor and control the member states adherence to the Union's fundamental principles. An actual decision under art 7 TEU is, however, still very unlikely and is depending on political will and the balance of powers in the Union.

## ***2.2 A community of values?***

The introduction of art 6 and 7 TEU and the subsequent Haider affaire suggests the emergence of a European community of values.<sup>86</sup> Some of the questions raised by this development will be assessed in this section. Special regard is given to the relation between European and universal values and regional identity.

### **2.2.1 European values**

Values and principles are two notions that, to some extent, have been used interchangeably in this text. As indicated in the introduction there is however a significant difference between the two: principles being legal rules and values being a notion of absolute positive significance.

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<sup>84</sup> As an indication of this, Germany was criticized by the European Commission against xenophobia and intolerance in 2001 for the lack of effectiveness in their legislation and action in preventing these problems. Germany responded that they respected the rule of law and further threatened to suspend their financial contributions to the Council of Europe. This did not prompt any reaction among the EU member states. Neuwahl and Wheatley p 236 This could be explained by the fact that it was the consequences of certain policies that were the issue, rather than the identity of the regime. Compare above 2.1.4, p 17

<sup>85</sup> Compare Neuwahl and Wheatley p 235 See also paragraph 11 c in the Resolution by the European Parliament M(2004)0309, stating that the principle of equal treatment of member states regardless of size, political influence etc., should be applied when taking measures under art 7 TEU.

<sup>86</sup> See Cramér and Wrange p 55 note 88, citing the discourse supporting the measures taken by the 14 against Austria.

Today, art 6.1 TEU enumerates principles, although they likely reflect corresponding values. However, the draft Constitutional Treaty and the ToL enumerate values. In the latter, the former art 6.1 is now rewritten and constitutes art 1a, stating that:

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

The change in classification from “principles” to values” signifies that European policy makers are pushing for a European community founded on values. It is noteworthy that minority protection has been part of the criteria for enlargement for quite some time, whereas there has not been an equivalent internal imperative until now.<sup>87</sup> The affirmation of minority rights in the article is thus an attempt to create symmetry in internal and external relations, hence strengthening the Union’s legitimacy.

The redefinition through ToL of the Union’s aims in art 2 TEU further outlines what values are encompassed by the EU:

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.
3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance. It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. It shall promote economic, social and territorial cohesion, and solidarity among Member States. It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.
4. The Union shall establish an economic and monetary union whose currency is the euro.
5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict

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<sup>87</sup> Compare Schweltnus pp 186-198

observance and the development of international law, including respect for the principles of the United Nations Charter.

Using the provisions on common values and the Union's aims as a starting point, Manners identifies nine values, distinguished from other Western values that can be considered as constituting EU. These are sustainable peace, social liberty, consensual democracy, associative human rights, supra-national rule of law, inclusive equality, social solidarity, sustainable development and good governance.<sup>88</sup> Some of these are more developed than others, e.g. human rights, where a legal body has been developed through The European Convention and the case law by the European Court. Others are vaguer, such as sustainable development. Some are contested, where especially social solidarity can be challenged on the grounds that the principle of free market economy often trumps social concerns within the Union, considering the paramount importance given to the establishment of an internal market through the four freedoms. However, it is important to separate end-goal and means. The EU's primary economic goal is to improve the welfare of all EU citizens and the chosen mean to reach this goal is a market economy based on competitiveness and market openness. Also, the internal liberalisation of the European market has been supplemented by increased regulation at the regional level and there is the possibility for the member states to impose their own regulation restricting the free movements on e.g. environmental or social grounds when this can be justified as a mandatory requirement. A supplementing or competing value to Manner's could thus be regulated liberalism or capitalism.<sup>89</sup>

The tendency in the EU constitutional development, as reflected in the ToL is clear; the policy-makers of the Union consider common values to be an important feature of European integration and furthermore suggest that what we have today is a community of values. However, it is also possible, as argued by Klabbers, that the EU is heading in the other direction and that making the EU membership subject to conditionality signifies that the Community does not consider itself as a community anymore.<sup>90</sup> Klabbers points out the fact that the conditionality of art 7 TEU was not introduced at the time of the Community's founding, despite of the recent dictatorships in Germany and Italy. Furthermore, neither the accession of Greece nor Spain and Portugal - countries marked by military rule and coup

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<sup>88</sup> Manners pp 32-37

<sup>89</sup> Lucarelli p 202

<sup>90</sup> Klabbers pp 276-281

d'états – prompted this response.<sup>91</sup> It was only in the 1990's with the Eastern enlargement that the need to codify and sanction common principles occurred. The reason for this was, according to Klabbers, that the European project by this time had abandoned its original philosophy of solidarity, instrumental to keep peace, and reiterated to “a new form of superficial intergovernmentalism”.<sup>92</sup> For sure, the very existence of art 6 and 7 TEU indicates that the mutual constitutional trust is not what it has been. Rules usually exist because people tend to act contrary to them. An example is the inclusion of minority protection in art 6 TEU, a field in which it is obvious that several member states do not meet the standard. This does not necessarily entail the conclusion that the EU has given up its aspirations to be a true community (of values), but can on the contrary mean that the integration process has deepened and widened into such sensitive areas that the need to trust the fellow member states in certain regards has become even more crucial. The Maastricht treaty turned the EC into a political creature, formalizing the past years development. It is hardly surprising that this development is reflected by a greater anxiety in the subsequent enlargement to countries that recently emerged communism. The introduction of art 6 and 7 TEU merely shows that there is a perceived gap between what is and what should be and hopefully the provisions can help overcoming this gap.

## **2.2.2 Universal values and regional identity**

There is an inherent tension between universal values and regional identity. It is unclear what the often-cited expression “European values” really signifies in this regard. Through assessing the enlargement processes and external policies of the EU, a lot of things can be said about the internal state of affairs. Sjursen and others question the EU enlargement process in order to describe the European order.<sup>93</sup> Three ideal types are outlined: namely EU reduced to a rational problem solving entity, EU moving towards a value-based community, and EU moving towards a rights-based post-national union.<sup>94</sup> EU has with the exception of the British candidacy in the 60's systematically decided in favour of enlargement and findings suggest that EU being a rational problem solving entity seeking economic and strategic gain cannot alone explain the enlargement process. Instead, the value-based community founded on a conception of a common European identity and the rights based post-national union resting on

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<sup>91</sup> Ibid. p 279

<sup>92</sup> Klabbers p 280

<sup>93</sup> Helene Sjursen ed: Questioning EU enlargement – Europe in search of identity

<sup>94</sup> Sjursen p 2f

universal rights and democratic procedures are two models that can explain the European enlargement process.<sup>95</sup> It is notably democracy promotion that has provided the basic rationale for all enlargements starting with Greece in 1981, except for the EFTA in 1995.<sup>96</sup>

However, cultural identity also seems to be a part of EU enlargement policy and the membership negotiations with Turkey put a finger on the difference between the two different types of value-based community. A sense of kinship and duty to enlarge has played an important role in the rhetoric supporting the Eastern enlargements in 2004 and 2007.<sup>97</sup> With regard to Turkey, emphasis has been on Turkey as an important partner to EU, rather than on kinship.<sup>98</sup> Some of those opposing Turkey's membership use the arguments that Turkey is not a natural part of Europe – neither geographically, nor culturally and religiously.<sup>99</sup> This rhetoric reflects an image of a shared European identity and inherited values, rather than EU founded on universal values, regardless of cultural background or religious adherence. In comparing the EU membership negotiations of Romania and Turkey, Lundgren shows that concern for democracy and human rights alone cannot explain their different treatment.<sup>100</sup> However, there has been a development in the EU's attitude and policy towards Turkey from the late 90's and if this process continues, it might indicate that the EU is moving towards a union based on universal rights.

This duality in the European image of itself as a value-based entity is to some extent reflected in a new passage in the preamble of the TEU, introduced through ToL, where the EU emphasizes universal values as a part of its regional identity:

DRAWING INSPIRATION from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law

It should be noted that it was much debated during the 2002-03 Convention and the 2003-04 IGC whether there should be any reference to god, Christian values or the Greco-Latin

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<sup>95</sup> Sjurson p 13, 39, 90, pp 208-213

<sup>96</sup> Verney p 40

<sup>97</sup> See e.g. Lundgren p 135

<sup>98</sup> Lundgren p 136

<sup>99</sup> Ibid. p 121

<sup>100</sup> Ibid. p 133f

heritage in this paragraph of the preamble.<sup>101</sup> Seven governments presented this idea at the IGC. There were, however, several governments that strongly objected to any such inclusion. The reference to the cultural, religious and humanist inheritance of Europe is a compromise over which consensus could be reached.<sup>102</sup> The EU motto “Unity in diversity” reflects the fact that the member states are heterogeneous in many respects. This is even more so after the latest enlargements. The difficulties of finding a common denominator for all member states that goes further than common adherence to universal values is thus not surprising and it is doubtful whether it would be fruitful.

A final point should be made on the distinction between European and universal values. The EU claims that its constituting values (the European values), such as democracy and human rights are universal. This can be contested and has especially been so by Asian debaters and policymakers, as will be discussed in section 3.2.1 below. As reflected in the new passage in the TEU preamble, the universal values have developed from the European inheritance. Through its external policies, the EU has given itself the task to promote human rights and democracy in all parts of the world. This perspective on universal values, that the EU has a special role and responsibility as their promoter and protector, might be what is specifically European about them.

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<sup>101</sup> The Convention was decided upon by the Council in Laeken in 2001 and was an institutional innovation, charged with preparing the IGC in an open and transparent manner. It was meant to pave the way for the Constitution that was adopted at the 2004 IGC.

<sup>102</sup> See the fact sheet by the Commission on the outcome of the European Convention, [http://europa.eu/scadplus/european\\_convention/index\\_en.htm](http://europa.eu/scadplus/european_convention/index_en.htm) and 2004 IGC, [http://europa.eu/scadplus/cig2004/debates2\\_en.htm#PREAMBLE](http://europa.eu/scadplus/cig2004/debates2_en.htm#PREAMBLE)



## 3 ASEAN

### 3.1 The ASEAN way

When reading about Southeast Asian integration, the “ASEAN way” is an often-cited expression. The concept itself implies that there is another way - namely the European. The ASEAN way encompasses emphasis on state sovereignty, non-interference in the internal affairs of other states, preference for consensus-style decision-making and informal agreements over treaties and legalistic rules and reliance on national institutions and actions, rather than a strong central bureaucracy.<sup>103</sup>

#### 3.1.1 Informality and soft diplomacy

Specific ASEAN traits, such as consensus as the principle of decision-making and the lack of strong institutions and legal binding arrangements are different aspects of the preference for informality.<sup>104</sup> The characteristic is still a prominent feature of the association, albeit limited by the signing of the ASEAN Charter. The informal character of ASEAN is evident from the way it was founded. The Bangkok declaration lacked the usual legal provisions on amendments, voting, etc. and did not set up any compliance-monitoring system or dispute settlement body. According to former Secretary-General Rodolfo Severino, “the declaration was essentially an expression of their determination not to allow their disputes to develop into conflict and their resolve to work together for common purposes, purposes that at the time were only vaguely discerned and projected”.<sup>105</sup> However, after the Bangkok-declaration, several formal treaties have been agreed upon. First was the Treaty of Amity and Cooperation in Southeast Asia (TAC) from 1976, stipulating binding norms of inter-state behaviour. These are *inter alia*: national sovereignty, non-interference in the internal affairs, rejection of the use or threat of use of force and the peaceful settlement of disputes.<sup>106</sup>

ASEAN leaders have to a great extent relied on diplomacy and personal relations instead of strong institutions.<sup>107</sup> Institutions are reactive rather than proactive compared to the EU. Severino calls it that institutions follow substance, i.e. that institutions in ASEAN are created

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<sup>103</sup> Tay p 9

<sup>104</sup> Severino 2006 p 11

<sup>105</sup> Severino 2006 p 3

<sup>106</sup> <http://www.aseansec.org/1217.htm> Compare Hernandez 2007 p 15, who identifies these as the operating norms of ASEAN.

<sup>107</sup> Funston p 4f, Severino 2006 p 11

in order to support measures previously agreed upon, rather than the other way around.<sup>108</sup> The central institution in ASEAN that would be comparable to the EC Commission is the ASEAN Secretariat, created in 1976 and based in Jakarta. However, there are virtually no similarities between the two institutions. While the EC Commission has a far-reaching mandate with great executive, enforcement and legislative initiative powers, the ASEAN Secretariat is very limited in size and scope. The mandate allows the Secretary-General to initiate, advise, coordinate and implement ASEAN activities.<sup>109</sup> However, in reality the mandate is so circumscribed that the Secretary-General cannot initiate and authoritatively call for compliance with ASEAN agreements or take other actions to fulfil ASEAN's purposes.<sup>110</sup> There is a dispute settlement mechanism regarding economic agreements similar to the quasi-judicial panel system set up under the WTO.<sup>111</sup>

### 3.1.2 Non-intervention

#### 3.1.2.1 Content

The principle of non-intervention or non-interference in the internal affairs of one another is a prominent feature of the ASEAN cooperation. It is envisaged in more or less all the leading documents,<sup>112</sup> and is supported by the principle of consensus in decision-making. The importance of the principle can largely be explained by the history of the ASEAN countries, with colonialism, their recently acquired independence at the time of the founding of ASEAN and the subsequently rising disputes between the member states.<sup>113</sup> Furthermore, the great diversity between, but also within, the member states means that they are sensitive to the possibilities of intervention.<sup>114</sup>

Naturally, the principle of non-intervention is not an ASEAN invention, but a cornerstone of public international law, governing the inter-state relations in the international community. The principle has been discussed and questioned, especially since the new world order started to be shaped after the cold war and with the gradual emergence of the notion of universal

<sup>108</sup> Severino 2006 p 23

<sup>109</sup> Protocol Amending the Agreement on the Establishment of the ASEAN Secretariat, Manila, 22 July 1992

<sup>110</sup> Severino 2005 p 6

<sup>111</sup> ASEAN protocol on enhanced dispute settlement mechanism, <http://www.aseansec.org/16754.htm>

<sup>112</sup> See the preamble of the Bangkok declaration "Considering...that they are determined to ensure their stability and security from external interference in any form or manifestation...", the Declaration on the Zone of Peace, Freedom and Neutrality (1971), the Treaty of Amity and Cooperation in Southeast Asia (1976) art 2, the Declaration of ASEAN Concord (1976), Declaration of Bali Concord II (2003) A.4., and the ASEAN Charter (2007) art 2

<sup>113</sup> For an interesting outline of the history of ASEAN and all the complicated relations between the member states at the time, see Severino 2006 chapter 1

<sup>114</sup> Severino 2006 p 90ff

human rights as something that concerns the international community at large.<sup>115</sup> The view that the protection of human rights is a legitimate concern of all nations was affirmed in the declaration on human rights from the Vienna conference in 1993.<sup>116</sup> But while Western societies are more open to this view, the EU being a prominent example with emphasis on human rights and good governance in both internal and external relations, ASEAN still has a more traditional view on the matter. Discussing issues of sovereignty and interference in the context of regional integration can easily become a pseudo-discussion. The EU member states have for sure delegated more of their sovereign powers to the Union and have thereby to abide by a much more comprehensive set of rules than the ASEAN member states. However, that is not a question of diminishing sovereignty in its proper sense, since the decision to transfer the powers is taken by each member state according to their own constitutional principles.<sup>117</sup> When, e.g., an EU member state faces sanctions by the Union on basis of a violation of EU rules, it is not a question of interference, but about using the Union's means to prompt compliance with entered agreements. ASEAN member states have transferred very few of their sovereign powers to the association, but cooperate in many areas. This being said, it is useful for the understanding of ASEAN fundamental values to explore the notion of non-intervention in ASEAN politics.

According to Archya, the traditional ASEAN approach to non-intervention encompassed four main points in the inter-regional relations: 1) refraining from criticizing the actions of the governments of member states towards their own people; 2) criticizing actions of states which are perceived to constitute a breach of the principle of non-intervention; 3) denying recognition, sanctuary or other forms of support to any rebel group seeking to destabilize or overthrow the government of a neighbouring state; and 4) providing political support and material assistance to member states in their actions against subversive activities.<sup>118</sup> Even critical commentary against another Southeast Asian government in the national media was initially suppressed as constituting an infringement of the principle.<sup>119</sup> It has also been

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<sup>115</sup> Funston p 8f, Archya p 10f

<sup>116</sup> See Section 3.2.1 for an outline of the ASEAN stand on human rights with regard to the Vienna declaration.

<sup>117</sup> Jörgen Örström Möller puts it well, stating that "Reshaping political systems to keep up with the new economic logic of globalisation requires nation-states to rethink and reformulate the concept of sovereignty. The conventional notion of sovereignty as the exclusive right to exercise supreme political authority over a geographic region or people is no longer meaningful. Instead, sovereignty should be seen not as a static quality but one that can be increased or exercised on several layers at the same time. A transfer/pooling of sovereignty to another body, therefore, should not be seen as its surrender, but as enhancing possibilities to achieve common goals". Seminar on Regional Integration in Europe and Southeast Asia, p 10

<sup>118</sup> Archya 1997 p 3

<sup>119</sup> Funston p 3

suggested that meetings organised by non-governmental groups were considered as constituting a breach of the principle of non-intervention if the meeting was meant to criticize another government.<sup>120</sup> Funston states that the *raison d'être* of the principle of non-intervention gradually shifted from a mechanism to contain differences between the countries into a means of supporting fellow leaders as the ties between the countries strengthened.<sup>121</sup>

There have, however, been instances where ASEAN, albeit carefully, has expressed their worry over the internal situation in a member state. The rationale for this is likely that the domestic situation was perceived to affect the other member states or the association itself.<sup>122</sup> In a communiqué from 1986, the members at the time, minus the Philippines, called for a peaceful resolution to the conflict between pro and anti-government forces in Manila.<sup>123</sup> Internal crisis, menacing to deteriorate into civil war is thus the type of situation where the member states have acted with at least diplomatic pressure. This is also the case with the ASEAN policy towards Myanmar as will be assessed in section 3.3 below. Furthermore, ASEAN (or rather some of the ASEAN countries) has played a more or less important role in different conflicts in the region, such as the Vietnamese invasion and occupation of Cambodia in 1978, the Cambodian coup d'état in 1997 and the political unrest in East Timor in 1999. However, the ASEAN involvement has been deployed with the consent of the states involved and largely under UN mandate.<sup>124</sup> In other instances, such as the Indonesian invasion and annexation of East Timor in 1975-76 and the violence in 1991, ASEAN remained silent.

### 3.1.2.2 A shift in policy

Globally, the post cold war climate entailed a change in political priorities with greater emphasis on issues of human rights and democracy.<sup>125</sup> ASEAN has found itself under pressure in this regard from the international (especially Western) community, international media and NGO's. The admission of the CLMV countries and particularly Myanmar, the coup in Cambodia in 1997, the situation in East Timor, the haze-hazard stemming from Indonesia and the Asian financial crisis were all factors putting greater pressure on the

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<sup>120</sup> Kraft 2000 p 11f refers to an incident where the Philippines did not allow a NGO conference on East Timor after pressure from Indonesia.

<sup>121</sup> Funston p 5

<sup>122</sup> Severino 2006 p 94

<sup>123</sup> Joint Statement On The Situation In The Philippines, Jakarta, 23 February 1986

<http://www.aseansec.org/1612.htm>

<sup>124</sup> See Kraft 2000 p 14, Severino 2006 p 128f

<sup>125</sup> Funston p 8

association, forcing it to step up and modify its interaction. The ASEAN action with regard to the Cambodian unrest in 1997 is by some seen as a step away from the principle of non-intervention. By linking the Cambodian membership in ASEAN to the establishment of a credible, stable and legitimate government, ASEAN tried to influence the internal political dynamics in the country, thus not adhering to the principle of non-intervention as an absolute principle.<sup>126</sup> However, the ASEAN action is also consistent with its previous policy of non-intervention since it was the unconstitutional overthrow of an established government that prompted ASEAN to react. This type of domestic unrest can pose a threat to the security interests of ASEAN.

Not incidentally, one of the earlier attempts to modify the ASEAN stance on non-intervention came after the financial crisis in 1997. In 1998, Thai foreign minister Surin Pitsuwan<sup>127</sup> proposed a review of the principle, allowing member states to openly discuss each other's internal affairs if they had an impact outside their borders. Named "constructive intervention", the policy would be pro-active rather than reactive and would entail supportive assistance to countries that needed it.<sup>128</sup> The proposal, watered down to the notion of "flexible engagement", and limited to peer pressure and friendly advice did not go through.<sup>129</sup> Instead, the notion of "enhanced interaction", was introduced by Indonesian Foreign Minister Ali Atlas, implying that non-intervention would still be the norm, but allowing states to voice their concerns over developments in one country that could affect them or the region.<sup>130</sup> The term was first used in 1997 with regard to the haze issue in Indonesia.<sup>131</sup> However, there are no agreed norms for which type of situations that would warrant collective concern and action. ASEAN still operates in its classic way, addressing events in a reactive way depending on the political circumstances of the moment.<sup>132</sup> It is not certain that the concept of enhanced interaction is applicable to more sensitive political issues such as human rights.<sup>133</sup> Severino states that there is no ground to intervene on basis of a country's treatment of its citizens,

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<sup>126</sup> Kraft 2000 p 7

<sup>127</sup> The new ASEAN Secretary-General since January 2008

<sup>128</sup> Ibid. p 7f, Archya p 13

<sup>129</sup> Kraft 2000 p 1

<sup>130</sup> Ibid. p 10

<sup>131</sup> The ASEAN agreement on trans-boundary haze pollution from 2002, <http://www.aseansec.org/6086.htm>, can be seen in this context, actually committing the member states to regulate conditions within their own territory for effects beyond its national jurisdiction. The importance of the treaty is limited since it only has seven signatories and notably Indonesia is not one of them.

<sup>132</sup> Severino 2006 p 357f

<sup>133</sup> Compare the statement by a Thai Ministry Official in Lindberg 2007 p 7 (note 18) and Archya p 9

unless it is clear that the events in one country have an adverse affect in another member state.<sup>134</sup>

### 3.1.2.3 Preliminary conclusions

The *modus operandi* of non-interference has probably been a prerequisite for the very existence of ASEAN, given the tense relations at the time of the founding, and has been instrumental in marking Southeast Asian independence against external world powers. According to Kraft, the ASEAN concept of regionalism is founded on strict adherence to non-intervention, the principle “paved the way for the consolidation of the norms, practices and mechanisms that eventually constituted ASEAN self-identification”.<sup>135</sup> In this regard the principle can be seen as a building-block, rather than a stumbling-stone towards deeper integration. Wah takes the argument a bit further, claiming that ASEAN, given its positive track-record of handling intra-regional disputes, can be seen as a *de facto* security community and that this has been brought about by confidence building through non-intervention and consensus.<sup>136</sup> Severino, however, argues that ASEAN politics is based on pragmatism and strategic concerns rather than any doctrine of non-intervention.<sup>137</sup> This approach would explain why ASEAN has invoked the principle of non-intervention in such a selective way.<sup>138</sup> Such pragmatism also means that as the member states gain greater trust in each other, a different approach is possible. Kraft puts it as: “In the end, it is the confidence that states have in their neighbours that will make intervention (up to a certain degree) more palatable”.<sup>139</sup>

In setting the limits for the permitted actions of the member states, the principle - and perhaps implicit value - of non-intervention has been instrumental in securing the values of national sovereignty, peace and stability in the region. However, there is no doubt that today, the *modus operandi* of non-intervention in ASEAN politics has become a stumbling-stone in the integration process, back-tying the member states from pushing for social transformation in the region and making it susceptible to charges that its mechanisms protect the regimes in power.<sup>140</sup> There is a growing awareness of the necessity of cooperation to tackle trans-

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<sup>134</sup> Severino 2006 p 90, 94

<sup>135</sup> Kraft 2000 p 3f

<sup>136</sup> Wah p 2f

<sup>137</sup> Severino 2006 p 90ff, 94

<sup>138</sup> Kraft 2000 p 10, finds the ASEAN approach selective when he compares the ASEAN handling of the Vietnamese invasion of Cambodia with the Indonesian occupation of East Timor and further the stance on Myanmar compared to the “constructive interventionist” approach towards Cambodia in 1997-98.

<sup>139</sup> Kraft 2000 p 15

<sup>140</sup> Kraft 2000 p 6f

boundary issues, but questions of governance and human rights are still largely seen as domestic matters where the neighbours should not interfere.

### 3.1.3 A new legal foundation

The ASEAN Charter<sup>141</sup> was signed during the 13<sup>th</sup> ASEAN summit in Singapore in November 2007 and now awaits national ratifications.<sup>142</sup> Through the Charter, ASEAN gets a legal foundation and personality, more comprehensive rules of procedure and strengthened institutions.<sup>143</sup> The Charter reaffirms ASEAN's adherence to the principles of sovereignty, non-interference and peaceful settlement of disputes and the purpose of ASEAN to maintain peace and stability. Supplementing these traditional norms of inter-state behaviour are the new purposes ASEAN has given itself: "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".<sup>144</sup> There is no definition of or reference to any specific practices that could help interpret what is meant by democracy and human rights in this context. However, the Charter states that ASEAN should act in accordance with the principle of "respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice."<sup>145</sup> The reference to social justice is an indication of the ASEAN emphasis on economic and social rights. The Charter furthermore provides for the establishment of a human rights body.<sup>146</sup> The background to and implications of this provision will be discussed in the section on human rights and democracy below.

The Secretary-General of ASEAN is through the Charter given the mandate to monitor the member states' compliance with met agreements. Serious breaches of the Charter and non-compliance with other agreements will be referred to the ASEAN Summit for a decision.<sup>147</sup> The Charter does not specify what such a decision could entail and there is no mentioning of any sanctions. Compared to the Eminent Persons Group (EPG) Report that provided the basis for the Charter negotiations, these provisions are watered down. The group suggested that ASEAN should have power to take measures to redress cases of serious breaches of

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<sup>141</sup> <http://www.aseansec.org/21069.pdf>

<sup>142</sup> The Charter is not politically uncontroversial and the ratification process might have backlashes in some of the member states. The Singapore Straits Times (ST) Nov 24 2007, p 49

<sup>143</sup> ASEAN Charter art 3 of chapter II

<sup>144</sup> Ibid. art 1.7 and 2.2 h)

<sup>145</sup> Ibid. art 2.2 i)

<sup>146</sup> Ibid art 14

<sup>147</sup> Ibid art 20, 27.1

ASEAN's objectives, major principles and commitments to important agreements. Such measures would be decided upon by unanimity, but without the participation of the member state towards which the measure would be applied. It was suggested that the measures would include suspension of any of the rights and privileges of membership, such as withholding the right to participate in ASEAN activities and to chair ASEAN bodies and their meetings. The report also made the recommendation that unless otherwise decided by the ASEAN Council in exceptional circumstances, there should be no recourse to expulsion of membership.<sup>148</sup> These suggestions, in principle identical to the sanction-mechanism in art 7 TEU, deviates strongly from the ASEAN Way and did not make it into the Charter.

The Charter, if and when signed, does not have much legal weight. Most provisions lack detail and there are no timeframes or sanctions provided for. Therefore, the document is basically worth as much as the leaders of the member states want to.<sup>149</sup> Also, the ASEAN Way is still very much alive in the Charter, so no drastic changes are likely to occur. Former Secretary-general Ong Keng Yong stated that the Charter should be seen as a way to bring together the old and the new way of ASEAN, building on and reaffirming the principles of 40 years of cooperation, i.e. consensus, non-intervention, reassuring that the integration happens in a pace comfortable to all, but at the same time containing new goals and possibilities for other ways in the future.<sup>150</sup> This being said, it is going to be harder for the member states to get away with non-compliance and to claim that serious human rights violations are purely internal matters. The Charter makes questions of this sort a legitimate objective for ASEAN to pursue.<sup>151</sup> But the potential intervention will lack coercive force and will rather fall back on the notion of "enhanced interaction", i.e. it will be limited to diplomatic pressure and aid with the consent of the state in question.

### ***3.2 Human rights and democracy***

This section will assess human rights and democracy in the ASEAN context. The ASEAN (lack of) policy on these matters is greatly influenced by the Asian values debate and related schools of thought. The Asian values discourse is developed as a response to Western perceptions and policies and the section will therefore to a great extent be a comparison with

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<sup>148</sup> Eminent Persons Group Report, 2007, p 3, 16, 30

<sup>149</sup> Compare e.g. ST, Nov 24 2007, p 39f and Severino 2007 p 1

<sup>150</sup> Speech during the ASEAN and Asia Forum, 30 Nov 2007 in Singapore

<sup>151</sup> Compare Severino 2007 p 2, stating that the Charter gives ASEAN "flexibility" to deal with the matter of gross violations.



Western notions of democracy and human rights. This comparison will be taken further with regard to the EU in section 4 below.

### 3.2.1 The Asian values debate

The debate over human rights in Southeast Asia has been referred to as the Asian values debate and consists of the perception of a clash between Western values on one side, and Asian on the other side.<sup>152</sup> This debate isn't of mere academic interest since human rights issues have caused clashes between Asian countries and the West. ASEAN has criticized what it perceives to be the intrusive nature of the West's human rights diplomacy.<sup>153</sup> The most famous proponents of Asian values are Singapore's founding father Lee Kuan Yew and Malaysian Mahathir, but the traditionally Western concept of human rights is regarded with some suspicion by all ASEAN countries. In Singapore, the ideology was largely developed to support state-building in a multi-ethnic society. The Malaysian perspective is more directly sceptic towards the West, legitimizing a soft authoritarian government dedicated to high economic growth.<sup>154</sup> ASEAN has as an association at least tacitly given its support to the discourse, not least since it traditionally has refused to even discuss human rights issues, arguing that it is the member states domestic matter.<sup>155</sup>

The Asian values discourse stems from the premise that international human rights norms and policies are shaped by the industrialized West. Hence, they are framed from within a Western liberal philosophy.<sup>156</sup> Hernandez identifies the main points of divergence between ASEAN and Western human rights perspectives. These are *inter alia*: 1) the nature of human rights, i.e. whether they are universal or subject to cultural relativism; 2) the character of human rights, i.e. whether they are international or purely domestic concerns; 3) the importance of individual as opposed to community rights and Western emphasis on rights on the one hand and the ASEAN emphasis on duties on the other; and 4) the timing and sequencing of human rights implementation and observance.<sup>157</sup> The Western notion of universal human rights as something that every human being possesses, and that cannot be denied a person regardless of the circumstances, is something that largely has been rejected by ASEAN ruling classes.

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<sup>152</sup> Acharya 2001 p 166 See, "Can Asians think", an essay compilation with and by Kishore Mahbubani, Singaporean diplomat, high profile debater and proponent of Asian values, for an interesting insight into the discourse.

<sup>153</sup> Ibid. p 167

<sup>154</sup> Katzenstein p 78f

<sup>155</sup> Kraft 2001 *Human Rights, ASEAN and Constructivism: Revisiting the "Asian Values" Discourse* p 3

<sup>156</sup> Ibid. p 1

<sup>157</sup> Hernandez 1995 p 3

Instead, they emphasise that human rights are shaped by each country's experiences, especially by religion and culture. Many ASEAN states thus subscribe to a cultural relativist view. Most ASEAN member states argue for the need to find a balance between individual rights and freedoms and the need to secure economic development. Far-going individual freedoms and rights are often seen as impairments to social stability and economic growth.<sup>158</sup> Instead, focus is on communitarian values, with the West being used as a deterrent example of how individualism and an atomic perception of society entail social disintegration, crime and drug abuse.<sup>159</sup> The ASEAN perspective encompasses the view that meaningful enforcement and enjoyment of political and civil rights have economic prosperity as a prerequisite and this entails primacy of economic development over civil and political rights.<sup>160</sup> Also, ASEAN opposes linking human rights to trade and development assistance, arguing that it constitutes trade protectionism and violates the peoples' right to development.<sup>161</sup> The West is often seen as hypocritical, pushing for human rights in a selective way depending on the national interests at stake.<sup>162</sup>

The intergovernmental declaration of human rights from the preparatory meeting in Bangkok 29 March – 2 April 1993 for the Vienna International Human Rights Conference in 1993 gives a good picture of the ASEAN stance on human rights:

"The Foreign Ministers welcomed the international consensus achieved during the World Conference on Human Rights in Vienna, 14-25 June 1993, and reaffirmed ASEAN's commitment to and respect for human rights and fundamental freedoms as set out in the Vienna Declaration of 25 June 1993. They stressed that human rights are interrelated and indivisible comprising civil, political, economic, social and cultural rights. These rights are of equal importance. They should be addressed in a balanced and integrated manner and protected and promoted with due regard for specific cultural, social, economic and political circumstances. They emphasized that the promotion and protection of human rights should not be politicized.

...They stressed that development is an inalienable right and that the use of human rights as a conditionality for economic cooperation and development assistance is detrimental to international cooperation and could undermine an international consensus on human rights. They emphasized that the

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<sup>158</sup> Ibid. p 4ff Mahbubani argues in this direction in his essay "An Asian perspective on human rights and freedom of press" (in his compilation from 2004, p 76ff), taking the Philippines as an example. The country had at the time the freest press in the region paired with great difficulties in modernization and economic progress.

<sup>159</sup> Bruun p 3

<sup>160</sup> Acharya p 166f

<sup>161</sup> Severino 2006 p 152

<sup>162</sup> Mahbubani p 62ff, 80ff

protection and promotion of human rights in the international community should take cognizance of the principles of respect for national sovereignty, territorial integrity and non-interference in the internal affairs of states. They were convinced that freedom, progress and national stability are promoted by a balance between the rights of the individual and those of the community, through which many individual rights are realized, as provided for in the Universal Declaration of Human Rights.”<sup>163</sup>

Most ASEAN ruling elites furthermore argue that Western-style democracy is not a suitable form of government for their states, at least not at the particular stage in development where the country is. The underlying rationale is often that the religious, cultural and ethnical diversity makes the country fragile and that special social and political arrangements are needed (that most Westerners find undemocratic).<sup>164</sup> Moreover, democracy is by some seen as an impediment to economic development.<sup>165</sup>

It is first and foremost the ruling elites of ASEAN that advocates the outlined discourse. Although generally sceptic towards Western universalist interpretations of human rights, civil society and regional NGO's do not necessarily share the views of the elite (or rather the authoritarian implications of these views).<sup>166</sup> Hence, speaking about Asian values is somewhat misdirected. Also, the outline of the main points of divergence between Western and ASEAN perspectives on human rights does not mean that the attitude towards democracy and human rights is the same in all ASEAN states. While it is probably true that all ASEAN member states regard the Western agenda with some suspicion, they differ largely in forms of governance and policies on human rights. The Philippines has been democratic since 1986 and is the ASEAN member states where the citizens - at least on paper - have had their human rights largely met through the ratification of many international human rights instruments dealing with a variety of human rights, incorporated human rights in laws and the constitution and an independent, constitutionally-based human rights-body. However, the country is tainted with deteriorating living standards, political unrest and violence. Singapore has a high standard of living and the citizens enjoy economic and socio-cultural rights, but the mode of government is soft authoritarianism based on repression of civil and political rights. The Singaporean rigid upholding of the principle of non-discrimination between different ethnic

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<sup>163</sup> <http://www.aseansec.org/2009.htm> paragraphs 16-18

<sup>164</sup> Hernandez 1995 p 7f

<sup>165</sup> See Hernandez 1995 p 8, citing Lee Kuan Yew: "What a country need to develop is discipline more than democracy".

<sup>166</sup> Compare Hernandez 1995 p 7f, 15, Kraft 2001 *Human Rights, ASEAN and Constructivism: Revisiting the "Asian Values" Discourse* p 1, 10. However, a survey carried out by BBC in Singapore in 2007 indicated that Singaporeans favour political stability over press freedom. ST Dec 11 2007

and religious groups can be contrasted to the Malaysian policy of affirmative action for the ethnic Malay. With the four newer member states, the gap between systems and perspectives on human rights gets even wider, with Myanmar as the most repressive society in ASEAN.

### 3.2.2 Changing discourse?

The underpinning of the Southeast Asian discourse on human rights and governance was to a great extent the economic growth and development that took place in the region during the post-colonial era and especially during the “miracle years” in the 1990’s. It gave legitimacy to the authoritarian rule and lack of freedom in the Asian states - so called “performance legitimacy”.<sup>167</sup> The financial and economic crisis that swept through Asia in 1997-98 caused political and social unrest in the affected countries, making states that had legitimized their rule on economic performance vulnerable to domestic criticism. The most striking example was Indonesia, where the Suharto government was thrown over, paving way for democratic elections and improved protection of human rights.

The nature of the discourse on human rights changed in the wake of the financial crisis and some even proclaimed the Asian values debate dead.<sup>168</sup> The most striking example of this change is the inclusion of a provision on an ASEAN human rights body in the ASEAN Charter and the explicit mentioning of human rights and democracy in the purposes and principles of ASEAN. There have, however, been earlier mentions of human rights in ASEAN discourse, marking the departure from Asian values and the strict adherence to non-intervention.<sup>169</sup> The ASEAN ministerial meeting in 1998 welcomed the establishment of a non-governmental Working Group on an ASEAN Human Rights Mechanism.<sup>170</sup> The vitality of civil society in many of the ASEAN member states can, according to Kraft, be seen as one of the clearer signs of the improvement of the regional climate on human rights.<sup>171</sup> However, the Asian values rhetoric and policy is, albeit more nuanced, still present in ASEAN member states.<sup>172</sup>

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<sup>167</sup> Ibid. p 12

<sup>168</sup> Compare Bruun p 16, Kraft 2001 *Human rights, regional institutions and the Asian Way* p167f and Kraft 2001 *Human Rights, ASEAN and Constructivism: Revisiting the “Asian Values” Discourse* p 1

<sup>169</sup> See e.g. the ASEAN 2020 Vision Signed 15 December 1997 in Kuala Lumpur,

<http://www.aseansec.org/1814.htm>

<sup>170</sup> [www.aseanhrmech.org](http://www.aseanhrmech.org)

<sup>171</sup> Kraft 2001 *Human rights, regional institutions and the Asian Way* p 205

<sup>172</sup> Kraft 2001 *Human Rights, ASEAN and Constructivism: Revisiting the “Asian Values” Discourse* p 1, See for example with regard to the restricted freedom of press in Singapore, PM Lee’s statement in July 2006 that the Asian countries who got “the best financial results were those whose media was less aggressive” (Reporters

The perspective on human rights in ASEAN is inter-linked with the notion of non-intervention. Thus, the debate over and slight modification of, the principle of non-intervention is crucial for the ASEAN course on human rights issues. Notwithstanding the change in discourse in these areas, solidarity between the ASEAN leaders has been given priority over human rights and democracy policy concerns this far.<sup>173</sup> Most ASEAN leaders are first and foremost strategic, safeguarding national interest and stability in the region, and only secondarily interested in the promotion and protection of human rights. This situation is complicated by the fact that according to the Asian values discourse, democracy and human rights promotion can have negative effects on political stability and economic development. Last but not least, intervening in somebody else's business means that the own domestic politics is open to interference. It is here that the main clash between ASEAN and the West lie. The Western concept of human rights entails international accountability for human rights violations. ASEAN on the other hand still argue that to a great extent, this is a domestic matter. Several ASEAN countries tends to omit signing international conventions on human rights, even though they might respect the rights in question, for the very reason that they don't want to be held internationally accountable.<sup>174</sup> The underlying reason for this can be the reluctance of the ASEAN ruling elites to share political power with a greater part of society.<sup>175</sup>

### 3.2.3 An ASEAN Human Rights Body and Charter

By contrast to the European experience, there is no ASEAN mechanism for the protection of human rights. The ASEAN Charter contains a provision to create a human rights body within ASEAN.<sup>176</sup> However, the mode of functioning and terms of reference of the body are to be decided later by the ministerial meeting.<sup>177</sup> There is no time frame set for this, and it is extremely unlikely that this will happen for a long time, given the diverging view on human rights between the member states and the unwillingness to give up sovereign powers. Any

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without borders; Singapore annual report 2007). See also the abovementioned article in ST 11 Dec 2007 about the public favouring stability over free media.

<sup>173</sup> Kraft 2001, *Human rights, regional institutions and the Asian Way* p 169

<sup>174</sup> Ibid. p 170

<sup>175</sup> Ibid. p 170

<sup>176</sup> This question was a possible deal-breaker during the charter negotiations in 2007. Apparently, Myanmar was against the inclusion of a mechanism or commission for human rights, even if unwilling CLMV countries would be able to accede to such a commission when they felt ready. The six older members were more willing.

Singapore Institute of International Affairs (SIIA) Online, "ASEAN Charter – hurdles cleared over human rights commission" 2007-07-30

<sup>177</sup> ASEAN Charter Art 14

mechanism agreed upon will most likely only have a consultative function or moral influence and definitely no supranational powers. This was expressed rather clearly by Singaporean Foreign Minister Yeo on a future ASEAN human rights body: "I'm not sure it will have teeth but it will certainly have a tongue...the human rights body will have the right to admonish, to criticise, to encourage. It will certainly have moral influence if nothing else."<sup>178</sup>

According to Severino and Kesavapany, it is only feasible for ASEAN to focus on specific human rights, like the protection of minorities, women and children and the innocent practice on religion.<sup>179</sup> All ASEAN countries are parties to the Convention on the Rights of the Child, and all member states have ratified the Convention on the Elimination of all Forms of Discrimination Against Women. The original five member states and Vietnam have ratified the ILO 1999 Worst Forms of Child Labour Convention. The ASEAN human rights body could thus monitor compliance with these agreements and initiate similar consensus on others. Also, Severino suggests that it should be possible to lay down a few ground rules that no state could openly reject, such as strictures against genocide, the use of rape as an instrument of state power or as a weapon of war, the worst forms of child labour, deployment of child soldiers and the curtailment of the freedom to practice one's religion in a way that doesn't offend others.<sup>180</sup>

### **3.3 Myanmar**

After having looked at the basic principles constituting ASEAN, these will be assessed with regard to the ASEAN policy on Myanmar.

#### **3.3.1 "Constructive engagement"**

Myanmar was admitted ASEAN membership in 1997. Questions of governance, treatment of the own population and other domestic matters are not pertinent as membership criteria in ASEAN and it was early evident that ASEAN aspired to encompass all Southeast Asian states. Through the admittance, ASEAN could gain external political bargaining power at the same time as strategically creating closer ties with its neighbours. It has been suggested that Myanmar's reasons for joining were connected to its need of allies, facing condemnation and sanctions by the West. It is also likely that Myanmar tried to gain external and internal

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<sup>178</sup> Interview by Singapore media representatives Nov 17 2007

<sup>179</sup> ST 4 Dec 2007, p.22, Severino 2006, p 151

<sup>180</sup> Severino 2006, p 155

legitimacy from joining the association.<sup>181</sup> The ASEAN dialogue partners, notably the US and EU, protested against the decision to admit Myanmar as a member, given its poor track-record on human rights.<sup>182</sup> It is likely that the West's efforts were counter-productive, spurring ASEAN to unite Southeast Asia.<sup>183</sup> Concerns were also raised within ASEAN.<sup>184</sup> Singapore's Prime Minister Goh Chok Tong justified the decision to admit Myanmar by invoking the principle of non-intervention: "we have always taken the position that the internal situation of a country is that country's concern".<sup>185</sup> At the time of admission, the Malaysian foreign minister brushed off the concerns that the human rights situation in Myanmar could deteriorate after the admission, and "hoped" that the membership would make the policy of constructive engagement more effective.<sup>186</sup>

It has been stated that ASEAN showed double standards when it admitted Myanmar in 1997, but postponed the Cambodian accession until 1999 due to the coup and following political unrest just before the 1997 summit. The argument goes that the Myanmar and the Cambodian records of repression were equivalent.<sup>187</sup> Notwithstanding this, ASEAN acted consistent with its established policy since Cambodia was in a state of chaos threatening to deteriorate into civil war, while the military junta in Myanmar had control over the territory. The key to understanding the ASEAN course of action is not to look at the level of repression, but rather at its strategic security concerns and its tendency to support fellow leaders in power. However, the ASEAN policy of "constructive engagement" towards Myanmar can be seen as intervention in the sense that it is aimed towards domestic policies. The goal of the policy is to break the country's isolation and promote regional security and socio-economic development by engaging Myanmar in regional cooperation through dialogue and persuasion.<sup>188</sup> The junta has, however, constantly denied that the goal of constructive engagement is to change Myanmar.<sup>189</sup> Sanctions and coercion are ruled out. ASEAN leaders have until 2007 only expressed rather careful statements on the situation in Myanmar,

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<sup>181</sup> Than p 84ff, 104f

<sup>182</sup> Funston p 9f, Than p 104 The accession caused stir within the ASEM-process (see section 5 for further detail).

<sup>183</sup> Archya 2001 p 170f

<sup>184</sup> Than p 83, Archya 1997 p 4f, citing the Thai Foreign Minister, Prachaub Chaiyasan, stating that a country's internal politics was "an important factor to consider". Funston p 7, referring to the fact that the ASEAN foreign ministers, before admitting Myanmar, collectively urged the junta to open a dialogue with Aung San Suu Kyi.

<sup>185</sup> Archya 1997, p 4

<sup>186</sup> Kraft 2000 p 6

<sup>187</sup> Than p 86

<sup>188</sup> Archya 1997 p 7, 2001 p 170f, Than p 104f

<sup>189</sup> Kraft 2000 p 6

“urging” and “encouraging” the military junta to work towards national reconciliation and the smooth transition to democracy through dialogue with all concerned parties and the release of political prisoners, including Aung San Suu Kyi.<sup>190</sup>

Constructive engagement is linked to the principle of non-intervention and also reflects ASEAN’s pragmatism. Archya claims that the policy of constructive engagement is not a strictly neutral approach, but rather “a form of interference consistent with ASEAN’s traditional support for a regime in power”.<sup>191</sup> There are several reasons for ASEAN to refrain from taking a tougher line on Myanmar. Such a line could push the country into the arms of China and it could also undermine ASEAN’s own security interests since poverty and political unrest in one country easily affects the whole region. Moreover, it is a well known secret that several of the most influential ASEAN members, notably Singapore, has substantial economic interests in the country and closer ties to the junta than they like to admit.<sup>192</sup> In the public discourse, ASEAN leaders stresses that sanctions against Myanmar would be counter-productive in pushing the country into deeper isolation and that it would be the poorest that would be most affected.<sup>193</sup>

### 3.3.2 A new precedent

The work on the charter was almost complete when a crisis in Myanmar was sparked in September 2007 by the public protests over dramatically increased prices on fuel. It was mainly Buddhist monks peacefully taking to the streets in the biggest mass protests in Myanmar since 1988. The junta answered with a bloody crackdown on the protesters. *Human Rights Watch* has documented the killing of 20 persons but believe that the real number is much higher. Hundreds of protestors remain in detention.<sup>194</sup> ASEAN leaders reacted quickly and more forcefully than they had ever done before. Singapore’s Foreign Minister Yeo issued a statement on behalf of the ASEAN foreign ministers in September 2007:

The ASEAN foreign ministers were “appalled to receive reports on automatic weapons being used and demanded that the Myanmar government immediately desist from the use of force against demonstrators.

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<sup>190</sup> See the joint communiqués from 2003 and 2004, [www.aseansec.org/14833.htm](http://www.aseansec.org/14833.htm) para 18, and [www.aseansec.org/16192.htm](http://www.aseansec.org/16192.htm) para 15

<sup>191</sup> Kraft 2000 p 8

<sup>192</sup> See with regard to the Singaporean ties with the junta, SIIA Online “*Singapore’s Myanmar liability*” 12 Oct 2007, ST 23 Oct 2007 “*Singapore’s arms sales to Myanmar not substantial*” and The Sydney Morning Herald 1 Oct 2007, “*Singapore a friend indeed to Burma*”

<sup>193</sup> See e.g. Singapore FM Yeo ST, 2 Oct 2007, p 8, PM Lee ST 19 Nov 2007 p 1, 6 and S-G Ong, ST 16 Oct 2007, p 11

<sup>194</sup> HRW Report: “Crackdown – Repression of the 2007 popular protests in Burma, [www.hrw.org](http://www.hrw.org)



They expressed their revulsion to Myanmar foreign minister Nyan Win over reports that the demonstrators in Myanmar are being suppressed by violent force and that there has been a number of fatalities. They strongly urged Myanmar to exercise utmost restraint and seek a political solution. They called upon Myanmar to resume its efforts to work towards a peaceful transition to democracy. The ministers called for the release of detainee Aung San Suu Kyi.

The ASEAN foreign ministers expressed their concern to minister Nyan Win that the developments in Myanmar had serious impact on the reputation and credibility of ASEAN.”<sup>195</sup>

In using the terms “appalled”, “revulsion”, “demanded” and “strongly urged”, this is the strongest statement from the ASEAN leaders in the history of ASEAN. ASEAN found it impossible to keep on defending Myanmar before the international community or they would have lost all credibility.<sup>196</sup> However, sanctions or expulsion are impossible alternatives for ASEAN.<sup>197</sup> Malaysia’s foreign minister Datuk Seri explained the ASEAN position, saying that besides the fact that it would be counter-productive to expel or use sanctions against Myanmar, “there is no mechanism for suspension in ASEAN. ASEAN will never take that route”.<sup>198</sup> There have been calls from within ASEAN for sanctions towards the junta and even expulsion, but these haven’t had any effect on the ASEAN leaders.<sup>199</sup> Instead, dialogue with the junta and the neighbouring giants, i.e. China, Japan and India together with support for the UN special envoy to Myanmar is the ASEAN way to handle the situation.<sup>200</sup>

It seems as if ASEAN has acted according to the principle of enhanced interaction, reaffirming its position in ASEAN politics and perhaps broadening its scope of application to situations that do not directly and physically affect the other member states, although a violent crackdown on demonstrators most certainly threatens the regional security and the region’s external relations.<sup>201</sup> More importantly, the strong wording of the statement suggests the emergence or strengthening of a norm for the member states’ domestic behaviour. It had already been expressed in more diplomatic terms in the 1986 communiqué on the political

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<sup>195</sup> Statement by ASEAN Chair, Singapore’s Minister for Foreign Affairs George Yeo in New York, 27 September 2007

<sup>196</sup> Compare FM Yeo in ST, 2 Oct 2007 p. 8

<sup>197</sup> For just a few articles on the viewpoint of key officials, see Singapore FM Yeo ST, 2 Oct 2007, p 8, PM Lee ST 19 Nov 2007 p 1, 6 and S-G Ong, ST 16 Oct 2007, p 11

<sup>198</sup> ST 17 Oct 2007 p. 16

<sup>199</sup> See notably the article by former diplomat and director of the S. Rajaratnam school of international studies, Barry Desker in ST 4 Oct 2007, arguing for the expulsion of Burma.

<sup>200</sup> See e.g. the answers given by FM Yeo when questioned on ASEAN and Myanmar in parliament on 22 Oct 2007.

<sup>201</sup> Compare PM Lee stating that “Instability in Myanmar can affect the whole region, especially as it is a member of ASEAN” ST 5 Oct 2007, p 14

unrest and violence in the Philippines. The emerging norm seems to be that a member state should exercise utmost restraint and seek a political solution in situations of public protests and domestic unrest.

### **3.4 ASEAN values**

ASEAN is aspiring to become an ASEAN Community.<sup>202</sup> Policy-makers in ASEAN are realizing that a community has to be built on a shared sense of regional identity and to some extent the existence of common values. As outlined in the previous sections, the common principles and implicit values of ASEAN are respect for national sovereignty, non-interference in the domestic affairs of each other, peaceful resolution of conflicts and non-threat and non-use of force. The underlying rationale of the principles is to secure peace and stability. Furthermore, economic development is given a prominent place in ASEAN policy. The means to achieve the economic development is after European model with the establishment of an economic community with a free flow of goods, services, skilled labour and capital. This emphasis on market economy is balanced by the goals “to alleviate poverty and narrow the development gap within ASEAN through mutual assistance and cooperation” and “to enhance the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to opportunities for human development, social welfare and justice”.<sup>203</sup>

The ASEAN principles and values mainly concern inter-state relations. However, something additional is required if ASEAN wants to deepen its integration and become a true peoples’ community. In order to achieve this, ASEAN needs to establish norms on the conduct of states towards their own citizens. However, there is little consensus on what those norms could be and the inclusion of human rights and democracy in the ASEAN Charter can today merely be seen as aspirations. When leaving the grand, all-encompassing notions and values, there are basic rules on the treatment by states of their own people that ASEAN should be able to agree on. As already outlined with regard to human rights, there is some common ground. There are also emerging norms relating to a government’s handling of political unrest as shown by the ASEAN policy on Myanmar. Severino suggests that, at least for public consumption, the peaceful resolution of political disputes through dialogue, free and peaceful elections, democracy as the end-goal of the political process, and broad participation in the

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<sup>202</sup> ASEAN wants to establish itself as “a caring and sharing community”. See the Cebu declaration from 13 January 2007 <http://www.aseansec.org/19254.htm>

<sup>203</sup> ASEAN Charter art 1.6 and 1.11

process, including the opposition, seem to be shared values of the ASEAN member states.<sup>204</sup> However, it is doubtful whether these more far-reaching norms really are embraced as common values by ASEAN.

Furthermore, the ASEAN flexibility with regard to different situations means that what seem to be common values do not necessarily have to be regarded as universally applicable norms, but rather as responses to specific situations.<sup>205</sup> Thus, the emerging norms would be strengthened if the enhanced interaction of ASEAN would be institutionalized and not applied ad hoc. By clearly defining which situations would come under regional scrutiny, the Charter provisions on human rights and democracy would not be mere rhetoric, but could serve as building-stones for further expansion of the promotion and protection of human rights and democracy in the region. This would of course be a deviation from the traditional ASEAN Way. However, such development is necessary if ASEAN is serious about the new objectives it has given itself through the Charter.

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<sup>204</sup> Severino 2006 p 359, 379 referring to ASEAN statements on the Philippines and Myanmar.

<sup>205</sup> Compare Severino 2006 p 359

## 4 Comparative analysis

### 4.1 A historical perspective

Europe and Southeast Asia share many traits - they are both regions at the end of a great continent, shattered into several nation states, with the superpowers China and the Soviet Union/Russia respectively casting its long shadows. Marked by different hardships, Europe by WWII and Southeast Asia by colonialism and rising disputes and rivalry between the newly independent states, the states in both regions chose to work together to secure peace and stability. However, the modes of cooperation were radically different. While ASEAN dealt with its fragile relations through assurances of respect for national sovereignty and non-interference, Europe, in the aftermaths of WW2, set up supranational institutions with the joint management of the means of war, i.e. coal, steel and atom-energy, in order to prevent the conflicts from resurging again and continued this path with strong supranational institutions. Thus, both ASEAN and the EU started out as peace projects created to ensure regional stability, but whereas ASEAN achieved this through strengthening the nation state, the EU on the other hand chose to bridge over the nation state.

An explanation offered by Severino to these different approaches to regional cooperation takes account of the fact that Europe is rather homogenous compared to Southeast Asia.<sup>206</sup> While there was relative hegemony in Western Europe in certain regards, such as religion, ethnicity and emerging norms on governance and fundamental principles, no such common platform existed in Southeast Asia. This is to a great extent still true today. Furthermore, the regionalisation process in Western Europe was spurred by the threat from the expanding Soviet Union. China did not pose such a direct threat to the founding members of ASEAN, even if domestic communist insurgency was seen as a problem in several member states.<sup>207</sup> Hence, the need for ASEAN to stand strongly united in the cold war era was perhaps not as great as the need to mark sovereignty towards one another and contain the disputes within the region. The situation in post-colonial Southeast Asia has been compared to the process of state-making in Europe between the 14th and 19th centuries, albeit concentrated within a

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<sup>206</sup> Severino 2006 p 6

<sup>207</sup> According to Severino at a personal interview 25 Jan 2008, China was never perceived as a threat by ASEAN.

much shorter time frame.<sup>208</sup> Non-interference and the other behavioural norms that constitute ASEAN are reflective of the stress of nation-building in post-colonial Southeast Asia.

Against the background of the fundamental differences between the ASEAN and EU approaches to regional integration, the EU as a model of regional integration has traditionally not had great influence on the course of ASEAN. As pointed out by Severino, there is a fear among ASEAN policy makers “to be like the EU”.<sup>209</sup> EU has perhaps even to some extent has been a deterring example. The perceived lack of economic dynamics within the EU paired with the economic rise of Asia has been one factor validating that the European way is not desirable. EU is sometimes associated with inflexible institutions, bureaucracy and detailed regulations. There has, however, been a notable change in the economic field where ASEAN is aiming at the creation of an ASEAN Economic Community by 2015 with a free flow of goods, services, skilled labour and a freer flow of capital, aiming at a single market and production base. More recently, the signing of the ASEAN Charter indicates that the EU to a greater extent is becoming an inspiration to ASEAN. The EPG that was established by the ASEAN heads of states/governments with the mandate to give recommendations for an ASEAN Charter, and the High Level Task Force that negotiated the Charter, both visited the EU for inspiration during the drafting of and negotiations on the Charter. On commenting on the EU-ASEAN relation in conjunction with the commemorative summit held between the regions back-to-back with the ASEAN Summit and Charter-signing ceremony in November 2007, Singapore’s Foreign Minister Yeo stated that “ASEAN Countries find in the European integration great inspiration for our own integration...I don’t think our integration will ever go as far as Europe’s but your footsteps, including your missteps, are a guide to us in our journey”.<sup>210</sup>

## **4.2 Protection of regional values**

### **4.2.1 The means**

The EU mechanism for constitutional discipline, art 7 TEU, has no equivalent in the ASEAN legal body. However, there are mechanisms to ensure adherence to fundamental values, albeit of an ad hoc character. When the stability of the region has been threatened, e.g. in the Philippines in 1986 and in Myanmar in 2007, ASEAN has acted with diplomatic pressure.

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<sup>208</sup> Compare Kraft 2001 *Human Rights, ASEAN and Constructivism: Revisiting the “Asian Values”* p 8

<sup>209</sup> Seminar in Göteborg 24 Jan 2008

<sup>210</sup> Yeo in EU & ASEAN – 30 years and beyond, EU-ASEAN Commemorative Summit 2007, p 11

The policy of enhanced interaction is the basis for discussion of domestic matters with regional implications although the principle of non-intervention regularly is invoked in order to keep domestic matters of the regional agenda. The ASEAN foreign minister's strong statement with regard to the violent crackdown on protesters in Myanmar indicates that ASEAN is ready to take a tougher line on member states domestic policies if they seriously contradict the association's norms or values. Furthermore, the Charter institutionalizes the possibility for the ASEAN Summit to take a decision in case of a member state's serious breach of the Charter provisions.<sup>211</sup> However, the Charter does not provide for any sanctions (contradictory to the suggestion in the EPG Report). Hence, at first glance, the ASEAN system seems to be quite different from the European.

However, the two systems have similar implications. Art 7 TEU is highly political in its nature and the lack of judicial control means that any action is subject to the Council's discretion. The Haider affair clearly shows this where the member states even preferred to keep its actions outside the Union's framework. Thus, both the ASEAN and the EU way of promoting compliance with fundamental values contain a high degree of political discretion. Moreover, the consequences of the policies might be similar, although ASEAN cannot resort to sanctions. E.g., one of the possible sanctions under art 7 TEU is suspension of chairmanship. In 2005, ASEAN leaders persuaded Myanmar to pass on its ASEAN chairmanship for 2006-07 after both internal and external pressure.<sup>212</sup> Myanmar voluntarily passed on the chairmanship, stating that it was going to concentrate on its national process of reconciliation, and the ASEAN leaders expressed their "sincere appreciation to the government of Myanmar for not allowing its national preoccupation to affect ASEAN's solidarity and cohesiveness".<sup>213</sup> There are more strict sanctions available in the EU arsenal, such as the suspension of the right to vote in the Council. However, if the Haider affair is a benchmark for measures likely to be taken, toning down of diplomatic relations is a more plausible "sanction". Hence, the results of EU and ASEAN action might be similar, although the situations on which the associations act are radically different in nature.

A second point of convergence is the use of a coordinated bilateral approach, rather than a multilateral with regard to sensitive issues. This type of action was used by the EU member

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<sup>211</sup> The ASEAN Charter art 20.4

<sup>212</sup> The US and EU threatened to boycott the ARF if Myanmar was chair. Compare Severino p 140

<sup>213</sup> Joint statement 25 July 2005 by ASEAN leaders, [www.aseansec.org/17589.htm](http://www.aseansec.org/17589.htm)

states against Austria and is largely pre-empted in the future after the revision of art 7 TEU. However, it is instructive to compare this to ASEAN, where the member states have acted coordinated in their own capacity, rather than as an association in delicate matters. This was the case with Southeast Asian participation in the UN peacekeeping operation in East Timor in 1999-2000.<sup>214</sup> This suggests that for the most sensitive matters, the member states of the regional organizations like to keep its actions outside the scrutiny of a regional institutional framework. Surin Pitsuwan, Secretary-General of ASEAN, suggested at a seminar in Singapore after the summits in 2007 that he could imagine a similar course of action for Myanmar, i.e. that the member states act on a coordinated bilateral level rather than multilateral, reaching out as neighbours.<sup>215</sup> Such a scenario would allow the member states that are ready to act, whereas the others can wait.<sup>216</sup> The EU member states would also be able to act in this manner in the not unlikely scenario that the European Council was unable to reach consensus on an alleged breach of the European values by a member state.

Having looked at the similarities between the systems, an important point has to be made on the different functions. Art 7 TEU serves its function as a symbol for and safeguard of European values. It is instrumental in ensuring respect for the EU law as the supreme law of the land. In ASEAN, any interventionist policy is still reactive rather than proactive. The flexibility and ad hoc character of ASEAN policy makes it not a means to ensure constitutional discipline, but more pragmatically, a means to handle situations threatening the regional stability.

#### **4.2.2 The values protected**

If ASEAN and the EU resemble each other to some extent when it comes to the means of promoting compliance with fundamental values, they differ all the more when it comes to the values protected. This is obvious when comparing what situations comes under regional scrutiny in the two systems - the repressive regime in Myanmar compared to the democratically elected government with a suspicious agenda in Austria. The EU has come much further in finding common principles and values that constitute a platform for the integration. These are not limited to norms of inter-state behaviour but have the relations

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<sup>214</sup> See Severino 2006 p 128f

<sup>215</sup> Speech during the ASEAN and Asia Forum, 30 Nov 2007 in Singapore

<sup>216</sup> Compare Yeo's comment at the parliamentary hearing 22 Oct 2007 stating that "Each country must respond according to its own interests and its value system". Also, the ASEAN's Chairman's statement on Myanmar 20 Nov 2007 states that "most leaders" agree that Myanmar cannot go back or stay put. This shows that there is a divide between the ASEAN leaders when it comes to Myanmar.

between the member states' governments and their citizens as subjects. ASEAN still puts its weight on norms of inter-state behaviour, in order to secure peace and stability. However, there is, through the inclusion of the principles of democracy and the protection of human rights in the ASEAN Charter, an emerging tendency in ASEAN to include norms regarding the member states' treatment of their own citizens.

Starting with the norms of inter-state behaviour, these are also endorsed by the EU. However, the norms in question are interpreted differently. The principle of non-intervention is not that pertinent in the EU context since the idea of a post-national entity defies the concept of national sovereignty. However, it is not generally accepted that this is the nature of the EU. Hence, the issue of sovereignty remains controversial but is presented in terms of division of competence between the Union and the member states and ultimately prompts the question of who is the master of the Treaty. The ASEAN discourse on non-intervention indicates that the association, at least in more sensitive areas, has not moved beyond classic international cooperation. Moreover, where ASEAN considers human rights and governance issues to be a more or less domestic affair, the EU approach is that concern for human rights and fundamental freedoms "cannot be considered as interference in the internal affairs of a state and constitute an important and legitimate part of their dialogue with third countries".<sup>217</sup>

As outlined earlier, the ASEAN emphasis on the principles of sovereignty, non-intervention and peaceful settlement of disputes is instrumental in securing stability in the region. ASEAN and EU are similar in this sense, since they both started as peace projects and stabilizing factors in turbulent times. However, whereas regional stability usually provides the rationale for ASEAN policy, the promotion and protection of democracy, human rights and the rule of law has been given a prominent place in EU policy. This can partly be explained by the two regions looking differently at the empirical link between these factors. A school of thought in Southeast Asia within the Asian values discourse emphasises the need for economic development and political stability in order for the citizens to enjoy their rights, some even claiming that too far reaching human rights and democracy can pose a threat to economic development and political stability. The causal link between human rights and democracy on one side and development and stability on the other is perceived radically differently in EU policy, where democracy and the protection of human rights are seen as prerequisites for

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<sup>217</sup> Luxemburg Declaration of the European Council 28-29 June 1991



peace, stability and socio-economic development.<sup>218</sup> However, it is also possible that democracy and human rights are independent values in the EU and not in any respect instrumental. Furthermore, the focus on political stability and economic development in several Southeast Asian societies does not necessarily have a more open, participatory society where citizens can enjoy their rights fully as an end-goal. The Asian values discourse is often seen as an elite discourse justifying repressive, or at least authoritarian, regimes. As an example, the Singaporean society has not opened up much during the past decades, despite flourishing economy (except in the aftermaths of the Asian financial crisis) and a stable political situation. The EU promotion of its values can also be criticized as serving other, less altruistic, interests. However, this critique largely regards the Union's external policies with regard to especially trade and development aid. This theme and the possible clashes between the EU and ASEAN will be discussed further in the concluding remarks in section 5 below.

ASEAN has through the signing of the ASEAN Charter committed to the principles of democracy, the rule of law and the protection of human rights. This implies a shift in policies that can reflect that the association is moving towards a more European-style type of constitutional discipline, where the member states domestic affairs are subject to regional scrutiny. However the only thing that is clear about this control in the ASEAN context is that it is going to be severely limited and the concepts of democracy and human rights are most likely going to have either a very minimal or an extremely open interpretation. This contrasts to the European system, where human rights are rather clearly defined, largely due to the European Convention and the case law of the European Court. The ECJ has also given regard to human rights in its judgements for quite some time. Furthermore, the Charter of fundamental rights of the EU is given binding legal force through ToL, which will further strengthen and refine the rights of the EU citizens. When putting the EU policy on human rights in the context of the Asian values discourse that is more general in its critique of the West, it is notable that whereas the EU certainly claims human rights to be universal and a legitimate international concern, it does not solely emphasize civil and political rights. The EU official policy (as is the UN policy) is that human rights are indivisible and the EU Charter of fundamental rights contains civil and political, as well as social and economic

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<sup>218</sup> Compare Balfour p 117 See further the statement in COM (2003)399 A new partnership with Southeast Asia p 10 "Moreover, the EC takes a holistic approach to its broadened policy agenda, acknowledging the inter-relationship of different issues and addressing them through integrated policies. Thus, terrorism, organised crime and illegal migration undermine the rule of law, discourage investment, and hinder development. Similarly economic and trade development can best flourish in countries that not only encourage economic freedom but also respect human rights and the rule of law, practice good governance and rule democratically."

rights.<sup>219</sup> However, economic and social rights have traditionally been given less consideration and a lower level of protection. The European Convention does not contain the latter type of rights, but they are contained in the European Social Charter that does not enjoy the status and enforceability of the Convention.

In lifting the perspective, and assessing the function of common values in the regions, both differences and similarities can be found. In the EU, the common values serve an important function as the glue of integration. The idea is that differences in traditions, culture etc. are balanced by a shared set of values. Interestingly, the ASEAN Charter paraphrases the EU motto of “Unity in diversity”, and cherishing the diversity is something that the EU and ASEAN have in common.<sup>220</sup> However, ASEAN has rather emphasised the classic norms of inter-state behaviour in order to ensure respect for the member states’ national identities and to secure stability. Certainly, these ASEAN principles can be seen as the glue of co-operation, but over-emphasis on norms relating to national sovereignty makes deeper integration hard to achieve. The values emphasised by the EU and ASEAN respectively are reflective of and support the different paths the organizations have taken with regard to state sovereignty. ASEAN traditionally encompasses common principles that strengthen state sovereignty. By contrast, the EU protection and promotion of its common values regard the member states’ treatment of their own citizens, subjecting the member states to a constitutional discipline unheard of in traditional international or regional organizations.

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<sup>219</sup> The Charter of fundamental rights of the EU

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:303:0001:0016:SV:PDF>

<sup>220</sup> The ASEAN Charter art 2.2 l) Compare COM (2003)399 p 11, where “cherishing diversity” is identified as a common value of the EU and Southeast Asia.

## 5 Concluding remarks

Through the comparative analysis in this thesis, several similarities but also great differences have been found between EU and ASEAN with regard to their regional systems for protection of common values. Whereas the greatest difference of the systems as such is that the EU has a proactive approach and ASEAN has a reactive, pragmatic take on things, the actual consequences of the two systems are quite similar. However, the EU member states are subject to a constitutional discipline that would be unthinkable in ASEAN where the common values instead relate to state sovereignty. The EU has reached consensus and elaborated certain norms regarding the member states' behaviour towards their own citizens, i.e. democracy, human rights and the rule of law. In ASEAN, the inclusion of these norms in the ASEAN Charter can be seen as a step in the same direction. However, there is currently no consensus on the content of these norms. Hence, they have the character of aspirations and the importance given to the principles of state sovereignty and non-intervention means that they most likely will remain so. These differences between the two regional entities should not conceal the fact that both ASEAN and the EU, in the wake of their conflict-ridden history, share the same overriding goals - to create peace and stability and to ensure economic development through regional cooperation and integration.

Having assessed the EU and ASEAN from an internal point of view, the question lurks what consequences the aforementioned similarities and differences might have for their bilateral and multilateral relations. As outlined in the introduction, the EU and ASEAN are cooperating in many fields and plan to expand and deepen their relations in several areas. This would perhaps not be viable, if there were not some shared aspirations between the two regions. The EC Commission finds this to be the case, stating that "The EU and South East Asia share enough interests and values to work together for a new partnership aiming at reinvigorating and guiding their relationship".<sup>221</sup> Cherishing diversity and the commitment to regional integration paired with strong multilateral institutions are the identified common values.<sup>222</sup> The shared interests are primarily economic and political-strategic.<sup>223</sup> Despite this resolve to work together, the different policies and underlying values of the EU and ASEAN might cause complications in their relations with each other. The differences that can arise

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<sup>221</sup> COM (2003)399 p 11

<sup>222</sup> Ibid. p 11

<sup>223</sup> Compare e.g. COM (2003)399, the status report by Lindberg 2007 p 17, Yeo p 9ff, Ferrero-Waldner p 15f

(and have arisen) are largely due to the diverging views on the protection and promotion of human rights and democracy, linked to the question of what constitutes interference in the domestic affairs of a state. It is largely in the context of the EU policy of promoting these values in its external relations, especially in linking them to trade and development assistance that these issues are risking to become contentious.<sup>224</sup> Promoting the Union's values is part of the EU external policy, as stated in art 2.5 TEU as amended by ToL – "In its relations with the wider world, the Union *shall uphold and promote its values and interests* and contribute to the protection of its citizens".<sup>225</sup> On the contrary, ASEAN external relations are characterized by openness, and the values they might export are primarily the basic rules of inter-state behaviour, i.e. non-interference in the internal affairs of one another and the renouncement of the threat or use of force against other states.<sup>226</sup> ASEAN is aspiring to play "a pivotal role in the international fora" and to be in the driving seat of regional integration in the Asia-Pacific region.<sup>227</sup>

The EU practice in its external relations of using conditionality related to the domestic situation of the counter part has by ASEAN largely been seen as constituting interference in the internal affairs of other countries and an unjust way of imposing European standards.<sup>228</sup> These arguments are fuelled by the fact that the EU foreign policy is inconsistent and therefore is susceptible to accusations of double standards and euro-centrism, despite the universal values it claims to uphold.<sup>229</sup> For example, EU has shown greater ease in resorting to negative measures for violations of human rights towards "poor, marginal countries" such as sub-Saharan Africa.<sup>230</sup> On the contrary, the policy towards China is "constructive engagement", based on the assumption that increased contacts with European partners almost automatically should bring liberalisation to the Chinese economy and subsequently politics. Despite the lack of results of this policy, EU has not chosen a more confrontational strategy, but relies on a dialogue approach.<sup>231</sup> These inconsistencies can be explained by the fact that

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<sup>224</sup> The promotion of democracy, the rule of law, and respect for human rights and fundamental freedoms constitute core objectives in external relations of the European Union and its development co-operation with third countries. COM (2003)399 p 14

<sup>225</sup> See also the European Security Strategy, The Council, Brussels 12 December 2003, "A secure Europe in a better world" and Title V art 10 A TEU (amended by ToL).

<sup>226</sup> The Treaty of Amity and Co-operation, to which all dialogue partners can become signatories, contains these norms.

<sup>227</sup> See the ASEAN Vision 2020 and the ASEAN Charter art 41.3

<sup>228</sup> Compare Hernandez 1995 p 6f

<sup>229</sup> Compare Balfour p 114f, 117

<sup>230</sup> Balfour p 115

<sup>231</sup> Panebianco p 139ff

there often are numerous principles conflicting in a given situation and that strategic and economic interests usually are prioritized over principles and values.<sup>232</sup> ASEAN furthermore claims that linking issues of human rights and democracy to trade concessions and development assistance impedes the economic development of the targeted countries and that this violates the human rights of people in the affected countries.<sup>233</sup> Hence, ASEAN does not necessarily reject the EU values, but questions the motives and the means used to promote them.

Against this background, different layers of ASEAN-EU relations will be assessed and the EU policies in different contexts will be outlined.<sup>234</sup> Starting with the interaction between the EU and ASEAN in the multilateral fora ARF and ASEM, it is mainly “the Myanmar issue” that has posed concrete problems this far. As outlined earlier, Myanmar renounced their ASEAN chairmanship after American and EU threats of boycotting the ARF.<sup>235</sup> EU refused to admit Myanmar into the ASEM process until the EU Eastern enlargement forced the EU to admit Myanmar in order to grant access to the new EU member states. However, Myanmar is only allowed to represent on a lower than head of state/government level.<sup>236</sup> A similar situation came up when Myanmar joined ASEAN in 1997 and wanted to accede to the 1980 Cooperation Agreement between the two regions. Diplomatic contortions had to be deployed since ASEAN would not leave Myanmar outside.<sup>237</sup> The Union regularly uses the framework of the ASEM process and of EU-ASEAN meetings to raise its concerns over the situation in Myanmar and it was one of the key issues at the EU-ASEAN Commemorative Summit in November 2007.<sup>238</sup> At this Summit, the regions reaffirmed that they had common goals regarding Myanmar, i.e. peaceful transition to democracy and the release of political detainees, but that they differed as to their strategy.<sup>239</sup> Whereas ASEAN uses the outlined approach of constructive engagement towards Myanmar, the EU has imposed economic sanctions. In later years, the sanctions have been nuanced in an attempt to avoid hitting the

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<sup>232</sup> Studies show that it is hard to establish a causal link between values and principles on the one hand and foreign policy on the other. Jørgensen p 56f

<sup>233</sup> Hernandez 1995 pp 6-7

<sup>234</sup> It is important to remember that whereas the EU participates in several international fora as one party (not, however, in the UN), ASEAN has, until now, not had standing as a legal person and therefore participates as individual member states. However, ASEAN has common positions on several matters in its external relations.

<sup>235</sup> Severino 2006 p 140

<sup>236</sup> Compare Severino 2006 p 137

<sup>237</sup> Severino 2006 p 136f

<sup>238</sup> Joint declaration of the ASEAN-EU Commemorative Summit, Singapore, 22 November 2007,

<http://www.aseansec.org/21120.htm>

<sup>239</sup> Compare ST 23 Nov 2007, p 1

more vulnerable parts of the population.<sup>240</sup> Despite this, ASEAN considers any sanction to be counter productive, and the constructive engagement makes it susceptible to European critique for neglecting to take any real action on the Myanmar issue and on the contrary providing it legitimacy. Although both the EU and ASEAN attempt to find common ground for discussing the issue of Myanmar, it is a subject that, due to differences in values and the approach of what constitutes legitimate intervention, regularly becomes contentious between the two regions.

Bilateral relations between the EU and individual ASEAN member states supplement the regional level cooperation. The EU is currently re-negotiating several of its older PCA's with Southeast Asian states. As a policy, the EU wants to include an "essential element" clause in all bilateral agreements with countries in South East Asia. This clause stipulates that respect for fundamental human rights and democratic principles, as laid down in the Universal Declaration on Human Rights, underpins the internal and external policies of the parties and constitutes an "essential element" of the agreement.<sup>241</sup> Through this clause, the EU links democracy and human rights to trade concessions and development assistance. The old agreements with Vietnam, Laos and Cambodia contain this clause, whereas the agreements with Indonesia, Malaysia, the Philippines, Singapore and Thailand do not.<sup>242</sup> The EU is currently negotiating new PCA's with Indonesia, Singapore, Thailand, Malaysia, the Philippines, Brunei and Vietnam.<sup>243</sup> According to a Filipino official, the EU demands inclusion of the essential elements clause in the PCA negotiated with the Philippines. The country's track-record of extra-judicial killings is seen as particularly problematic.<sup>244</sup> The PCA's are linked to a future ASEAN-EU FTA in the sense that political clauses can be incorporated in the PCA's rather than risking over-stretching the FTA.<sup>245</sup>

Even though the EU still is a major contributor to Southeast Asia through development and technical assistance, ASEAN and the EU are slowly moving from a donor-recipient relationship to a more equal partnership.<sup>246</sup> This reflects the shift that is taking place in

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<sup>240</sup> See the information provided by the Commission, [http://ec.europa.eu/external\\_relations/myanmar/intro/index.htm](http://ec.europa.eu/external_relations/myanmar/intro/index.htm)

<sup>241</sup> COM (2003)399 pp 14-15

<sup>242</sup> COM (2003)399 p 14, notes 17-18

<sup>243</sup> Compare the status report by Lindberg 2007 p 16 and [http://ec.europa.eu/external\\_relations/asia/reg/sea.htm](http://ec.europa.eu/external_relations/asia/reg/sea.htm) for an account on the EU relations with the different ASEAN member states.

<sup>244</sup> Philippine Daily Inquirer, 13 Aug 2007

<sup>245</sup> Compare the status report by Lindberg 2007 p 16

<sup>246</sup> See <http://www.aseansec.org/5612.htm> and the there referred 24th AMM/PMC

economic power between Europe and Asia and the fact that several Southeast Asian nations have developed considerably during the past decades. Furthermore, the EU uses the cooperation with ASEAN as a cornerstone for the increasingly important dialogue in the wider Asian region.<sup>247</sup> The current PCA negotiations between the EU and Vietnam are a part of this development, where the social-economic development of Vietnam has prompted the EU to negotiate a new, broader partnership agreement with the country. Human rights are on the agenda, but it is unlikely that this will be a contentious subject.<sup>248</sup> Conflicts can arise if the EU tries to push the more influential and developed ASEAN member states into accepting the essential element clause, since international accountability and conditionality for domestic conditions largely is rejected by the ASEAN member states. However, the potential conflicts surrounding these clauses should not be exaggerated since all ASEAN member states pay at least lip service to the principles of democracy and human rights (as shown by the signing of the ASEAN Charter). Furthermore, the essential elements clauses are highly unlikely to be invoked by the EU in other than extreme circumstances.

After having assessed potential conflicts with regard to the EU policy in bilateral relations, especially in the relation to development assistance, the possibly contentious area of trade linked to issues of human rights and democracy will now be assessed. EU is influential in the WTO and its policies there do to some extent reflect the values that the EU wants to promote. This is first and foremost the case with its policies on social standards and environmental protection, where the EU is committed to linking these factors to trade. The EU has e.g. suspended Myanmar's GSP privileges as part of the Union's economic sanctions.<sup>249</sup> It is possible to argue that protectionist interests are behind the EU position on these matters. However, the EU policy is not that developing countries must have the same level of protection as the EU. Instead, there is an understanding that a higher level of development needs to be reached before adopting stricter standards. Positive inducements are used, notably lower tariffs under the Generalized Scheme of Preferences (GSP), in order to encourage developing countries to abide by basic standards.<sup>250</sup> ASEAN on the other hand does not believe that the solution to poor labour standards in the developing world lies in linking these issues to trade. Instead, they argue that they should be dealt with in other international fora,

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<sup>247</sup> Compare Severino 2006 p 332 The EU wishes to sign the TAC and to be involved as closely as possible in the EAS process shows this. See Ferrero-Waldner p 16

<sup>248</sup> Compare the EU press release 28 June 2007

<sup>249</sup> [http://ec.europa.eu/trade/issues/global/social/index\\_en.htm](http://ec.europa.eu/trade/issues/global/social/index_en.htm)

<sup>250</sup> Compare van den Hoven p 191 ff

such as the International Labour Organization (ILO).<sup>251</sup> The different regional policies on trade and social conditions become all the more evident in the context of an ASEAN-EU FTA.

The FTA negotiations between the two regions were launched in 2007 but haven't really gotten anywhere. A reason for this is the difficulties in establishing the framework for the negotiations in terms of participation. For example, the EU has no intention of negotiating on free trade with Myanmar, against which it has economic sanctions. ASEAN, on the other hand, demands that Myanmar is allowed to join in a later phase of the agreement.<sup>252</sup> In conjunction with the crisis in Myanmar in 2007, the Malaysian trade minister stated on the ASEAN-EU FTA that: "Negotiations must be free of political meddling and a constructive engagement is a better way to persuade military-ruled Myanmar to open up".<sup>253</sup> The possible value-based conflicts are not limited to the Myanmar issue - the Malaysian New Economic Policy that favours ethnic Malay politically and economically, has also been a source of European critique (albeit not officially). A European envoy to Malaysia stated that the discriminatory policy is protectionist and might hamper the ASEAN-EU FTA negotiations.<sup>254</sup> Malaysia answered by sending an official protest to the EU over the official's remark, contending that it "was tantamount to interfering in Malaysia's domestic affairs and policies".<sup>255</sup> Hence, diverging views on human rights and democracy and their connection to issues of non-interference and trade can affect the FTA negotiations.

Having looked at different aspects of EU-ASEAN cooperation, it is evident that differences in constituting values and the ways in which these are promoted can affect the relations between the regions in a time when the areas of cooperation deepens and widens. Whereas the EU human rights diplomacy is considered intrusive by ASEAN, the association is itself susceptible to accusations of being lenient towards serious human rights offenders. The conflicts that have arisen have to a great extent regarded Myanmar, but the forthcoming FTA and PCA negotiations might put a finger on other contentious areas, especially if the EU insists on conditioning trade concessions and development aid on compliance with its values. However, the possible conflicts should not be exaggerated. There are substantial economic

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<sup>251</sup> Hernandez 1995 pp 6-7

<sup>252</sup> Lindberg *A status report on ASEAN & EU-ASEAN Economic integration in 2007* p 15

<sup>253</sup> Associated Press, 30 Oct 2007, Malaysia: Keep Myanmar politics out of ASEAN-EU free trade talks

<sup>254</sup> Bilaterals.org, 14 Nov 2007, Malaysia's racial policies jeopardizes trade deal, EU envoy says, [http://www.bilaterals.org/article.php3?id\\_article=10316](http://www.bilaterals.org/article.php3?id_article=10316)

<sup>255</sup> Asia Times, 29 June 2007, Race-based policy spoils EU-Malaysian ties



and strategic gains for both ASEAN and EU in deepening their partnership and it is thus in all parties' interest to overcome existing differences. First and foremost, the EU is not necessarily as stark as sometimes depicted, but has, as outlined above with regard to labour standards and free trade, a more nuanced approach. The EU is also capable of flexibility (or inconsistency for those who wish) depending on the counterpart, as demonstrated by its relations with China where "constructive engagement" has been deployed rather than confrontation and conditionality. Furthermore, ASEAN has generally toned down the Euro-sceptic rhetoric and has included several of the EU core values in its own Charter. The rapid economic development that is taking place in several of the ASEAN member states and the general shift in economic powers from Europe to Asia make the negotiations more equal. Hence, it will be hard for a party to one-sidedly impose their standards. Certainly, there is a limit for the acceptance of each other's differences, where external condemnation might be important for internal legitimacy. This seems to be the case with the EU stand on Myanmar. Nevertheless, given the mutual wish to maintain and develop good relations, more serious conflicts between ASEAN and the EU with regard to differences in the values they encompass should be able to be contained through flexibility and concessions on both sides.

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