Building the Diverse Community

Beyond Regionalism in East Asia

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Mimicking of Integration. At the Sources of Under Utilization of Intra-ASEAN Institutions

Introduction

The Asian financial crisis 1997–1998 is widely recognized in literature as the turning point in development of the Association of Southeast Asian Nations (ASEAN) – having undermined the credibility of the Association as a responsible and capable international organization it facilitated the change of the member states' approach to regional integration in general, and the role of institutions in this process in particular. In the recent years the institutional development of ASEAN indeed has not only been rapid, but also comprehensive: it included the development of the existing inter-parliamentary body, advancement in building and improvement of the existing dispute settlement mechanisms, establishment of institutional framework for human rights protection, and also wide institutionalization of cooperation in the areas of trade, investment, and finance. The general direction of these changes led to adopting the ASEAN Charter in November 2007, and thus establishing the legal status of the Association as a formal international organization, as well as agreeing on the desired institutional structure of ASEAN in the form of the three Communities – all this in order to move closer to "an EU-style community" (Phillips 2009; Lin 2011, p. 23).

However, a closer inspection of the activity of the ASEAN bodies casts doubts on this rationale, as the institutions are underequipped in competences at best, and completely neglected at worst; in most cases they also

seem to have a marginal impact on the advancement of the integration process in the Southeast Asia. Thus, the progress which the Association has achieved seems to be a paradox: the member states devote considerable efforts to establishing the institutional structures, which they subsequently reject to use. This contradiction evokes questions on the sources of the underutilization of the ASEAN institutions – whether they result from an insufficient level of trust among the member countries and a lack of a regional leader, contradictory national interests, or the very idea of the Association itself.

The theoretical framework which offers interesting insights into this problem is sociological institutionalism, according to which institutional solutions are chosen not necessarily because of their functionality, but frequently also because they are perceived as the "appropriate" solution within the community (Finnemore 1996, p. 338). A consequence of this, besides a diffusion of a certain institutional model, is the lack of relation between adoption of a given institution and its efficiency in the circumstances it is applied to. The analysis of the institutional development of ASEAN seems to show that this is the case of the Association as well.

Development of the ASEAN institutions after the Asian financial crisis

The underdeveloped institutional structure which would enhance the feeling of community among the ASEAN members could be named as one of the main causes of the poor damage control after the Asian financial crisis. The perception of the financial breakdowns in particular countries as their own national problems, the lack of means necessary to coordinate the international response, and the minimal interest in adopting comprehensive, ASEAN-wide policies were the main causes of chaotic and ineffective reactions. As a result, not only serious doubts were casted on the ASEAN member countries' commitment to the regional cooperation, but above all – it undermined the Association's legitimacy as a credible international organization, which was only strengthened by the abrupt decline in the economic growth of the member countries (Rüland 2000, pp. 428–432). Taking into account the fact that ASEAN was envisioned as an integration structure established independently of the foreign (i.e. European) models, its loss of validity could be perceived not only as a failure

of policy of certain organization, but also as an example of shortcomings of the promoted "Asian model of integration."

In order to regain the legitimacy, a new blueprint for ASEAN has been proposed, namely the ASEAN Community consisting of three pillars: ASEAN Political-Security Community (APSC), ASEAN Economic Community (AEC), and ASEAN Socio-Cultural Community (ASCC), with the middle one being considered as the key element of the Association's activity. The enhanced engagement in economic cooperation, so far neglected in favor of the security interests, was supposed not only to alleviate the consequences of the crisis, but also prove the member countries' commitment to the integration by partaking in some actually functioning initiatives (Narine 2008; Rüland 2000). The new blueprint was accompanied with an institutional reform, which was conducted as both widening the scope of integration by the new areas and deepening the cooperation in the already covered ones. The goal of the reform was establishing the ASEAN Community as an international organization with legal personality, equipped with effective institutions, and its main point was the adoption of the ASEAN Charter which came into force in 2008 (Acharya 2009). The development of the particular institutions, however, mostly proceeded independently from the works on the Charter itself, and is briefly described in the four subsections below.

Inter-parliamentary cooperation

The history of inter-parliamentary institutions within ASEAN started in the early 1970s, when Indonesia proposed cooperation of the representatives of parliaments of the five initial ASEAN members, i.e. Indonesia itself, Malaysia, the Philippines, Singapore, and Thailand. Firstly, the cooperation took form of ASEAN Parliamentary Meetings (APM) – three of them took place between 1975 and 1977, with their main objectives being the regular cooperation between the parliamentary bodies of the Association's members and drafting a statute of an organization. The ASEAN Inter-Parliamentary Organisation (AIPO) was established at the end of the third APM in September 1997 in Manila (AIPA 2014a). The membership in AIPO was open and developed together with the enlargement of the ASEAN. In 2007 the member countries decided to modify AIPO and the ASEAN Inter-Parliamentary Assembly (AIPA) was established (Deinla 2013, pp. 7–8). The main rationale of the reform was to increase role

of the inter-parliamentary cooperation in regional integration, as well as "steer AIPO towards a more closely integrated parliamentary institution" (AIPA 2014c).

The main decision-making body within AIPO/AIPA is the General Assembly (GA), which gathers in annual meetings hosted by the AIPA presiding country. Each member country has right to delegate up to fifteen representatives who discuss the agenda prepared by the Executive Committee. The GA issues its decisions in form of resolutions which should be disseminated to the parliamentary bodies of the member countries to facilitate their implementation and thus harmonization of the legislation in ASEAN (AIPA 2007). The progress should be reported during the AIPA Caucus – a new body established by the AIPA members. Its role is also enhancing the harmonization the legal framework of the ASEAN member countries (AIPA 2009).

However, despite the main goal of changing AIPO into AIPA, namely facilitating the regional integration by strengthening the cooperation between member countries' parliaments and harmonization of the legal framework throughout ASEAN, the statute reform in 2007 did not empower AIPA with any capabilities to fulfil it. Under closer observation, AIPO cannot realize any of the parliamentary functions, i.e. legislation, representation and control.

The resolutions adopted by the Assembly, though numerous (until 2014 there have been over 400 of them), are not legally binding, thus there is no possibility to force a member country to implement AIPA decisions into their legal system. Moreover, even though all resolutions are conveyed to the member countries' parliaments with the request of enacting them, and the progress should be reported during the AIPA Caucus, there are no sanctions for failing to implement the resolutions, or submit the report of progress. The resolutions are very general and vague in their formulations. As a result, the Assembly's capacity to inflict any change on the members' legal order is almost non-existing (Rüland & Bechle 2011, pp. 11–12). What is more, AIPA representatives are frequently hand-picked by the governing elites. The results of that, however, are twofold: firstly, the representatives in AIPA do not actually represent the member countries' citizens, and any opposition to governmental policies within AIPA is fairly unseen. The Assembly cannot thus be perceived as fulfilling the representative function. Secondly, the role of AIPA is perceived by the governing elites as promoting the idea of ASEAN and regional integration to their parliaments – as Rüland puts it,

as a transmission belt between the ASEAN and the parliaments (Rüland 2013, p. 178). Lacking representation of any opposition voices within AIPA, combined with no explicit control measures included in the statute functions of the Assembly, excluded the possibility of it realizing the third function of a parliamentary body, namely the control over the policy of the governments.

Thus, AIPA is not only underequipped to realize its tasks; it also fails to fulfil the criteria of a parliamentary body on supranational level. It acts as a supporting and, to lesser extent, an advisory body – the tasks which it could have done as well without the reform in 2007.

The dispute settlement mechanisms

Despite its long history of cooperation and integration, ASEAN is not free from disputes among its member states, be they of political or economic nature. The number of political quarrels was growing along with the territorial expansion of ASEAN; as for the economic arguments, their number has also the potential to grow due to closer integration of the ASEAN markets through the free-trade area (AFTA) and other agreements. To put it simply, the number of possible disputes rises with the number of interactions, both due to including more members and to intensifying the contacts among them (Cockerham 2007).

Settlement of political disputes

The first mechanism established for the political disputes settlement was included in the Treaty of Amity and Cooperation (TAC), signed in 1976. The main purpose of TAC is to create a non-aggression zone among its members: it obligates the parties to solve their disputes peacefully and forbids threats or use of force. The member countries are also to refrain from any intrusion of another party's territorial integrity, sovereignty, as well as political and economic internal affairs. The provisions of TAC can be utilized in any dispute "disturbing regional peace and harmony" (as per Article 13), thus encompassing a broad scope of issues (ASEAN Secretariat 1976).

TAC includes also a mechanism of its peaceful settlement which can be used upon prior agreement of all arguing parties. A continuing body named the High Council is established, consisting of representatives (on

the ministerial level) of each ASEAN country, as well as representatives of non-ASEAN countries participating in the dispute; the High Council serves as the third party in this mechanism. The decisions are made in form of consensus, after a negotiation process; should they reach an impasse, the High Council can propose appropriate means of further action, e.g. mediation or conciliation. If agreed upon by all the disputing parties, the High Council can also engage as mediator or conciliator (ASEAN Secretariat 1976; ASEAN Secretariat 2001).

The TAC mechanism has been included in the ASEAN Charter as a vital part of the Association's dispute settlement system. Upon a closer examination, however, the mechanism does not seem functional. It cannot be started unilaterally but requires an agreement from all disputing parties, which makes it prone to blocking. The decision-making process, consisting of through political negotiations, and a consensus is required. Should it be achieved, there are no means of enforcing it. Thus, application of the final solution is at the discretion of the parties. As a result of that, the TAC mechanism has so far never been utilized; all cases of settlement of political disputes involving the ASEAN members included the utilization of international courts instead, namely the International Court of Justice (ICJ) and International Tribunal for the Law of Sea. There were cases in which one of the disputing parties opted for utilizing the TAC mechanism, but the objection voiced by the other party blocked the constitution of the High Council; it is worth noting that in these cases all parties were ASEAN members (Severino 2006, pp. 12–13). Thus, despite the existence of the TAC mechanism, ASEAN does not provide its members with a functional means of solving political disputes.

Settlement of economic disputes

Whereas the TAC procedure for political arguments bases on political rather than legal solutions, and is deeply embedded in "the ASEAN Way," the mechanism regarding the economic disputes, namely the Enhanced Dispute Settlement Mechanism (EDSM) is highly judicialized, and its design does not allow a simple blocking out of its utilization. It was adopted in 2004 in Vientiane, Laos (thus is also known as the Vientiane Protocol), replacing the old protocol from 1996, and its legal provisions are modelled on the solutions of World Trade Organization (WTO) (Wu 2009, p. 350).

The procedure can be initiated by a state which consider that the economic agreement it takes part in has been violated.[1]The first step is a round of obligatory consultations among all directly affected parties. Then the claimant state requests to institute a dispute settlement panel of three to five "well-qualified governmental and/or non-governmental individuals." The Senior Economic Officials Meeting (SEOM), the central body of the EDSM, decides upon establishing the panel. After hearing the interested parties, examining the facts and documents, and gaining information from all other necessary sources, the panel issues a decision which is reported to SEOM, together with a list of recommendations for the party which violated the contract provisions. SEOM gives the violating party sixty days to implement the recommendations and is entitled to monitor the process; in case of failure the negotiations about compensation measures are required. The EDSM offers also a possibility of appellation, though it is limited to the legal procedure only (ASEAN Secretariat 2004).

The EDSM provides reasonable procedures of settling the economic disputes: it omits the obvious obstructions to the successful utilization of the procedure, delegates the decision-making process to professionals rather than to politicians, and includes measures of enforcing the decisions of the panel. A solution worth noting is also the "reverse consensus," which is the default decision-making procedure for SEOM (Wu 2009, pp. 350–351). It limits the political influence on the settlement process to a significant degree. Despite their values, however, the EDSM measures have not yet been utilized; ASEAN members prefer to turn to the WTO dispute settlement mechanisms instead.

Disputes regarding the provisions of the ASEAN Charter

Subsequent to implementations of the ASEAN Charter the possibility of disputes related to the interpretation of its provisions or its application appeared. The settlement procedures of this new type of quarrels are included within the Protocol to the ASEAN Charter on Dispute Settlement Mechanisms, adopted in 2010 in Hanoi. In case an ASEAN member state does not agree with a given interpretation, it can engage in consultations

[1] The interests of private entities can be engaged in this procedure only through the agency of their government.

with the other party. The arbitration and conciliation procedures are available if necessary, though only upon prior agreement of all parties. Each party appoints one arbitrator and collectively they choose the third one; all arbitrators need to be expert professionals in law and/or international dispute settlement, and they are obliged to decide independently basing on the provisions of international law and existing ASEAN measures. Their finding is final and legally binding to the parties. In case any of the parties do not agree to arbitration, the dispute can be presented to the ASEAN Coordinating Council, which decides whether legal or political procedures are to be applied. The case can be directed to the ASEAN Summit, which issues a political decision about the dispute (ASEAN Secretariat 2010).

The Protocol provides measures for settlement of new type of disputes, which due to their nature cannot be resolved using external mechanisms. It offers a choice between political and legal procedures, and that the utilization of the latter requires the consent of all parties involved. Despite of some praise that the flexibility received (Naldi 2014), it seems to be a drawback as it can result in overusing political influence. The actual functionality of the Protocol, however, remains yet to be seen, as no ASEAN country has yet decided to utilize its measures.

Protection of human rights

The idea of human rights promotion and protection has been featured in ASEAN documents and proceedings since the Ministerial Meeting in 1993, and has been included in both the Hanoi Plan of Action (1998) and Vientiane Action Programme (2003). The institution dedicated to human rights issues has been established under provisions of the ASEAN Charter, Article 14 of which required the founding of the ASEAN Human Rights Body. In October 2009, the ASEAN Intergovernmental Commission on Human Rights (AICHR), as well as the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC) were established (Centre for International Law 2009).

The founding document for the AICHR are the Terms of Reference (TOR), according to which the AICHR is "an intergovernmental, consultative body," whose mandate encompasses advisory functions to the other ASEAN bodies as well as to member countries, as well as technical assistance in matters related to human rights. The AICHR consists of representatives appointed by the ASEAN members' governments and

responsible to them, meeting regularly twice a year. Decisions should be achieved by consultation and consensus; the AICHR is allowed to consult the civil society organizations (CSOs). In case of a suspected infringement of human rights, the Commission can engage in consultations with the state (ASEAN Secretariat 2009b). Due to the fact that women and children are groups especially vulnerable to discrimination and rights infringement, the ACWC was established simultaneously with the AICHR, and – according to its TOR – it consists of 20 representatives (each member state delegates one representative for women's issues and one for children issues) meeting regularly twice a year. Similarly to the AICHR, the decisions are made through consultation and consensus, with the right to consult the CSOs. The main functions of the ACWC are to promote the women's and children's rights agenda among the members and provide technical assistance (also with reporting to respectable bodies for Convention on the Rights of the Child and Convention on Elimination of All Forms of Discrimination against Women) (ASEAN Secretariat 2009a). Both bodies are responsible to the ASEAN Ministerial Meeting and obliged to submit annual reports of their activity.

Despite of the fact that establishing the AICHR and ACWC, as well as subsequently agreeing upon the ASEAN Declaration of Human Rights, are important advancements in this area (Kosmala-Kozłowska 2013, pp. 54, 58–59), their efficiency is significantly limited by a number of factors. Firstly, the fact that both institutions have been established as intergovernmental consultative bodies is a vital limitation itself, as it is hard to believe that bodies working on governments' discretion would advocate concrete measures of human rights protection (Johnston 2009). Secondly, putting the highlight on the consultative character excludes any possibility of their decisions being legally binding; on the contrary, the decisions made by the AICHR and ACWC are voluntarily adopted with no enforcement mechanism foreseen in TOR. This is only strengthened by emphasizing the "ASEAN Way" rule of non-intervention in internal affairs (Basham-Jones 2013, pp. 6–7). Thirdly, despite the fact that there are numerous ASEAN CSOs active in the field of human right protection, their impact on AICHR creation has been limited (Asplund 2014) and so is their influence on both Commissions' works. Since only the CSOs accepted by the national governments can partake in consultations, interests of numerous groups are not represented, and the appointed CSOs would not advocate solutions contradicting their government's policy (Gomez & Ramcharan 2013, p. 28). Finally, there is

no mention of any international or supranational court dedicated to human rights issues, and no possibility of an individual application against a contracting state, or even the states suing each other. Apart from limiting the scope of protection it is a serious obstacle in the development of a human rights protection legal framework, as the already implemented measures cannot be verified and amended according to the actual needs (Phan 2009). Thus, the AICHR (and analogically the ACWC) can be considered "a toothless tiger" (Mercado 2009; Kosmala-Kozłowska 2013, p. 49), with no actual tools of effective human rights protection.

Summing up the institutional development in the recent years, there is noticeable progress in creating a more elaborate, judicialized and accessible institutional framework. The institutional network becomes more comprehensive in terms of legal means adopted, and it covers virtually all areas of interest of ASEAN member countries. The effort dedicated to developing it has been significant, and yet, the utilization of the mechanisms has been scarce. The ASEAN members either did not equip the institutions in legal capabilities to fulfil their functions or – in the case of more elaborated mechanisms – showed no trust in their own solutions, more willing to use external procedures. The following subsections seek to explain the reasoning behind this contradiction.

The paradox of ASEAN institutional development

An analysis of the aforementioned examples leads to an obvious question: why does ASEAN not utilize the mechanisms whose creation required so much effort and cost? However, what seems more interesting is the question turned around: why does ASEAN create institutions it is not eager to use?

The first reason of the reluctance to use the intra-ASEAN institutions could be a poor design of the mechanisms; it seems, however, not very likely to be the significant cause. As described above, ASEAN institutions vary in terms of their design, and despite the obvious shortcomings of some of them, there are examples of relatively well-prepared solutions. What is more, ASEAN institutions have been drafted bearing in mind the characteristics of the Association, which should make them even more suitable for addressing the members' specific needs. Thus, it seems that the modes of working of a given institution do not have any influence on whether or not it will be used by the ASEAN members.

What could have more impact is the focus on national interests. As Acharya points out, during the formative years of both the Association and the ruling elites of its member countries, the challenges to their internal security and stability have been continuously present, which is reflected in the "ASEAN Way" mindset and attachment to political negotiations (Acharya 2004). ASEAN members refrain from bestowing responsibilities and capabilities on institutions, thus avoiding to make them independent players which could gain more influence over time, achieving supranational status and pursuing their own interests similarly to European Union (EU) institutions. It seems even more probable due to the fact that the national elites of ASEAN countries do not perceive the Association favorably (Rüland 2013, p. 178). Moreover, the level of trust among them is very low – not only they do not perceive the other ASEAN countries as "good neighbors," but also there is a significant group of the elites which are afraid of the high possibility of an armed conflict within ASEAN in two next decades (Roberts 2007, pp. 4–5). Building on such premises, ASEAN countries are wary in trusting their own institutions.

The mistrust could be eased by responsible leadership which could as well enhance the prestige of the institution by showing confidence in their efficiency. Yet, in the case of ASEAN, the disputable position of the Association's leader seems to be a significant obstacle in becoming more institutionalized. While there is no obvious ASEAN leader, the state most frequently named as the one is Indonesia, which seems not to have a clear view on the role of institutions in ASEAN. Even though it initiated the creation of some of them, it has not made use of them even if only to – according to the theory of hegemonic stability – strengthen its regional influence (Rüland & Bechle 2011). According to Roberts' findings, Indonesia seems to be the most distrusting country within ASEAN (Roberts 2007) and significant growth of nationalistic and anti-ASEAN sentiments in the recent years can be observed (Noor 2012). Thus, there is little possibility to strengthen Indonesia's commitment in the institutional framework.

While there are reasons preventing the ASEAN countries from using the institutions are significant, what seems more important are the reasons standing behind the creation of these institutions. The main theoretical approaches to establishing institutions, namely liberal institutionalism and institutional realism seem to fail in explaining the case of ASEAN.

According to the liberal approach, the institutions facilitate the cooperation and reduce its costs. Institutions are a means of addressing

functional needs experienced by all participating states, recognizing and pursuing of shared interests, and of managing their growing interdependence resulting from existing cooperation (Keohane 2005, p. 241 ff.). While it seems fitting for ASEAN due to the similar challenges its members face, as well as the expanding network of economic connections, the fact that the institutions are not utilized limits the explanatory power of this theory. There is a significant level of mistrust among the members, combined with a complicated network of frequently contradictory interests – what is more, some of the economic institutions only deepen the existing discrepancies (e.g. Chen & Yang 2013). Thus, for ASEAN countries the institutions have not been a means of solving shared problems and managing their interdependence.

The explanation provided by institutional realism does not seem to fit the ASEAN case either. According to this approach the main reason for creating institutions lays in "institutional balancing" – states with smaller relative power advance establishing of institutions in order to have better leverage over the bigger players (Lee 2012, pp. 4–5). Yet again, obtaining any gains from the institutions would require utilizing them, which is not the case in ASEAN. Moreover, during the process of drafting and negotiating the mechanisms it was frequently the relatively less powerful countries which objected institutionalization (Yen 2011, pp. 399–400). A similar explanation is provided by the hegemonic stability theory, the difference being the fact that it is the regional hegemon who pursues institutionalization to legitimize and pursue its interests. As exemplified above with the case of Indonesia, this approach does not correspond with the ASEAN reality either.

The theoretical approach which seems to provide the best explanation for the case of ASEAN is sociological institutionalism. It argues with the idea that handling problems through institutions is always the most rational answer, giving numerous examples in which an institutional solution is chosen *because* it is deemed rational, and not because it rationally is the most effective option (Finnemore 1996, p. 330). Further, the states engage in establishing institutions to be perceived as rational, capable, and modern – the values respected in the international environment due to the propagation of Western-style rationality (Finnemore 1996, pp. 331–334). Thus, the institutions are not directed "inwards," towards the issues faced by the member states, but rather "outwards," to show certain set of qualities to other actors and gain credibility. What prompts an institutionalization process is a decline in international legitimacy; in order to

rebuild it, the organization adopts more intricate institutional measures, modelling them after its counterparts perceived as more advanced and successful (in terms of legitimacy and international credibility). As a result, the organization becomes isomorphic, i.e. displaying similarities to other entities of the same type, and it replicates the other institutional measures without any evidence that they are effective (mimetic isomorphism) (DiMaggio & Powell 1983, p. 152).

This approach seems to explain the specific case of ASEAN. The Asian financial crisis, subsequent significant decrease in the economic growth, and the rise of China as an important competitor for foreign direct investment – all these factors casted doubts over the credibility of ASEAN as an organization, but also on the Asian development model promoted by the "Asian tigers." In order to regain credibility in the eyes of international players and regain the trust of investors and trade partners, ASEAN advanced institutionalization. The organization they modelled their solutions after is the EU (Jetschke 2009, p. 407). However the adoption of the solutions in the process of isomorphic modelling is on the rhetorical level only; the actual change of norms and practices is not likely (Rüland & Bechle 2011, p. 4).

While it may be argued that the mimicked institutions in ASEAN fulfilled their role as facilitators of legitimacy and thus enhanced the development of the Association (Jetschke 2009, p. 422), this strategy does not come without cost. Since both external institutional solutions and norms are adopted on the rhetorical level only, without actual substance accompanying them, there is a high risk of decoupling the actual proceedings from the theoretically adopted procedures (Ashworth et al. 2007, pp. 182–183). In the long term such a discrepancy could lead to undermining the regained legitimacy again: the problems identified through the mimicked institutions (e.g. the need of parliamentary representation, or protection of human rights) can require an efficient handling according to the institutional provisions, yet the institutions will not be able to provide the solutions due to their lacking functional capabilities.

As a result of decoupling, a normative change is to be expected. However, it is not an automatic process and in the case of ASEAN it is a fairly limited one. From a spectrum of scenarios of possible normative change, three could apply to it: (1) inertia, i.e. rejection of the external norms or practices if the domestic conditions allow it (e.g. if the elites are strong enough to prevent the new norm from propagation); (2) localization of the external norms through changing and adapting them until they display congruence with lo-

cal practices; and (3) transformation, or radical normative change prompted by powerful external incentives (Jetschke & Rüland 2009, pp. 194–195). In the following section these three scenarios are to be applied to the examples of institutions presented in the first chapter, to establish the probable trend in the future development of ASEAN institutions.

The predicted trends in the development of ASEAN institutions

The brief analysis of the existing institutional framework of ASEAN displayed the discrepancy between the mimicked theory and practice. According to the arguments proposed by Jetschke and Rüland, the strategies of overcoming this decoupling favored by the ASEAN members are inertia and limited localization, while the transformation is very unlikely to occur (Jetschke & Rüland 2009, pp. 195–197). The area which appears most resilient to any normative change is the inter-parliamentary cooperation – the establishment of AIPO and its subsequent reform into AIPA seem to have no influence on behavior of the ASEAN members. The reasons of that are: low level of political freedom and political awareness; lack of confidence and attachment to democracy among the elites; significant number of authoritarian regimes among the members; and lack of the parliamentary traditions in the region. Until recently there have been no signs of more liberal concepts of democracy, individual rights, or representation in the AIPO/AIPA documents (Rüland & Bechle 2011, p. 10). Thus AIPO/AIPA is a result of isomorphism, but coercive (i.e. existing due to an external pressure) instead of mimetic. The establishment of AIPO was preceded by growth of the significance of international advocacy networks promoting the issues of parliamentary representation, democracy, and political rights on international agendas (Rüland & Bechle 2011, p. 9); for example Indonesia initiated the discussion on a parliamentary body only after the European Community established its Parliament (Jetschke 2009, p. 417). While there are voices praising AIPA's role in accelerating the regional integration and propagating ideas of parliamentary representation and democracy (Deinla 2013, pp. 27–28), there is no evidence supporting such theses; AIPA seems to be an institution limited to the rhetorical sphere.

The case is similar for the dispute settlement procedures. It seems to be the result of mimetic isomorphism, especially so in the EDSM – it has

been established with the objective of lessening the international uncertainty and strengthening legitimacy, with no intention of being utilized (Korte 2012, pp. 111–112). Similarly after signing TAC "[i]t was as if the ASEAN had had little expectation that any member state would invoke the treaty's mechanism any time soon," which resulted in adopting the rules of procedure of the High Council only 25 years after the treaty itself was signed (Severino 2006, pp. 12–13). An argument in favor of this thesis is also the priority which ASEAN countries give the idea of sovereignty; as a result, there is no possibility of appellation by a non-state actor as it could, in the ASEAN members' perspective, diminish their sovereignty and political integrity. This is strengthened by the fact that the external dispute settlement mechanisms used by ASEAN are available for state actors only.

Despite the scarce examples of any normative change brought by the ASEAN dispute settlement measures, there is one example of a different attitude among the member countries. Even though it did not prove successful, there was an attempt to convene the High Council to settle a dispute under the provisions of TAC: in 1994, when the Indonesian government expressed clear preference for the TAC mechanism over the ICJ for settling the territorial dispute with Malaysia over the Sipadan and Ligitan islands. Malaysia did not agree to this mechanism, opting for the ICJ. This decision has been officially explained by the concerns "not to burden ASEAN with considering the quarrel"; in fact, however, Malaysia, having similar disputes with all other ASEAN countries, was convinced that the High Council would side with Jakarta's claims (Butcher 2013, pp. 242–244). This case exemplifies that ASEAN members do not exclude the possibility of utilizing internal dispute settlement mechanisms automatically, but the shortcomings in their design that make them tools of political meddling rather than a legal dispute settlement can be an important cause of their underutilization.

The last area, most widely criticized by external observers, is the institutionalization of human rights protection. While the AICHR and ACWC have been criticized, it seems that in this regard the most significant normative change has been achieved. Between the first mention of the human rights issue in official ASEAN documents and establishing an institution only sixteen years have passed, which seems a relatively short time comparing to the evolutionary process of other ASEAN institutions. Moreover, the issue has been formalized in the form of institutions despite various forms of resistance among the member states, with the most notable example of Myanmar (Kosmala-Kozłowska 2013, p. 51). Establishing the AICHR is an "initial stage" of building the Southeast Asian human rights

system; nonetheless, its success is the fact that human rights cannot be perceived as a solely domestic issue, when there is an international forum dedicated to them within ASEAN (Phan 2009). Another advance brought by the AICHR is the possibility to receive help and support from external partners; as for now, it has been utilized in the ASEAN-Japan plan of action (ASEAN Secretariat 2011). Finally, both the AICHR and ACWC introduced the idea of close engagement of CSOs in the decision-making process; while limited, it is still a significant change of attitude. Thus, not forgetting about the restrictions of their effectiveness, the AICHR and ACWC seem to be an example of most significant normative change. This view is contested by Katsumata who claims that human rights are an example of mimetic adoption, pursued in order to gain legitimacy and recognition among the Western states (Katsumata 2009).

The discussed examples support to a large extent the thesis about the lack of substantial normative change caused by ASEAN institutions. The theory-practice gap has been present in ASEAN policy since its beginning, and is unlikely to change even under significant external pressures. Even the shock brought by the Asian financial crisis did not cause an actual reformulation of policy, but only a new wave of mimicry (Jetschke & Rüland 2009, p. 198 ff.). The examples of normative changes noted above do not change the general trend of ASEAN's actions.

Conclusions

This paper investigated the existing contradiction between the theory and practice of ASEAN institutionalization process, seeking to find out why the institution developed by the member countries with significant effort are not, in fact, utilized. After examining several theoretical approaches, the sociological institutionalism seems to provide the most comprehensive explanation, ascribing the gap to the practice of mimetic isomorphism, i.e. modelling the institutional solutions on the ones provided by a more advanced organization (in the discussed case – the EU) on a rhetorical level, while leaving the actual practice unchanged. The analyzed examples of selected institutions seemed to confirm this reasoning and showed that there is little normative change in the ASEAN members' behavior.

On the final note it should be emphasized that while some of the institutional solutions may have been modelled after the EU, it should not be confused as a role model for ASEAN. Firstly, while the mimetic

isomorphism can occur unconsciously, i.e. without a plan to model after a certain institution, and so some of the ASEAN institutions could receive similar characteristics to the European ones, the EU has been merely an "inspiration," and never a role model. Secondly, the core of the idea of isomorphism is to prevent the vital characteristics of the modelling organization; consequently, the activities of ASEAN should not be assessed as "copies" of the EU ones, and assessed through a European lens. Therefore, even if the mimetic isomorphism does indeed take place, ASEAN is not "a product of mimicry" (Jetschke 2009, p.421). On the contrary – it works towards a unique set of goals by its own set of means, deriving from other players only the solutions which are considered necessary, all in order to pursue its own agenda of regional integration.

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