

Seoul presentation – IL and IR: State of Play

Reconceptualising Regionalism in SEA: ASEAN's Turn to Rules and Institutions

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[Abstract]

This paper sets out an emerging theory of 'Southeast Asian regionalism' by reconceptualizing the ASEAN discourse through the incorporation of the rule of law and institutions. This theory will not only be novel in the area of ASEAN studies in the field of international relations but is expected to add another dimension to the multi-faceted field of regional integration in international law. It is necessary to situate ASEAN regionalism within its contemporary paradigm because theories of Southeast Asian regionalism have traditionally been dominated by realist and, to a lesser extent, constructivist perspectives stemming from the field of international relations and security studies. Hence the perspectives from the field of international law have largely been undeveloped. Such models are increasingly inaccurate for three substantive reasons. They overlook: the substantial economic and socio-cultural cooperation under the auspices of ASEAN since its establishment in 1967; the intensifying use of law and institutions especially following the adoption of the landmark ASEAN Charter in 2007; and the actual legal and institutional foundations of the ASEAN Community post-2007. This paper thus develops concepts and parameters with which to do so by discussing the undisputed role of realism in ASEAN's history before turning to expound on the limitations of realism in the new rule of law and institutions framework. The emergent theory of ASEAN regionalism will then be constructed using these characteristics as well as concepts extrapolated from existing institutionalism-informed theories. In doing so, this paper will lay out in real terms not only the state of play of interdisciplinary work between the realms of international law and international relations, but also illustrate through the above case some of the advantages, tensions, and limitations that lie therein. (280 words)

[Talking points]

- In this research project I am investigating the emergence of a new theory of ASEAN regionalism that is premised on the rule of law and institutions. This theory borrows IR concepts; primarily, Puchala's Concordance theory, Keohane's Institutionalism, and Moravcsik's Intergovernmentalism.
- I find it necessary to meld IL and IR theory in the area of Southeast Asian Regionalism because such research is long overdue. Here, IL and IR still remain very separate even though there is the awareness and push for greater cross-disciplinarity.
- In ASEAN, as is true in other subregions of Asia, there is an over-fixation on sovereignty of the Westphalian type. The theory of ASEAN regionalism so far has been dominated by Realist theory.

- There has been some development in using Constructivist theory but this has not evolved very much because the norms (the ASEAN Way of non-interference; consultation and consensus; etc.) – or even emerging norms (community; identity; etc.) – have only been thought of with respect to the ASEAN regional security field.
- This is obviously not ideal as ASEAN regionalism is not static and is not limited to security studies. The over-reliance on Realism and Constructivism is not only self-limiting but also dated.
- While they are accurate for the first 40 years of ASEAN's existence in that law and institutions have had very little impact, they miss out the crucial legal and institutional developments in ASEAN regionalism since the adoption of the ASEAN Charter in 2007 and the establishment of the ASEAN Community at the end of 2015.
- Through the first constitutional treaty of this regional organisation, the Charter promulgated the Rule of Law and Rule of Institutions. And this was seen explicitly in the proclamation that:
 - ASEAN now has legal personality
 - The ASEAN Charter has a special legal character unlike its predecessors. It codifies ASEAN norms, rules and values; sets clear targets for ASEAN; and presents accountability and compliance.
 - There are new ASEAN organs and bodies to facilitate ASEAN Community-building.
 - The ASEAN Charter serves as a firm foundation in achieving the ASEAN Community by providing a legal status and institutional framework for ASEAN.
 - ASEAN now is meant to comply with its agreements, adhere to its obligations, and there are monitoring mechanisms and dispute settlement mechanisms to help move this along.
- All this is a sea change from the previous modalities of working based solely on political exigency and diplomatic flexibility, with an obvious eschewing of formal laws and institutions.
- For the ASEAN sceptics, although this change is difficult to bring about, it is a **SERIOUS** undertaking. The background for this radical transformation to the law and institutions
 - The need to cohere as an economic bloc and develop as a region
 - China, India – competition
 - External shocks such as the AFC
 - ASEAN Centrality
 - International standing
 - The ASEAN Community has been established – yes, still a work in progress but there are signs of a gradual but relentless strengthening of law and institutions.
- It is posited that ASEAN states in their post-Charter activities exhibit elements of

- Institutionalism – where states organize themselves into regimes to coordinate their activities for stable relations, information, and mutual benefits;
- Why: Rational choices and interest gains – legalization and institutionalization are tools ASEAN members use to increase the opportunities for information exchange, inspire confidence in the commitments made, foster reciprocal positive behaviour, and deter cheating, thereby engendering overall greater trust and stable expectations in the interconnecting relationships.

- Moravcsik's liberal Intergovernmentalism – a dual-stage model where state preferences are first formed in the domestic order through bargaining among the different players, including the executive arm of government, and subsequently the executive brings this agenda to the intergovernmental bargaining table where the strategic interaction among the member states results in a collective outcome.

- Who: States as Elite Intergovernmental Decision-makers – Decision-making within ASEAN is very state-oriented and elite-centric with top-down attitudes to the regional bureaucracies (comprising the ASEAN Secretariat, national secretariats, and relevant national agencies). This profoundly impacts how ASEAN regionalism is shaped at three levels: first, national interests; second, regional interstate bargaining and compromise; and third, the constraining framework of law and other rules and policies as well as institutions in ASEAN cooperation.

- Puchala's Concordance System thesis – where pragmatic states seek to cooperate and compromise (rather than coerce and confront) and channel their agreed-upon transactions through the bureaucratic channels of their organizational network.

- How: The intergovernmentally-ordered ASEAN regionalism functions in accordance with the rule of law and institutions. This is a highly institutionalized system where the state actors channel the bulk of their common transactions across the shared issue-areas through their organizational networks, thus utilizing the processes of laws and institutions. Channelling implementation through bureaucracies depoliticizes to some extent the inherent sensitivities among member states in the pursuit of their interests, since the activity would be largely governed by the realm of internal administrative law rather than at the level of obligations owed to other states. This should allay ASEAN members' suspicions of a 'supranationalism creep' against sovereignty when regional laws and institutions are respected through domestic implementation.

