

The background of the cover is a vintage map of the North Atlantic, showing Greenland, Iceland, and parts of North America and Europe. Several chess pieces are placed on the map: a white king, a white queen, a black king, and a black queen. The pieces are arranged in a way that suggests a strategic game of international relations.

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REGIONAL ORGANIZATIONS IN INTERNATIONAL SOCIETY

ASEAN, the EU and the Politics
of Normative Arguing

Kilian Spandler



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Regional Organizations in International Society

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of Normative Arguing

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To Marisa Irawan

PREFACE

Two main impulses prompted me to write this book. The first was a scholarly interest in the historical roots of regionalism in different parts of the world that goes back to my times as a graduate student of Political Science at the University of Würzburg, Germany. Over the years, it has become increasingly obvious to me that the Eurocentric myopia of regional integration studies as it was (and often still is) studied at most Western universities makes it harder for researchers to grasp the politics of regionalism, i.e. the way it is shaped by power, contestation and uncertainty. The second impulse was the intuition—which later developed into a firm conviction—that the English School of International Relations has more to offer in terms of understanding the history and the politics of regionalisms than most scholars have realized. I hope that ‘Regional Organizations in International Society’ will help promote a dialogue between the English School and Comparative Regionalism, be it by convincing others of the theoretical insights the former holds for the latter or by spurring critical engagement and even disagreement.

Many colleagues and friends have provided helpful comments on draft sections of this book. My long conversations with Thomas Diez certainly had the most influence on the arguments and I am deeply indebted to him for his continual willingness to engage with my work. I also wish to thank Joakim Berndtsson, Barry Buzan, Jeffrey T. Checkel, Maria Eriksson Baaz, Marisa Irawan, Anja Karlsson Franck, Johan Karlsson Schaffer, Tonny Brems Knudsen, Mathis Lohaus, Steffen Murau, Cornelia Navari, Hanna Pfeifer, Lukas Rudolph, Thomas Risse, Frank Schimmelfennig,

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Completing this book would not have been possible without my friends and family. I am thankful for their hands-on help, but especially for reminding me that there is a life for academics beyond offices, libraries and convention halls. Most of all, I am eternally grateful to my partner Marisa Irawan for her encouragement, love and the intellectual companionship throughout the years. I dedicate this book to her.

New York City, USA
May 2018

Kilian Spandler

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ABBREVIATIONS

ARF	ASEAN Regional Forum
ARO	Asian Relations Organization
ASA	Association of Southeast Asia
ASEAN	Association of Southeast Asian Nations
ASEAN-ISIS	ASEAN Institute of Strategic and International Studies
CEEC	Central and Eastern European Countries
CLMV	Cambodia, Laos, Myanmar and Vietnam
CSCE	Conference for Security and Co-operation in Europe
EC	European Communities
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EDC	European Defence Community
EEC	European Economic Community
ENP	European Neighbourhood Policy
EPG	Eminent Persons Group
EP	European Parliament
EU	European Union
Euratom	European Atomic Energy Community
G20	Group of Twenty
IR	International Relations
ISEAS	Institute of Southeast Asian Studies
Maphilindo	Malaysia, the Philippines and Indonesia (Greater Malayan Federation)
MEP	Member of European Parliament
Mercosur	Mercado Común del Sur

NATO	North Atlantic Treaty Organization
NIS	Newly Independent States
OAS	Organization of American States
OCT	Overseas Countries and Territories
OEEC	Organization for European Economic Co-Operation
PHARE	Poland and Hungary: Aid for Restructuring of the Economies
PMC	Post Ministerial Conference
SEAFET	Southeast Asian Friendship and Economic Treaty
SEATO	Southeast Asian Treaty Organization
SLORC	State Law and Order Restoration Council
TAC	Treaty of Amity and Cooperation in Southeast Asia
UK	United Kingdom
UN	United Nations
US	United States
USSR	Union of Soviet Socialist Republics
WTO	World Trade Organization
ZOPFAN	Zone of Peace, Freedom and Neutrality



CHAPTER 1

Introduction

Over the last decade, the image of regionalism has deteriorated dramatically. From the late 1980s to the mid-2000s, academics and the broader public had attached high hopes to the proliferation of regional organizations and integration. The New Regionalism literature embodied this mind-set and provided the grand narrative for it. The narrative was that there is a sustained trend toward governance on a regional scale and that it is a welcome response to many of the world's most pressing challenges, including peacekeeping, economic development and tackling new transboundary policy problems (Mattli 1999). This optimism has slowly given way to much more ambivalent assessments by some and open frustration by others.

A look at two parts of the world where the success story of regionalism had been particularly deeply engrained provides illustrative examples of this change in perspective. The European Union (EU) and the Association of Southeast Asian Nations (ASEAN) are regional projects that researchers used to celebrate for their positive influence on peace and prosperity in formerly war-torn regions. After the end of the Cold War, both embarked on a process of institutional widening and deepening. Post-Cold War Europe saw the successful transformation of the European Communities (EC) into the EU, the expansion of EU membership to the East and South and a far-reaching reform of its institutions by means of the Treaty of Lisbon. In Southeast Asia, ASEAN gradually incorporated Vietnam, Laos, Burma and Cambodia, weathered the Asian

financial crisis and strengthened its institutional foundations with the creation of an ASEAN Community. Both organizations were lauded for establishing and progressively refining governance mechanisms in various policy fields, ranging from economic and financial integration to human rights.

Yet, they have had to navigate troubled waters in recent years, and only partially lived up to the challenge (Beeson and Diez [2018](#)). From the stunted constitutional process to the financial turmoil and Brexit, the EU has been facing multiple legitimacy challenges. The spike in migration across its external borders in 2015 has sparked heated debates, in which some criticize the organization and its member states for the treatment of refugees and others for failing to protect its borders. The ASEAN Charter, signed in 2007, disappointed the hopes of many observers. Internal divisions, willingly exploited and fueled by external actors like China, have thwarted the group's aspirations to play a greater role internationally. Its failure to act on norm violations by its members, such as the military coups in Thailand or the persecution of the Rohingya minority in Myanmar, has drawn widespread criticism from local and international civil rights groups as well as Western governments.

This pattern of progressive institutionalization and New Regionalism euphoria followed by the frustrating experience of crisis, institutional stasis and legitimacy challenges is mirrored elsewhere, for example in the Americas, where Malamud ([2012](#)) argues that 'Sovereignty is back, integration out'. Yes, institutional innovation is still happening, but on a less ambitious level and in a much less favorable political environment. The expectation that a unified template of organizing regional politics would at some point emerge—be it EU-style or otherwise—has not been fulfilled. Instead, each regional organization has developed unique institutional rules and procedures that prove resistant to the abounding recommendations of policy experts on how to make them more effective. For instance, while the ASEAN member states took inspiration from the EU when reforming their own regional organization, they continue to be highly skeptical about institutional arrangements that centralize decision-making and compromise state sovereignty (Pettman [2010](#); Yeo [2010](#)).

If one assumes that regional organizations are instruments created by rationally calculating states to address transboundary policy issues (Koremenos et al. [2001](#)), these developments must indeed be frustrating.

Their institutional frameworks appear dysfunctional, prone to crisis and too slow to adapt to changing circumstances. However, is it possible that this overly bleak picture is based on a simplifying account of how regional organizations emerge and transform? After all, they are not designed on the drawing board but develop over time in a process that involves phases of stability and stasis as well as adaption and change. The intricacies of history inevitably cause regional organizations to elude the control of their creators to some extent and develop a life of their own (Moxon-Browne 2015). The current literature on regionalism does not account for the importance of these historical pathways. It is primarily concerned with whether regional organizations work or not in terms of providing governance for current problems. While such critical investigations into the effectiveness of regional organizations are warranted, they need to be based on a realistic appraisal of the conditions for institutional adaption to demands. Conventional approaches discuss the ability of regional organizations to provide governance in terms of ‘supply factors’ such as regional leadership or strong regional institutions (Mattli 1999). They disregard that regional organizations are developed over time by political actors who draw on and negotiate various normative ideas about how regional politics should be organized. By teasing out how this normative agency of political actors shapes institutional stability and change, this book takes a fresh look at the question: *how can we understand the historical development of rules and procedures in regional organizations?*

REGIONAL ORGANIZATIONS AND NORMATIVE ARGUING

Tackling this question moves the debate beyond an analysis in terms of governance success and failure, which still often uses EU-style integration as an implicit gold standard of regionalism despite all claims that Eurocentrism is a thing of the past. Instead, it draws attention to the potentials and limits of organizational change that arise from the fact that regions are international societies, i.e. political spaces that share common norms and rules. The book thus adopts a novel approach to the unique institutional features of regional organizations that acknowledges the importance of historical normative structures and agency for different organizational pathways.

Explaining the different institutional forms of regionalism across the world is a main concern of Comparative Regionalism, a relatively

new sub-field of Regionalism studies in International Relations (IR). Authors working within the paradigm have produced some important insights regarding potential sources for such divergences. They point to power-political factors such as the hegemonic influence of major states (Beeson 2005), domestic factors such as the preference structures of ruling coalitions (Solingen 2008), functional demands such as economic interdependence (Kanthak 2012), the importance of distinct regional identities (Checkel 2016; Hemmer and Katzenstein 2002), historical factors such as institutional inertia or functional spillover (Van Langenhove 2011; Moxon-Browne 2015), as well as the diffusion of organizational models and their adaption to local predispositions (Acharya 2009; Jetschke 2017).

This book offers a different perspective. It focuses on the processes of normative arguing in regional international societies and argues that they crucially shape the institutional pathways of regional organizations. Some Comparative Regionalism authors have suggested that norms are an important part of the story, arguing that regional organizations are embedded in a deeper layer of social structure (Acharya and Johnston 2007, pp. 17–19; Katzenstein 2005; Wunderlich 2007). In this perspective, differences between regional organizations are a result of diverging underlying norms. For example, the EU is more supranational and formal than ASEAN because the legitimacy of the nation-state has been challenged in Europe, whereas national sovereignty remains a strong principle in Southeast Asia. However, Comparative Regionalism has neither consistently addressed the emergence and change of these structural factors nor investigated how they translate into specific organizational features. The heavy emphasis on norms as a fixed structure with almost deterministic effects overlooks the importance of the agency of political actors who develop fundamental regional norms and use them in their arguments about regional organizations.

To rectify this longstanding neglect, the book explores the normative foundations of regional organizations in a systematic fashion. The overarching argument is that regional organizations display persistent differences because their rules and procedures—what the English School of IR calls ‘secondary institutions’—are developed by political actors in regionally specific contexts of fundamental norms, or ‘primary institutions’. These elementary understandings about how to play the game of regional politics, and who the players are, set the basic limits to the forms regional organizations can take. The structure of primary institutions

shapes, and is at the same time shaped by, the agency of politically influential actors. The historical comparison of the foundation, legal integration and enlargement of ASEAN and the EU, which makes up the main part of the book, demonstrates that government elites, regional bureaucrats and public figures routinely make normative claims when promoting or opposing concrete organizational forms. By providing normative reference points, primary institutions constitute a space for these processes of normative arguing and shape the possibilities for change in regional organizations. However, as they use norms in their arguments, political actors constantly redefine the substance of primary institutions. The contested nature of these discourses and the malleability of the normative context explain why the institutional trajectories of the organizations do not follow a general logic or are determined by external conditions, but unfold in contingent and highly political ways.

In the first instance, therefore, this book makes an original theoretical claim about the connection between the institutional histories of regional organizations and normative arguments, and offers a narrative illustrating these dynamics in the EU and ASEAN cases. This is not a purely intellectual exercise. While the institutional histories of the two regional organizations are certainly interesting in their own right, their relevance for today rests on the belief that an understanding of the politics of normative arguing shaping their development also puts the current state of regionalism in Europe, Southeast Asia and elsewhere in a new perspective. By contextualizing their genesis and informing our expectations of change, the book attenuates two of the currently most common normative postures of regionalism pundits. First, it thwarts ‘integration snobbery’ (Murray 2010), i.e. the measurement of all regional organizations against a purportedly universal yardstick—in most cases, the EU. Second, it prevents functionalist disenchantment, i.e. the pessimism stemming from the frustrated expectation that any demand for transnational governance will automatically lead to an effective regional response.

However, for those interested in the disciplinary debates of IR, the book also makes an argument about the institutional structure of world politics more generally. There is a longstanding theoretical debate about how the normative ‘deep structure’ of the international sphere—the shared fundamental understandings about who matters and what counts as legitimate behavior—and more tangible institutional phenomena such as international organizations hang together (Spandler 2015). How does change in norms impact on concrete frameworks for cooperation, and

vice versa? The book explores this connection with regard to regional organizations by drawing on the English School's distinction between primary and secondary institutions. Filling some important gaps in this conceptual apparatus, it offers an innovative framework that draws attention to how politically influential actors engage in normative arguing by exploiting institutional tensions and external shocks to underpin their visions for international order. At critical junctures in history, this agency has set regional organizations on certain pathways that continue to influence their institutional characteristics and their adaptability to new governance demands even today. By unpacking these mechanisms, the English School approach demonstrates not only that history matters, but also *how* it matters. It traces institutional trajectories to the path-dependent co-constitution of primary and secondary institutions and highlights the role of discursive agency as a process mediating between the two institutional layers. While it is a study of the significance of normative change for regionalism, the book thus ultimately also makes the case that the English School offers an underexploited resource for the study of international organizations and regimes in general (Knudsen and Navari 2018). By analyzing historically how normative arguing connects the deep structure of international society with ideas about institutional innovation, the approach highlights the political dimension of organizational development.

The book explores these ideas through a comparative analysis of the political debates surrounding three central episodes in the historical development of ASEAN and the EU: their foundation, legal integration and enlargement. Using discourse tracing (LeGreco and Tracy 2009), a variant of textual analysis that emphasizes temporality, it considers how the discourses on organizational innovation were shaped by and in turn shaped changes in the regional primary institutions. The comparison does not identify causal variables that influence differences in institutional design. On the contrary, the reconstruction of the three episodes of normative arguing in the two regions shows that the complex interplay of normative structure and agency foregoes simple causal explanations, as it gives rise to political processes that are historically contingent rather than structurally determined.

There are two reasons for focusing the inquiry on Europe and Southeast Asia. First, while researchers sometimes describe the relation between the EU and ASEAN as an exemplary instance of interregional diffusion (Börzel and Risse 2009; Jetschke 2010), in the sense that

ASEAN copies institutional features and policies from the EU, ASEAN decision-makers have never adopted EU-style institutions wholeheartedly (Jetschke and Rüländ 2009; Wong 2012). To the contrary, many observers argue that ASEAN's organizational development follows a unique model, the 'ASEAN Way', which consists of more informal and consensual forms of cooperation than in the EU case (Acharya 1997; Haacke 2009; Stubbs 2008). In view of these empirical findings, explaining the persistent divergence between European and Southeast Asian models of regional organization becomes particularly salient.

Second, to legitimate their respective mode of regional cooperation, actors in both regions have repeatedly invoked the existence of regional identities, values and norms (Murray 2015, pp. 22–23). The notion of a European identity, based on a common cultural heritage and a commitment to individual rights, justified the launching of the integration process in Europe as well as concrete ideas for organizational reform (Schimmelfennig 2005; Wæver 2005). For example, the liberal-democratic values of EU member states have shaped debates over the admission or rejection of new members. In the same vein, Southeast Asian leaders frequently refer to the ASEAN Way as a mode of interstate cooperation informed by distinct regional norms. These observations are initial evidence that choices in the EU's and ASEAN's rules and procedures were made in the context of regionally specific social deep structures. The book explores this connection in-depth using a comparative framework and thereby provides a historically embedded account of the commonalities and differences in the two regions' institutional architectures.

ORGANIZATION OF THE BOOK

The book is divided into seven chapters. Chapter 2 fleshes out the analytical framework for the book. It briefly expounds the main tenets of the English School of IR and argues that its conceptual apparatus provides a more historically and sociologically informed picture of regional organizations than existing approaches in Comparative Regionalism. The framework specifies the mechanisms by which normative arguing is linked to primary and secondary institutions, and discusses their implications for institutional stability and change. The central idea is that while feedback effects stabilize institutional configurations, tensions between primary institutions or external shocks can induce innovative institutionalization practices that change the pathways of regional organizations at

critical junctures. As the chapter shows, this approach strengthens the explanatory power of Comparative Regionalism not only by producing original narratives of organizational pathways but also by specifying the scope conditions of existing theoretical accounts.

Using this framework, the subsequent chapters turn to the empirical study of the EU, ASEAN and their respective predecessors. They do not provide an exhaustive historiography of regionalism in Europe and Southeast Asia. Such comprehensive accounts are already available (Dinan 2004; Milward 1992; Tarling 2001) and I do not aspire to match their historical detail. Instead, the analysis uses historical evidence from a comparative perspective to make a convincing case for the theoretical proposition that normative arguing shapes the pathways of regional organizations. Chapter 3 sets the scene for this examination by reconstructing the increasingly powerful challenges to colonialism in Europe and Southeast Asia from the early twentieth century onwards, which provided the normative groundwork for regionalism. Beginning a study of the EU and ASEAN in the late 1920s might seem unusual, but the early starting point drives home the argument that the foundation of both organizations was closely connected to the regional ramifications of global decolonization processes. It thus carves out the significance of the successes of decolonization, but also the dysfunctionalities and ongoing normative tensions resulting from it, for the subsequent institutional developments in both regions.

Against this background, Chapter 4 traces the normative discourses surrounding the founding of the EC and ASEAN as the first central episode of institutional innovation. Regional boundaries and the relations between intra- and extra-regional actors were central themes of these initial institution-building discourses. Efforts to come to terms with the lasting influence of colonialism are tangible in both cases, resulting in normative tensions and contestation that complicated the establishment of regional organizations. In Europe, tensions between integrationist and nationalist conceptions of imperialism shaped initial debates on regional organizations after the Second World War. This conflict crystallized in diverging visions for the European Communities' relations with African countries on the level of secondary institutions. In Southeast Asia, a broad agreement among the governments of the newly independent states emerged to institutionalize principles of non-intervention and peaceful dispute settlement on the level of primary institutions.

However, the divergent strategic interests between states with security ties to former colonial powers and strictly non-aligned governments impeded a stronger normative consensus regarding the external relations of regional states. This problem significantly shaped the early years of Southeast Asian regionalism and inscribed an institutional compromise in ASEAN that would have a long-lasting influence on its future trajectory.

Chapter 5 accounts for the different pathways of the EU and ASEAN in legal integration by examining how actors drew on existing regional norms or constructed new ones to oppose or promote legal integration. In Europe, the Maastricht Treaty of 1992 with its rules for EU citizenship marked one of the biggest leaps in integration in the organization's history. The chapter provides a narrative that sees these provisions as the culmination point of a process that started in the 1960s, in which pro-integration actors managed to forge powerful interest coalitions and exploit tensions between regional primary institutions drove changes on the level of primary and secondary institutions. Despite this activism, the institutionalization of European citizenship rules remained incomplete, paying tribute to persistent tensions between the region's primary institutions. In Southeast Asia, the adoption of the ASEAN Charter was a key integration milestone for the regional organization, but like Maastricht in the EU case, it fell short of many expectations. Due to the resilience of the region's 'pluralist' institutional configuration, there was hardly any momentum for legal integration. While pro-integration actors pushed for reform on the grounds of economic, strategic and functional arguments, they lacked normative reference points in the region's primary institutions to undergird their claims.

Chapter 6 illuminates that the enlargement of both organizations was accompanied by the parallel construction of specific 'standards of membership', i.e. sets of primary institutions that served as discursive frames of reference for accession applications. It shows that neither the EU nor ASEAN initially disposed of clear membership requirements. Normative arguments about a more substantial standard of membership only ensued in response to concrete accession questions. In Europe, Greek and Spanish plans for joining the EU in the 1960s and the shock of the end of the Cold War caused heated discussions about the organization's boundaries. The creation of a complex graduated membership framework and the European Neighbourhood

Policy were an attempt to come to terms with persisting ambiguities in its standard of membership. Like the EU, ASEAN responded to new challenges with normative innovation and differentiating its membership regime. It introduced the prohibition of unconstitutional changes of government to its standard of membership in reaction to the impending accession of Cambodia, and reinterpreted its longstanding normative commitments against hegemonic encroachment and formal dispute settlement to launch strategic institutional outreach processes like the ASEAN Regional Forum (ARF). The contested and sometimes muddled institutional responses in both regions attest the immense difficulty of translating an ambiguous context of regional primary institutions into a clear-cut accession regime.

Finally, Chapter 7 summarizes the findings and discusses the book's theoretical contributions to the study of regional organizations and IR more generally. The comparative approach demonstrates that structural as well as agential factors shape organizational pathways. While organizational stability and change is path dependent and shaped by the context of regional foundational norms, primary institutional configurations are always ambiguous and how they translate into organizational forms depends on agency in the form of normative arguing. At critical junctures in history, political actors can draw on tensions and shocks to introduce changes that have a massive influence on organizational pathways. Therefore, the connection between primary and secondary institutions is not linear and causally determined but complex and contingent. Against the background of these conditions for regional institution building, the sometimes erratic and contradictory development of regionalism in the EU, ASEAN and elsewhere appears in a new light. The Conclusion argues that we need to moderate our expectations regarding the functional effectiveness of regional organizations and take a critical stance against any integration snobbery. The insights are also valuable for the discipline of IR more generally, as they unpack the significance of normative structure and discursive agency for organizational stability and change and emphasize the role of norm ambiguity as a pervasive condition of institution building in world politics.

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CHAPTER 2

The Politics of Normative Arguing in Regional Organizations

The idea that differences between regional organizations are shaped by processes of normative arguing is inspired by a tradition of thinking about regions as international societies. The concept of international society is a cornerstone of the English School of IR, a theoretical strand that grew out of a double skepticism regarding the dominant scholarship at the time.¹ Its pioneers, including Hedley Bull, C. A. W. Manning and Martin Wight, rejected both the behaviorist methodology of mainstream IR and the (neo-)realist accounts of international relations as a more or less mechanical world where the interactions of states are determined either by human nature (Morgenthau 1948) or by the anarchical structure of the system (Waltz 1979). Instead, they combined insights from international legal theory and political thought to emphasize that despite the absence of supreme authority, international politics is an essentially social realm in which the pursuit of common interests is possible. The concept of international society thus points to the fact that state representatives ‘do’ international politics by consciously interpreting their environment and assigning meaning to their actions, and that this is done in an intersubjective process through which shared understandings

¹Comprehensive accounts of the intellectual history of the English School as a theoretical strand in IR have been given by Dunne (1998) as well as Linklater and Suganami (2006). For systematic introductions into the main concepts and topical theoretical debates, I recommend Buzan (2014) as well as Navari and Green (2014).

about rightful conduct emerge (Bull 1966b; Manning 1962; Wight 1977a).

Of course, this is a point made by many approaches in International Relations with a broadly constructivist or poststructuralist outlook. There is a great variety of concepts highlighting the importance of ideational factors for world politics, such as culture, epistemes, ideology and identity. Despite their intersubjective connotation, they are mostly used to grasp how individual international actors or groups interpret situations, form their interests and legitimate their actions (Adler 2005; Campbell 1992; Katzenstein 1996; Ruggie 1998). What sets the English School apart is its concern with the rules of the game of international politics as such and how they hang together. Its main contention is that the practices of international actors are shaped by fundamental norms encapsulated in international institutions. One of the English School's seminal works and still the main point of reference in this respect is Bull's 'The Anarchical Society' (1977), in which the author developed a catalogue of five institutions he believed to be representative of modern international society and critical in maintaining its order: the balance of power, international law, diplomacy, great powers and war. For English School authors, institutions of this kind are different from international organizations like the United Nations (UN) and issue-specific regimes like the Bretton Woods monetary system. Located in the deep structure of international society, they constitute actors, their interests and their interactions—hence the term *primary* institutions (Buzan 2004). For example, states only exist by virtue of the practice of mutual recognition that forms an integral part of the institution of diplomacy. As constitutive structures, international institutions are not necessarily the conscious creation of rational actors, as in liberal institutionalist approaches, but may develop over time through iterated practices and evolving mutual expectations (Hurrell 1993). However, unlike the implicit everyday knowledge contained in the *doxa* that are central to practice theory (Hopf 2010), the normative substance of primary institutions is not entirely habitual but frequently articulated and reflected by international actors such as diplomats and international theorists. Accordingly, the work of English School authors on international institutions concentrates on finding traces of their normative dimension and historical development in the discourse and practice of international politics.

In contrast to approaches focusing on other types of background ideas, the attention to fundamental norms enables the English School

to explore how institutions express changing ideas about international order and common purposes, but also how they legitimate authority and inequalities in international society to maintain this order. Acknowledging that regional organizations are built in an attempt to entrench such ideas on a regional scale allows researchers to make sense of the normative arguments that infuse their creation and reform. This makes the English School and its international society concept an instructive starting point for an inquiry into the historical pathways of regional organizations.

REGIONALISM AND INTERNATIONAL SOCIETY

Early on, English School authors realized that international society has an important geographical dimension. Wight (1977a) and Watson (1992) both analyzed historical cases of regional international societies. An underlying argument of these works was that international society presupposed a certain level of cultural affinity, which was more readily found among states in geographical proximity (Dore 1984). Buzan (1993, p. 344) later offered a different, more functionalist interpretation of the emergence of regional social spaces. He argued that ‘the logic of anarchy works more powerfully over shorter distances than longer ones’, which results in a stronger incentive for adjacent states to develop rules of interaction. Whether adhering to the cultural or the functional account, English School authors rejected both the realist skepticism that regions are merely the backyard of powerful hegemons and the neo-functionalist hypothesis that supranational organizations would catalyze a self-reinforcing process of regional integration. Instead, they studied the social foundations and the historical significance of regions. Bull and Watson’s edited volume on ‘The Expansion of International Society’ (1984) examines how the frontiers of Europe’s international society gradually came to encompass the whole world. The same narrative of shifting boundaries is at the core of the work by Stivachtis and others (Riemer and Stivachtis 2002; Stivachtis 2002; Stivachtis and Webber 2011) on the enlargement of the contemporary European international society.

However, regions are not only relevant as sources of the evolution of contemporary global international society. Researchers have also analyzed differences between coexisting global and sub-global structures and theorized how these layers relate to one another. Wight (1977b) and Watson (1992), for example, both interpreted international society

as consisting of two concentric circles, a European core bound by the cultural unity of Christianity and a universal society constituted by the moral unity of humankind. More recently, English School authors have rediscovered this idea of regional cores with a ‘thicker’ set of shared institutions within a ‘thinner’ global international society (Buzan 2004; Hurrell 2007; Stivachtis 2014), although without necessarily subscribing to Wight’s and Watson’s argument about cultural similarities as an integrating force. For example, Diez and others (Diez et al. 2011; Diez and Whitman 2002) argue that the European postwar international society has fundamentally surpassed the classical Bullian institutions that are still prevalent in the rest of the world.

The renewed attention to regions is producing an ever-growing body of studies of regional international societies and their specific characteristics (Buzan and Gonzalez-Pelaez 2009; Buzan and Zhang 2014; Karmazin et al. 2014; Narine 2006; Pourchot and Stivachtis 2014; Quayle 2013; Schouenborg 2013). Most of these studies are idiographic single-case studies but researchers have recently started to engage in cross-regional comparison (Costa Buranelli 2015). This is a welcome development since the unique English School perspective can help to fill some of the theoretical blind spots of the existing Comparative Regionalism literature. First, it can add a historical point of view, since most English School studies apply historiographic perspectives and methods of analysis (Bull 1966a; Navari 2009). Instead of looking for general laws of international politics, the English School reconstructs how ideas about international conduct and international institutions developed over time in an idiosyncratic, contingent nature. The underlying idea that the past is instructive for understanding the present is a claim that also underpins criticisms of contemporary Comparative Regionalism as historically uninformed (Beeson 2005; Fawcett 2015). Rather than understanding regional organizations as functions of *present* environmental conditions, such as a specific distribution of power, preferences, domestic coalitions and the like, an English School perspective draws attention to the historical ideational context within which they develop. In this view, power-political, domestic and functional factors may very well have an impact on the development of regional organizations but it is false to assume that the latter will adapt directly to change in the former.

Second, the English School can produce a more thorough theoretical account of the role of norms in Comparative Regionalism because

it acknowledges that international organizations are shaped by the normative deep structure of international society (Young 1996). For example, Foot (2014) argues that the persistence of the primary institutions of sovereignty and nationalism in East Asia limits the scope of regional cooperation.² Comparative Regionalism has acknowledged but not systematically explored this connection. Authors usually adopt a structuralist perspective, in which different organizational forms are a materialization of regional normative proclivities. Accordingly, Nesadurai and Khong (2007) link the longevity of the ASEAN Way to the persistent commitment to noninterference in Southeast Asia, and Domínguez (2007) explains stability and change in the regional organizations of Latin America with longstanding ‘international rules’, such as the honoring of inherited colonial boundaries, nonintervention and active dispute mediation. These accounts do not address the question how agency translates norms into organizational templates. From a methodological point of view, they border on the tautological, because if organizational features are an epiphenomenon or an expression of the underlying normative structure, then the latter cannot be used to *explain* the former. Checkel (2016, p. 574) thus rightly insists on the need to study the causal mechanisms that connect broader normative ideas to concrete organizational forms.

Using an English School approach, with its traditional focus on the role of statecraft as a morally conscious practice, makes a more nuanced view on the role of norms in the reproduction of differences between regional organizations possible. Regional actors create and change the rules and procedures of their organizations in a regionally specific context of primary institutions, which express ideas about rightful conduct between international actors. This conceptualization draws attention to the social mechanisms connecting the development of regional organizations to regionally specific norms. It highlights that processes of contestation and the mitigation of normative tensions are essential forces shaping organization-building processes.

This brings us to the third advantage, namely the English School’s acknowledgment that the normative deep structure of international societies is not necessarily consistent. Ambiguity can be present in the form of tensions, vagueness or contestation. In Southeast Asia, for

²For a collection of English School inspired articles on European organizations, see Stivachtis and Webber (2011).

example, the recent years have seen an increasing commitment to human rights principles, which implies the recognition of individual rights vis-à-vis the states of the region. At the same time, however, regional policymakers insist on the salience of undivided state sovereignty and noninterference in internal affairs. What is more, representatives of different ASEAN member states disagree over the substance of human rights as a regional principle. The more such contestation and normative tensions exist, the more problematic is the structural argument that regional organizations simply reflect the logic of the underlying normative framework because it cannot explain which aspects of the competing normative expectations are translated into organizational features and which are not. To do so, it is necessary to take a closer look at the processes through which such ambiguities are negotiated between the involved regional actors.

Tensions in international society are a recurring theme in many of the English School's core works—be it between general principles, such as 'pluralism' and 'solidarism' (Bull 1966c), 'international' and 'world society' (Linklater 1998) or order and justice (Bull 1977), or between the contents of specific primary institutions, such as sovereignty and human rights or humanitarian intervention (Vincent 1986; Wheeler 2000).³ Such contradictory patterns can be sources of friction and conflict but also drivers of change (Ahrens 2018; Buzan 2004, pp. 250–251; Knudsen 2018a). For example, Mayall (1990) analyzed how the emergence of nationalism created tensions with established ideas of international society, with the effect that some institutions (like dynasticism) dissolved, others (like war) underwent transformations and still others (like human rights) emerged. Beyond merely pointing to the importance of the normative context, English School theory also accounts for the causes and consequences of inconsistencies in this context.

Taken together, the historical orientation, the acknowledgment of the normative underpinnings of regional organizations and the

³The pluralism—solidarism distinction is a well-known heuristic in English School writing. It contrasts international societies with a thin set of institutions providing for the mere coexistence of states with those where states share substantial principles and norms for cooperation towards common goals. The terms of international and world society are used to distinguish between norms and institutions relating to sovereign states on the one hand and non-state actors, especially individuals, on the other (Buzan 2004, 2014).

emphasis on ambiguity can produce accounts of how regional organizations develop along divergent pathways within a ambiguous regional normative context. However, to draw on the full potential of the English School for the analysis of regionalism and regional organizations, an open question in its theoretical framework must be addressed. Scholars have only recently begun to systematically explore the status of secondary institutions in international society (Knudsen and Navari 2018). Traditionally, the English School has mainly concerned itself with ‘big picture’ accounts of primary institutions, seeing organizations and regimes as mere epiphenomena or as the object of regime theory. Buzan (2009, p. 43) deplores that ‘the division of labour [between students of primary and secondary institutions] has gone too far, with neither English School writers nor liberal institutionalists and regime theorists bothering to think about how the level of institutions that they study relates to the other’. By consequence, the English School approaches to regionalism have either neglected the role of regional organizations or remained vague about their role. Sometimes, organizations and regimes are depicted as ‘expressions’ or ‘reflections’ (Foot 2014; Pourchot 2011; Quayle 2013) of regional international society, or as ‘representing’ it (Stivachtis and Habegger 2011). In these accounts, regional primary institutions are usually fixed. However, some of these authors also indicate that secondary institutions can strengthen international society as socializing agencies or instruments for the diffusion of norms and values (Pourchot 2011; Stivachtis and Habegger 2011).

It thus remains an open question whether regional organizations should be studied as *indicators* of international society and its primary institutions or as *causal forces* influencing their shape. Both conceptions are intuitively plausible but confounding them within a single analysis bears the danger of tautological reasoning. Regional organizations cannot at the same time be explained by and used as an empirical marker of primary institutions. It is necessary to clarify the relationship to understand how change in primary institutions may affect secondary institutions and vice versa. Historically, primary institutions have not been static and one can expect that normative changes influence the shape of regional organizations. However, there is no linear logic leading from a primary institution to one specific secondary institution ‘reflecting’ it on an organizational level. While different regional organizations have endorsed the notion of human rights in principle, they have created a large variety of organizational instruments for their protection and promotion.

Not only is there usually more than one way in which a new norm can be translated into organizational forms—institutional tensions, contestation and the vague formulation of norms make the connection between primary and secondary institutions even less straightforward.

This book builds on the central idea that regional primary institutions and organizations are linked through the agency of regional actors who engage in politics of normative arguing. Discourses about appropriate forms of organizing regional politics are essential building blocks for a better understanding of the different organizational pathways of regionalism around the world. It thus connects the English School's concern for the deep structure of regional international societies with an account of how regional actors and their practices of normative arguing influence institutional developments. To analyze the historical pathways of regional organizations, a comprehensive theoretical account of how primary and secondary institutions relate and what social mechanisms connect them is necessary. The following section fleshes out such a framework.

REGIONAL PRIMARY AND SECONDARY INSTITUTIONS: A FRAMEWORK

A good way to mobilize the idea of primary and secondary institutions for an analysis of institutional change is to think of them as constitutive structures on two levels of social reality. Both are sets of discursively formulated and intersubjectively shared expectations about legitimate actorness and rightful conduct in international relations, but they are reproduced by different institutionalization practices.⁴ Primary institutions are general principles and norms of international conduct, which are institutionalized through unspecific, iterated discursive practices. These processes are not necessarily geared toward upholding specific ideas of rightful conduct but often emerge out of habitual ways of doing international relations (Finnemore and Sikkink 1998, p. 905). For example, although the institution of international law has gradually become more codified, it is still primarily a condensate of customary practices among nation-states. Primary institutions become the object of conscious reformulation only at critical points in institutional history.

⁴This idea is developed in detail in Spandler (2015).

Secondary institutions, meanwhile, are rules and procedures that result from conscious institution building through formalization, i.e. the making of explicit and more or less binding agreements. While these agreements can be bilateral, all regional organizations also build upon such secondary institutional frameworks.

For analytical purposes, this conceptualization implies that primary institutions display a low and secondary institutions a high degree of formalization. The main difference between fundamental institutions such as international law or the balance of power and specific organizations is thus not that the former are constitutive while the latter are merely regulative, as many authors have argued (Holsti 2004; Keohane 1988; Reus-Smit 1997; Searle 1995). At first glance, the constitutive-regulative distinction provides a convenient theoretical division of functions in which primary institutions condition the identities, interests and relations of international actors while secondary institutions regulate their behavior. However, its ontological assumptions have problematic methodological implications. While regulative rules have causal effects, constitutive rules affect structure by defining situations and are therefore subject to constitutive explanation. Therefore, the explanatory logic differs depending on what kinds of institutions are in question (Dessler 1989; Ruggie 1998; Wendt 1998) and it becomes impossible to study the mechanisms through which they are connected. For the purpose of this book, a conceptualization that acknowledges that primary and secondary institutions are both constitutive in their own way is methodologically more appropriate.

As intersubjective sets of expectations, both types of institutions organize meaning in a systematic way and thus have structuring effects on the reality of international relations. However, they do so in different ways. Primary institutions are constitutive by defining who can count as an actor, how such actorhood is acquired and the basic nature of the relations between those actors. Besides states, primary institutions can also endow non-state actors and regional organizations with actor quality, as in the case of Europe, where the institution of ‘pooled sovereignty’ has empowered the EU institutions while challenging the role of member states (Diez et al. 2011). Apart from shaping its basic composition, primary institutions can also define the scope of an international society, and change in primary institutions can lead to expansion or contraction of established societies, or the emergence of new ones. This will become clear in Chapter 6 on the enlargement of the EU and ASEAN.

Primary institutions also influence the basic interests of actors (cf. Wendt 1999, pp. 122–125) and, more fundamentally, the kind of rationality actors pursue (Kratochwil 1993, pp. 75–76). They can encourage utility maximization or behavior that is more in line with a logic of appropriateness, although usually elements of both will be present in an international society.

Through these mechanisms, primary institutions shape the context within which the secondary institutions of regional organizations are institutionalized. At the same time, these more specific rules and procedures are also constitutive because actors acknowledge that their identity as a member of the international community depends on accepting them (Hurrell 1993). Secondary institutions are constitutive in that they ascribe differentiated roles to actors and enable them to engage in specific forms of interaction that would not be possible without the existence of those institutions (Onuf 2002, p. 224; Wendt and Duvall 1989, p. 61). As an obvious example, membership in international organizations has a profound impact on who counts as a legitimate actor in an international society. It can signal the political relevance of a state or organization, as in the case of the EU's eagerness to take part in fora such as the G20 and the East Asia Summit, the rehabilitation of former pariahs, as in the accession of Myanmar to ASEAN and even the status as an actor as such, as in the case of Palestine's struggle for formal representation in the UN framework. Secondary institutions affect members' relations by constituting hierarchies, rights and duties. They are also constitutive by distributing material resources, defining preference structures and sanctioning behavior with a wide range of instruments, including 'shaming', conditionality and formal jurisdiction (Stivachtis and Habegger 2011). Think of the disciplining power of the Copenhagen Criteria, through which the EU imposes accession criteria and thus determines the conditions of membership in the international society. In sum, secondary institutions define to a considerable extent and in more detail than primary ones the identities, interests and capabilities of the actors, and thus open up possibilities for meaningful interaction.

Drawing together these assumptions provides for a two-level structurationist schema, in which regional international practices are constituted by—but at the same time also the source of—primary and secondary

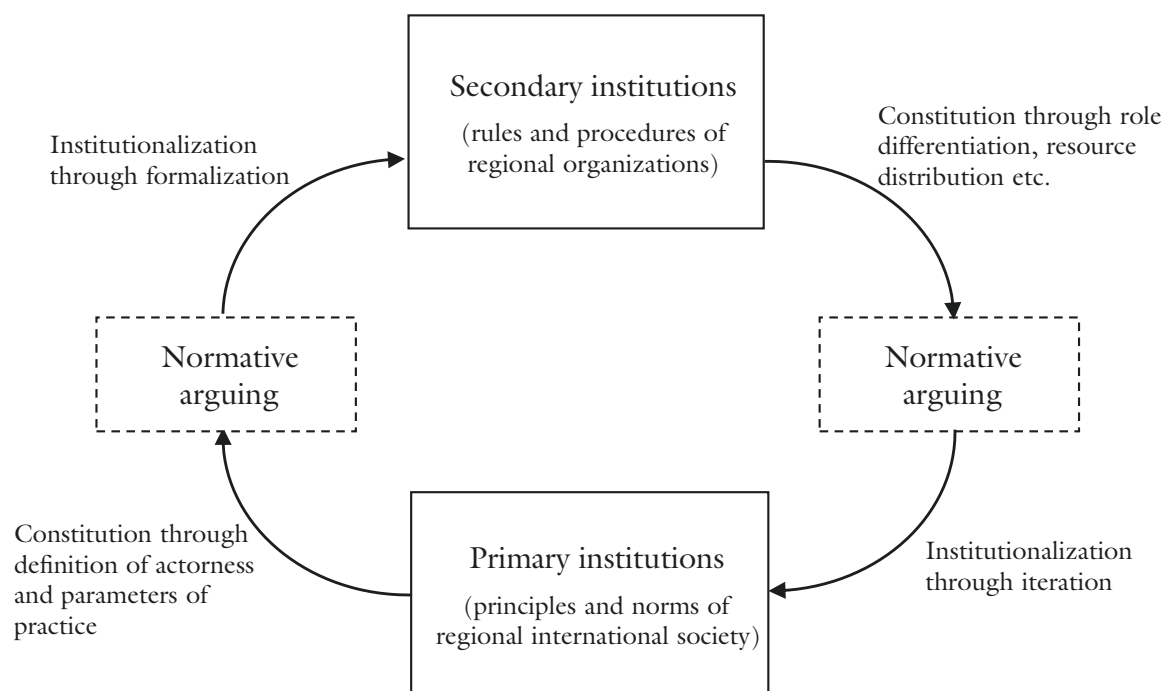


Fig. 2.1 The reproduction of primary and secondary institutions

institutions.⁵ How does this help understand the divergent pathways of regional organizations? When politicians engage in discourses over the institutionalization of new secondary institutions for regional organizations, they do so in a constitutive context of primary institutions. Regardless of whether they promote or oppose organizational innovation, they must do so from within the limits of the existing discourse. They can acknowledge the validity of existing primary institutions by claiming that their position or demand is appropriate when judged against their standards of legitimacy, or try to push the boundaries of the discourse by challenging the principles and norms of the underlying primary institutions. Other actors can acknowledge those claims or oppose them. These discursive struggles are the politics of normative arguing which are so central for the development of regional organizations (Fig. 2.1).

The concept of normative arguing builds on a strand of constructivist IR scholarship that emphasizes the role of reasoned discourse in world politics. The arguing literature opposes rationalist accounts

⁵Structurationist ontology emphasizes that social reality is reproduced through the mutual constitution of structure and agency, and is not to be confused with structuralism (Giddens 1984).

of international negotiations because of their reductionist attribution of outcomes to constellations of power, interests and strategies. At the same time, it also criticizes conventional norm research for its structuralist focus on norm-following behavior. Instead, it proposes that studying the processes in which actors seek common understandings, justify their actions and attempt to persuade others of their ideas is central for understanding decision-making as well as normative and organizational change (Crawford 2002; Deitelhoff 2009; Risse 2000). Initially, some authors have suggested distinguishing arguing from rhetorical action. Whereas the former is supposedly based on collective truth-seeking and requires that actors are ready to be convinced by the better argument, the latter comprises cases where norms are invoked for strategic purposes (Risse 2000; Schimmelfennig 2001). However, others have shown that determining empirically whether arguing is consensus-oriented or interest-based is hard if not impossible (Deitelhoff and Müller 2005; Krebs and Jackson 2007). Instead of fixating on the motivations of speakers, it is more productive to study arguing as *any* discursive practice that is characterized by reason-giving. Normative arguing, then, is a variant of such practices that relies on norms as reasons (cf. Crawford 2002).

This conceptualization makes arguing compatible with the English School's middle-way approach of understanding regional international societies as spheres of common understanding on the one hand and arenas for political power games on the other. Actors put their arguments in normative terms irrespective of which of the two aspects dominates their thinking in concrete instances. At the same time, the notion of primary institutions makes it possible to explore and problematize the social and historical basis of normative arguing. Constructivists studying arguing point out that a shared cultural context is essential for the intersubjective construction of meanings. This 'common lifeworld' also influences which arguments resonate with audiences and which do not (Bjola and Kornprobst 2011). However, they have a hard time pinning down the substance of this context, both theoretically and in concrete empirical cases. In the framework developed above, the cultural context for normative arguments about the secondary institutionalization of regional organizations is provided by the primary institutions of the regional international society. The norms they encapsulate can be invoked to justify arguments about organizational innovation and provide standards against which the legitimacy of such arguments can be judged.

However, the English School approach of this book concedes that primary institutions are often conflicting and ambiguous, and always open to change. It thus asserts the existence of a common lifeworld in world politics without overstating its thickness and homogeneity, and makes sense of the fact that normative arguments usually result in partial agreement and ongoing contestation, rather than permanent consensus (Wiener 2011).

ORGANIZATIONAL STABILITY AND CHANGE

The notion of normative arguing implies that regional actors do not chose the design of regional organizations in a social vacuum but in a constitutive context of existing institutions. Combined, the mechanisms of constitution and institutionalization tend to have reproductive consequences (Wendt 1999, pp. 186–187) because they give rise to what historical institutionalism calls positive feedback effects, which lead to path dependence in institutional development. A concept popularized by historical institutionalism (Pierson 2004), path dependence means that institutional change is possible but always conditioned by previous institutional choices. Rather than explaining organizational differences entirely through present formations of power, interest and identity, as much of the existing Comparative Regionalism literature does, such a view directs attention to the social context and the mechanisms that have shaped the distinctive pathways of regional organizations through time.⁶ In the structurationist framework presented above, positive feedback is a combined effect of the reproductive mechanisms of constitution and institutionalization. Primary and secondary institutions constitute institutionalization practices that reinforce the existing configuration. This feedback can materialize in different dimensions:

⁶A brief overview of the main factors identified by the existing Comparative Regionalism literature follows below. Those Comparative Regionalists who do adopt the concept of path dependence usually use it in a generic way to emphasize institutional inertia. They neglect that it can also lead to conditional change and tend to overemphasize similarities between old and new institutions—e.g., ASEAN and the ASEAN Regional Forum (Acharya 1997, 2001; Nesadurai and Khong 2007). Such conceptualizations either neglect evidence of change at critical junctures altogether or at least provide unsatisfactory accounts of what happens at these junctures. If path dependence leads to stability almost all the time, why does change suddenly become possible at certain moments?

Power effects. Even though processes of arguing about international organizations are characterized by permanent contestation (Schmidt 2010, p. 15; Wiener 2008), these debates are usually not ideal Habermasian discourses of equal opportunity, where the better argument will carry the day. All international societies are to some degree hierarchical (Keene 2014). Institutions have an impact on actors' abilities to participate in the process of their reproduction because they identify certain actors as legitimate and authoritative while others are ascribed a subordinate position or denied actorhood altogether. By structuring the access to institutionalization discourses, institutions tend to increase the influence of those who benefit most from the existing configuration. Once established, the institutions therefore reflect the interests of these privileged groups and reproduce the power relations that produced them in the first place. Both rationalist and constructivist authors have noted the power effects of international institutions (Adler 1997, pp. 336–340; Kratochwil 1993, p. 72; Pierson 2004, pp. 36–40; Thelen 1999; Wendt 1999, p. 331). Post-structuralist authors are even more attentive to the connection between discourse and power (Foucault 1980). However, the concept of power effects employed here is not about discourse *as a form of power*, but about *power in discourse*, namely the differential ability to influence debates about regional organizations and the stabilizing consequences for institutional configurations. Government officials can back their discursive authority with the symbolic authority of being elected as representatives of their state, as well as the physical force of a security apparatus. Both forms of influence are unavailable to non-state actors. In addition, language barriers and parochial political loyalties seriously complicate attempts to establish an influential transnational public. Even where such a realm, however rudimentary, exists, only those who possess the necessary resources, infrastructure and credibility will have a voice in the normative arguments, and states often still work as gatekeepers deciding about the level of access to decisive discursive fora (Price 2003, pp. 586–595). The history of normative arguing about regional organizations is also highly gendered, in the sense that an overwhelming majority of the political elite that had access to the relevant discursive arenas were middle-aged and senior male policy-makers.⁷

⁷ Blanchard (2011) provides a powerful critique of the English School's traditional failure to recognize the gendered nature of international society.

Reification. Second, institutions may assume a taken-for-granted status. Reification is a process of constructing intersubjective meaning with seemingly essential qualities that stabilizes institutional orders (Hall and Taylor 1996, p. 940; Wendt 1999, pp. 326–336). Historical international societies often expressed a putative natural or even divine order—think of the self-understanding of China as the Middle Kingdom in its imperial era and that of the Roman Church in pre-Westphalian times—or as a stage in a teleological process—an argument that served to justify Soviet imperialism during the Cold War. The contingency of such constructions often only becomes obvious with the benefit of hindsight. Their significance with respect to institutions is that they can be invoked to legitimate norms and rules. For example, the *topoi* of the ‘Free World’ and the ‘West’ naturalized the boundaries of Cold War organizations such as NATO. This is not to suggest that any institutional configuration has ever been accepted as given by everyone living in it. However, high degrees of reification make it difficult for those challenging an institutional configuration to draw on generally accepted concepts to claim legitimacy, or even invoke a common identity as a basis for action against established institutions. Indigenous anti-colonial movements had a hard time establishing claims for national self-determination because the concept of a ‘nation’ was originally reserved for the ‘civilized’ Western part of the world. This naturalization of racial difference made it hard for the colonized population to be heard (Anghie 1991), and consequently stabilized colonial primary and secondary institutions.

Vested interests. Third, actors find it expedient to play by established rules because they benefit from compliant behavior and because unilaterally defying expectations is costly (Bicchieri 1990). Vested interests created through the continuous (re)distribution of resources shift preference structures toward rule-consistent behavior and inhibit institutional change. Benefits from compliance may include material profit. Coordination effects, adaptive expectations and high start-up costs make it inexpedient to seek alternatives to existing institutional frameworks (Krasner 1989, pp. 87–88; Pierson 2004, p. 33). However, actors may also expect an increase in legitimacy and status, as when newly independent polities strive for recognition as sovereign states. Such ambitions do not only reinforce the primary institution of sovereignty but also the role of international organizations as embodiments of the international community and as providers of legitimacy and status by means of accession.

Institutional linkages. Mutually reinforcing relations between primary and secondary institutions of this sort lead to a fourth source of institutional feedback. Many expectations about actors and their behavior expressed by different institutions in an international society are compatible. For example, the primary institutions of diplomacy and international law both traditionally reinforce the privileged status of nation-states in international society. Changing the constitutive structures of one would therefore require the parallel adaption of the other if excessive tensions in the overall institutional set-up are to be avoided (Crawford 2002, p. 110). One of the reasons why the recognition of regional organizations as actors in international diplomatic fora is advancing so slowly is that it not only changes the primary institution of diplomacy but also raises follow-up questions in international law. Krasner (1989, p. 78) has introduced the term of ‘horizontal linkages’ to explain the persistence of a coherent set of institutions. The less tensions between different primary institutions exist, the stronger such linkages are. However, there are also ‘vertical linkages’ between primary and secondary institutions. Since primary institutions form a constitutive context for the institutionalization of secondary institutions, the latter must not blatantly violate the expectations constituted by the former (Knudsen 2018b; Young 1996). This effect limits the prospects for change in secondary institutions. In contrast to what functional and rational-choice accounts suggest, secondary institutions hardly ever adapt optimally to functional demands or coordination problems (Koslowski and Kratochwil 1995, p. 138) because primary institutions limit the range of included actors and what counts as a legitimate attempt at institutional reform. Vice versa, primary institutions are unlikely to change drastically as long as the secondary constitutive context does not change. As the literature on norm socialization has pointed out, secondary institution building can be an attempt to ‘lock in’ certain norms and principles because challenges to those primary institutions can be delegitimated as a violation of formal arrangements and codified law (Friedner Parrat 2017).

Taking path dependence seriously means that an institutional configuration will be relatively stable once the reproductive mechanisms are operating. Of course, poststructuralists rightly argue that meaning is never entirely fixed and permanently subverted through ongoing discourse (Laclau and Mouffe 2001). Nevertheless, beyond mere shifts in nuances, significant change depends on the ability of discursive actors to engage in new institutionalization practices that offset the feedback effects.

Under certain circumstances, they can claim increased authority, problematize apparently natural conditions, change preference structures and/or weaken institutional linkages. Those defending the status quo must then react by reasserting their own authority, justifying previously taken-for-granted ideas, considering the redistribution of resources and/or re-establishing institutional linkages, for example by invoking one institution to legitimate another. If these countermeasures fail, changed institutionalization practices will prevail.

Some of the conditions that can induce such transformative practices are endogenous to the institutional configuration itself while others are external. *Endogenously*, tensions between institutions, i.e. situations where different institutions prescribe mutually exclusive ways of behavior, are conducive to effective contestation (Zald 1996). Tensions can occur between institutions on the same level, for example between sovereignty and human rights, or between primary and secondary institutions, when the rules of an international organization are out of tune with the broader normative fabric of international society. For example, critics of the UN Security Council sometimes argue that it reflects an outdated notion of great power management. The more such tensions are exposed, the weaker horizontal and vertical linkages become. Up to a certain point, inconsistencies can be tolerated or suppressed in institutional arrangements, and it is likely that they are an intrinsic characteristic of any international society, as Buzan (2014, p. 169) implies when he speaks of the ‘perennial and permanently necessary discussion of how order and justice relate to each other in an ever changing global system’. Therefore, institutional inconsistencies will not automatically prompt adaption. However, they are a potential point of attack since discursive actors can point to contradictions to contest the legitimacy of certain institutions (Wendt 1999, p. 188). If such strategies succeed, the reform or transformation of existent institutions or, in extreme cases, their dissolution and the creation of new ones become likely. For example, sovereignty continues to be the main primary institution in global international society but, over the last two decades, it has come to depend on the ability of a government to protect the basic human rights of its own population. As enabling conditions, inconsistencies between institutions can thus provide additional momentum for change after initial shifts in the institutional set-up have occurred.

Transformative practices can also be catalyzed by *exogenous* shocks. These are events that disrupt or offset the feedback effects of institutional reproduction practices (Thelen 1999). Shocks can (a) change the relative power position of actors, (b) disturb reification by fundamentally altering established patterns of meaning production and lead to what Adler (1991) has called ‘cognitive evolution’, (c) alter the preference structures in a way that is not consistent with the logic of the existing institutional configuration, or (d) weaken institutional linkages by exposing previously latent tensions. Major wars, economic crises, fundamental power shifts and contacts between previously isolated international societies are likely candidates for such shocks. For regional international societies, changes on the global level of international society need to be considered as well. The events must not necessarily be punctual and sudden but can also take the form of longer-term processes, such as globalization. The relevant feature of a shock is not its abruptness but the fact that it initially occurs outside of the institutional logic of constitution and institutionalization.

As scholars of social movements have noted, the discursive representation of tensions and shocks create contexts in which private beliefs and grievances can be mobilized and actionable, and innovative ideas obtain sufficient space for their realization (Zald 1996). Actors supporting organizational innovation can then delegitimize existing primary or secondary institutions by describing them as outdated, contradictory or dysfunctional in light of certain events, and promote their ideas as timely and better equipped to address certain problems. In this way, they create ‘critical junctures’, at which practices promoting alternative meanings and institutional forms have better chances to succeed in the normative arguments than during ‘normal’ times, until the feedback effects begin stabilizing the institutions again and they largely follow the adopted path (Krasner 1984, 1989; Mahoney 2000; Pierson 2004). This does not mean that a shock will *necessarily* lead to change. However, for a moment of heightened contingency, possibilities for the adaption or dissolution of old institutions or for the emergence of new ones open up. The temporary openness is not simply a result of institutions releasing their regulative constraints on actors so that the latter obtain more freedom of action. Rather, since institutions are constitutive, critical junctures see the emergence of meanings that provide legitimacy to new kinds of actors and forms of practice that were previously not considered as justifiable, or not considered possible at all.

The purpose of highlighting the transformative potential of shocks such as wars, power shifts etc. is not to introduce material causation into an essentially ideational perspective. Of course, these kinds of events rely on material foundations such as spaces and objects. However, shocks do not result in a simple adaption to a changed external context. Like institutional tensions, they become socially relevant only in processes of normative arguing, where actors interpret them in the context of existing intersubjectively shared and institutionalized frames of meaning (Crawford 2002, pp. 76–77; Guzzini 2012). Consequently, agency is a crucial element because the possibility of change and the direction it will take depend on the ability of actors to claim new sources of authority and effectively mobilize discourses that challenge or defend the existing institutions (Schmidt 2010). The transformative potential of tensions and shocks lie in the fact that references to them make possible powerful objections to dominant discourses. If these dominant discourses cannot accommodate these challenges and fail to justify their own validity, windows of opportunity for the institutionalization of alternative meanings open (cf. Capoccia and Kelemen 2007; Thelen 1999). External shocks and tensions can also reinforce each other, as historical events sometimes enable contesting actors to highlight existing ideational contradictions or even construct new ones (Zald 1996). For example, institutional contradictions of the colonial order were already conceivable in the interwar period but only came to fully play out and lead to a transformation of international society when the Second World War weakened the old European imperial powers (Bull 1984, p. 224). The analysis of the development of the EU and ASEAN contains further examples where shocks catalyzed change of institutional configurations that had already been destabilized by inconsistencies between institutions.

THEORETICAL BENEFITS

A framework based on the politics of normative arguing sees the institutionalization of regional organizations as a discursive practice taking place in the context of primary institutions. From this perspective, regions are at the same time international societies with institutions that express normative understandings about international conduct and common purposes, and a political sphere in which different actors contest these understandings to justify organizational innovations, but also to assert and defend their

own power. This framework does not propose any causal hypotheses relating to general laws but offers a template for understanding the significance of normative arguing for differences between regional organizations. In methodological terms, it pursues what Wendt has called ‘constitutive explanation’, where a phenomenon is made intelligible by reference to the discursive structures and mechanisms ‘by virtue of which it exists’ (Wendt 1998, p. 105). Instead of making deterministic claims, it focuses on the way in which existing normative frames favored the positions of some actors over others in the normative arguments about regional organizations. By analyzing the relation between endogenous structures (primary and secondary institutions), exogenous influences (shocks) and discursive practices (normative arguing), such a mechanism-based inquiry connects the macro-perspective of institutional patterns with a micro-perspective of agency (cf. Bennett and Checkel 2015).

The benefits of studying regional organizations in this way are not purely analytical, in the sense that it offers a more sophisticated theoretical template for thinking about the connection between norms and regional organizations. It also produces empirical accounts that buttress the explanatory power of Comparative Regionalism. The prevalence of middle-range theorizing in the current literature makes it hard to define these advantages in general terms. Unlike earlier research on regional integration, Comparative Regionalism is not characterized by the opposition of grand theories like intergovernmentalism and neo-functionalism. While these traditions are still influential, most studies nowadays focus on individual policy fields and exhibit a certain degree of theoretical pluralism (Börzel and Risse 2016). Despite this diversity, there are some recurring patterns. Virtually all work in the field relies on one of the following factors and mechanisms, or a combination of them: power and interests, functional demands, norms and institutional history and diffusion. This literature has vastly enhanced our understanding of regionalism, but each of the explanatory approaches also has significant blind spots. The following—necessarily brief—survey shows how an analysis based on normative arguing around primary and secondary institutions makes it possible to address several of the open questions with which the field is struggling. Instead of rejecting these accounts altogether, the book *qualifies* them by specifying the normative scope conditions under which they apply, and thus enhances the overall explanatory power of Comparative Regionalism.

Power and interests. Many authors argue that the preferences of hegemonic states (Beeson 2005; Katzenstein 2005) or influential domestic groups and government elites (Jetschke and Katada 2016; Solingen 2008; Söderbaum 2004) have a decisive influence on the shape and policies of regional organizations. However, the history of regionalism is replete with cases in which regional organizations served the interests of ostensibly small or weak states, which defies arguments about the dominating role of hegemons (Acharya 2007). These approaches also have a hard time explaining why states sometimes inadvertently lose control over regional organizations to supranational actors. Seeing regions as international societies characterized by normative arguing helps understand these limitations by highlighting that negotiations about organizational innovation are hardly ever struggles of brute force in which the position backed by superior material force inevitably carries the day. Power is important, but it is bound to normative justification. To push through their interests, actors need to legitimate them by reference to the normative content of regional primary institutions. If such reference points are missing, this will weaken the discursive position even of powerful actors.

Functional demands. Governance approaches argue that addressing policy issues through formal and informal cooperation on the inter- and transnational level may hold advantages over state-based solutions. Regions with a high level of economic or other forms of interdependence will therefore develop stronger regional organizations (Kanthak 2012; McCall Smith 2000). Like interest and power-based explanations, functional arguments work better in some parts of the world than others (Börzel 2016; Lenz and Marks 2016). One of the main puzzles is why the relatively high level of economic interdependence in Asia has not translated to higher levels of integration (Jetschke and Katada 2016). The framework accounts for this shortcoming by arguing that functionalism is not an automatic causal mechanism but rather a mode of reasoning in processes of normative arguing. Whether demand for regional governance leads to a supply of regional institutions depends among other things on the respective context of regional primary institutions. Functional arguments resonate better if they can invoke principles and norms that emphasize economic liberalism and qualify national sovereignty. Where such a legitimating context is missing, it is easier for guardians of state authority to dismiss functional reasoning.

Norms and institutional history. Constructivist and historical institutionalist perspectives rightly point out that ideational factors and deeply rooted institutional traditions shape regional organizations (Checkel 2016; Duina 2006; Hemmer and Katzenstein 2002; Moxon-Browne 2015). In this view, differences between organizations exist because they develop within distinct regional communities. However, existing constructivist approaches in Comparative Regionalism struggle to account for long-term institutional pathways because of their overly structuralist concept of norms. They often presuppose the existence of regional communities as fixed entities and see regional organizations as epiphenomena instead of acknowledging that, from a historical perspective, community norms and organizations are codeveloping because they are *both* political constructs. The structuralist perspective also obfuscates the role of norm contestation—more often than not, organizational dynamics are driven by arguments over, rather than a putative consensus about the meanings of norms (Acharya 2009; Wiener 2008). The framework of this book acknowledges the role of the normative context for the pathways of regional organizations, but highlights the role of agency by focusing on the processes of normative arguing linking primary and secondary institutions. Whether and how change on one institutional level translates to the other can only be answered by empirical historical analysis. The approach also acknowledges contestation by relating it to the competing legitimacy standards constituted by contradictory or ambiguous primary institutions.

Diffusion. Some approaches see the development of regional organizations mainly as a consequence of the spread of institutional models from one region to another or the adoption of a global ‘script’ of regional governance (Börzel and van Hüllen 2015; Jetschke 2017). Authors working under this paradigm have developed sophisticated models of the different mechanisms by which this can occur, such as material incentives, persuasion and the prospects of gaining international legitimacy (Risse 2016). However, they have also had to acknowledge that diffusion has not resulted in a unified model of regionalism, that institutional templates are usually localized according to preexisting cognitive frames and that there are varying levels of resistance to diffusion (Acharya 2009, 2016; Jetschke 2009). While they are struggling to explain why some regions are more reluctant to follow the global script than others and to account for the regional preconditions of localization, a framework of normative arguing points to the role of primary

institutional dynamics. On the one hand, the primary institutions of the ‘receiving’ region may limit the scope for legitimate change in secondary institutions by means of diffusion. On the other hand, the ‘sending’ region may itself be host to conflicting primary institutions that complicate the promotion of institutional models abroad (Ahrens and Diez 2015). In some cases, the diffusion mechanisms might be strong enough to override these internal or external limitations. However, in such cases, horizontal tensions or a vertical disconnect between primary and secondary institutions are likely to impinge on the legitimacy of the institutional configuration and result in volatile organizations.

ANALYTICAL APPROACH AND METHODS

The following chapters flesh out these theoretical benefits with regard to existing perspectives on three key processes in the development of most regional organizations around the globe: their foundation, legal integration and enlargement. They track change in ASEAN and the EU in thematically circumscribed areas, rather than providing an all-encompassing historical account of their institutional evolution during a certain period. The three episodes are not discrete stages of regionalism. Legal integration occurred before, after and in parallel to enlargement, and central conflicts in the organizations’ founding moments lingered on during their later development. Accordingly, the temporal scope of the chapters partially overlaps. Chapters 4 to 6 focus on key developments in the formal framework of the regional organizations and then traces the institutionalization practices as well as the normative discourses leading up to them (Table 2.1). Before that, however, Chapter 3 sets the scene for the subsequent developments as it analyzes the processes of decolonization upon which European and Southeast Asian actors would later build their regional organizations. As Chapter 4 shows, these processes had important ramifications for the foundational rules of the EC and ASEAN, especially regarding relations with outside states. Chapter 5 analyzes the relocation of legal authority in the EU’s citizenship rules of the Maastricht Treaty and the reform of dispute settlement mechanisms in the ASEAN Charter, while Chapter 6 reconstructs central instances of organizational enlargement and differentiation.

Each chapter starts by briefly reviewing existing accounts of the specific focus area in the Comparative Regionalism literature. The subsequent empirical case narratives reconstruct the processes of normative

Table 2.1 Key formalization events in the EC/EU and ASEAN

<i>Dimensions of change</i>	<i>Key events EC/EU</i>	<i>Key events ASEAN</i>
Founding	Establishment of the Association framework in the European Economic Community (1957)	Establishment of foreign policy rules in the Bangkok Declaration (1967)
Legal integration	Establishment of citizenship rules in the Maastricht Treaty (1992)	Formalization of dispute settlement mechanisms in the ASEAN Charter (2007)
Enlargement	Eastern Enlargement and launch of European Neighbourhood Policy (2004–2007)	Creation of ASEAN Regional Forum and accession by ‘CLMV’ states ^a (1994–1999)

^aThe acronym represents the four states of Cambodia, Myanmar, Laos and Vietnam, which joined ASEAN in the late 1990s

arguing and institutional change. In line with the broadly interpretative methodological tradition of the English School (Butterfield and Wight 1966; Navari 2009), they look for traces of these processes in historical sources. The relevant texts were identified by using official documents produced at the respective key formalization events as the starting point and then conducting archival research and relying on intertextual references in primary and secondary sources—English School writings, international historiographies etc.—to find related material (Hansen 2006). Most of the texts are products of official discourse in the sense that their authors have some kind of legal international authority, such as heads of state and government, foreign ministers and senior officials in international organizations. They include documents of varying formality, ranging from speeches and declarations to court decisions and legal agreements. However, the study also considers texts by other actors who engaged with the official discourse, such as policy advisors or leaders of social movements, because they often provide crucial insights into the broader dynamics of hegemonic stabilization and contestation.

The chapters track the positions of these different actors in the discourses about the secondary institutions of regional organizations, and relate them to the context of primary institutional dynamics by mapping the norms these actors invoke to legitimate their positions. Since the conceptual distinction between primary and secondary institutions is based on the degree of formality, the analysis classifies statements invoking nonbinding and unspecific expectations about international conduct

as referring to primary institutions and those that have as their central subject the binding codification of specific expectations as referring to secondary institutions. The explicit formulation of expectations is not always necessary for the discursive reproduction of a primary institution. Political actors may use concepts that are understood as representing a set of norms by an audience familiar with the broader discourse. For example, in Europe, the notion of a ‘legitimacy deficit’ implicitly invokes the idea that regional actors should be subject to principles of democratic representation as well as norms of accountability, transparency and participation. Accordingly, an interpretive analysis recognizes references to a perceived legitimacy deficit as evidence for the primary institution of liberal democracy. As with all interpretive research, constructing primary institutions from disparate textual data is an analytical task that inevitably involves a degree of subjective judgment. To minimize conceptual bias, the analysis combines inductive and deductive elements. Using existing functional heuristics⁸ and findings about historical primary institutions as starting points and ‘sensitizing concepts’ but triangulating them with an original analysis of central sources keeps the analysis theoretically focused but at the same time empirically grounded.⁹

The first part of each case narrative describes the initial configuration of the primary and secondary institutions, concentrating on those that are functionally related to the focal issue of the chapter. Chapter 3 concentrates on those institutions that express expectations about membership and relations between the core and the periphery. Chapter 4 focuses on relations with external states, Chapter 5 on legal authority and the sanctity of agreements, Chapter 6 on membership and regional boundaries.

⁸Functional conceptualizations of primary institutions are common in the English School (Bull 1977; Buzan 2004, pp. 186–190; Schouenborg 2017). The underlying assumption is that any international society has to address a set of general issues such as membership, the sanctity of agreements and the use of force. For some, these functions explain the emergence of international institutions in the first place (Bull 1977). Others, myself included, merely use them as heuristic categories to drive empirical investigation into which primary institutions address the functions in different international societies (Buzan 2014, p. 175; Schouenborg 2014, p. 84).

⁹As such, the book takes up Wilson’s (2012) call for a methodologically rigid analysis of international society. However, it does not adopt his radically inductive approach because he leaves open the question how researchers can make sense of a large amount of historical data without any pre-empirical concept-building guiding their search for primary institutions.

This part also gauges the strength of the four feedback effects in concrete cases. The intensity of power effects is indicated by the degree of an international society's 'stratification' (Keene 2014), expressed through privileged access to the main institutionalization processes for a limited number of authoritative actors. The more restricted the central fora for official diplomatic deliberation and the more asymmetrical decision-making—indicated for example by voting procedures and the number of veto players—the stronger are these power effects. Evidence for reification is, almost by definition, hard to find because it concerns latent, taken-for-granted structures. The analysis deals with this problem by treating the absence of legitimacy discourses surrounding norms as an indication for a high degree of reification. Vice versa, decreasing reification is marked by an increasing tendency to legitimate or delegitimize institutions explicitly. For example, the growing recourse of European governments to notions of development to justify asymmetrical relations with the former colonies attests the problematization of previously reified colonial structures. Vested interests in an institutional configuration are inferred from the general distribution of material and nonmaterial benefits generated by it, as well as actors' own statements about their interests.¹⁰ If those benefiting the most are also the ones with privileged access to institutionalization practices, then the feedback effects are strong. Finally, analyzing institutional linkages requires comparing the constitutive logic of the primary and secondary institutions of the initial configuration, both horizontally (among institutions on each of the levels) and vertically (between primary and secondary institutions). Are all the institutions consistent with regard to the actors and the practices they identify as legitimate? Or are there conflicting expectations in the sense that a specific action can be judged as legitimate or illegitimate, depending on which institution's standard is applied? The more such inconsistencies exist, the weaker are institutional linkages and the more vulnerable to contestation is the institutional configuration.

The second part of the case narratives then explains institutional stability and change by reconstructing the normative arguments for and

¹⁰Realists might argue that such statements cannot be taken at face value because actors might lie to deceive other actors. However, such behavior is most likely to occur in very specific situations that approximate non-iterated zero-sum games. There is no reason to assume that lying about interests is pervasive in the iterated and legitimacy-oriented discourses of normative arguing, where actors depend much more on long-term credibility.

against organizational innovation and their impact on institutional change. It examines to what extent and how shocks and institutional tensions enabled challenges to the existing institutional configuration. To this end, it pays particular attention to the justification of delegitimizing claims. If oppositional actors mainly refer to a discrete event to question the legitimacy of an institution and make change appear desirable, this indicates exogenous, shock-induced change. A shock can be sudden or take the form of longer-term processes—its defining characteristic is that it is not an intrinsic feature of the institutional configuration itself. Shock-induced normative arguments can represent an event as proof that the expectations of an existing institution are outdated or dysfunctional, or promote new institutions as timely or better equipped to fulfill certain functions. By contrast, arguments focusing on relations between institutions indicate that oppositional actors capitalized on weak institutional linkages. This can take the form of exposing contradictory expectations between the principles and norms of different primary institutions, demonstrating that existing secondary institutions contradict the principles and norms of primary institutions, or arguing that the region lacks secondary institutions to put a newly established primary institution into practice.

Because the practice of normative arguing connects primary and secondary institutions, and changes on one level can catalyze change on the other, the analysis pays close attention to the dynamic interplay of the primary-secondary relation. To this end, it draws on LeGreco and Tracy's (2009) notion of discourse tracing—although without employing discourse analysis in a strictly Foucauldian, critical sense.¹¹ Combining elements of process tracing and its focus on social mechanisms with methods that reconstruct the gradual institutionalization of normative claims out of discursive struggles, this approach emphasizes the chronological sequence of discursive interventions on different levels of abstraction. Whereas the gradual formalization of new rules and procedures is a clear measure of change on the secondary level, change in primary institutions is by nature more diffuse and difficult to determine. However, the scholarship on norm advocacy indicates that the acceptance of

¹¹In contrast to my empirical-analytical approach focusing on social mechanisms, conventional discourse analysis is primarily concerned with discourse as a form of power in itself, with the essential instability of meanings and with the representational aspect of theory (Fairclough 2003; Milliken 1999).

emergent norms by critical actors is a central threshold for normative change and signals changed legitimacy standards in a group of international actors (Finnemore and Sikkink 1998). Crucial indicators for such a ‘tipping point’ in primary institutionalization are points in time when a large number of political actors with a high level of formal authority, such as heads of states and government, adopt normative arguments previously used by other actors. Putting the framework to work in this way, the chapters offer narratives of organizational stability and change in ASEAN and the EU that give the politics of normative arguing pride of place.

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CHAPTER 3

Decolonization: Setting the Stage for Regionalism

The organizational roots of the EU and ASEAN lie in the 1950s and 1960s. In 1951, the Treaty of Paris established the European Coal and Steel Community (ECSC). Plans for a European Defence Community (EDC) formed in 1952 but were buried after their rejection by the French National Assembly. In 1957, representatives of the six founding members of the ECSC¹ signed the Treaties of Rome, which created the European Atomic Energy Community (Euratom) and the European Economic Community (EEC). Taken together, the ECSC, Euratom and the EEC formed the European Communities (EC), the forerunner of today's EU.

In Southeast Asia, several early attempts at fostering interstate cooperation failed. The Southeast Asian Treaty Organization (SEATO) was founded in 1954 under US leadership as a kind of complement to NATO but quickly fell into obscurity. In 1961, the governments of Malaya,² the Philippines and Thailand formed Association of Southeast Asia (ASA), which remained equally insignificant and short-lived. In reaction to this failure, Malaysia, the Philippines and Indonesia launched several agreements under the heading of Maphilindo in 1963, but

¹These were Belgium, France, the Federal Republic of Germany, Italy, Luxembourg and the Netherlands.

²Malaya was the name of the federation that existed on the Malay Peninsula until the formation of the state of Malaysia in 1963.

the cooperation dismantled only weeks after its inception due to the policy of *konfrontasi* (confrontation) adopted by the Indonesian government against its Malaysian neighbor. Attempts at forming a regional organization finally gained traction after the resolution of the conflict in 1967, as the Foreign Ministers of Indonesia, Malaysia, the Philippines, Singapore and Thailand convened to sign the Bangkok Declaration establishing ASEAN.

Some authors in the field of Comparative Regionalism have realized that historical origins are important sources for the differences between European and Asian regionalism today. However, their research mostly focuses on the regional repercussions of the global Cold War and superpower influence (Beeson 2005; Hemmer and Katzenstein 2002; Katzenstein 2005).³ Choosing an earlier point of departure, this chapter emphasizes a different aspect of historical legacy. It shows that the foundation of the EC and ASEAN was deeply intertwined with the institutional transformation of the global international society in the course of decolonization. The fact that the discourses about how to organize relations between regional states in both Europe and Southeast Asia emerged at a time when the normative foundations of colonialism unraveled strongly and lastingly influenced their contents.

The normative arguments surrounding decolonization therefore set the scene for the regional organizations' diverging trajectories until today, which is why they are the center of attention in this chapter. The first section outlines the main relevant primary institutions characterizing the global colonial international society of the late nineteenth and early twentieth centuries. The subsequent parts reconstruct how discursive contestation resulted in the incremental demise of those institutions and made the emergence of distinct regional international societies possible. Although decolonization was of course a global phenomenon stretching across two centuries, the relevant discourses for the development of the EU and ASEAN are those that took place in the two regions roughly from the 1920s to the late 1950s.

³A rare exception is Domínguez's (2007) study of how colonial legacies such as imperial territorial boundaries were converted into norms between independent countries in Latin America, and how the Organization of American States (OAS) reflects these norms.

THE INSTITUTIONS OF THE COLONIAL INTERNATIONAL SOCIETY

In the period from around 1870 to the Second World War, neither Southeast Asian nor genuinely European international societies existed as separate entities. Colonialism pulled territories from vastly distant geographical spaces together into a single international society of virtually global reach. In fact, Southeast Asia as a regional concept was not in common use prior to the establishment of the Allied South East Asia Command in 1943 (Emmerson 1984). There were other geographical notions that partially overlapped with the region as it is understood today, such as the Indies, East Indies, Further India or the Malay Archipelago. However, these concepts represented the colonial possessions of individual Western states, and therefore constituted territorial claims rather than a coherent regional identity, let alone regionally specific institutions. Regarding Europe, there definitely existed a regional concept and possibly even a collective identity. But by the late 1800s, European states had become so engaged globally—both in their relations with new global actors such as the United States and Japan, and through their imperial undertakings—that it hardly makes sense to speak of Europe as an insular regional international society at that time. The global international society was not one of sovereign equal states but a highly stratified one (Keene 2014).⁴ Its institutions constituted a structure of concentric circles, with a small core of sovereign (mostly European) states and a large periphery of dependent and semi-dependent polities (Bull 1984a, pp. 124–125; Buzan and Little 2000, p. 337). Those institutions were shared globally in the sense of being accepted as valid and consequential by actors both in the core and in the periphery. Of course, force was an important means through which the core ensured this acceptance.

Three primary institutions were central in constituting the stratified nature of the colonial international society. The first was a graduated conception of sovereignty, which differs significantly from the classical Westphalian and realist ideal of sovereignty as absolute and indivisible. In principle, the state was the paramount source of legitimate force in international relations, both externally and internally. However, sovereignty was not an absolute and natural right of all political communities but

⁴The idea that international societies are not necessarily made up of like units but can also be hierarchical or differentiated in other ways has been advanced most prominently by Keene (2002), Watson (1992) and Wight (1977).

seen in direct relation to their civilizational advancement (Gong 1984b). For this reason, it applied differently in the core and the periphery of the colonial international society. In the ‘civilized’ core, sovereign equality based on practices of mutual recognition was the norm. In the periphery, and this included virtually all of Southeast Asia,⁵ imperial states could penetrate local authority to varying degrees by establishing protectorates and colonies. In these territories, governmental authority was often not centralized but divided between local rulers and an imperial administration that held far-reaching prerogatives, especially concerning foreign policy. The legitimating idea underlying such practices of graduated and mixed sovereignty was the notion of trusteeship, which the League of Nations institutionalized in its Mandate System (see below). Trusteeship meant that a ‘civilized’ state could assume governing powers over a peripheral territory until the development or civilizational advancement of its population enabled the latter to execute self-government (Crawford 2002; Louis 1984). Whether and when this paternalistic relationship would expire was determined by the ‘standard of civilization’, a set of preconditions any polity needed to fulfill before the established core members would consider granting membership as an autonomous actor in international society (Anghie 2005; Gong 1984b). While it was created initially by European states to control the extension of their community of sovereign equal states, the standard of civilization—and with it the primary institution graduated sovereignty—was subsequently recognized by all non-European states that aspired to fulfill it to achieve or maintain independence (Gong 1984a), as Siam successfully did in Southeast Asia.

Second, and closely related to this graduated notion of sovereignty, was the primary institution of an imperial concert. The concert was essentially an extension of Bull’s (1977) institution of great power management into the periphery of the colonial international society, since it asserted the dominant role of a few powers that accepted each other as sovereign equals while claiming supremacy in the periphery. The dominance of this colonial core was partially based on informal coordination and mutual restraint. A central moment of the institutionalization of the imperial concert was the Berlin Conference in 1884 and 1885, which established norms and principles such as that of ‘effective occupation’,

⁵The only polity whose independence European states acknowledged at least formally was the Kingdom of Siam.

according to which colonial claims had to be supported by actual territorial control (Hansen and Jonsson 2014, pp. 33–34). Tacit or explicit agreements on spheres of influence and neutral ‘buffer states’ were characteristic elements of imperial concert. For example, the Anglo-French Declaration of 1896 and the Entente Cordiale of 1904 designated the Siamese Menam Basin as a neutral zone while dividing other parts of the Kingdom into British and French spheres of influence (Goldman 1972). Here and elsewhere, the great powers not only expected one another to respect the spheres of influence but also that the local authorities in one power’s sphere of influence do not hold relations with other major powers (Puchala and Hopkins 1983, p. 68). Hence, the special role of empires deeply affected the logic of territoriality in international society. Whereas in the core, boundaries and international relations were based on the principle of nationality (see below), in the periphery, they were neither national nor regional but based on the colonial interests and power relations of the empires (Acharya 2012, pp. 80–82; Tarling 2001, pp. 91–92). This imperial ordering of space precluded the emergence of regional international societies in the colonized world.

Third, sovereignty was tied to the primary institution of nationalism and its main principle, national self-determination. Nationalism expresses the idea that the execution of governmental authority in the international realm must be bound to the will of a nation, i.e. a group of people with a collective identity that is socially constructed to varying degrees upon notions of shared culture, history and ethnicity (Mayall 1990). National self-determination implied that any claim to membership in international society must be based on an implicit or explicit popular will. It thus constituted nation-states as the basic units of international society. In theory, national self-determination applied to all peoples, but in practice, it was conditional and restricted to the core. Indigenous populations of colonies and protectorates did not usually assume the status of citizens of the imperial state, although they did so formally in the case of France. In general, imperial administrations were not obliged to apply the same principles regarding nationality to them as to their home population, not least because it would have blurred the distinction between the ‘civilized’ and the ‘non-civilized’.⁶ By consequence, despite the

⁶Article 29 of the Convention on Certain Questions Relating to the Conflict of Nationality Law, which sought among others to eradicate statelessness, leaves the applicability of the agreement in colonies and protectorates to the discretion of the signatory states (see also Société des Nations 1922, pp. 88–89).

universal nature of the principle of self-determination, the factual distribution of individual rights was unequal, which further cemented the stratified structure of the colonial international society.

The principles and norms of other primary institutions exhibited similar inequalities. For example, international law at that time was dual in nature, meaning that its applicability was dependent on the recognition as a sovereign state (Anghie 2005, pp. 53–54). The principle of peaceful dispute settlement reserved the right to use force in conflicts to exceptional cases of self-defense, but conferred this right only to those actors enjoying full status as a member of international society, i.e. independent nation-states. It goes without saying that the core perceived militant anti-colonial struggle as illegitimate. In addition, the primary institution of diplomacy limited the access of representatives of the periphery to the circles of authoritative communication, as well as the ability to establish diplomatic contacts among themselves (see Satow 1922, pp. 190–191). However, the asymmetries in these institutions are derivative in that they largely reflect the stratified nature of the primary institutions of sovereignty, imperial concert and nationalism.

A dense web of multilateral arrangements and bilateral treaties supported and was supported by these primary institutions on the level of secondary institutions. It suffices to point out some general features of this framework to illustrate that they mirrored closely the stratifying constitutive effects of graduated sovereignty, imperial concert and nationalism. The multilateral dimension is represented, on the one hand, by the League of Nations. Although only created after the First World War and ill-fated, it most visibly embodies the structure of the colonial international society. This is most obvious in the League's Mandates System, according to which member states could assume authority over foreign communities formerly under German or Ottoman rule. The Mandates System established more reformist legitimacy standards that opposed colonialism in its earlier, more blatantly exploitative form (Crawford 2002), but it also provided an international legitimating framework for continued colonial administration. Besides the League, a network of multilateral conventions underpinned the imperial concert. Some of them installed mechanisms of collective security, such as the Locarno Pact, while others, such as the Naval Treaties of Washington, specified goals of disarmament. Both types reflect the rejection of raw balance-of-power politics in favor of a coordinated self-restraint among the major powers. The same logic applies to the agreements that aimed at preserving a particular territorial

status quo in the periphery. The Four-Power Treaty between France, Japan, the UK and the US, which was concluded at the same conference as the Naval Treaties and in which the parties mutually acknowledged their claims to imperial possessions in the Pacific for the sake of preserving peace (*Four-Power Treaty* 1921, Preamble), is a good example.

There was also a plethora of bilateral treaties between members of international society. It is, of course, impossible to provide even a general overview of their contents. However, two general patterns are obvious. First, the core of major powers was a hub of the treaty system. Actors from the periphery often had contractual relations with only one European state, while European states concluded treaties with a large number of other actors from the core and the periphery (Keene 2014). Some of the core-to-core treaties delineated the boundaries of imperial control in the periphery, such as the Anglo-French Entente Cordiale or the Franco-Italian Agreement of 1935, both of which determined spheres of influence in African territories. Second, while the treaties among the core states were generally based on notions of reciprocity, European states drew on the tradition of unequal treaties in their dealings with the periphery. The most common examples are treaties granting extra-territorial jurisdiction to Western powers in semi-sovereign states. Under these agreements, people from the core obtained religious freedoms but also immunities and exemption from taxation. Although criticism against unequal treaties mounted in the first half of the twentieth century, they were still common and international law kept recognizing the validity of treaties concluded under duress (Satow 1922, pp. 251–328; Stivachtis 2014, p. 115).

Taken together, these primary and secondary institutions constituted a global international society characterized by a high degree of stratification and virtually global scope. The institutional configuration of colonialism was far from monolithic. There was an increasing social mobility, as states could move from the core to the periphery by fulfilling the standard of civilization. A full account should also not ignore the momentum of resistance that manifested in early, dispersed anti-colonial uprisings like the Indian Rebellion of 1857, the Can Vuong Movement in Vietnam in the 1880s and the Chinese Boxer Rebellion of 1899–1901. However, the principal structural logic of global extension and strong stratification remained remarkably stable from the 1870s to the First World War, a period the historian Eric Hobsbawm (1987)

so aptly described as the Age of Empire. Even beyond that, in the troubled interwar period that saw the crisis and eventual demise of the League of Nations, colonial institutions did not immediately collapse. This relative stability can be attributed to the reproductive effects of the structurationist processes of constitution and institutionalization.

The framework presented in the previous chapter identifies four important feedback effects that can stabilize configurations of primary and secondary institutions: power effects, reification, vested interests and institutional linkages. All of these undergirded the colonial international society up until the interwar period to some extent. Power effects were obviously very strong because a small community of influential state representatives created the primary and secondary institutions. Until 1945, a core of mainly Western state representatives and international lawyers virtually monopolized the discourse on international conduct (Bull 1984b, p. 217). They were in charge at important moments of institutionalization, such as the Berlin Conference of 1884–1885 or the Paris Peace Conference of 1919. In Paris, the ‘Five Great Powers’ represented in the Supreme Council of the allied victors, namely the US, the UK, France, Italy, and Japan, dismantled the Austro-Hungarian and Ottoman empires.⁷ Of course, they ensured at the same time that their own imperial interests beyond Europe were kept. Although the core of fully sovereign states was growing, a large part of the non-Western world still had limited or no access at all to the conference (Mishra 2013, pp. 192–200). This concentration of decision-making was also enshrined in the Council of the League of Nations, of which all major allied powers except the United States were permanent members.⁸ The Council could for example define the degree of colonial control in the Mandate System and appointed the experts working on the codification of nationality principles in international law (League of Nations 1927). Power effects also surrounded the unequal treaties on the secondary institutional level, which the imperial party could easily enforce as it disposed over superior military power. In addition, the

⁷Some accounts of the events ascribe the leading role merely to the Council of the ‘Big Four’ Western powers, but Satow (1922, p. 190) notes that a Japanese member was included in the proceedings of the Council.

⁸The permanent members were the UK, France, Italy and Japan. The US was not a member of the League because Congress refused to ratify the Versailles Treaty establishing the League.

colonial powers could suppress resistance by means of policing such as para-military forces, penal and convict labor systems.

Adding to these power effects, a discourse tying the right to self-determination to purported civilizational advancement reified colonial institutions. It deprived non-Western independence movements of a potentially powerful basis for legitimate authority. Of course, as pointed out above, nationalist or proto-nationalist resistance to colonialism is as old as colonialism itself, going back at least to the American and Haitian revolutions in the late eighteenth Century. However, in the *international* discourse, the idea of colonialism as a natural state of affairs, in which the colonized could only become legitimate actors by sanction of the West, was still prominent around 1900. Notable cracks in this picture appeared in Asia when the Russian defeat in the war against Japan in 1905 debunked the myth of the seemingly invincible West and sparked hopes for independence (Mishra 2013). Anti-imperial agents grew assertive and demanded recognition for their peoples, thus denaturalizing the stratified order of international society. This nascent nationalism was to become the basis of the international anti-colonial discourse that emerged in the 1920s. Because the Paris Peace Conference frustrated all hopes of those who had believed in the Wilsonian rhetoric of liberal internationalism, it was often channeled into radical ideologies. Chi Minh Ho's turn to socialism after trying in vain to meet with Wilson in Paris epitomizes this disillusionment with Western hegemonic ideas (Petersson 2017).

Third, elites shared vested interests in upholding colonial institutions. While this is obvious for the core, which benefited from economic exploitation, the preferences of local leaders in the periphery often aligned with those of the core states. From the *collaborateurs* in French Cochinchina⁹ to the Anglo-Burmese and Indian officials in Burma, a cooperative local bureaucracy—usually actively recruited by the colonial power—executed administrative tasks and thus helped in upholding the institutions of colonial rule in exchange for receiving a privileged status within the system and for being protected from challenges by rival groups or ethnic or religious violence (Anderson and Killingray 1991; Benda 1965).

Finally, some institutional linkages existed both between primary institutions, and between primary and secondary level. The notions of graduated sovereignty and imperial concert certainly reinforced each another. However, a fundamental tension existed between them and the primary

⁹Cochinchina was the name of a French colony (1862–1954) in what is today Southern Vietnam.

institution of nationalism because their constitutive logics are ultimately irreconcilable. While graduated sovereignty and imperialism enabled governments of the core to restrict self-government in the periphery, nationalism bound the right to exert authority to the will of local political communities through the principle of national self-determination. Anti-colonial actors would draw on this tension as a source to legitimate their calls for a demise of the stratified institutions of the colonial international society (Mayall 1990).

There are also linkages between primary institutions and individual secondary institutions of the League of Nations. For example, the League's Covenant explicitly allowed dominions and colonies to become members, thereby effectively legitimating their existence and perpetuating the colonial division and subversion of sovereignty. It is also instructive to look at the exact wording of the Mandates System, which confers the right to govern other territories 'in the name of the League' (cf. Société des Nations 1921, p. 5). This is to say that the League, represented by the Council powers, and not the respective population legitimated foreign rule. The language in these administrative rules thus reflects the limited applicability of self-determination. The type of mandate, and consequently the degree to which outside powers could penetrate sovereignty in the periphery, was classified into three categories according, among other criteria, to the 'stage of the development of the people' (League of Nations 1919, Art. 24). The Mandate System emphasized that the ultimate goal was to lead the mandates into independence but did not define a set period for its achievement. In fact, even among the 'Class A' mandates of more 'advanced' peoples, only Iraq was able to achieve independence by the time of the outbreak of the Second World War (Anghie 2005; Springhall 2001, p. 23). The ostensible long-term objective of leading colonies into independence is evidence that the League founders were aware of the fundamental contradictions between the colonial primary institutions and the principle of national self-determination, and may even have sensed the waning legitimacy of imperialism (Mayall 1990, p. 47). More immediately, however, the Mandate System's rules and procedures had the effect of enabling continued practices of graduated sovereignty. Similar institutional linkages to the institutions of graduated sovereignty and imperial concert existed also in secondary institutions beyond the League. For example, the formal rules regarding security cooperation of the Four-Power

Treaty are connected to an assertion of the major powers' claims to imperial territorial control in the periphery. According to the preamble, the Treaty's powers acted 'with a view to the preservation of the general peace and the maintenance of their rights in relation to their insular possessions and insular dominions in the region of the Pacific Ocean' (*Four-Power Treaty* 1921).

DISMANTLING IMPERIALISM

The preceding account shows that there were significant positive feedback effects in the mechanisms surrounding the reproduction of primary and secondary institutions in the colonial international society. At the same time, it reveals some limits to these effects, such as institutional tensions and dispersed attempts to question the reified nature of colonial order. The First World War was a first shock that catalyzed a more substantial and broad-based critique. However, anti-colonial actors only managed to dismantle the global international institutions of colonialism in the wake of the Second World War. Some historians have depicted decolonization as a process driven mainly by the imperial powers themselves, spurred by changing cost-benefit estimates that made overseas possessions appear as economic or geostrategic liabilities (Darwin 1991; Springhall 2001, pp. 13–17). While such considerations may have had a profound effect on colonial policies in some imperial capitals, they did not affect the broad international acceptance of colonial practices, at least up until the initial years after the Second World War. Rationalist accounts focusing on the imperial core overstate the degree of control on the part of the colonizers while ignoring how normative agency contributed to changed legitimacy standards in international society (Crawford 2002). Decisive impulses came from within the colonies themselves. Pro-active and deliberate renunciations of colonialism were decidedly not a dominant part of the discourse in Europe, and strictly anti-imperialist positions remained marginalized until at least the late 1950s. By contrast, powerful discursive challenges to the colonialist institutions of graduated sovereignty and the concert of empires in the periphery mobilized resistance to colonial practices at least from the 1920s onwards.

Despite important alliances with Western political groups, the most consequential normative arguments in favor of decolonization originated from anti-colonial mass movements in the dependent territories

in Southeast Asia. While these were of a diverse nature and drew on different epigones and intellectual forerunners (Kohn and McBride 2011; Mishra 2013), there were three main currents: Islamic reform movements such as the Sarekat Islam in what were then the Dutch East Indies (Indonesia), nationalist movements such as the Dong Du in the Vietnamese part of Indochina and the socialist parties springing up in nearly all the colonial dependencies of the European powers. These anti-colonial movements managed to lay the groundwork for a discourse subverting the legitimacy of the existing institutional configuration of international society. Some of these movements, especially the socialist variant, represented explicitly transnational identities. The Congress of the Conference of the League Against Imperialism in 1927, organized by the Communist International, was a point where individual anti-colonial struggles coalesced and became consolidated on a global level (Petersson 2017). It included delegations from Indonesia, Indochina and the Philippines. However, while socialists shared an ‘internationalist’ rhetoric, national independence was the paramount goal for their movements (see e.g., Indochinese Communist Party 1998). Their organizational structures formed within the patterns of territoriality set by the colonial powers, and their political goals had mostly national reference points. Anti-colonial discourses thus did not primarily concern themselves with international society in its entirety but with local manifestations of an international order. Lenin’s (1977a) works on imperialism and colonialism provided the ideological justification for this amalgamation of nationalist and socialist thought, which later found its manifestation in united liberation fronts including communists, the bourgeoisie and even the monarchy, as for example in the Vietnamese struggle for independence. In the context of the weak positional power of anti-colonial actors and the lack of a transnational infrastructure, such temporal alliances were very well justifiable.

In Europe, anti-colonial normative arguments were decidedly less pronounced at that time. With the exception of some anti-imperialist and pacifist movements, most notably the Communist International, a broad imperial consensus pervaded the political landscape of the major European states. This included Germany, which had lost its dependencies following the First World War but made efforts to reinstate its colonial claims during the Weimar Republic, for example through the Deutsche

Kolonialgesellschaft (Hansen and Jonsson 2014, pp. 44–45). Even the Socialist International did not take a clear anti-imperialist stance at that time (Ho 1998). If political actors did challenge the colonial system, it was with the geopolitical aim of perfecting political control through new means of governance and optimizing access to resources, rather than abandoning it (Crawford 2002). The first pan-European transnational advocacy groups connected this colonial reformism to the idea of European integration. The most vocal of these movements was Richard Coudenhove-Kalergi's Paneuropean Union, which in its call for a European Union included the vision of a joint management of Europe's colonies, especially in Africa, for both economic and geopolitical reasons (Coudenhove-Kalergi 1924). The Federalist Union in the UK put forth similar ideas (Müller 2001).

By suggesting to replace individual empires with colonial control in a common European framework, these actors fundamentally reinterpreted the primary institution of imperial concert, but did not call into question the graduated notion of sovereignty. The Paneuropean idea and the closely related concept of 'Eurafrica' gained considerable support in diplomatic circles between the World Wars. However, it was opposed by a dominant discourse of national imperialism in the metropolitan governments (Hansen and Jonsson 2014, pp. 55–56), especially in the UK. The British government had a strong preference for developing its relations with the dominions and colonies within the Commonwealth framework, rather than in a joint European project. In sum, the field of normative arguing of the interwar period in Europe was characterized by three main strands: a small faction promoting leftist anti-imperialism, integrationist reformists, and defenders of the established institutions of national imperialism.

The political demands of anti-colonial movements were obviously manifold but often focused on concrete practices shaped by secondary institutions that they perceived as unjust. For example, Vietnamese socialist leader Chi Minh Ho focused his critique of colonialism on the exploitative working conditions and repressive legal systems in his homeland. Despite this local focus, anti-colonialists in both Europe and Southeast Asia tried to legitimate their claims by pointing to tensions in the primary institutions of international society. The most powerful of these discursive strategies was emphasizing the contradiction between

nationalism and other institutions of international society. Communist anti-colonialism took its cue from Lenin's (1977b) writings, who argued that practices based on the primary institutions of graduated sovereignty and the imperial concert unjustly prevented national self-determination outside the capitalist core. From this perspective, the colonial powers' self-representation as champions of human rights and self-rule were hypocritical considering their continued imperialist policies in Southeast Asia, which violated the political rights of its population and led to perpetual underdevelopment (League Against Imperialism 1927). An example is Burmese leader Aung San's (2010) scathing rejection of the constitution that the British had granted Burma upon its separation from India in 1937. To him, the constitution paid lip service to democratic principles but conferred 'dictatorial powers upon the Governor who comes from a land eight thousand miles away'. He concluded: 'Burma is still unfree. And yet our imperialist rulers have the cheek to declare that they are for democracy'. In response to this perceived hypocrisy, the peoples of the periphery should turn the institution of national self-determination against its inventors (Kohn and McBride 2011, pp. 21–22). As the Manifesto of the League Against Imperialism (1927) reads: 'In their inexcusable struggle against each other the imperialist powers were themselves forced to announce the solution of self-determination. The oppressed, enslaved peoples took the Imperialists at their word [...]'. Since human rights and democracy are principles linked to nationalism and self-determination (Mayall 1990), this appears as another example of how anti-colonial actors highlighted tensions in the institutional configuration to make the case for institutional change.

For anti-colonialists, the political logic of the imperial concert also revealed the internal contradictions of the stratified international society. The League Against Imperialism (1927) argued that

[t]he world-war and its consequences clearly showed [...] that imperialist colonial capitalism, and capitalism in general was its own grave-digger. The explosion of the world war not only revealed the amazing internal dissensions [sic!] by which capitalist society was torn, but millions of men had to lose their lives in the attempt to adjust and smooth over these dissensions.

In this view, the First World War had unveiled the destructive nature of imperialism and delegitimated the major powers' claims that their domination was a way of guaranteeing peace, wealth and stability.

From the perspective of the socialist movements, this collapse was closely connected to the logic of capitalist production exported to the dependent territories. However, even for those critics not subscribing to left-wing anti-imperialism, the war had thrown the limitations of the West's supremacy into sharp relief. It comes as no surprise, then, that Chi Minh Ho (1961) called the League of Nations the 'general staff' of imperialism.

THE SECOND WORLD WAR AND ITS IMPACT ON FEEDBACK EFFECTS

Despite this increasingly vocal opposition, the feedback effects outlined above seriously limited its impact. This is particularly true for political activists in Southeast Asia. Mobilization capacities were limited by a lack of material resources and low levels of literacy, but also by censorship and physical repression. The Dutch administration cracked down on the revolt initiated by the Partai Komunis Indonesia in the late 1920s and Sukarno's nationalist movement in 1933, while the British crushed the Saya San rebellion in Burma in 1930. The movements' leaders often faced exile or imprisonment (Springhall 2001, pp. 27–28). What is more, as most political entities were products of a colonial logic of territoriality, not all anti-colonial movements could draw on a mobilizing narrative of a historical national collective to support their claims to self-determination by appealing to the primary institution of nationalism.

The Second World War fundamentally disrupted these stabilizing conditions. First, it weakened power effects by perfecting the ascendance of two declaredly anti-imperialist superpowers (Puchala and Hopkins 1983, p. 73). The United States in particular put pressure on apologists of colonial institutions in Western Europe, using Marshall Aid assistance as a bargaining chip. It also acted as a champion of sovereign equality by pushing for an inclusion of the principle of national self-determination in the Atlantic Charter and the UN Charter, and condemning the Dutch repression of Indonesian independence movements in the infamous 'Police Actions' (Garavini 2012, pp. 9–10). Most European governments endorsed American efforts to establish a new global order in principle and quickly acceded to the UN, although their attitudes toward its emphasis on sovereign equality remained lukewarm (Crawford 2002, pp. 294–301; Springhall 2001).

However, in an immediate sense, the Second World War also disrupted power effects by radically altering the distribution of positional power from the colonial metropolises to the actors in the periphery. Starting with the invasion of Indochina in 1940, Japanese forces had occupied almost all of Southeast Asia during the war. The Japanese war-time administration of the occupied countries had supported nationalist political activity, although within narrow confines and mainly as an anti-Allied instrument (Christie 1998, p. 88). When the Japanese retreated in 1945, some of these movements quickly filled the ensuing political vacuum. A section of the broad nationalist front movements could draw on a massive surge in authority virtually overnight. Starting in Southeast Asia and spreading to other regions, the wartime events allowed nationalist liberation movements to occupy the political center stage. The anti-colonial uprisings that drew European colonial powers into conflicts in Indochina, Algeria, Egypt and elsewhere were in large measure aftershocks of the catalyzing war events.

The war also accelerated the deconstruction of reified colonial institutions by putting the atrocities of imperialist powers on display. Rather than appearing as the natural order of things, the expansion of German forces in Europe and Japanese occupiers in Southeast Asia highlighted the deeply inhumane character and potentially catastrophic consequences of foreign dominance. In Europe, the shared experience of wartime resistance to fascism and occupation delegitimated nationalism, racism and imperialism, at least in its most aggressive variants (Kahler 1984; Springhall 2001, p. 29). In Southeast Asia, those arguing for decolonization could debunk the myth of Western empires as benign protectors. Burmese leader Aung San (2010) was among those decrying the hypocrisy of the European occupants, who claimed to guarantee stability and peace but were so quick to surrender their colonies and 'protectorates' in the face of Japanese attack.

Another effect of the war was that it changed the preferences of actors who had hitherto been supportive of colonial institutions. It dissolved vested interests in Europe, where advocates of integration questioned the usefulness of a loose concert of national empires as a way of managing conflicts in light of exacerbating threat perceptions. The so-called Message to Europeans issued at the Council of Europe's Congress in The Hague in 1948 illustrates this point:

Alone, no one of our countries can hope seriously to defend its independence. Alone, no one of our countries can solve the economic problems of today. Without a freely agreed union our present anarchy will expose us tomorrow to forcible unification whether by the intervention of a foreign empire or usurpation by a political party. (Congress of Europe 1948)

For the champions of the national empires, meanwhile, the experience of existential threat to their societies actually *increased* the rationale for clinging on to the colonial dependencies, especially in France, where the overseas territories had been a refuge for the Résistance (de Gaulle 1944). This exemplifies that the relevance of shocks for institutional change depends on their discursive representation in processes of normative arguing. Meanwhile, in the periphery, the empires lost the support of and legitimation by local elites, which had been essential in upholding colonial regimes. Faced with the sudden success of liberation movements, their preferences shifted toward championing the nationalist cause (Springhall 2001, pp. 213–217). At the same time, declining wages and aggravating labor conditions increased frustration among the working population in the colonies (Crawford 2002, p. 295).

NORMATIVE ARGUING AND ASIAN DECOLONIZATION

In sum, the shock of the Second World War benefited anti-colonial actors in Southeast Asia more so than in Europe. Southeast Asian nationalism became the dominant stream of political discourse among local elites during the war. Shortly after the Japanese surrender, one Southeast Asian state after the other declared independence—as early as 1945 in the cases of Cambodia, Indonesia, Laos and Vietnam. The declarations affirmed the gradual institutionalization of an inclusive interpretation of national self-determination and sovereign equality. The politics of the periphery thus claimed primary institutions that had previously applied only to the core of international society in order to overturn the stratified structure of international society and to achieve the status of a legitimate actor.¹⁰ Using this strategy, Indonesian political leader Sukarno declared in October 1945:

¹⁰This strategy was also used by anti-colonial actors in Africa (Crawford 2002).

Indonesians will never understand why it is, for instance, wrong for the Germans to rule Holland [under wartime occupation] if it is right for the Dutch to rule Indonesia. In either case the right to rule rests on pure force and not on the sanction of the populations. (cited in Klose 2015, p. 51)

By 1945, this de-hierarchization in primary institutions had been accepted in principle at the global level, as the UN Charter testifies. However, it should take some time until the asymmetries on the secondary level, embodied above all by the various bilateral treaties of cession, protection etc. and the multitude of informal rules and procedures governing colonial practices, should be fully eradicated. In fact, neither France nor the Netherlands recognized the 1945 declarations of independence, and instead embarked on bloody expeditions to reestablish their rule and keep up their grip on Indochina and the Dutch East Indies, respectively. The formal decolonization of British Malaya took until as late as 1957. This was not a universal pattern, as the relatively straightforward transition of British Burma—which gained independence in 1948—shows, but such individual cases do not mean that European imperial governments abdicated their role as colonial powers altogether. Numerous authors have shown how the ‘colonial consensus’ in Europe broadly survived the Second World War and the initial postwar years until well after the wave of decolonization had spread across Asia (Garavini 2012; Kahler 1984; Müller 2001). Even when the European empires granted a degree of self-government to their former dependencies, they attempted to establish secondary institutions that maintained their privileged status by qualifying independence, keeping the former colonies in close political union and maintaining ‘special ties’, as embodied by the constitutional frameworks of the Commonwealth, the French Union and the Netherlands-Indonesian Union.¹¹ However, by pointing to the obvious tensions between the new interpretation of the primary institution of sovereignty in terms of sovereign equality and the residual, now anachronistic secondary institutions, the national movements had a strong normative argument at hand to delegitimize these practices. The ability to refer to sovereignty and the principle of national

¹¹A similar pattern applies in the Philippine case, where the United States recognized the country’s independence in 1946 but made sure to keep a special relationship by asserting privileged access to the country’s natural resources through the so-called Parity Amendment.

self-determination enshrined in the UN Charter significantly helped their cause (Mayall 1990). In fact, the statements of the new Southeast Asian leaders disclose rather conservative views on international relations. Indonesia's Sukarno (1974), for example, promoted a pluralist understanding of international society even before his country declared independence:

We have not only to establish the state of Indonesia Merdeka [independent Indonesia], we must also proceed towards the familyhood of nations. [...] When I say internationalism, I do not mean cosmopolitanism, which does not want the existence of nationalism [...]. Internationalism cannot flourish if it is not rooted in the soil of nationalism.

Due to this conservative argumentation, the Western powers found themselves in a sort of 'rhetoric entrapment' (Schimmelfennig 2001). They had signed the UN Charter and consequentially endorsed the universality of the sovereign equality and national self-determination. If they wanted to retain legitimacy, they had to acknowledge that these principles would apply also to the nations beyond the Western core of international society. This shift to more egalitarian structures on the primary level formed a new constitutive context for the reproduction of secondary institutions. The maintenance of arrangements that impinged on the authority of local political actors against their express will was no longer a legitimate option. Accordingly, the former empires formally accepted the independence of all major Southeast Asian states within the first twelve postwar years, which effectively completed the decolonization of Southeast Asia's secondary institutions.¹²

SUMMARY

The Asian wave of decolonization marked a milestone in the history of international society in the twentieth century. Driven by processes of normative arguing that challenged the primary institutions of graduated sovereignty and imperial concert, it brought about a transition from a

¹²The latecomers in this respect are Singapore, which entered the Federation of Malaysia in 1963 and became an independent state two years later, West Irian, which Indonesia took over from the Netherlands in 1969, East Timor, which gained independence from Portugal in 1975 (but only became a fully sovereign state in 2002 after decades of Indonesian occupation), and Brunei, which remained a British protectorate until 1984.

colonial international society marked by global reach and stratification to structures that were more egalitarian on the global level, but at the same time developed a regional dimension. The Southeast Asian polities that gained independence in the late 1940s and the 1950s rejected the territorial logic of imperialism and thereby opened spaces for the formation of a genuine regional international society. The European empires—with the exception of the Netherlands—reacted to this by reaffirming their colonial claims on Africa (Waites 1999, p. 258). This geographically more circumscribed international society cannot be called global but neither was it genuinely European at that time—‘Euro-African’ might be the most adequate description, although its outermost periphery extended to some other parts of the world as well.

The normative arguments that drove decolonization were marked by intense contestation. Defenders of the old empires found themselves challenged in Europe by integrationist reformers of colonialism and fierce anti-colonialism in the periphery. The latter launched powerful challenges against the primary institutions of graduated sovereignty and imperial concert. Despite their initial marginalization, they ultimately attained discursive dominance because of their ability to expose normative tensions regarding the primary institutions of graduated sovereignty and imperial concert on the one hand and nationalism on the other, and because of the transformational impact of the Second World War on the institutional feedback mechanisms. In the following years, actors in both regions attempted to build secondary institutions in order to consolidate these new regional boundaries, which culminated in the foundation of ASEAN and the EC.

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CHAPTER 4

Founding Years: Building Regional Organizations in Postcolonial Spaces

The previous chapter demonstrated how decolonization cut the strong institutional ties that had bound the peripheral polities to the Western core and suppressed the development of regionalism. Faced with new challenges and opportunities, but also mindful of the struggles of the immediate past, political elites in Europe and Southeast Asia shifted their attention to possible ways of organizing politics on a regional scale.¹ While much of the debates revolved around practical issues, a normative dimension is clearly discernible. As Indonesian President Sukarno put it in 1955: ‘We were suddenly confronted with the necessity of giving content and meaning to our independence when it was finally attained and secured ... Not material content and meaning only, but also ethical and moral content’ (cited in Anghie 2017, p. 540). The building of regional organizations was closely linked to arguments about the appropriate primary institutional framework for the postcolonial situation.

The most fundamental questions that an emerging regional international society needs to address concern its boundaries and legitimate actorness. Internally, it must build a working consensus on who counts as a member and on the types of practices that should guide regional affairs. Externally, there needs to be some agreement on legitimate

¹This turn towards the regional level is not unique to Europe and Southeast Asia, as is evident from the spread of pan-Africanist, pan-Arabist and pan-Asianist ideas during and after the Second World War.

interaction partners beyond the region's boundaries, and on how to define the relations with those external actors. This chapter focuses on the latter set of questions and investigates the construction of primary and secondary institutions concerning external relations as a central theme of the debates surrounding the emergence of regional organizations in Europe and Southeast Asia. For Europe, the question of external relations materialized mainly in the discourse about 'overseas territories' and the organization of Euro-African relations in the context of the creation of the EEC. The discussions eventually resulted in the creation of the Association framework for development policy in the late 1950s and early 1960s. In Southeast Asia, the founders of ASEAN argued over guidelines for member states' security relations with major states—including the former colonial powers. Arguments about norms and rules for the engagement between members and nonmembers thus molded the organizational development of regionalism in postwar Europe and Southeast Asia.

THE EEC'S ASSOCIATION FRAMEWORK AND THE IMPERIAL QUESTION, c. 1945–1963

The imperial origins of European integration have received increasing attention in recent critical EU Studies and historiography. In their path-breaking study of the 'Eurafrica' concept, Hansen and Jonsson (2014) reconstruct the postwar ascendancy of the idea of European cooperation on colonial questions. In their view, conventional narratives of the European project overemphasize the peace-building aspirations of its founders. Shedding light on the 'dark side' of its history, they show that the founding of European regional organizations, in particular the EEC, was substantially driven by a shared concern of national governments to restore the grip on their 'overseas territories'.² Imperialist foreign policy visions were clearly inscribed into early initiatives for European integration. However, there was no uniform view on their realization. Postwar regional discourse was torn between different ideas concerning the relations of European states with external actors. The main normative friction line ran between two visions of regional politics: pooled sovereignty—the idea of dividing national sovereignty by relocating

²The term overseas territories was used as a catch-all concept for the different peripheral territories with varying degrees of dependence, ranging from effectively self-governing dominions to colonies under direct rule.

political authority partly to the regional level (Diez et al. 2011)—and conventional national imperialism. These ideas do not qualify as primary institutions in the immediate postwar period. The former was a political project that quickly gained momentum among politicians who were convinced that the colonial institutions had been delegitimated beyond repair. However, it was not yet supported by substantial institutionalization practices. The latter was a foreign policy doctrine for the colonial powers that expressed a continued claim to territorial control in the extra-European periphery but had lost its primary institutional basis in the colonial institutions of graduated sovereignty and imperial concert.

THE EMPIRES STRIKE BACK

Advocates of pooled sovereignty interpreted the postwar position of European states—dominant within the Euro-African international society, but externally under pressure from the emerging global bipolarity—as an existential challenge. The ‘Eurafrica’ concept of the interwar period provided an ideal reference point for framing collective colonial policies as a geopolitical response. Only by joining forces, thus the argument, could Europe prevent the Asian wave of decolonization from ‘flooding’ Africa as well (Hansen and Jonsson 2014, p. 73). Integration was not just a remedy for Europe’s internal war-proneness but also a way of maintaining some form of privileged status. Naturally, the Europeanist attack on unrestrained nationalism met with fierce opposition from the defenders of the old empires. In reaction to this resistance, advocates of integration tried to reassure their opponents that the pooling of sovereignty would be compatible with the parallel maintenance of national imperial ties. However, they did not provide concrete plans for squaring this circle. The resolution of the Congress of Europe at The Hague in 1948 echoed the call for pooled sovereignty and a joint responsibility for the overseas territories. At the same time, it claimed that this should be done ‘without prejudice to the special ties which now link these territories to European countries’ (Congress of Europe 1948, see also 1991)—an ambiguous formulation that can in similar forms be found in many other documents of the discourse on European order at that time. The ‘Third Force’ project by the British Foreign Secretary Ernest Bevin imagined a close European cooperation but refrained from breaking up the national empires (Bevin 2007). Even the draft for a Federal Pact adopted in 1949 by the decidedly integrationist European Union

of Federalists renounced the ‘era of national ownership of colonial territories’ but reaffirmed the special ties of these territories with their ‘mother countries’, leaving open how to reconcile the competing claims of national and European empire (European Union of Federalists 1991). Thus, while there was a clear thrust toward pooling sovereignty within Europe, how to integrate the relations with the periphery into secondary institutions for a possible regional organization remained an open question.

These unresolved issues did not harm the position of the integrationist strand. Its proponents in governmental elites capitalized on the proliferation of transnational interest groups in the postwar years, which by nature did not need to pay tribute to nationalist sentiments. As nation-state actors had to relinquish their virtual monopoly over normative arguing and accommodate these voices, the idea of secondary institutions that pooled competences at home while retaining political control over the periphery gained more and more traction. Supporters of unconditional and immediate decolonization remained marginalized and hardly anyone seriously challenged the stratified nature of the Euro-African international society as such. However, the organization of its center was now a subject of intense debate.

The ongoing equivocality regarding external relations was visible in the initiatives at creating regional organizations that emanated from a series of intergovernmental conferences in the late 1940s and early 1950s. The secondary institutions with relevance to relations with overseas territories were usually vague or ambiguous. For example, the Organization for European Economic Co-Operation (OEEC) contained rules that allocated funds to support colonial empires to *individual* European states. However, it also promoted *regional* collaboration in the overseas territories. This double approach is also visible in the Strasbourg Plan for European cooperation, which was prepared chiefly by the OEEC and adopted by the Council of Europe in 1952. Although it never came into effect, the Plan with its far-reaching ideas for joint development and exploitation of economic resources in the overseas territories, a European development bank and a preferential trade area influenced future initiatives like the European Coal and Steel Community (Council of Europe 1952). The first of the European Communities included a most-favored nation clause that extends preferences granted by one member state to its overseas territories to all members, but it did

not include the overseas territories in the common market (Hansen and Jonsson 2014, pp. 112–122).

The European Defence Community would have extended these ambiguities to the security sphere. The EDC Treaty envisaged joint military forces, which could be stationed on non-European dependent territories but not recruited from colonial populations. Any forces used in case of an emergency situation in these territories would have been temporarily put under the authority of the relevant national government (*Treaty Establishing the European Defense Community* 1952, Art. 13). The EDC's proponents thus intended to pool regional defense resources but designated the defense of colonial empires as an ultimately national responsibility (Müller 2001, pp. 444–445). These provisions did not alleviate the concerns by the French Communists and Gaullists. While some of them were generally uncomfortable with ceding national sovereignty in the field of defense, de Gaulle (1953, p. 5) specifically lamented the exclusion of the overseas territories from the envisaged military union. Without their resources, he argued, German troops would certainly dominate the EDC. The French Parliament eventually rejected the initiative in 1954.

Even the institutionalization of the EEC through the Treaties of Rome in 1957 did initially not resolve the tensions between pooled sovereignty and national imperialism. The Anglo-French fiasco of the Suez crisis put an end to French global power ambitions and turned its strategic attention to European integration as a means to retain geopolitical influence (Dinan 2004, pp. 71–72). With this goal in mind, the French government, together with its Belgian counterpart, insisted during the EEC negotiations on rules and procedures for close association of the overseas territories (Hannibal et al. 2013, p. 79). By consequence, the EEC established secondary institutions that effectively ‘communitarized’ economic relations with the dependencies of European states (Hansen and Jonsson 2014; Rempe 2011). On the other hand, *national* colonial ties continued to determine the geographical extension of these relations, and constitutional questions of colonial relations remained a matter of national politics. For example, Algeria was initially incorporated in the EEC because it was legally part of the French Republic (Hansen 2002, p. 488). Other territories with constitutional ties to a European state were automatically included in the EEC's preferential trading system. Explicit governmental approval for association only became necessary once they acquired independence from the metropolitan power.

By linking the new economic framework to a classical imperial logic of territoriality, the EEC translated the persistent tensions between pooled sovereignty and the national concert of empires into a secondary institutional framework.

The continued influence of colonial attitudes is borne out by the European reactions to initiatives that aimed at advancing the decolonization of the global international society. When the Security Council adopted a resolution in support of Congolese independence in 1960 and called upon Belgian troops to withdraw from its territory (United Nations Security Council 1960), the permanent European members of the Council, France and the UK, abstained.³ Similarly, when the General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples later that year (United Nations General Assembly 1960), five European countries—including two EC members—abstained.⁴ This failure to endorse the global principle of national self-determination and sovereign equality is remarkable given that the Treaties of Rome had affirmed the principles of the UN Charter.

AFRICAN DECOLONIZATION AND THE EMERGENCE OF DEVELOPMENTALISM

In the short run, therefore, the institutionalization of the secondary institutions for association in the EEC formed a compromise between competing normative reference points on the primary level, rather than resolving them. Over the next few years, however, the new secondary institutional framework disturbed the feedback effects supporting the reproduction of national imperialist ideas. It did so primarily by changing the preference structures of the national governments and letting unilateral imperialism appear as anachronistic. National imperial ambitions were harder to justify when the prospects of a common market promised security and prosperity in Europe (Waites 1999, p. 274). The new regional organization also shifted the strategic focus from the empires to the European neighborhood. In an effort to secure their leadership in the EEC, the French government reallocated political, economic and

³Italy, by contrast, supported the resolution, which points to crumbling intra-European support for continued colonial adventures.

⁴These were Belgium, France, Portugal, Spain and the UK, all of which were retaining colonial dependencies at the time of the adoption.

military resources from the overseas territories to Europe (Holland 1985, pp. 172–173). On top of this, the prospect that the EEC promised preferential economic relations even if the overseas territories gained independence weakened the argument for colonial possessions as a matter of national security and prestige. By consequence, the struggle between national and European orientations in France was decided in favor of the latter. The establishment of the Fifth Republic in 1958 marks the rebranding of Gaullism from an imperial nationalism to a “nationalism of the ‘hexagon’” (Kahler 1984, p. 99; see also Rempe 2011).

The UK’s attitude toward empire constitutes a special case, as the significance of its preferential trading arrangements had been one of the main reasons for not joining the EC. Yet, the creation of the EEC increased the rhetorical leverage of advocates of (regional) free trade over those favoring classical imperial trade relations, leading to a reorientation toward European markets and finally to a first, albeit unsuccessful, application to the EEC in 1961 (Holland 1985, pp. 206–207). Beyond purely economic arguments, Europe also served as a new source of international identity and status for the colonial powers. Kahler (1984, pp. 134–135) writes that ‘Europe would become for the Conservatives the substitute for empire, a new source of international prestige and influence’, and Hansen (2002, p. 494) calls Europe

a space in which ruling elites were provided an opportunity to trade the grievances over the loss of empire – and all that this would encompass in terms of damaged national pride, international prestige, sense of national direction, and, not the least, the humiliating experience of being defeated by peoples often designated as inferior races – for a new beginning, a new project, and a new national purpose in a ‘new Europe’.

Against the background of such favorable conditions, vested interests in applying principles of graduated sovereignty abroad appeared less significant. Consequently, European empires reacted differently to the wave of decolonization that spread in the African continent in the early 1960s than to the earlier phase of decolonization in Asia. The challenge directed at constitutional secondary institutions by independence movements were more readily accepted and unilateral declarations of independence were the exception. Violent repression was increasingly delegitimated so that France was forced to accept complete Algerian independence in 1962 despite its effective earlier military

victory over the National Liberation Front. Normative arguments defending the notion of graduated sovereignty or the instrument of territorial control in relation to the non-European world all but vanished. The acknowledgment of the strive for national self-determination in Africa in Harold Macmillan's Wind of Change speech, held in 1960 in South Africa, and in Charle de Gaulle's second Brazzaville speech in 1958 illustrate that this shift was also reaching the former colonial empires of the region.

Subsequently, the primary institutions of graduated sovereignty and national imperialism were replaced by a developmentalist discourse, which emphasized the sovereign equality of the newly independent countries and called for more symmetrical relations. Interpretations of external relations in terms of development were not new at that time. The Strasbourg Plan had spoken of the development of the overseas countries as a goal of the Council's economic cooperation (Council of Europe 1952, p. 127). In French politics, *développement* and the roughly synonymous *mise en valeur* had been buzzwords in discussions of colonial reform since at least the Brazzaville Conference in 1944 (Rempe 2011, p. 7). The concept can even be seen in the tradition of the *mission civilisatrice* idea dating back to the heyday of colonialism—in fact, the very term was used by the Dutch Foreign Minister Joseph Luns (1957, see also Hansen and Jonsson 2012, p. 1035) when he signed the Treaties of Rome. Until well into the 1950s, however, development usually meant that advanced governments purportedly needed to assume sovereign rights over the 'underdeveloped' subjects. Now, the idea of sovereign equality became deeply inscribed into the new interpretation. Although European notions of development still carried paternalistic overtones that set it apart from the parallel discourse on developmentalism in the Global South (Eslava et al. 2017), this shift had a significant effect on the EEC's external policies. The Yaoundé Convention, signed in 1963 to formalize trade relations between the EEC and the newly independent African states, explicitly affirms the principle of 'complete equality' between the parties and refers to the principles of the UN Charter.

Thus, while it continued to develop pooled sovereignty as a primary institution internally, the European international society came to accept the principle of sovereign equality in virtually all its external relations. The related concept of communitarized developmentalism meets all the criteria of a new primary institution. It is a coherent set of principles

and norms containing ideas about actorness—the EEC as a part of the ‘developed’ world and its partners from the ‘developing’ world—and legitimate practice, namely Europe’s duty to assist the developing countries in their economic, political and cultural advancement. It also constitutes practices such as developmental policy and secondary institutionalization, like the trade rules and procedures laid out in the Yaoundé Convention and its successor agreements. By acknowledging the formal equality of African states and relinquishing explicit territorial claims beyond Europe, developmentalism also defined in clearer terms the boundaries of the region. A genuinely European international society finally replaced the Euro-African concept of the initial postwar years.

The factual power relations constituted by this new primary institution continued to be stratified and geographically distributed along the lines of Europe’s former empires. The Yaoundé Convention and the subsequent agreements of Lomé and Cotonou cover the EEC’s (and EU’s) relations to former dependent territories only and do not include other developing countries. To this date, the EU and its member states have ambiguous sovereignty relations with the remaining overseas territories (Adler-Nissen and Gad 2013). The argument that elements of an imperial or neocolonial logic of dependence, control and center-periphery structures have been a feature of European external relations even after formal decolonization certainly cannot be dismissed (Müller 2001; Wæver 1996). Indeed, the secondary institutions of Yaoundé mostly contain the same rules and procedures as the association provisions for overseas territories in the Treaty of Rome. However, these continuities should not lead researchers to overlook important ruptures. The transition from imperialist to developmentalist discourse attest to changed legitimacy beliefs that accompanied the decolonization of international society in Europe.

ASEAN AND THE ISSUE OF NONALIGNMENT, c. 1945–1967

In the first postwar years, decolonization discourses in Southeast Asia were preoccupied with achieving actorness, i.e. becoming fully fledged members of international society. Therefore, they were national in form and substance, and emphasized *global* primary institutions as normative reference points, especially those enshrined in the newly established UN framework. The national format was also a consequence of the anti-colonial struggle and the endoscopic efforts at state- and

nation-building, as well as the previous suppression of independent diplomatic ties among regional countries, deplored among others by India's Prime Minister Jawaharlal Nehru (ARO 1948, p. 21). This limited the extent of institutionalization at the regional level. However, the more the new leaders consolidated their rule against internal and external challengers, the more they came to ascribe an international responsibility to their governments. Consequently, the political discourse became increasingly regionalized. The Asian and Asian–African conferences of the postwar period provided a format for normative arguing about the possible shape of a regional international society. Initially, the possibility of a regional organization was not a focus of this debate. The Asian Relations Conference in New Delhi in 1947 did in fact establish an Asian Relations Organization (ARO), but that was merely a secretariat for information sharing and not a truly intergovernmental body. The discourses at these gatherings instead concentrated on the primary institutional level, as they aimed to define the general normative parameters of regional politics.

NEW DISCURSIVE ARENAS, NONINTERVENTION AND ANTI-HEGEMONISM

Although regional in format, the debates at the Asian Relations Conference were still rather inward-looking in substance. The discussion reports reveal a preoccupation with mustering support for independence movements and nation-building, questions of development and human rights within Asian countries (Acharya 2012, pp. 106–118). If they did invoke international norms, speakers referred almost exclusively to global primary and secondary institutions, as evident in the support for the fledgling UN and its principles of national self-determination and sovereign equality. Defense and security questions did feature on a preliminary agenda of the conference but the organizers, who thought it unwise to stir political controversies at the very first meeting of this kind, later omitted them. Moreover, it was argued at the preparatory meeting that

the security of Asia had more than an Asian incidence as it was almost identical with world security. The view prevailed that in an Asian Relations Conference we should avoid on the one hand controversial issues relating to particular states and, on the other, issues which have more than an Asian incidence and can be solved only at higher levels. (ARO 1948, p. 4)

This reasoning is remarkable as it not only precludes the institutionalization of distinctive regional institutions but also accepts, if not encourages, intervention from the outside. Whether ‘higher levels’ refers to the formal mechanisms of the UN Security Council or an informal concert by the new superpowers, the statement clearly acknowledges the global institution of great power management.

The meeting was not an official intergovernmental conference. It was organized and hosted by the Indian Council of World Affairs, not the Indian government, and most high-level government representatives were participating as observers only. None of the nine participating Southeast Asian countries⁵ except the Philippines and Siam enjoyed full independence, which naturally limited their ability to speak authoritatively on international matters and may have contributed to the inward-looking focus of the meeting. Still, the Asian Relations Conference was the first expression of a regional postwar discourse, which by default centered on the fully fledged accession of the region and its countries to international society. It did not yet promote specific visions for organizing regionalism, let alone forge a consensus on concrete primary or secondary institutions. However, it did serve as a marketplace of different regional ideas and identities, and as such it was the place where, driven by the regionalist vision of Myanmar’s Aung San, delegates first discussed the idea of a Southeast Asian association (Acharya 2012, pp. 109–113). A second conference in New Delhi, this time convened as an official intergovernmental gathering by Prime Minister Nehru in 1949, had a similarly broad range of participants⁶ but was geared more toward Southeast Asian issues. Its main purpose was to address the conflict between Indonesia and the Netherlands. In the conference resolution, the representatives expressed their unanimous support for Indonesian independence. Although resentments against great power politics and hegemony were palpable in New Delhi, the final document still relies on the UN principles of sovereignty and self-determination, rather than formulating any genuine (Southeast) Asian institutions.

⁵These were Burma, Cochinchina, Indonesia, Cambodia, Laos, the Malayan Union, the Philippines, Siam and the Democratic Republic of Vietnam.

⁶The conference was attended by representatives from Afghanistan, Australia, Burma, Ceylon, Egypt, Ethiopia, India, Iran, Iraq, Lebanon, Pakistan, the Philippines, Saudi Arabia, Syria and Yemen. Envoys from China, Nepal, New Zealand and Siam participated as observers (*International Organization* 1949).

This changed with the Colombo Conference of 1954, attended by representatives from Burma, Indonesia and other Asian countries. It was the first regional gathering that included an official reference to Southeast Asia, although the fact that the line-up differs significantly from today's understanding of the region indicates that the political boundary-drawing efforts were far from definite (Emmerson 1984).⁷ One of the main items on the agenda was the solution of another decolonization conflict, the First Indochina War. The failure of US efforts to stop communist expansion through increasing military engagement in Vietnam was an external shock that bore out those who warned against the dangers of major power involvement. It caused those governments that had been more accommodating toward security cooperation with the West to reconsider their vested interests in their alliances (Acharya 2012, p. 125). The positions of the participants were, for the first time, framed mainly in terms of nonintervention. The main driving force behind this development was Nehru, who had endorsed the norm as one of the Five Principles of Coexistence in his government's ongoing negotiations about territorial disputes with China. In Colombo, he included it in his five-point proposal on Indochina (Nehru 1999, p. 425).

Nonintervention was derived from the primary institution of national sovereignty but carried a regionally specific interpretation, as it expressed the belief that a localization of conflicts such as that in Vietnam and their isolation from great power influence would heighten stability in the region. A narrative linking nonintervention to the international law principle of peaceful dispute settlement and opposing balance of power politics emerged. As it was primarily directed against *outside* intervention by the major powers, the idea of nonintervention also had a clear anti-hegemonic undertone at this stage (Anghie 2017; Chen 2017). This linkage was reinforced on the secondary institutional level by the Geneva Accords of 1954, which ended the First Indochina War. Apart from sealing the independence of Cambodia, Laos and Vietnam, the final declaration recognizes the intent of the three states to expel foreign troops, abstain from military alliances—unless they are provided for under a UN framework—and renounce external military assistance.

The Afro-Asian Conference of Bandung in 1955 further advanced this new, regionally specific interpretation of sovereignty and the skepticism

⁷The official title of the meeting was Southeast Asian Prime Ministers Conference. It was attended by representatives from Burma, India, Indonesia, Pakistan and Sri Lanka.

of great power management. It was here that the emerging principles and norms were most comprehensively and explicitly stated as a regional approach to international politics (Chen 2017). Apart from the not-yet independent territories, all Southeast Asian nations were present, with a Malayan delegation attending in the capacity of an observer. Relations between regional and external actors were a central issue on the agenda, as debates revolved around the local manifestations of the international Cold War order. Indonesian President Sukarno complained that super-power rivalry manifested itself in neocolonial practices of political interference, ‘special relations’, economic dependence and cultural hegemony:

Colonialism has also its modern dress, in the form of economic control, intellectual control, actual physical control by a small but alien community within a nation. [...] Wherever, whenever, and however it appears, colonialism is an evil thing, and one which must be eradicated from the earth. (cited in Kahin 1956, p. 44)

As an alternative to balance of power politics, Sukarno advocated a particular regional approach based on the norms of nonintervention and the peaceful and nonconfrontational settlement of disputes. He celebrated the response of the Colombo Powers to the Indochina conflict as an example of this political style:

They [the Southeast Asian Prime Ministers] issued no ultimatum, they mobilized no troops. Instead they consulted together, discussed the issues, pooled their ideas, added together their individual political skills and came forward with sound and reasoned suggestions which formed the basis for a settlement of the long struggle in Indo-China. [...] [T]hose five Prime Ministers brought a *fresh approach* to bear on the problem. [...] They had no axe of power-politics to grind. They had but one interest – how to end the fighting in such a way that the chances of continuing peace and stability were enhanced. [...] They spoke on a subject of immediate concern to Asia, and in doing so made it quite clear that the affairs of Asia are the concern of the Asian peoples themselves. (cited in Kahin 1956, p. 46, emphasis in original)

The last phrase stands in remarkable contrast to the strong regional-global security nexus purported ahead of the Asian Relations Conference. In fact, it implicitly rejects balance of power politics and great power management, embodied by the Cold War superpower

rivalry, as well as the idea of dispute settlement through collective security, which was at that time being reinvented within the UN framework on the global level. The principles of nonintervention and peaceful settlement of disputes were also invoked by other Southeast Asian leaders such as Cambodia's Prince Norodom Sihanouk, Thailand's Prince Wan Waithayakon and Burma's U Nu (Kahin 1956). They explicitly found their way into the list of principles of the Declaration on the Promotion of World Peace and Cooperation that emerged from the conference.

The question of relations with major external powers, meanwhile, was a difficult subject and in fact a contested issue in Bandung. A number of participating countries, such as Pakistan, the Philippines and Thailand, entertained military ties with Western states⁸ or even hosted foreign bases on their territories. In Bandung, the representatives of these states postulated a right to collective defense, referring among others to corresponding UN Charter provisions. Others, led by Nehru and supported by Cambodia's Norodom, argued that to succumb to power politics by aligning with one of the two blocs would cause armed conflict (Kahin 1956, p. 23). They therefore promoted the idea of nonalignment as a guideline for extra-regional relations. However, the pro-Western bloc fenced off this criticism by evoking the very norm of nonintervention, which had initially been an element of the nonalignment doctrine. If nonintervention was to be taken seriously, they argued, the formulation of foreign policies must not be subject to external interference by any other state, regional or external. Prohibiting military alliances with the West on principle meant curbing the independence of the newly founded states, which was precisely what the nonintervention norm was supposed to prevent. This rhetoric marks a strategic reinterpretation of nonintervention, which now applied also to *intra*-regional relations, not just to relations with the global powers. I use the term *noninterference* to capture this shift in meaning.

At this point, a new tension in the framework of primary institutions emerged. Nonalignment and the noninterference norm expressed potentially conflicting ideas. How could one norm make certain prescriptions with regard to regional states' foreign policy conduct if another explicitly bars such interference? The final declaration adopted at Bandung formulated an ambiguous compromise between these two logics.

⁸The most important multilateral of these, SEATO, is briefly discussed below.

It acknowledged the ‘right of each nation to defend itself singly or collectively’ but also declared the intention to abstain ‘from the use of arrangements of collective defense to serve the particular interests of any of the big powers’. The principle of nonalignment was thus institutionalized on the primary institutional level, but in a narrow and ambiguous way, which restricted its concrete application to the rejection of great power dominated collective defense mechanisms (Acharya 2009, pp. 55–56). *Anti-hegemonism* may be a more exact term for this understanding. By identifying an external Other—the major powers—and defining a common political approach to them, it provided an alternative to the global primary institutions of the balance of power and great power management, and helped constituting a regional international society distinct from the global level.

BUILDING ASEAN

While unique primary institutions, or specific regional interpretations thereof, were slowly taking shape, regionalism in Asia was yet to consolidate. It was unclear whether the equivocal compromise regarding external relations at Bandung could provide a working normative basis for regional cooperation. In addition, the various discursive arenas, ranging from the Indian Ocean Rim format of the Colombo Powers to the vast extension of the Asia–Africa conference, led to blurred geographical boundaries. One reason for these ambiguities was a lack of secondary institutionalization. From the 1950s onwards, however, the newly independent Southeast Asian states engaged in normative arguing about the possibility of regional organizations.

The first attempt at building a regional organization was SEATO, a counterpart to the North Atlantic Pact. Apart from the Western and Pacific members of Australia, France, New Zealand, the UK and the US, it included the regional states of Pakistan, the Philippines and Thailand. It was in fact established in 1954, prior to the Bandung conference, and the debates on national sovereignty at the conference were clearly influenced by the launch of the organization. The ambiguous institutionalization of the nonalignment norm in the Bandung Declaration is partially a result of the conflict between regional SEATO members and nonmembers. The Western members of the organizations initially hoped that once established, the alliance would create vested security interests that would gradually hollow out the nonalignment stance.

However, subsequent events proved them wrong. The inglorious role of the United States in the Vietnam War confirmed the anti-interventionist stance of regional policymakers (Acharya 2012, p. 125). The constitutive context of the primary institution of anti-hegemonism delegitimated cooperation with major external powers, and consequently made it unattractive for the Southeast Asian members to seriously commit to their obligations under SEATO's secondary institutions (Chen 2017). Consequently, the organization never gained serious traction and soon became insignificant in Asian security affairs before eventually dissolving in 1977.

Evidently, the regional conferences had established an effective regional primary institutional framework that set certain limits for the range of possible secondary institutionalization. Anti-hegemonism and the implied rejection of balance of power politics and great power management had made it virtually impossible for any great power to become a member of such an organization. For those with a more rigid interpretation of the norm, it also precluded the establishment of an organization with a clear anti-communist stance. This explains the lukewarm reception of the proposal by the Malayan Prime Minister Tunku Abdul Raman in 1958 to establish a Southeast Asian Friendship and Economic Treaty (SEAFET), which was to codify cultural and economic cooperation in the region. One of the reasons for SEAFET's failure was that the Philippines insisted on an institutional linkage to SEATO, an idea opposed by the Indonesian government, which subsequently abandoned the project.

The remaining states involved in the SEAFET initiative—Malaya, the Philippines and Thailand—eventually moved on to create an Association of Southeast Asia (ASA). All three member states had a declared anti-communist outlook, which strengthened perceptions by other Southeast Asian governments that ASA was a pro-Western bloc contrived to secretly advance the regional interests of the SEATO states. Encumbered by the Philippine-Malayan conflict over Sabah in Northern Borneo, the organization remained inconsequential (Narine 2002, pp. 10–11). The follow-up initiative for trilateral cooperation between Malaysia, the Philippines and Indonesia under the heading of Maphilindo experienced a similar fate, faltering as Malaysia antagonized its partners by incorporating North Borneo and Sarawak in its newly founded Federation (Acharya 2012, pp. 150–155).

Only the initiative for the establishment of ASEAN, which was not susceptible to being a security alliance or overtly pro-Western, eventually proved to be sustainable. Statements by the Foreign Ministers at ASEAN's founding meeting in Bangkok in 1967 attest the anti-hegemonic sentiment of its member states' governments⁹:

Indonesia always wants to see Southeast Asia develop into a region which can stand on its own feet, strong enough to defend itself against negative influence from outside the region. (Adam Malik, Indonesia)

If there are people who misunderstand the proposed grouping, or manifest hostility towards it, [...] it can only be because [...] outside powers have vested interests in the balkanisation of this region. We ourselves have learnt the lessons and have decided that small nations are not going to be balkanised so that they can be manipulated, set against one another, kept perpetually weak, divided and ineffective by outside forces. (Sinnathamby Rajaratnam, Singapore)

However, even ASEAN's translation of primary institutions into a secondary institutional framework was problematic. The references to noninterference and anti-hegemonism in the Bangkok Declaration—ASEAN's founding document—remain quite vague, mostly because of different interpretations of the new primary institutions. The eventual text of the Declaration merely states the founding members' resolve 'to ensure their stability and security from external interference in any form or manifestation' and that 'all foreign bases are temporary', without setting a clear timeframe for their termination.¹⁰

The organization's nonintrusive and ambiguous foreign policy rules and procedures, which form part of what later came to be known as the ASEAN Way, served as a way of mediating the tensions between the primary institution of nonalignment and the norm of noninterference (into national security policies). Two strategic considerations were decisive for the middle-ground approach. First, the formal endorsement but lack of enforcement of nonalignment through secondary institutions

⁹The quotes are taken from Jorgensen-Dahl (1982, pp. 73–74).

¹⁰A similar ambiguity was later adopted in ASEAN's Declaration on a Zone of Peace, Freedom and Neutrality (ZOPFAN) of 1971, which rejected great power interference in the region but stopped short of formalizing actual neutralization and was declaratory, rather than legal, in nature (Narine 2002, pp. 19–22).

acknowledged the heterogeneity of member states' strategic interests. Some governments pushed for rules prohibiting great power-led collective defense in the region. Malaysia even proposed the formal neutralization of Southeast Asia. Thailand and the Philippines, on the other hand, were factually reliant on them in the foreseeable future, as they entertained security ties with great powers (Narine 2002, pp. 13–14). Despite being skeptical toward external powers in theory, they could not support neutralization in practice. Second, even the Indonesian government, which generally resented external influence, was wary of the idea of formal neutralization. Its policy-makers feared that a declaration of neutrality would make the regional states dependent on the guarantees of the great powers. Thus, a stronger institutionalization of nonalignment would paradoxically have resulted in practices inconsistent with the primary institution of sovereignty (Acharya 2012, pp. 166–167). This complexity made it very difficult to uphold normative arguments for a radically neutral ASEAN.

Drawing on the ambiguity in the primary institutional structure—especially the tensions between an interpretation of sovereignty based on the noninterference norm and the institution of anti-hegemonism—ASEAN's secondary institutional response to these policy challenges allowed its members to pursue a rhetoric of neutrality, nonalignment and antiimperialism and at the same time entertain security ties with the West. The price for this arrangement was an organizational pathway that would have to accommodate a considerable degree of ambiguity in the decades to come, and was therefore vulnerable to charges of institutional dysfunctionality and failure.

SUMMARY

This chapter examined the foundation of regional organizations in Europe and Southeast Asia in the context of decolonization processes in the mid-twentieth century. It started from the assumption that one—though not the single—condition for their coming-into-being was the creation of primary and secondary institutions regarding the relations between intra- and extra-regional actors. The normative arguments surrounding these institutionalization processes were heavily influenced by the legacy of colonial primary and secondary institutions. While the discourses in Southeast Asia expressed the desire to acquire and secure international actorhood, institutional change in Europe was a response

to declining relative power and an attempt to ward off further challenges to the international standing of European states. Actors in both regions partially endorsed global primary and secondary institutions, but they also created distinctive regional ones, as a way of delimitating their regional international societies from the global level.

The normative dimension of building EC and ASEAN rules was more complex than existing accounts of the imperial origins of European integration and early Southeast Asian regionalism suggest. In both instances, secondary institutionalization took place in an ambiguous and contested primary institutional context. In Southeast Asia, the Bangkok Declaration created vague rules regarding member states' external relations. These secondary institutions reflect not just diverging strategic interests, but more fundamentally normative tensions between the norms associated with the primary institution of national sovereignty and ideas about nonalignment, even though both were initially intended to prevent renewed foreign domination under the banner of great power management. In the debates at the regional conferences, governments that were weary of far-reaching restrictions on their foreign policies reinterpreted the norm of nonintervention as prohibiting interference in domestic policymaking. As a result, an unequivocal regional commitment to nonalignment could not materialize. Organizational traits of this conflict between noninterference and anti-hegemonism linger on in today's ASEAN. The emphasis on 'ASEAN centrality' in documents relating to institutional cooperation with major powers¹¹ and the incorporation of the Declaration on a Zone of Peace, Freedom and Neutrality (ZOPFAN) in ASEAN's 2009 white paper on the Political-Security Community demonstrate that external relations remain a delicate subject for the organization.

Whereas in Southeast Asia, normative arguing on the primary level drove subsequent secondary institutionalization in a unidirectional fashion, institutional change oscillated between the primary and the secondary level in Europe. The secondary institutions relating to the EEC's external relations formed out of a struggle between national

¹¹ Art. 41 para. 3 of the ASEAN Charter (2007) demands that ASEAN be the 'primary driving force in regional arrangements that it initiates and maintain its centrality in regional cooperation and community building'. The Concept Paper of the ASEAN Regional Forum (1995, Art. 3–4) ascribes to ASEAN the 'obligation to be the primary driving force of the ARF'.

imperialists, who modeled their foreign policy visions on the old and widely discredited primary institutions of graduated sovereignty and imperial concert, and integrationists who promoted the idea of pooling sovereignty. The Association framework translated this ambiguous context of primary institutions into secondary institutions that acknowledged continued imperial relations but put them in a community framework. This arrangement fed back into the primary institutional level, as it altered the preference structures especially in France and the UK and thus catalyzed the dismissal of national imperialist positions. Consequently, developmentalism emerged as a new primary institution governing external relations. These processes consolidated the boundaries of Europe's regional international society, as developmentalism constituted a distinct set of principles and norms that differed from the global international society and drew a clear inside–outside distinction between developed EEC members and developing states. Thus, while the EEC's secondary institutions were shaped by institutional tensions on the primary level, they subsequently transformed the regional primary institutions and contributed to the consolidation of a postcolonial European international society. Meanwhile, important institutional ambiguities persisted. The neocolonial overtones of developmentalism conflicted with the declared promotion of sovereign equality in the EEC's external relations since the Yaoundé Convention. Relics of these tensions appear in the EU's Cotonou Agreement on development cooperation with the ACP countries and the treaty provisions regarding its 'Outermost Regions and Overseas Countries and Territories' (OCT). The protracted debates about the OCTs' status reflect persistent conflicts over the normative value of developmentalism and different understandings of sovereignty (Müller 2001; Hannibal et al. 2013).

The analysis of the dynamic relation between primary and secondary institutions shows that normative arguments connected to decolonization processes have shaped the specific institutional pathways of regionalism in Europe and Southeast Asia to this day. The English School-based approach also brings into focus that normative arguing in both regional international societies did not simply replace the stratifying colonial institutions in a straightforward manner. Normative ambiguities and contestation were pervasive. In this sense, both regional international societies are essentially postcolonial phenomena.

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CHAPTER 5

Legal Integration: Regionalizing Judicial Authority

The preceding chapter highlighted that the creation of regional organizations in Europe and Southeast Asia was tightly linked to efforts to consolidate the decolonization of the two regional international societies. While the institutional frameworks resulting from these processes were quite different, both the EC and ASEAN subsequently experienced substantial legal integration. The EC gradually developed a set of rules that granted citizens of its member states certain rights and therefore constituted them as legal subjects of the European international society. These rules were extended and formally enshrined in the Treaty of Maastricht signed in 1992, which simultaneously transformed the Communities into the EU. Roughly fifteen years later, ASEAN's legal framework also underwent a reform process of formalization, which culminated in the signing of the ASEAN Charter in 2007. The Charter endowed ASEAN with legal personality, and reformed and strengthened existing mechanisms for dispute settlement between its member states.

A few Comparative Regionalism authors have paid attention to legal aspects of regionalization. Several studies have noted that Asian regionalism is less 'legalized' than that of Europe and other regions, meaning that agreements are generally less formalized and less binding in character (Higgott 2014; Kahler 2000). When it comes to explaining such variation, those paying attention to domestic factors argue that formal dispute settlement is more common among democracies (Jo and Namgung 2012) or states with a civil law tradition (Duina 2006).

Another line of argument is that differences can be explained via functional demands or institutional links, in the sense that stronger dispute settlement will be set up in regions with either high economic interdependence (Haftel 2013; Korte 2012) or ‘deep’ regional trade agreements (Allee and Elsig 2016). Alter (2012, p. 145) connects this idea to the diffusion concept, arguing that regions with a free trade agreement, such as ASEAN, tend to ‘download’ dispute settlement mechanisms from the global script embodied by the WTO, whereas common markets like the East African Community rather emulate the regional court model of the EU. However, she also concedes that this theory does not apply to all cases. Since ASEAN launched its common market initiative, the ASEAN Economic Community, in 2015 without establishing a regional court, the argument has become even less convincing.¹

What the comparative study of legal integration lacks is an account of the role of normative arguing in the establishment of rules and procedures in the legal realm. Insofar as scholars acknowledge norms, they usually refer to legalization as a means of increasing international legitimacy (Korte 2012). However, these arguments assume that there is only one, global normative reference point for such strategies while leaving distinct regional legitimacy standards out of the picture. As Alter and Hooghe (2016, p. 439) note, legal integration is ‘a game changer in regionalism that stands for more than just a commitment to use legal means to resolve [...] disputes; it signals a commitment to uphold specific community values’. An English School approach helps tease out this normative dimension of legal integration and showing how it shaped arguments about institutional reform.

In English School terms, legal integration affects those institutions that are concerned with the ‘sanctity of agreements’ (Buzan 2004, p. 189) and the definition of binding rights and obligations. It is a process of institutional change that relocates judicial authority from the nation-state to the regional level. Most importantly, the primary institution of positive international law, which constitutes states as the only legitimate actors, is gradually abandoned. The result is a move toward more

¹Other cases are also hard to explain with this theory, such as that of Mercosur, which has only made minor steps toward a formal judicial body since its creation in 1991 (Alter 2014, pp. 86, 374).

hierarchical forms of regional international society.² Against this background, citizenship in the EU and dispute settlement in ASEAN appear as different materializations of the same phenomenon, namely the process of regionalizing legal authority. Understood in this way, legal integration comprises more than just instances of the formal codification of rules (Goldstein et al. 2000), which would imply that the study of legal integration could be limited to secondary institutions. The legitimacy of law may also depend on informal discursive practices that ensure its compatibility with ‘the larger moral fabric of society’ (Deitelhoff 2009; Finnemore and Toope 2001, pp. 749–750). Legal integration is a continual process, rather than a discrete event, and it links to the level of primary institutions of international society as well.

Based on these considerations, this chapter examines how normative debates shaped legal integration in Europe and Southeast Asia. Focusing on the renegotiation of legal authority in these discourses makes it possible to compare the integration pathways of the EU and ASEAN. This approach resists the temptation to juxtapose European ‘strong’ legalistic versus Asian ‘weak’ nonlegalistic regionalism for the sake of sustaining a neat typology or a theoretical argument (Kanthak 2012; Katzenstein 2005). The risk of such an approach is to brush over the finer aspects of the historical development of regional legal frameworks, which have often been complex and contested. Legal integration in the EU and ASEAN has certainly run at different speeds, but as a process driven by normative arguing, it has displayed limitations and ambiguities in both regions.

THE CONSTITUTIONALIZATION OF EC LAW AND EUROPEAN CITIZENSHIP, c. 1961–1992

This section examines the process of legal integration from the initial years of the EC until the signing of the Maastricht Treaty in 1992, focusing on the introduction of rules on European citizenship. Part Two of the Treaty formalizes the status of Union citizen for all citizens of EU member states, and confers rights of free movement and residence, voting in local elections in the country of residence (*in loco*), petition and

²Legal integration thus goes beyond the notion of ‘solidarization’ in international society because solidarism is still based on like units, usually states.

diplomatic protection beyond EU borders. In addition, it creates the position of an ombudsperson, who acts as a representative of the Union citizens' interests at the community level. Some provisions concerning the free movement of people and rights of residence had already been part of the EC's founding treaties, but they had been restricted to the Community's working population. The treaty was a milestone of legal integration in the region, as it created a secondary institution constituting rights for all European citizens toward the EU as a supranational regional organization (O'Leary 1996, p. 21). It thereby supplemented the established horizontal structures of coexisting national constitutional orders and international law with a more hierarchical legal construct on a regional scale.

Researchers do not usually compare European legal integration to other regions, and most studies come from an idiographic EU studies or legal background (Alter 2009b; Weiler 1991, 1994). This is understandable given that the EU is the only regional organization to have developed substantial rules in this area. On the other hand, exactly why that is the case remains unclear. Some authors have rightfully challenged interpretations based on classical integration theories (Maas 2007, pp. 6–8). Intergovernmentalist accounts, which concentrate on states' interests in an effective regional legal system (Garrett 1995), have a hard time explaining why EU governments have increasingly ceded control over the legal status of their citizens. Neo-functionalism suggests that integration in the legal field followed a quasi-automatic logic, whereby economic interdependence led to a demand for an ever-stronger supranational judiciary (Burley and Mattli 1993; Stone Sweet and Caporaso 1998). However, market demands may have made the introduction of individual rights on the Community level plausible but they were by no means a *necessary* consequence. It remains unclear why functional demands in the economic sphere should translate to far-reaching legal integration in Europe but not elsewhere. Given these weaknesses, scholars who see EC/EU citizenship instead as the result of a political project of building a European community (Maas 2007; Wiener 1998) are the main reference points for the analysis in this section. It expands on their work by situating the processes of normative arguing about citizenship in the dynamic and ambiguous institutional context of Europe's international society. In pursuit of their goal, the advocates of citizenship benefitted from certain features of the secondary institutional legal framework and tensions in the primary institutions, which increased their positional

power in the discourse and allowed them to make strong claims about the legitimacy of sub- and supranational actors. This approach not only offers a fresh perspective on EU citizenship but also makes it possible to account for the similarities and differences with processes of legal integration in other regions.

Treating it as an instance of legal integration, I employ a conventional definition of citizenship as a legal status, expressed through a set of rights and duties, that confers membership of and participation in a political community (O’Leary 1996, p. 13). The term thus comprises secondary institutions that constitute the individual as a holder of political, social and economic rights and obligations vis-à-vis an administrative entity. In contrast to broader conceptions (Wiener 1998), this definition excludes notions of collective identity. Early figurations of the discourse on citizenship emerged in the 1960s, only a few years after the creation of the EEC. The analysis therefore starts by outlining the context of primary and secondary institutions at that time, focusing on those institutions that deal with the ‘sanctity of agreements’ and the definition of binding rights and obligations of individuals.

Three of the region’s primary institutions are relevant for the initial conditions of legal integration in Europe. First, the primary institution of sovereignty had experienced a massive albeit incomplete reinterpretation since the end of the Second World War. Citing economic and security concerns, political leaders had departed from the graduated conception of sovereignty of the colonial era on the one hand, and the sovereign equality doctrine of the contemporary global international society on the other. Instead, the notion that sovereignty was to be pooled, which was also influential in the debates on external relations explored in Chapter 4, had become firmly entrenched in the discourse of European international society (Diez et al. 2011). The emergence of an authoritative actor on the supranational level was a logical consequence of these ideas. However, the reallocation of authority was only partial. As a second primary institution, nationalism remained central and was in fact reasserted as a main reference point for the development of the EC’s political framework throughout much of the 1960s and 1970s (Milward 1992). The rhetoric of a *Europe des patries* (Europe of the homelands) and the French boycott of EC decision-making during the ‘Empty Chair Crisis’ demonstrate this continued importance of nationalism. The principle of national self-determination constituted individuals as holders of rights in their state of citizenship, but not in the region as a transnational whole.

Third, even with the institutionalization of the EC, the legal doctrine of the European international society initially remained dedicated to positivist international law. States could enter exclusively into obligations set freely among themselves, and they were the only sources of regional legal order. Accordingly, the rules and procedures of the EC were the result of interstate treaties. The fact that non-state actors such as the European Court of Justice (ECJ) could serve as a source of jurisdiction does not contradict this notion, as international courts are a common feature even of pluralist international societies that provide only a thin fabric of principles for the coexistence of states as its constitutive units. Individuals, meanwhile, could only acquire legal status by virtue of being a citizen of a nation-state. Therefore, their legal rights were directed at those states and could not be extended to supranational bodies.

Already in the 1960s, Europe hosted a multitude of regional organizations with different secondary institutions, functional scopes and overlapping memberships, some of which had a profound impact on international law. For example, the Council of Europe was an important source of legal development in the wider European international society. The EC's remarkable significance for the development of legal integration in Europe is rooted in its unique combination of centralized and dispersed authority resulting from the parallel existence of supranational and intergovernmental structures. In the legal realm, the most notable supranational feature were the rules and procedures of the ECJ. Created in 1952 as a part of the Treaty of Paris, it had jurisdiction in certain circumscribed areas of regional cooperation. However, there were only rudimentary elements of a secondary institution of citizenship in its legal framework. Article 48 of the Treaty Establishing the EEC limited the right to free movement to the active and former workforce in the private sector only (Baldoni 2003). The rationale behind the concept was to optimize the allocation of the factor work in the common market, not to ensure equality among individuals. The treaty was neither supposed to establish special rights for citizens of a member state in other member states nor fundamental rights for all member state citizens.

The configuration of primary and secondary institutions in the early years of the Communities constituted a regional international society in which nation-states were still the main legal actors. This setup was stabilized by the feedback effects surrounding its reproduction. As detailed in Chapter 2, institutional configurations can obtain a high degree of stability through power effects, the reification of social facts, vested

interests and institutional linkages. Starting with power effects, access to the main institutionalization mechanisms—the intergovernmental conferences, meetings of Heads of State and Government, and the Council meetings—was restricted to state representatives. The reproduction of regional institutions was thus a highly exclusive practice. The ECJ as a supranational institution began to take on a more assertive position and actively tried to extend its role in the development of the legal framework of the Communities in the mid-1960s, thereby challenging the intergovernmentalist structure. However, much of its factual jurisdictional power relied on the progressive establishment of case law, which was a slow process. Regarding reification, the existence of the EC institutions certainly challenged traditional perceptions of international relations in which the nation-state was the paramount actor of international society and the only source of legitimacy. However, the subordinate role of the individual as a legal subject beyond national constitutions in traditional international law doctrine worked against the introduction of a transnational concept of citizenship. On the other hand, the objective of an ‘ever closer Union’ enshrined in the Treaty of Rome opened a potential discursive space for denaturalizing the role of the nation-state in this respect.

Feedback effects were arguably the weakest in terms of vested interests. Many subnational actors expected to benefit from closer legal integration and a weakening of national legal authority. Lower-level national courts saw the prospect of building coalitions against the predominance of supreme courts, while individuals and companies expected enhanced possibilities for litigation and more favorable jurisdiction (Alter 2009b; Stone Sweet and Caporaso 1998). Of course, national supreme courts were anxious to safeguard their important position. However, even a number of nation-state governments, namely those with a federalist outlook like Italy and the Benelux countries, preferred legal integration. Interests were thus not unequivocally geared toward the preservation of the existing institutions. There were strong vertical institutional linkages between the secondary institutions of the EC and the regional primary institutions. The provisions for free movement put the primary institution of pooled sovereignty into practice in the economic realm, but the very limited extension of individual rights paid tribute to the rivaling institution of nationalism. The EC’s legal foundations were also in line with the positive law doctrine since they were founded by intergovernmental treaties. Even the supranational ECJ fits into this assessment,

as its original purpose was to sanction the other EC institutions if they overstepped their narrow competences.³ Horizontally, however, the logic of pooled sovereignty on the one hand and nationalism with its principle of national self-determination on the other constituted fundamentally conflicting expectations about the location of legal authority. This deeply rooted tension provided a point of attack for those promoting legal integration in the following years and decades.

THE INSTITUTION OF DEMOCRACY AND THE CONSTITUTIONALIZATION OF COMMUNITY LAW

As possibly the first vocal advocate of European citizenship, Lionello Levi Sandri, then Commissioner for Social Affairs, made several attempts to put the issue of individual rights on the Community agenda in the 1960s (Maas 2007, p. 21). Departing from a purely economic rationale in legitimating the free movement for workers, he stated before the European Parliamentary Assembly in 1961:

I do not conceive of the free movement of workers as a simple means to optimize the combination of production factors, that is to say the combination of labor with other factors; I actually conceive of it as the first element of a European citizenship. (Levi Sandri 1961, p. 135, my translation; see also 1966)

At the level of member state governments, the idea was first taken up at the 1972 Paris Summit of Heads of State and Government (Maas 2007, p. 30). There, the Italian Prime Minister Giulio Andreotti (1972) suggested to establish a European citizenship ‘in addition to the citizenship which the inhabitants of our countries now possess’, and which would comprise certain political rights such as the right to vote in local elections. Commission President Sicco Mansholt seconded this position and echoed Levi Sandri by including the free movement of persons to the short list of possible rights of political participation for Community citizens. At the 1974 Paris Summit, the EC leaders established working parties on a potential passport union and ‘special rights’ (Wiener 1998, p. 74).

³See Chapter IV of the *Treaty establishing the European Coal and Steel Community* (1951), which almost exclusively refers to infringements by the High Authority of the EC, not by its member states.

The Tindemans Report of 1975 called for the recognition of citizen rights and the abolition of border controls, and in 1978, the European Parliament (EP) held a Roundtable on Special Rights and a Charter of Rights of the Citizens of the European Community. Despite the various ideas and scenarios resulting from these initiatives, attempts at formalizing citizenship rules in the 1970s and early 1980s provided few tangible results.

On a more fundamental level, however, this period saw the emergence of two important regional primary institutions, namely liberal democracy and Community constitutionalism. Principles of liberal democracy had not been a part of the EC's founding document, the Treaty of Rome. However, statements by individual EC bodies soon asserted the importance of democracy as a foundational value (Diez et al. 2011, p. 131). The Parliamentary Assembly's Birkelbach Report of 1961 and the Luxembourg Report, drafted in 1970 by a committee of experts and later adopted by the Council, became important reference points in this respect. At the Copenhagen Summit in 1973, the Heads of State and Government agreed on the Declaration on European Identity, which affirmed democracy as a basic element of the Community's set of values. In conjunction with the frequent invocation of the concept in subsequent documents such as the European Council's Declaration on Democracy (1978), this is evidence for the firm institutionalization of liberal democracy as a primary institution of the European international society by the mid-1970s.⁴

Drawing on these developments, advocates of European citizenship started to link their arguments to a call for democratization of the EC in the 1970s. Again, the European Parliament was at the forefront of exploring possibilities for extended rights for European citizens on the community level. A report by MEP Alfons Bayerl on behalf of the Parliament's legal affairs committee exemplifies this connection: 'Only equal treatment of citizens in every member state can guarantee in the long term a democratization of the Community and contribute to its further development' (Legal Affairs Committee 1979). This runs counter to claims in the literature that early European citizenship discourse was concerned above all with creating a European identity, while legitimacy concerns only entered the picture in the 1980s (Wiener 1998).

⁴A detailed account of the institutionalization of democratic principles in the context of EC and EU enlargement follows in Chapter 7.

However, the strategy of legitimating citizenship with democratic principles in the 1970s suffered from one major drawback: the traditional notion of democracy was still tied to *national* constituencies. Liberal democracy as a primary institution of the European international society initially was an attribute of the member states, and conservative stakeholders wanted to keep it that way. Consequently, pro-citizenship actors like Bayerl had to reassure skeptics that nation-states would remain the only legitimate sources of citizen rights:

Nobody wanted a ‘superconstitution’, and no Member of the European Parliament who supported the idea of drawing up rights for the Community’s citizen wanted to take from national authorities the powers which devolved on them in the field of fundamental rights. (European Parliament 1979, p. 44)

It was hard to see how citizenship could develop a distinct European dimension under these circumstances.

Only in connection with the emerging primary institution of Community constitutionalism did the notion of democracy acquire a meaning beyond the nation-state level. The constitutionalization of the regional legal order was heavily influenced by ECJ activism. As pointed out above, the contracting parties initially set up the ECJ as a means of safeguarding the member states against an excessive appropriation of competences by the supranational High Authority. National governments thus saw the Court as a body that would help resolve potential tensions between pooled sovereignty and nationalism in favor of the latter. However, by including a preliminary ruling clause in the Treaty of Rome (Art. 177), the governments unwillingly created a secondary institution that transformed itself from a guardian of nationalism to an ally for those supporting federalism.

The preliminary ruling clause allowed the lower courts of member states to refer cases touching upon EC law to the ECJ, in circumvention of their respective national high courts. Since lower courts were more often in favor of legal integration than high courts, which generally upheld the principle of national self-determination and the autonomy of national constitutional law, this option increased the positional power of pro-integration actors (Weiler 1994). For the ECJ, in turn, the complicity of national courts was beneficial because they could ensure compliance with its rulings (Alter 2009c). By making governments

liable for infringing prior Community decisions before national courts, the clause imposed a *legal* logic upon issues that had hitherto been subject to *diplomatic* rationality. This restricted the argumentative leeway of governments, as it increased the self-binding nature of their speech acts and restricted the use of means such as ambiguous language in order to advance their interests. The preliminary ruling clause also expanded the ECJ's authority by effectively allowing private individuals access to Community jurisdiction (Burley and Mattli 1993).

The Court of Justice, meanwhile, did not initially use the case references to interpret EC law in an overly expansive way. In fact, the leading political science scholar of European legal integration, Karen J. Alter (2009d), argues that early high-profile rulings such as *Van Gend & Loos* or *Costa v ENEL* did not fundamentally impinge on nation-state interests in the specific cases at hand. Their real significance lay in the construction of a legal doctrine based on the principles of direct effect and the supremacy of EC law. To this end, the ECJ pointed to an essential tension on the primary level, namely the contradiction between the legal implications of pooled sovereignty on the one hand and the provisions of conventional international law on the other. If individuals hold rights against their sovereigns, and if interstate treaties create authoritative supranational decision-making bodies with the power to impact on the lives of European citizens, a legal order emerges on the regional level. This order must provide for individual rights vis-à-vis the new sovereign, even if its sovereignty is only partial. The ECJ expressed this view in its judgment on the pathbreaking *Van Gend & Loos* case:

[The Treaty of Rome] is more than an agreement which merely creates mutual obligations between the contracting states. This view is confirmed by the preamble to the Treaty which refers not only to governments but to peoples. It is also confirmed more specifically by the establishment of institutions endowed with sovereign rights, the exercise of which affects Member States and also their citizens. [...] [S]tates have acknowledged that Community law has an authority which can be invoked by their nationals before [national] courts and tribunals. (European Court of Justice 1963)

In areas where Community goals are affected, the Treaties effectively established a legal order that bestowed individuals with rights going beyond those granted by the respective national constitutions. Such a view contravened the conventional assumption of international law that

‘legal obligations are addressed to states only, and do not create direct effect for nationals of that state’ (Halter [2004](#), p. 180).

This argument was further strengthened by the parallel development of the principle of supremacy, which established the paramount authority of law on the supranational level (Weiler [1994](#)). Assisted by the legal advocacy of transnational organizations of ‘Euro-law scholars’ such as the *Fédération Internationale de Droit Européen* (Alter [2009a](#)), the ECJ and lower national courts institutionalized a new primary institution, that of Community constitutionalism. Governments opposing the development were in a bad position, as ECJ decisions could only be overturned by unanimous Treaty revisions (Stone Sweet and Caporaso [1998](#)). Nevertheless, in the 1970s, this institutionalization was far from complete. While former Commission President Walter Hallstein was adamant that the Community’s legal system had all the hallmarks of a liberal democratic constitution, he had to admit that the ‘thesis of the superiority of the law of the Community over national law is not accepted by everyone’ (Hallstein [1972](#), p. 34). The most reluctant actors in this respect were national high courts, in particular the German *Bundesverfassungsgericht*, which explicitly opposed the principle of EC law supremacy in the *Solange I* ruling of 1974. The French *Conseil d’Etat* and the Italian *Corte Costituzionale* were equally hesitant. However, in the 1980s, the *Corte Costituzionale* (1984), the *Bundesverfassungsgericht* (1986) and the *Conseil d’Etat* (1989) eventually recognized the EC’s primacy—although not without the reservation that Community law supremacy derived from the provisions of their national constitutions (Craig [2004](#), pp. 37–39; Kwiecień [2005](#), p. 1487). Due to the influence of the courts on the legislation of three major member states, these rulings were crucial moments in the institutionalization of Community constitutionalism.

TOWARD EUROPEAN CITIZENSHIP

It should not surprise, then, that normative arguing about European citizenship regained momentum in the late 1980s. The development of Community constitutionalism created a new constitutive context for subsequent institutionalization on the secondary level. The primary institutions of liberal democracy and Community constitutionalism disturbed the power effects supporting existing institutions. They constituted individuals as legitimate actors of the European international

society by making them “the principal ‘guardians’ of the integrity of the Community legal order” (Halter [2004](#), p. 180). The empowerment of both Community bodies and ordinary Europeans in this legal order is evident in the increasing number of individual appeals to the ECJ (Weiler [1994](#), p. 513). The new primary institutions also provided a basis of legitimacy for the EP, which had always nurtured a self-understanding as a champion of individual rights in accordance with the mostly federalist outlook of its delegates. At the same time, the institutionalization of democracy and constitutionalism on the regional level also further deconstructed the notion of the state as the constituent unit of international relations, disturbing the reification effects surrounding traditional understandings of international law.

The Parliament’s Draft Treaty on European Union (1984), masterminded by Altiero Spinelli and published in February 1984, affirmed the ideas of an EC law with direct effect and supremacy (Art. 34–44), as well as the principles of democracy and individual rights. Spinelli connected these notions to rules that would establish a European citizenship. The proposed framework was directed against proponents of a *Europe des patries*. However, it also paid respect to national legal traditions by making Union citizenship dependent on citizenship in a member state and by deducing individual rights from ‘the common principles of the Constitutions of the member states and from the European Convention for the Protection of Human Rights and Fundamental Freedoms’ (European Parliament [1984](#), Art. 4.1). Thus, the Draft Treaty took up the qualified interpretation of Community constitutionalism by the national high courts in an attempt to mediate the tensions with the primary institutions of nationalism and international law.

While the Belgian and Italian governments failed in their attempt to have the Draft Treaty ratified by the member states, the EP nevertheless succeeded in infusing a new dynamic in the citizenship discourse (Maas [2007](#), p. 35). The European Council of Fontainebleau in June 1984 decided to set up a working group concerned with how to promote the identity of the Community among its citizens. The Adonnino Committee, interpreting this mandate quite broadly, published two reports suggesting citizenship rules that largely reflect the ultimate framework of the Maastricht Treaty. The reports use different justifications for these proposals: for example, the freedom of movement is described as a ‘necessary corollary of the programme for the completion of the internal market which has received, rightly, the highest priority’.

While statements like this echoed the market logic inscribed into pooled sovereignty, the reports also describe citizen rights as a means to defend the principles of the EC, among which representative democracy features prominently, and to make it more credible and responsive (Adonnino 1985, pp. 9, 19).

There were also some setbacks. Advances in the realm of free movement peaked in the Schengen Agreement of 1985, but this secondary institution remained ineffective because it lacked specific provisions for implementation. The member states' governments could not agree on a Danish proposal to include voting rights in the Single European Act signed in 1986. The Act also kept decisions on questions of free movement firmly in member state hands (Maas 2007, p. 38). Frustrated by the lack of progress, the Commission criticized the Council for failing to act on the recommendations of the Adonnino reports. Referring to the institutions of Community constitutionalism and democracy to legitimate its call for formalizing citizenship rules (but also disclosing a discomforting gender bias in its citizen concept), it stated:

After thirty years of European integration, the steady – and sometimes spectacular – development of Community law has produced a legal order which affects the whole of society: those in business, industry and commerce just as much as the ordinary citizen in his [!] day-to-day life. Community legislation offers him new opportunities, opens up new perspectives and confers on him specific rights which he may exercise both in his private and in his working life if he so wishes. But in order to do so he has to be aware of them. [...] [The European people] should [...] be made aware of their special rights as well as their economic and social rights, and in this connection, the right to vote in local elections for all Community nationals would be the best way of demonstrating the creation and existence of a people's Europe [...].

If ordinary citizens are to be involved in the building of Europe, they must gradually be granted at European level the political rights enabling them to do so. (European Commission 1988, pp. 26–27, 34)

These demands helped putting citizenship high on the agenda of the Intergovernmental Conference on Political Union, during which member states negotiated the contents of the treaty which was to transform the EC into the EU. The memoranda of the national delegations reveal that it was particularly the smaller and medium-size member states that pushed for the inclusion of some sort of citizenship concept in the

Treaty, although there was no consensus on the precise nature of the rules.⁵ Some member states rejected the idea of including citizenship provisions in the Treaty altogether. The Belgian, Danish and Greek delegations pursued a rather minimalistic concept centered on the *in loco* right to vote in local elections. The Portuguese went beyond this by adding free movement for all citizens and diplomatic protection in third countries to the list of potential rights. The proposals by the Italian and Spanish representatives were the most far-reaching, including broader political and social rights such as the freedom of expression and association (European Commission 1990). The Spanish proposals were distinct in that they contained

- a provision obligating the Union to guarantee equal opportunities for all citizens;
- the notion of obligations such as military service, rather than just the conferral of rights;
- the possibility to extend the rights to further areas of EC policies in the future;
- the possibility to extend the rights to non-Community citizens (Délégation espagnole 1991; Permanent Representation of Spain to the European Communities 1990).

In this, they were quite close to the ideas of the EP, which also favored a more comprehensive approach, including citizens' duties, rights to petition and information, and the possibility of extension to non-Community citizens (European Parliament 1991; Wiener 1998, pp. 261–270).

The justifications for these suggestions varied. Some actors constructed contemporary events as shocks that redefined national preference structures, thus offsetting member states' vested interests in opposing new secondary institutions. The European Commission (1990) and the Greek government, for example, argued that German reunification and post-Cold War uncertainties increased the need for a more integrated treaty framework. In her report on behalf of the Committee on Institutional Affairs, MEP Rosaria Bindi (1991, para. 1.a) stressed that the increased migration flows of a globalizing world made exclusive

⁵Unless indicated otherwise, the memoranda referred to in this section are collected in the annex of Laursen and Vanhoonacker's (1992) volume on the Intergovernmental Conference. For an overview of the delegations' positions, see O'Leary (1996, pp. 23–30).

citizenship concepts appear outdated. Others invoked a spillover logic of integration by displaying citizenship as a necessary consequence of previous integration efforts. The Spanish delegation asserted that European citizenship was necessary to create the common political space required for implementing a common foreign and security policy as well as an economic and monetary union (Permanent Representation of Spain to the European Communities 1990). Most often, however, the memoranda depicted citizenship rules as a question of democratic legitimacy of the EC. One of the Spanish notes is exemplary here as it sketched out

an integrated area serving the citizen, which will be the very source of democratic legitimacy and a fundamental pillar of the Union, through the progressive constitution of a common citizenship, the rights and obligations of which derive from the Union. (Délégation espagnole 1991)

This normative argument links citizenship rules to the primary institutions of democracy and, by describing the Union as the source of citizen's rights and obligations, Community constitutionalism. The EP took a similar view. The Bindi report made strong legitimacy claims, going as far as comparing the Community institutions to a democratic government:

government must derive its legitimacy from a mandate given by citizens, and, in particular, laws must stem from institutions democratically elected by citizens [...]; citizens must, in their own right enjoy specific rights – including political rights – vis-à-vis the institutions of the Community and each of the Member States; those rights must enjoy full protection of the courts in the Member States and, by extension, at Community level [...]. (Bindi 1991, para. G)

The report also explicitly cites ECJ case law as a source of these considerations (Bindi 1991, para. L). This line of reasoning subsequently became the mainstream of the EC discourse. The Foreign Ministers took it up in a reflection paper submitted to the Dublin European Council in 1990, where they argued that the transfer of competences to the EC's institutions made it necessary to reinforce democratic control (Foreign Ministers of the European Community 1990).

What is striking is that both the national delegations and the European institutions invoked functional arguments, but they did so

with a twist. Rather than using a simple spillover logic, where increased cooperation in certain areas of cooperation necessitates integration in another, they asserted that past integration successes raised normative concerns about democratic legitimacy. The demand for citizenship thus echoed the original argument of the ECJ that the constitutional character of EC law results from the effective political authority that had been transferred to the Community institutions. These linkages to the primary institutions of liberal democracy and Community constitutionalism provided a strong legitimating basis for the introduction of citizenship rules. By the start of the Intergovernmental Conferences in December 1990, the European Council (1990) had adopted the citizenship agenda, albeit in a form that mirrored the more minimalistic concepts of the reluctant states. This approach was to dominate the conference debates and is represented in several treaty drafts circulated in the first half of 1991. These texts contain all the elements that would ultimately be included in the Maastricht Treaty and only differ in details, such as timeframes for implementation and conditions for obtaining the right to vote in other member states (Conference of the Representatives of the Governments of the Member States 1991a, b; Présidence Luxembourgeoise 1991).

Building on this minimalist approach, the treaty signed in Maastricht in February 1992 established rules of a common European citizenship. The Treaty ensured the free movement of all persons, the right to vote in municipal and EP elections at their place of residence, diplomatic protection by other member states in third countries, and the right to petition at the EP (*Treaty on European Union* 1992, Part Two). It did not refer to any more far-reaching political or social rights, and neither did it confer obligations on Union citizens. It is evident that the authors had been aiming for a compromise not just between individual country positions but also between normative reference points. Reaffirming the primary institution of Community constitutionalism but also bowing to conventional understandings of international law and the principle of national self-determination, the treaty defined national constitutional law as a source of Community law (Art. F) and based European citizenship on national citizenship in the member states (Art. 8.1). Despite these limitations, the treaty was a leap toward a more hierarchical legal order. It weakened the nation-state in relation to the supranational institutions and the individuals in terms of legal authority.

Although functionalist and intergovernmentalist perspectives capture important dimensions of legal integration processes in Europe, the

EU's new legal secondary institutions were not the simple consequence of functional necessities, nor the mere result of rational negotiations between governments. Instead, their institutionalization was driven by the normative arguments of pro-integration actors. Insofar as the promoters of citizenship used functional arguments, these only started resonating once the constitutive context on the primary institutional level changed and the feedback effects stabilizing the institutional configuration were disrupted. An English School-inspired analysis thus supports accounts arguing that the introduction of citizenship rules was connected to specific legitimation strategies (Wiener 1998), but it shows that the ability to draw on specific argumentative patterns depended on the changing normative frame of reference provided by the primary institutions of Europe's international society. Bringing the argument full circle, the dynamics in this primary institutional context could in turn only have occurred because specific secondary institutions—especially the EEC Treaty's preliminary ruling clause—provided structures conducive to change.

THE ASEAN CHARTER AND DISPUTE SETTLEMENT, C. 1976–2007

This section follows the legal integration process in Southeast Asia from the institutionalization of ASEAN until the adoption of the ASEAN Charter in 2007 and the related protocols. The signing of the Charter accompanied the launch of a community-building process in ASEAN, which is supposed to deepen cooperation in the politico-security, economic and sociocultural domains. Developing a concept of Community citizenship was not a part of this process. Still, the Charter marked a key event in legal integration, not just because it conferred a legal personality on the organization but also because it introduced provisions for legal dispute settlement that went significantly beyond existing standards. Traditionally, ASEAN had emphasized nonlegal forms of dispute settlement, such as confidence-building, consultation and mediation (Caballero-Anthony 1998). By contrast, the Charter also provides for elements of compulsion and binding arbitration in dispute settlement.

Apart from the sparse comparative literature mentioned at the beginning of this chapter, there is also a small body of studies analyzing legal integration in ASEAN from a legal perspective. Insofar as these offer

explanatory approaches, they either take recourse to neo-functional arguments (Ewing-Chow and Tan 2013) and the diffusion literature (Jetschke 2017), or see the nature of legal secondary institutions as a direct reflection of the principles and norms of Southeast Asia's international society, which emphasize national sovereignty (Desierto 2011). Of course, there are numerous IR contributions on the development of the ASEAN Charter in 2007, including the aspect of dispute settlement. However, these are largely written with a focus either on the economic or security aspects of regional cooperation (Caballero-Anthony 1998) and see its legal implications as a by-product of these dynamics. To account for legal integration as a political process in its own right, the following analysis traces the accompanying normative arguments and illuminates the primary institutional context in which they unfolded.

In principle, dispute settlement mechanisms had been a part of ASEAN's secondary institutional framework since 1976. However, they were only of marginal significance for the first two decades. In the 1990s, a discourse on strengthening legal integration through enhanced dispute settlement emerged in the region. To understand the way in which it unfolded, it is not sufficient to look at individual country positions. Regionally specific primary and secondary institutions that expressed convictions about the role of law in international society shaped the normative dimension of the debates. In the initial ASEAN years, the Southeast Asian international society mostly reproduced primary institutions of the global international society. Unlike in Europe, the primary institution of sovereignty was unequivocally treated in terms of sovereign equality. The central norm associated with this primary institution was noninterference. This conservative interpretation implied that states were the only sources of legal authority both internally and internationally. As national sovereignty was much less compromised by other institutions than in Europe, Southeast Asia's international society was decidedly pluralist.

Another clear parallel to the global international society was Southeast Asia's adherence to the primary institution of nationalism. The UN Charter principle of self-determination continued to be a central reference point of discourses about regional order even decades after formal decolonization. In a marked distinction from the global level, however, the Southeast Asian discourse connected the viability of national self-determination to the ideas of 'regional resilience' and 'regional autonomy', which both promote regional cooperation for the purpose of

fending off internal and external security threats. Unlike pooled sovereignty in Europe, regional resilience did not imply a qualification of the principle of self-determination but, on the contrary, a way of strengthening the state against domestic insurgence as well as hegemonic encroachment. In the Southeast Asian interpretation, nationalism and regional resilience were mutually reinforcing concepts. Regional autonomy is often invoked as one of ASEAN's foundational principles, although it was primarily a strategic security doctrine shared by its member states' foreign policy elites. However, it had a distinctive normative element as it qualified the principle of national self-determination by making it dependent on a cooperative stance among Southeast Asian nations, and therefore expressed mutual expectations about regional interaction.

A final pluralist feature of the Southeast Asian international society was its adherence to positive international law. Even more so than in Europe, region-building was the result of a self-binding commitment of independent states. In the Bangkok Declaration (ASEAN 1967) and the *Treaty of Amity and Cooperation in Southeast Asia* (TAC 1976), the regional states expressly acknowledged the 'rule of law' in the sense that their interactions were bound to a set of legal provisions. However, these were conventions agreed upon freely—at least in theory—by the states themselves and did not constitute an independent legal entity. An important aspect of international law in Southeast Asia was the principle of peaceful dispute settlement. It embodied the conviction that power politics inevitably result in imperial tendencies and are not conducive to the region's peace and prosperity. The TAC, which sought to establish a regional security framework, thus enshrined the '[r]enunciation of the threat or the use of force' as a principle of regional interaction. The commitment to peaceful means of conflict resolution was one of the very few instances of voluntary self-restraint by state actors institutionalized in Southeast Asia. While per se also a principle of global international law, in Southeast Asia peaceful dispute settlement carried a specific interpretation. 'Peaceful' meant not just the absence of military force but a general commitment to nonconfrontational interaction, based on accommodation and without any kind of coercion that impinged on the sovereignty of its member states. This also included a profound skepticism of legal coercion—in contrast to conventional international law, where sovereignty has been compatible with formal and binding arbitration for a long time. In Southeast Asia, conventional interstate diplomacy relying on informal

pressure and incentives was the only means of achieving peaceful dispute settlement (Acharya 2012, p. 166; Boyce 1973).

In terms of secondary institutions, ASEAN's legal basis was not a legally binding treaty. Its founding document was an intergovernmental agreement that did not establish any centralized source of legal authority nor, in fact, a legal entity. Subsequent intergovernmental agreements such as the Declaration of ASEAN Concord (1976) had advanced the institutionalization of the grouping and created something like an ASEAN *acquis* (Naldi 2014) but they were not enforceable. ASEAN also lacked a judiciary authority for dispute settlement such as the ECJ. Even when its member states concluded legally more binding economic agreements from the late 1970s on, the organization had no way to enforce compliance with them (Ewing-Chow and Tan 2013, pp. 5–6). The voluntary nature of ASEAN cooperation was also reflected in the TAC. The machinery of the TAC echoes the regionally specific interpretation of peaceful dispute settlement outlined above. As an embryonic dispute settlement mechanism, the framework established a High Council that was supposed to take on matters of dispute by offering various nonlegal instruments of settlement, such as good offices, mediation, inquiry and conciliation—but not legal arbitration. The procedural requirement that it could only be activated by unanimous member state consent and the fact that its personal composition followed political considerations, rather than being based on legal expertise, compromised the Council's mandate from the outset (Caballero-Anthony 1998, p. 50). It should come as no surprise that, to date, regional governments have preferred to refer their disputes to global dispute settlement mechanisms and never used the services of the High Council. While it continued to exist *de jure*, the TAC's dispute settlement mechanism never became part of regional legal practices.

The strong emphasis on national sovereignty, in combination with the consensus rule on the secondary institutional level, constituted a regional international society with a clearly pluralist, horizontal structure, in which states acted as the single source of authority. All important negotiation sites were arenas of classical multilateral diplomacy such as intergovernmental conferences. The result of this setting was that non-state actors, which played such an important part in European legal integration, had no access to the institutionalization practices. National governments, which already had a privileged position under international law, maintained a virtual monopoly on international legal discourse.

Strong narratives of national liberation and postcolonial discourses that reified the nation-state as the paramount international actor and guarantor for stability and independence reinforced these power effects. Against this background, any infringement on the state's internal or external authority must appear as a threat to hard-fought political freedom. The governments of ASEAN member states did acknowledge the UN as an important source of adjudication in international disputes at the global level and called upon it in cases where they saw international norms violated, as during the Vietnamese occupation of Cambodia from 1977 to 1991. However, voluntarily calling upon the UN in specific cases was very different from permanently subjecting state sovereignty to review by a regional court.

The institutions were also strengthened because the absence of stronger dispute settlement mechanisms provided benefits to the Southeast Asian governments and created vested interests. In the economic realm, it enabled them to protect important domestic industries, the development of which was an important source of regime legitimacy. An independent mechanism for solving investment disputes, for example, would have seriously disrupted this symbiotic relation. The economic *dirigisme* that dominated many ASEAN economies also meant that many domestic economic actors were benefiting from close connections to the government and that societal pressure for legalization of regional economic relations was lower than in the European case. In security issues, the regional institutions ensured that Southeast Asian governments could conduct an independent foreign policy that maximized their freedom of action. It also excluded the possibility of forfeiting international prestige by losing a case before an international court.

Finally, the configuration displayed strong institutional linkages. Horizontally, the primary institutions constituted an almost ideal-type pluralist international society. The high degree of consistency and the lack of substantial tensions deprived oppositional actors of potential normative attacking points. In principle, it was possible to interpret the notion of dispute settlement in a way that put into question national sovereignty and noninterference: if acts of one or more states threaten the peaceful resolution of a conflict, this would call for actions curtailing its ability to act as a sovereign. This is a core idea of collective security. However, as pointed out above, the regionally specific interpretation of peaceful dispute settlement was so strongly tied to the principle of non-coercion that it excluded the possibility of *judiciary*

decision-making and enforcement. Therefore, the potential for tensions between peaceful dispute settlement on the one hand and nationalism as well as sovereignty on the other was quite low. Vertically, ASEAN's decidedly intergovernmental setup and the consensual decision-making procedures of the ASEAN Way mirrored the norms of noninterference and national self-determination. By ensuring that the management of interstate conflicts proceeded within the comfort zone of member states, they also undergirded the principle of peaceful dispute settlement. The same applies to the procedures of the TAC's High Council, which ensured that all parties had to consent before handing a case over to its jurisdiction.

BUILDING MOMENTUM FOR LEGAL INTEGRATION

During the first twenty-odd years after the signing of the TAC, there were only marginal changes in the legal institutional configuration of Southeast Asian regionalism. In the legal field, secondary institutions incrementally formed out of accumulating treaties and cooperation agreements. Starting in the late 1970s, ASEAN member states entered into economic agreements covering specific aspects of trade and financial policies, which led to the harmonization of laws and the gradual creation of an ASEAN Free Trade Area. However, these agreements remained firmly within the parameters of conventional international law. While some of the obligations were binding in principle, the member states did not create strong independent bodies to interpret them and monitor or enforce compliance (Ewing-Chow and Tan 2013, pp. 5–6). Under the 1992 Framework Agreement on Enhancing ASEAN Economic Integration, the ASEAN Secretariat assumed a minor role in monitoring implementation and developing recommendations on further institutionalization, but it had to do so hand in hand with national ASEAN bureaucracies and the intergovernmental ASEAN Summit remained the paramount decision-making body (Lin 2010). In 1996, ASEAN leaders signed a Protocol on Dispute Settlement, which covered potential cases of noncompliance with the organization's economic agreements. The mechanism was a response to pressure from industry representatives, but ASEAN leaders were reluctant to establish far-reaching rules and procedures (McCall Smith 2000, p. 168). They limited the protocol to good offices, mediation and conciliation while excluding adjudication, which means that any decisions would be nonbinding

and political, i.e. based on the reconciliation of interests rather than legal procedure. While the agreement envisioned third-party arbitration by ad hoc panels, these could only be established after a unanimous decision of all member states, including the dispute parties. Adjudicative decision-making capacity remained with the intergovernmental Senior Economic Officials Meeting and the ASEAN Economic Ministers Meeting, which acted as the final appellate body. Just like the TAC's High Council, the protocol remained inactive because its use was non-compulsory and subject to bilateral consensus (Lin 2010, p. 835).

In contrast to the European case, there were no developments fundamentally disturbing the feedback effects surrounding the institutional configuration in Southeast Asia. Institution-building at the early stage of regionalization had not included the establishment of an authoritative supranational entity like the ECJ, which could have participated in the regional discourse as an autonomous actor, changed the preference structures of actors and created a regional legal doctrine (Ewing-Chow and Tan 2013, p. 18). The interpretation and application of rules remained subject to national administration, legislation and jurisdiction, and, by consequence, national constitutional traditions. The absence of a supranational court also implied that the positional power of subnational actors with a preference for legal integration, such as lower-level courts and certain private actors, remained unchanged. Without a constitutive context conducive to arguments for integration, the institution of positive international law was not seriously challenged.

This changed in the late 1990s, when pressure by pro-integration actors mounted to increase the legal integration of Southeast Asia's international society. I pointed out above that in Europe, decisive pressure for institutional change emanated from nongovernmental actors. In a limited sense, this was also true for Southeast Asia. There were no influential transnational associations like the European Federalists, not least because the authoritarian nature of many of the member state regimes impeded the development of a transnational civil society. To the extent that non-official actors penetrated the discourse of the regional international society, they were often not entirely independent from their national governments. The frequent consultation of 'Eminent Persons Groups' (EPGs) in questions of regional integration by ASEAN leaders is a case in point. EPGs are nominally nonofficial expert groupings but usually consist of former high-level administrative staff appointed by incumbent governments. This para-governmental approach allowed the member

states to increase the ‘input legitimacy’ of their institutionalization practices while keeping a firm grip on the actual degree and direction of discursive contestation. However, nonofficial actors had a broader channel for their advocacy in the so-called track-two diplomacy consisting of conferences, seminars and workshops attended by policy experts and decision-makers participating in a nonofficial capacity. Academic institutions and think tanks like the ASEAN Institute of Strategic and International Studies (ASEAN-ISIS), a regional association of research and policy-consulting institutes, and the Institute of Southeast Asian Studies (ISEAS) in Singapore were important conveners of such events and produced publications championing the legal integration of Southeast Asia’s international society (Soesastro and Hew 2003).

The only pro-integration actor with supranational characteristics was the ASEAN Secretariat. The Secretary-Generals Rodolfo Severino, in office from 1998 to 2003, and Ong Keng Yong (2003–2007) gave important impulses toward further legal integration by using their informal agenda-setting power and, in the case of the latter, by orchestrating the drafting of the ASEAN Charter (Chalermphanupap 2009, pp. 120–121). As one of the first policy-makers to urge publicly for legal integration, Severino (1998) declared:

ASEAN may have to move toward the greater use of more formal instruments and binding commitments in the future, as developments like the financial and economic crisis [...] press ASEAN’s members to ever closer coordination, cooperation and integration.

From this observation, the Secretary-General derived an ambitious agenda to reform ASEAN’s secondary institutional structure, including effective enforcement and legal adjudication. ‘This would mean’, Severino (2002) asserted, ‘voluntarily ceding a measure of sovereignty for regional purposes’—a direct challenge to the norms of noninterference and national self-determination. However, the Secretary-General could not link his political project to an established primary institution, as European actors did when they derived the rules of European citizenship from the primary institution of Community constitutionalism. The strongly pluralist interpretations of sovereignty, nationalism and positive international law did not provide sources of legitimacy for his agenda. He also lacked a strong ally for his vision, as a supranational judicial body might have been. This was especially consequential since the Secretariat

itself was notorious for its lack of resources and decision-making authority. While the discourse was thus open to some actors beyond the official governmental realm who produced pressure for institutional change, access was generally limited to academic and meritocratic elites. Ultimate authority remained firmly vested in ASEAN governments.

The official positions of these governments were not uniform and the five ASEAN founding members⁶ (and Brunei) were in fact willing to move beyond the minimalist configuration of Southeast Asia's international society. However, the consensus-oriented procedures of the organization ensured that the generally more conservative group of the newly acceded CLMV states—Cambodia, Laos, Myanmar and Vietnam—determined the pace of official arguing about legal integration (Chalermpanupap 2009; Koh 2009). After their accession, which will be further explored in Chapter 6, CLMV leaders made every effort to reaffirm the established primary institutions, often using culturalistic explanations that tied in with the debate on 'Asian values' of the 1990s. Phan Van Khai (2004), then Prime Minister of Vietnam, exemplified this view in a speech on ASEAN Day 2004:

We believe that, ASEAN fundamental principles will still be the foundation for the existence and development of our Association in the long run, even when the ASEAN Community is materialized [...]. I would like to emphasize the importance of culture in maintaining the relevance of ASEAN and its fundamental principles. They are reflective of Asian values [...]. They have been manifested as Asian way in international relations [sic!] [...].

Thus, Khai expressed the resolve of the CLMV countries to move along with secondary institutional reform—the building of an ASEAN Community—in a conservative way that would not put into question the established primary institutions.

The champions of legal integration, on the other hand, used three main themes to justify their calls for change: the imperatives of globalization, the changing regional strategic context and functional requirements. Regarding the first point, the main argument was that economic globalization made it necessary to increase the competitiveness of Southeast Asian economies, which could be achieved most effectively through economic integration (Tay 2008). In the eyes of the advocates of change, the Asian financial crisis of the late 1990s dramatically

⁶These are Indonesia, Malaysia, the Philippines, Singapore and Thailand.

reinforced the need to adapt. In December 1997, amidst financial turmoil in Indonesia, Malaysia and Thailand, ASEAN leaders presented the Hanoi Plan of Action as a sign of commitment toward closer integration. Heavily influenced by neoliberal thinking, the plan signaled their commitment to regional integration as a means to accelerate integration into the world market and, ultimately, economic recovery and growth. While the globalization argument was plausible, it was not very compelling from a normative point of view. It did not reflect a strong, historically grown consensus on an economic model for Southeast Asia but appeared to be a necessary response to external developments in the global economy. The call for more regional cooperation certainly resonated with the concept of ‘regional resilience’, and there is no doubt that neoliberalism had become the dominant model for economic policies in all ASEAN members including the CLMV states. However, unlike in the European case, free market principles and the goal of economic integration were not linked to the primary institution of pooled sovereignty, and therefore not as deeply inscribed into the logic of ASEAN cooperation from its inception.⁷ Without such a primary institutional reference point, it was now hard to use economic imperatives as a justification for far-reaching change in the level of secondary institutions.

The second theme permeating the discourse on regional international institutions was the changing strategic environment in the region. In this view, integration was a prerequisite for engaging in the politics of the wider Asia-Pacific region and possibly acting as a mediator of tensions between the great powers (Tay 2008, p. 156). As an EPG report put it:

The rise of China and India, coupled with the resurgence of Japan, is also changing the economic landscape of the region, with profound implications for the rest of the world. Southeast Asia is well-poised to benefit from these developments, provided that ASEAN Member States strengthen cooperation among themselves and with the rest of the region and the world. (Eminent Persons Group on the ASEAN Charter 2006, p. 14)

⁷The ambiguous role of liberal economic principles for regional cooperation in (Southeast) Asia is also reflected in the academic literature, where some see it as a foundational principle (Acharya 2012, pp. 161–164) while others refrain from according primary institutional status to the notion of ‘market’ (Foot 2014, p. 191).

The changing context created additional pressure for ASEAN to increase its competitiveness by codifying the regional integration project, but also to bundle its resources and act in a more unified way. Statements like the one by the EPG did not always specifically address the question of legal integration but mostly focused on the need to strengthen economic and security cooperation as such. However, and this brings us to the third argument, further regionalization in the economic field was seen as dependent on a firmer legal basis for regional interaction. Thus, the references to the exogenous shocks of globalization and the rise of regional competitors were ultimately also a basis to push for change in the legal field. From this point of view, spillover effects from the economic sphere created a functional demand for integration, including the codification of international agreements, making them more binding and providing for effective enforcement. Secretary-General Severino (2001), for example, was adamant ‘that closer regional economic integration requires basing it on binding legal foundations if integration is to be stable, credible and effective. The commitments undertaken must be clear, firm and enforceable [...]’. The need for enhanced monitoring and compliance to accompany economic integration was also stressed by his successor Ong (2003). To ‘deepen’ secondary institutions in this way was to provide the legal context necessary for an integrating regional economy dependent on foreign direct investments (Ewing-Chow and Tan 2013). In this sense, any argument for increased economic cooperation was ultimately also an argument for the legal integration of the regional international society. The Vientiane Action Programme, a declaration by ASEAN Heads of State and Government that outlines the intent to create an ASEAN Charter, takes up this functional reasoning:

Deepening integration, especially in the economic sphere, will also require the Member Countries to [...] make binding commitments, identify appropriate implementing timetables and mechanisms, extend national and regional capacities and competences, and develop institutional frameworks, responses and human resources in a range of areas that extend far beyond the existing scope of ASEAN integration. (ASEAN 2004a, Section 5)

What is striking about these justification strategies for legal integration is that, in contrast to the European case, none included clear references to a primary institution. Whereas pro-integration actors had to rely on reactive and functional lines of reasoning, the conservative actors explicitly

invoked and reaffirmed the primary institutions of sovereignty and nationalism through the norms of self-determination and noninterference when opposing more regionalized legal institutions. Evidently, the normative context provided a stronger legitimating basis for the guardians of national legal competencies and conventional international law.

Nevertheless, it was impossible to simply ignore the functional arguments, so that a cautious agenda to revisit the legal framework of the Southeast Asian international society materialized in the early 2000s. Besides the campaigning of Severino and Ong, this was also due to the advocacy of para-governmental and non-state actors. Apart from publications by the ‘track-two’ actors mentioned above (High-Level Task Force on ASEAN Economic Integration 2003; Soesastro and Hew 2003), an ASEAN-commissioned study by McKinsey & Company (Schwarz and Villinger 2004) made a strong case for more binding agreements to tap the full potential of regional economic integration. The recommendations relating to legal integration centered on three aspects: codifying ASEAN’s soft law, bestowing ASEAN with legal personality, and ensuring effective implementation and enforcement. The proposals focused on the economic realm, while security considerations, which had dominated the creation of the TAC’s High Council, became increasingly marginalized. The ideas of these actors subsequently entered the intergovernmental realm, buttressed by the member states’ decision in 2003 to create an ASEAN Community covering security, economic and sociocultural cooperation by 2020. In 2004, they reformed the Protocol on Dispute Settlement. Reversing the original procedure, the establishment of an independent appellate body could now only be *prevented* by member state consensus. While this limited the power of the Senior Economic Officials Meeting, national governments maintained considerable influence over the procedure (Naldi 2014, pp. 119–120).

THE CHARTER—AN ASEAN CONSTITUTION?

The regional governments soon agreed that an ASEAN Charter should serve as the main instrument of further institutionalization, and that it should contain elements of legal integration such as enhanced compliance mechanisms (ASEAN 2004a, b). However, the precise framework was still up for debate. Some leaders, such as Malaysia’s then Prime Minister Abdullah Ahmad Badawi (2004), argued that ‘there should be capacity for enforcing Community decisions’. Others, including his

Vietnamese counterpart Khai (2004), were more critical toward legal integration altogether and expressed a preference for established practices ‘such as tacit consultations, closed door diplomacy, and not rushing to regionalize or internationalize disagreements or disputes among nations’. While Abdullah was not able to support his argument for integration by referring to an established primary institution, Khai (2004) expressly linked his preference for nonlegal, nonintrusive ways of dispute settlement to the noninterference norm and reaffirmed the validity of uncompromised sovereignty despite the shock of globalization:

Globalization has increased interdependence among nations. A crisis or epidemic may erupt in a country or region, but their impact could quickly spill over to other countries and regions. [...] But we do not abuse regional cooperation to leverage pressure on other countries or use it as an excuse to interfere into others’ internal affairs. Thanks to this unique ‘ASEAN Way’, many issues facing the Association have been addressed successfully while ASEAN’s non-interference principle continued to be upheld.

Even pro-integration actors such as Abdullah did not directly call the ASEAN Way into question. From the very beginning, the Charter was supposed to reaffirm the established principles and norms of the regional international society (Acharya 2005; ASEAN 2004b). Advancing legal integration on the secondary level but in a way that would not threaten the existing primary institutional framework—this was the compromise found between the progressive ASEAN member states and the CLMV group. Consequently, when the leaders tasked an EPG in 2005 to develop recommendations for a Charter, the group’s mandate was fairly circumscribed. The Kuala Lumpur Declaration (ASEAN 2005), which served as a reference document for the EPG, stated that ‘the ASEAN Charter will codify all ASEAN norms, rules, and values’ and ‘reaffirm [...] the principles of inter-state relations in accordance with the UN Charter and established international law’.

These guidelines effectively ruled out strong supranational institutions like the ‘high-level judiciary body’ proposed by academics in the track-two channel (Soesastro and Hew 2003) before the EPG even took up its work. Still, its report published in 2006 was quite far-reaching in some respects, too far-reaching in fact for the more reluctant national governments. The High-Level Task Force of government-appointed

negotiators, which wrote up a draft Charter in the first half of 2007, eventually rejected some of the EPG's more controversial proposals, such as provisions for sanctions in case of noncompliance, as well as a clause inhibiting unconstitutional changes of governments (Koh 2009). Similarly, ideas for a formal court were discussed but eventually dismissed (Woon 2009, p. 74). Three aspects of the negotiation process enabled the conservative states to water down or simply omit some of the most controversial suggestions of the EPG. First, the Task Force worked by consensus (Chalermpananupap 2009; Ong 2009, p. 110). Second, the new ASEAN Secretary-General Ong, a champion of further institutionalization, could only participate in the High-Level Task Force as an impartial 'resource person' and not as a negotiator in his own right. Third, the Foreign Ministers repeatedly intervened in the negotiation process to safeguard their governments' interests and further weaken the integrationist position.

As a result of these circumstances, the Charter signed in 2007 displayed a mixed record in terms of legal integration. Legal scholars are very cautious in their assessments whether and to what extent the document represents a constitutionalization of ASEAN law. Some analysts argue that it is a constitutional document in that it gives the regional organization legal personality (Desierto 2008; Lin 2010). The obligation established in Article 5 (2) that member states need to implement provisions of the Charter using 'all necessary measures, including the enactment of appropriate domestic legislation', affirms this view. On the other hand, ASEAN decisions have no direct effect because they must be ratified by national parliaments under most member states' constitutions and member states may invoke domestic law 'to justify suspending, delaying or declining to comply with ASEAN Summit decisions, ASEAN Law and international law norms subsumed in the ASEAN Charter' (Desierto 2011, p. 304).

This equivocal assessment also extends to the more specific rules and procedures regarding dispute settlement. The Charter calls for expanded dispute settlement mechanisms regarding the accumulated body of ASEAN law. This provision was implemented by a protocol in 2010. This document departs even further from the requirement of mutual consent than the 2004 version of the Protocol on Dispute Settlement, but it still leaves considerable freedom of choice for the member states and does not set up a formal, permanent court. Instead, it vests supreme decision-making and enforcement authority in the ASEAN Summit of

Heads of State and Government. It thus created a potentially powerful dispute settlement tool (Lin 2010, p. 828), but also let concerns about the political rather than legal nature of the region's dispute settlement mechanisms resurface—especially because rules of procedure and potential sanctioning measures remained unspecified. The Secretariat, meanwhile, obtained a monitoring role but no mandate to enforce compliance, which leaves effective judicial oversight to national courts (Desierto 2011; Ewing-Chow and Tan 2013). Neither does the protocol contain a right to appeal for private actors, so that it avoids any sense of an ASEAN citizenship.

The Charter is also ambiguous in other provisions with legal implications. Among these is its notable but qualified commitment to democracy and human rights and its call for a human rights body, which was eventually realized half-heartedly through the creation of the ASEAN Intergovernmental Commission on Human Rights. From its inception, the Commission has drawn criticism for its lack of independence from national governments and enforcement capabilities (Ewing-Chow and Tan 2013, p. 32). Overall, the Charter represented a remarkable move toward legal integration in the region's secondary institutions as it created binding commitments and enhanced dispute settlement mechanisms, but it fell short of aspirations to be a genuine regional constitution due to its largely nonintrusive character and scant provision of enforcement capabilities. In this sense, it advanced the institutionalization of international law in Southeast Asia, but only tentatively *regionalized* it in the sense of creating legal authority at the regional level (Desierto 2011; Naldi 2014; Tay 2008).

An important reason for this mixed record was the primary institutional context of Southeast Asia's international society, which remained rather constant throughout the processes of arguing about institutional change on the secondary level. Those who would have liked to see further-reaching legal rules and procedures were not able to transform the primary institutions in a way that would have bolstered their arguments for reform with normative legitimacy. Meanwhile, opponents of reform could draw on the full inventory of Southeast Asian primary institutions to thwart any far-reaching innovations in ASEAN's dispute settlement mechanisms. Of course, any reform in secondary institutions changes the context of reproducing primary institutions, so that the development of more intrusive principles and norms in the future is a distinct possibility. However, ASEAN governments seem to have been acutely aware of this risk and actively tried to counteract it. The 2010 Protocol on Dispute

Settlement explicitly precludes the possibility of the development of legal doctrine through case law, as it states: ‘The award of the arbitral tribunal shall not add to or diminish the rights and obligations provided in the ASEAN Charter or any other relevant ASEAN instrument’ (ASEAN 2010, Art. 15).⁸ In addition, the ASEAN Coordinating Council clarified in 2012 that interpretations of the Charter by the ASEAN Secretariat ‘shall be non-binding and non-authoritative in nature and shall not be considered as representing the view of any Member State of ASEAN as an intergovernmental organisation’ (ASEAN 2012). This assertion undermines the Secretariat’s potential to intervene in the discourse on Southeast Asia’s primary institutions and progressively change the region’s international law doctrine.

SUMMARY

Both the European and the Southeast Asian international society underwent a process of legal integration but they did so along different institutional pathways. On the surface, the normative context of these developments appears similar. In both regions, the primary institutions of sovereignty, nationalism and positive international law infused the debates. However, their regional interpretation through principles and norms diverged significantly. In Europe, the initial institutional context was shaped by strong tensions between the notion of pooled sovereignty on the one hand and the traditional notions of positive international law and nationalism on the other. Consequently, the stabilizing mechanisms were relatively weak. The main dynamic toward legal integration emanated from the institutionalization of liberal democracy and the constitutionalization of Community law from the 1960s onward. The primary institution of Community constitutionalism, advanced by the ECJ in conjunction with national courts, replaced classical international law and provided pro-integration actors with a normative template that allowed them to link democratization demands to the Community level. This legitimization strategy resulted in the inclusion of rules for EU citizenship in the Maastricht Treaty.

Southeast Asia was an almost ideal-type pluralist international society, in which the primary institutions of sovereignty, nationalism and

⁸As Naldi (2014, p. 136) observes, it is far from clear whether such a view can prevail in practice.

international law were interpreted through the principles and norms of noninterference, national self-determination and peaceful dispute settlement. The primary institutional framework thus lacked the strong tensions of the European case and consequently was subject to stronger feedback effects. Together with the absence of a powerful supranational actor in the legal realm, this put pro-integration actors in a weaker position and worked against change in the primary institutions. Advocates of legal integration had to rely mostly on functional rather than normative arguments. However, claims about the ramifications of globalization could not resonate as strongly as if there had been a firmly institutionalized primary institution of market liberalism. The notion of regional resilience supported calls for stronger cooperation but it did not legitimize the centralization of authority. By consequence, progressive discursive positions had a hard stance in arguments about the potential legal features of the ASEAN Charter. Considering this rigid primary institutional context, it is almost surprising how far the new legal framework went, even if the degree of regionalization was limited. Given the strong opposition to integration by the CLMV states, a mere perpetuation of the existing institutional framework would appear as an equally likely outcome.

The comparative analysis of change in primary and secondary institutions thus provides a fresh perspective on how normative arguments shape legal integration. It also recasts the significance of functionalism as a theoretical approach to legal integration. While both European and Southeast Asian actors used functionalist arguments to advance legal integration, only the Europeans were able to link their claims to principles and norms that made a far-reaching redefinition of rules and procedures possible. Instead of an automatic process driving integration, functionalism is one form of arguing for integration in organizational discourses. While neo-functionalists assume that spillover effects and operational links between different policy fields are a sufficient *cause* for integration, an English School perspective shows that they may rather be a *reason* given by actors for their institutional reform projects. The resonance of functionalist logic, and consequently the degree to which it can buttress legal integration, depends on its proponent's ability to link it to normative reference points in the primary institutional sphere. Despite this importance of the normative context, legal integration is not structurally determined—first, because primary institutions themselves change through normative arguing for and against legal

integration, and second, because the overall context of primary institutions is often ambiguous and cannot be easily translated into legal rules and procedures. Because primary and secondary institutions are connected and mediated through discursive practices, legal integration is a deeply political process.

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CHAPTER 6

Enlargement: Redefining Regional Boundaries

By the mid-1980s, the EC's geographic extension covered roughly half of the European continent.¹ Denmark, Greece, Ireland, the UK, Portugal and Spain had joined the six founding states. Turkey was aspiring to join, but to the east, the boundaries seemed fixed for the time being. Meanwhile, ASEAN had admitted Brunei Darussalam in 1984 but it, too, was far from being a pan-regional organization when measured against common geographical conceptions of Southeast Asia. These limitations were hardly surprising given the 'overlay' of regional politics by global superpower rivalry (Buzan and Wæver 2010). With the end of the Cold War and the dissolution of the Soviet Union, questions of organizational boundaries came to the forefront for both the EC and ASEAN. The ensuing debates eventually resulted in an enlargement boost, both through the formal admission of new member states and the creation of new organizational frameworks beyond full membership. With 12 new member states, the Eastern Enlargement in 2004 and 2007 marks the biggest expansion in the EU's history. In parallel, the organization launched the European Neighbourhood Policy (ENP), an institutional umbrella for relations with countries in its periphery. ASEAN also grew considerably, admitting four new members between 1997 and

¹Parts of the analysis in this chapter draw on Spandler (2018). The article presents a more detailed analysis of how the membership applications of Greece, Spain and Cambodia catalyzed change in the normative fabric of the EC and ASEAN, respectively.

1999. The 1990s saw ASEAN establishing new frameworks for engaging with the broader Asia-Pacific region, the most comprehensive of which was the ASEAN Regional Forum (ARF). Formal organizational growth thus went hand in hand with institutional differentiation in both regions.

There is hardly any comparative research on regional organization enlargement, let alone on the role of fundamental norms in shaping discourses of enlargement.² Existing knowledge stems largely from idiographic studies of the respective regions, especially from EU Studies, where formal enlargement and the ENP have both been the object of much scholarly attention (Ott and Inglis 2002; Schimmelfennig and Sedelmeier 2005; Whitman and Wolff 2010b).³ An important cue regarding the role of norms in the EU literature comes from the influential ‘liberal community hypothesis’. Developed by Schimmelfennig, the approach maintains that the liberal democratic identity of the EU’s member states was a crucial factor for concrete decisions over membership. The organization included those states that best conformed to certain of its core norms, while offering partial membership to those that only partly fulfilled the requirements (Schimmelfennig 2005, 2016). However, the liberal community hypothesis suggests that the EU’s normative identity is made up of a fixed catalogue of unmalleable core norms, which are mainly an externalization of important domestic political principles. Such an essentialist view of Europe’s regional community ignores the historical process of formulating and interpreting certain principles and norms as core conditions for membership in the ‘liberal community’ (Thomas 2006, 2017). After all, even the most fundamental of the EU’s membership criteria—that candidates must have democratic institutions—was not an explicit accession condition from the start. Because it is essentialist regarding the substance of European community norms, Schimmelfennig’s thesis cannot be applied to organizations whose membership is not exclusively liberal democratic.

²The only research from within a principally comparative framework that I am aware of is Aschhoff’s (2012) single case study of the accessions by Cambodia, Laos, Myanmar and Vietnam to ASEAN. He applies a framework developed initially for the EU by Schimmelfennig and Sedelmeier (2002), which aims to explain preferences for membership by outsider states and not, as this chapter does, how inside actors made decisions on admitting new members.

³A brief overview of literature on ASEAN enlargement follows below.

From a comparative perspective, it is more insightful to see the role of regional norms in enlargement as forming a ‘standard of membership’. This concept draws on the concept of the ‘standard of civilization’, which was famously introduced to the English School by Gong as a means to analyze the accession of new states into international society in the nineteenth and early twentieth centuries. In his definition, ‘a standard of civilization is an expression of the assumptions, tacit and explicit, used to distinguish those that belong to a particular society from those that do not’ (Gong 1984a, p. 3). Adopting this idea and linking it to the distinction of primary and secondary institutions makes it possible to spell out the role of normative arguing for the enlargement of regional organizations. The trajectory of a regional organization’s enlargement is shaped by a set of primary institutions that regional actors construct as a standard of membership, which guides the enlargement practices in a way that is very similar to the original ‘standard of civilization’ (Behr 2007; Nicolaidis et al. 2014). The primary institutions of the standard constitute a discursive space within which concrete decisions about the secondary institutional forms of enlargement are made. These decisions may concern the geographical scope as well as the differentiation of boundaries, because membership need not take dichotomous forms. Enlargement also encompasses the creation of new institutional frameworks that give certain actors a special status without granting them full formal membership (Schimmelfennig 2016). If an actor partially fulfills the standard, it can become a member of the regional international society without attaining full membership of the regional organization on which this society is centered (Diez and Whitman 2002).

This chapter shows that the processes of redrawing the EU’s and ASEAN’s institutional boundaries⁴ through secondary institutionalization were inextricably connected to discussions about the broader primary institutional fabric of the European and Southeast Asian international societies. This is not to deny that geopolitical and economic considerations or identity politics have informed concrete enlargement decisions. However, these factors played out in the context of broader

⁴By institutional boundaries, I mean socially constructed principles, norms, rules and procedures about the inclusion and exclusion of actors in an international society, i.e. expectations about membership. Institutional boundaries may differ from those drawn on a geopolitical, transactional or cultural basis (Smith 1996).

normative arguments about who was as a legitimate member of the regional international society in question.

EU ENLARGEMENT AND THE EUROPEAN NEIGHBOURHOOD POLICY, c. 1961–2007

The accession of twelve Central, Eastern and Southern European states to the EU in 2004 and 2007 marks the most comprehensive round of enlargement in terms of population, territory and number of states. Even while finalizing the accession negotiations with these countries, the EU launched the Stabilisation and Association process with states from the Western Balkan that had expressed a wish to join the Union. As accession candidates or prospective candidates, these and other states enjoy a special relationship with the EU even before officially joining. In parallel to these processes of formal admission, the EU developed a political framework for its relations with those states on its newly extended borders that have not been granted a membership perspective. The participants in the ENP, officially launched in 2003, can participate in a number of important aspects of EU integration, including free trade, security cooperation and, theoretically, full access to the Single Market. By consequence, they acquire an ambiguous status between formal membership and nonmembership (Smith 2005). Overall, the EU's borders have become increasingly 'fuzzy' (Christiansen et al. 2000).

The Eastern Enlargement and the launch of the ENP mark a milestone in the pathway of the EU's enlargement. This trajectory was shaped by the gradual development of a standard of membership, which formed the primary institutional context for the institutionalization of secondary membership institutions including the diverse frameworks for preparing accession (the pre-accession strategy and the Stabilisation and Association Process), realizing accession (the relevant articles in the EC/EU Treaties and the Accession Treaties) and providing various degrees of membership (EU member state status as well as the ENP and its Action Plans). Initially, the EC did not dispose of well-defined membership institutions. When the issue of British membership arose in the late 1960s, the EC had some basic accession conditions and procedures in place but the question was eventually resolved on political grounds when Charles de Gaulle, whose French government had rejected the first British application, left office. This section outlines the primary

institutions that made up the standard of membership and the corresponding secondary institutions as they existed around that time, as well as the feedback effects stabilizing this institutional configuration.

As the founding document of the EC, the Treaty of Rome is quite inclusive about who may accede, at least if taken by the letter. It describes membership as open to any European state. This criterion establishes a primary institution of Europeanism as an essential element of the EC's standard of membership. It formulates an expectation about the geographical origin of legitimate members and thus defines the organization as the representative of an international society covering Europe in its entirety. The EC upheld this claim in principle, despite the factual exclusion of Soviet bloc states from the very beginning of its existence. The exclusionary effect of Europeanism became obvious when Morocco's membership application was rejected on the grounds that it was not a European country in 1987.

Although the term was not yet established as a common EC colloquialism, the idea of an *acquis communautaire*—the accumulated legislation and case law that aspiring members had to accept—also figured prominently as a membership condition in these early documents on EC enlargement.⁵ It was first introduced by the Heads of State and Government at the The Hague Summit in 1969, where they argued that applicant states needed to 'accept the Treaties and their political finality, the decisions taken since the entry into force of the Treaties and the options made in the sphere of development' (The Hague Summit 1969; see also European Commission 1972). Since the factual *acquis* of the EC included the creation of a supranational legal order, it was closely linked to the primary institution of Community constitutionalism. Despite the ongoing internal contestation of Community constitutionalism highlighted in the previous chapter, the acknowledgment of EC law supremacy and direct effect were central conditions for accession from the very first round of enlargement. For example, the European Commission (1972; Ott 2002, p. 15) stressed in its opinion on the applications of Denmark, Ireland, Norway and the UK that

it is an essential feature of the legal system set up by the Treaties establishing the Communities that certain of their provisions and certain acts of the

⁵On the *acquis communautaire* as an internal primary institution of the European international society, see Diez et al. (2011).

Community institutions are directly applicable, that Community law takes precedence over any national provisions conflicting with it, and [...] accession to the Communities entails recognition of the binding force of these rules [...].

The secondary enlargement institutions in the EC were of a rather generic nature and followed a dichotomous in-or-out logic. The Treaty of Rome made the accession of new members possible and formalized the enlargement procedures, i.e. the regular processes by which the EC considered applicant states as new members. Upon application, the Commission would draw up a recommendation, based upon which the Council would make a formal decision. The terms of the agreement were to be negotiated between the member states and the applicant (*Treaty establishing the European Economic Community* 1957, Art. 273). However, the Treaty did not specify any conditions, which made concrete decisions on membership applications almost entirely subject to immediate political considerations, as in the British case. In practice, the assessment of the applicants publicized by the Commission narrowed down the political leeway provided by the Treaty of Rome by clarifying the basic criteria for accession decisions. However, the Commission did not follow a standard approach based on clearly operationalized benchmarks. The only way in which the membership criteria were formally specified and developed during this time was through the accession treaties with new member states, which set precedence for future candidates in terms of their obligations in the Community context.

Conspicuously absent from the secondary institutions at that time were rules and procedures providing forms of intermediate status between full membership and nonmembership (Smith 1996, pp. 19–20). Of course, the EC disposed of a framework for association but this was mostly an instrument of the EC's external relations with its former colonies. Therefore, participation in it did not imply a membership status or an enlargement perspective.⁶ Even the states recognized as member candidates were not formally included in a pre-accession process and did not participate in institutionalized EC cooperation before their formal accession. The accession treaties reaffirm this picture of clear-cut, dichotomous borders. Apart from certain transitory provisions, any new member

⁶Notable exceptions are the Agreements with Greece, signed in 1961, and Turkey (1964), which both contain a membership perspective.

had to comply fully with EC legislation upon accession—the treaties did not allow for opt-outs.

As in the other cases, the feedback effects identified in Chapter 2 supported this configuration of primary and secondary institutions. Like the standard of civilization analyzed by Gong (1984b), the EC's standard of membership was constructed primarily by the 'insiders' of international society. The main actors in this respect were the Heads of State and Government, acting through the European Council, and, to a lesser extent, the European Commission. Like the substance of the standard, the assessment of compliance by individual countries was also reserved to the insiders. As evidenced by the French veto on the UK, the formal, state-centered enlargement procedure provided for a large number of governmental veto-players and the absence of objective measurement left a lot of room for political considerations on the side of the EC's internal actors (Hillion 2011, p. 191). This led to strong power effects. Because the relation between insiders and outsiders was usually asymmetrical, applicants did not challenge the standard, as this would have reduced their chances of accession.

Reification in the context of membership institutions is particularly apparent with respect to spatial conceptions. While there was no ultimate consensus about the region's boundaries, the notion of 'Europeanness' as a necessary attribute for a member candidate denotes a seemingly natural quality. This stabilized the institutional configuration of the EC's boundaries because it prevented the accession of actors who could have challenged its self-understanding as a geographically defined entity, such as Morocco. However, the dissonance between the pan-European discourse and the effective limitation of membership to the bloc of Western states undermined the notion of Europeanism as part of the EC's standard of membership. Cold War realities suggested an alternative geopolitical framework, according to which Europe would remain a divided continent for the time being, and the EC was a Western European organization at best.

Another stabilizing factor was that the actors who defined the EC's standard of membership had strong vested interests in its reproduction. The Commission benefited from an emphasis on Community constitutionalism and the *acquis communautaire*, because a commitment of new member states to the existing level of legal, political and economic integration strengthened its position in relation to the existing member states. Through the 'opinions' on accession applications,

the Commission ensured that these two primary institutions took pride of place in the standard of membership. With support from the governments of pro-integrationist member states, the Commission consistently admonished that haphazard enlargement may lead to a backlash in the EC's internal institutional development (Schimmelfennig 2001, p. 73), which would have contravened both the individual EC institutions' and the organization's collective interests.

In addition to these mechanisms, institutional linkages stabilized the configuration. Horizontally, the different institutions of the standard of membership followed quite different logics—geographical (Europeanism), legal (Community constitutionalism) and administrative (*acquis communautaire*)—but they were complementary rather than contradictory, as adhering to one did not preclude or complicate complying with another. Put differently, the primary institutions of the standard of membership did not display any fundamental tensions that could have been used as a hook for normative arguments in favor of new boundaries. Vertical linkages were more problematic because it was unclear how the standard could guide formal enlargement decisions. The existing secondary institutions lacked a clear operationalization of the standard that could serve as a basis for decisions on concrete cases. An important unresolved question in this respect was how to treat applicant states that fulfilled the standard only partially. Subsequent shocks would force the EC/EU to clarify these issues.

THE GREEK AND SPANISH APPLICATIONS AND THE END OF THE COLD WAR AS EXOGENOUS SHOCKS

The first important challenge to the standard of membership came as the use of Association Agreements with European non-member states raised the question of the EC's relations with autocratic states and triggered a discourse about the normative foundations of the organization (Spandler 2018; Thomas 2006). In 1961, plans of Francoist Spain to apply for association became public. Since an agreement would have made eventual membership possible, the prospect met with strong resistance by the European Parliamentary Assembly and civil society actors. The EP's Birkelbach Report, drawn up in response to the Spanish issue, argued that liberal democratic institutions should be an essential condition for accession to the EC. To justify this assertion, the report emphasized the

prevalence of democratic institutions in the current member states, arguing that nondemocratic states would constitute ‘a foreign body’ (*‘un corps étranger’*) in the Community (Birkelbach 1961, Art. 24). While some member state governments had initially supported the Spanish initiative, it became increasingly obvious that admitting an autocratic state would contravene tacit assumptions about the EC’s normative identity even if it did not formally violate any membership conditions. The Council eventually gave into mounting political and public pressure, and decided not to make any commitments to Spanish membership for the time being (Thomas 2006). Adding to these dynamics was the coup d’état in Greece, an associated state, in 1967. Under pressure from the EP (European Parliament 1967), the Commission effectively put the Association Agreement, and with it the prospect of Greek membership, on hold ‘so long as democratic and parliamentary structures have not been reestablished in Greece’ (cited in European Commission 1975). The explicit application of conditionality with respect to democratic government is notable, since democracy was an explicit part neither of the accession criteria in the Treaty of Rome, nor of the Greek Association Agreement. Normative considerations thus overrode existing formal-legal rules. Greece only became an EC member in 1981, several years after the restoration of democratic rule. Spain was admitted in 1986 along with Portugal, another formerly authoritarian state. Both states had applied in 1977 but the Commission made a point of confirming their democratic consolidation before recommending their accession.

The Spanish and Greek episodes were shocks that changed the preference structures—and thereby offset vested interests—of EC governments, as the EP’s advocacy impressed upon them the urgent need to weigh the potential economic benefits of enlargement against normative considerations (Thomas 2006, p. 1203). By consequence, they institutionalized principles of liberal democracy as part of the organizations’ standard of membership. The European Council’s Declaration on Democracy called the respect and maintenance of democracy and human rights ‘essential elements of membership of the EC’ (European Council 1978). The Single European Act listed it as part of the EC’s principles in the preamble, although it did not explicitly make accession conditional upon the acknowledgment of these principles in the applicant country. It was clear that the domestic institutions of member states, which had previously been beyond the sphere of Community politics, now had to meet standards like pluralism, representativeness, rule of law and

human rights. By institutionalizing liberal democracy as a new primary institution of the standard of membership, the EC was able to exert a strong socializing and transformative power upon potential new members (Spandler 2018). This change in the standard of membership should decisively influence the organization's enlargement practices in the 1990s and 2000s.

A second decisive shock for the EC's standard of membership was the end of the Cold War. The detente in bloc rivalry and the liberal reforms in the Central and Eastern European Countries (CEEC) in the late 1980s, soon followed by the end of the Warsaw Pact and the collapse of the Soviet Union, led to a fundamentally new geopolitical context. The transformations affected the feedback surrounding the reproduction of the EC's membership institutions in different ways. In terms of power effects, it removed the Cold War overlay on the limits of the hitherto Western European international society and put the power to redefine the boundaries in the hands of European actors. It also debunked the belief that Europe would remain a divided continent. As this view had reified the EC's boundaries to the East, the organization's Western European nature was suddenly up for debate. The central narrative that emerged in this discourse was that the division of Europe into two blocs had been artificial, and that Europe would eventually achieve its natural unity as the countries of the East modernized, that is to say transformed into liberal democracies (Behr 2007, p. 250).

The end of the Cold War also affected the preference structures of EC actors and therefore offset vested interests. A rigid definition of the EU's boundaries was no longer conducive to fostering a European security community. Most of the states to its east—the CEEC, the countries of the West Balkan and the Newly Independent States (NIS) of the former Soviet Union⁷—clearly strove for close relations with or even membership in the EC. At the same time, EC actors assumed that some form of integration was needed to stabilize the region and in particular to avoid mass migration from the CEEC to the EC (Weizsäcker 1990). However, it was unlikely that all of the Eastern neighbors would be able to meet the existing standard of membership in its entirety. This meant that the EC did no longer perceive its security interests, which called for an

⁷For the purpose of this analysis, I count the former Soviet States of Estonia, Latvia and Lithuania as part of the CEECs because of their eventual inclusion in the enlargement process.

inclusion of the CEECs, to be in line with its preference for preserving the achieved level of integration through a rigid standard of membership.

The uncertain impact of enlargement on the economic performance of the EC was another complicating factor. The standard did not have an explicit economic dimension at that time. Member states had only selectively used economic arguments, for example when the French government rejected the UK's first application (Hillion 2011, p. 191). The Commission's opinions on the early candidate states did not judge their economic performance. Now, the EC faced the challenge of almost a dozen states in its neighborhood whose economies lay in ruins, without clear principles and rules on how to deal with their demands for closer ties with Western Europe. These circumstances increased the existing member states' interest in adding an economic dimension to the standard of membership.

TOWARD COPENHAGEN: DEBATING MEMBERSHIP INSTITUTIONS

The ensuing process of normative arguing on how to redefine the EC's boundaries led to change on the primary as well as the secondary level of membership institutions. In the first phase of change, the EC began to move from a policy of cooperation to one of enlargement. The initial reaction of the EC governments to the improved relations with the East was cautious at best (Friis and Murphy 1999). On the one hand, Western European politicians celebrated the democratic reforms and the prospect of overcoming the East–West divide, thus underscoring the institutions of liberal democracy and Europeanism (European Council 1989b, para. 1.1.14). On the other hand, the actual redefinition of relations with the CEEC on the level of secondary institutions did not raise prospects for enlargement. The European Council in Rhodes in December 1988 offered the CEECs undergoing democratic transformation enhanced cooperation and dialogue but no membership perspective. A clear preference for cooperation over enlargement also informed the creation of assistance instruments like PHARE,⁸ the European Bank for Reconstruction and Development and the Europe Agreements concluded from 1991 on. Despite these signs of goodwill, the EC soon came under increasing normative pressure to admit new members

⁸The acronym stands for 'Poland and Hungary: Aid for Restructuring of the Economies', although the program was later extended to other CEECs.

from inside and outside its own borders (Fierke and Wiener 2005; Schimmelfennig 2001). Among the most fervent advocates of enlargement was the then British Prime Minister Margaret Thatcher (1990), who suggested that

the Community should declare unequivocally that it is ready to accept all the countries of Eastern Europe as members if they want to join, provided that democracy has taken root and that their economies are capable of sustaining membership. We cannot say in one breath that they are part of Europe and in the next our European Community Club is so exclusive that we will not admit them.

The combination of security imperatives and moral appeals put the reluctant EC actors, who feared that widening membership would impinge on deepening integration, on the defensive so that the need to enlarge was essentially accepted by the early 1990s.

However, this development presented the EC with two problems. First, there were the already mentioned uncertain consequences of integrating an array of volatile countries without any economic conditionality. Second, even when judged against the existing standard, the eastern neighbors performed quite poorly. The CEECs were clearly European and might have accepted the supremacy and direct effect of EC law, but they were clearly not in a position to adopt the *acquis communautaire* in the near future. In addition, their political transformation was far from consolidated, which meant they did not meet the requirement of liberal democracy. Up until the 1990s, there had been a consensus that candidate countries had to meet all of the accession criteria before entering the EC. For example, the Commission had argued in its opinion on the applications by Portugal and Spain that a partial adoption of the *acquis* was not enough to warrant accession (European Commission 1985). The secondary institutions for enlargement did not provide for any intermediate form of membership. In the early 1990s, it became increasingly obvious that this dichotomous approach was inadequate to deal with the complexities of the post-Cold War situation. The EC's intention to respond to the normative demands and the security context while safeguarding its economic interests and the institutional achievements made a reform of the institutional configuration of its membership concepts necessary.

On the primary level, member state governments and institutional actors added economic conditionality to the existing standard.

A decisive moment in this regard was the Bonn Conference on Economic Co-operation in Europe in April 1990. In the final document, the representatives of the attending states—which included the EC members, five CEECs, the Soviet Union and Yugoslavia—acknowledged an intrinsic connection between democratic institutions and conditions of market liberalism. Taking up this idea, the Dublin European Council of the same month explicitly connected the prospect of membership in the European international society to the adoption of a liberal economic order (European Council 1990). On the level of secondary institutions, there were two visions regarding the future boundaries of the European international society. The first one was that of a new organizational framework for partial integration of the Eastern neighbors into the European international society separate from the EC/EU. The first vocal supporter of this idea was the then French President François Mitterrand (1989), who floated the idea of a European Confederation for economic and security cooperation. The Confederation would form an ‘outer circle’ of membership open to all states fulfilling the prerequisite of liberal democracy, while membership in the EC remained conditional upon the full standard of membership, including the *acquis*. The EP debated similar proposals. In a report from 1992, the Parliament’s Institutional Committee clarified that it

[d]oes not believe that it is possible or desirable for all the nations of Europe or those which feel themselves to be European or are allied with Europe to be gathered together at some future point into a union [...]. (Hänsch 1992, p. 15)

Instead, it proposed a pan-European system of ‘confederative cooperation’ in multiple functional fora on security, environmental, health and other issues. At the same time, the EP suggested to create new forms of membership *within* the EC/EU. The idea was to establish a two-tier Community of full and aspiring members, the latter of which were to obtain a transitional status with reduced rights and obligations (Hänsch 1992, p. 28). The Commission advanced a similar concept by proposing a common European Political Area, where ‘partner members’ would be coopted in certain policy fields as a transitory measure, but not granted access to decision-making (European Commission 1992, p. 18).

All of these approaches departed from a strict inside-outside logic of membership in the European international society, but neither gathered

unqualified support. The EC's Heads of State and Government saw no need for new institutions at that time. They believed that the existing frameworks of the Conference for Security and Cooperation in Europe (CSCE) and the Helsinki Final Act could adequately deal with the security implications of the transformations in Central and Eastern Europe (European Council 1989a, para. 1.1.16; European Council 1990, Annex 1). On the other hand, most actors also rejected the idea of first and second-class membership within the EC on the grounds that this would cause 'institutional, political, and psychological problems' (Hänsch 1992, p. 16). Fearing that a two-tier Community would renew divisions in Europe, the then British Prime Minister Thatcher (1990) instead proposed to strengthen the status of Association Agreements and give the CEECs a clear membership perspective. This compromise between creating entirely new institutions and a two-tier EU found increasing resonance among political elites. From the point of view of the EC/EU, the association model had the advantage that it could display a degree of openness while at the same time maintaining control over the conditions of membership and the eventual contours of a wider Europe.

It was clear that for practical reasons, Association Agreements preparing for membership would need to specify accession conditions and procedures. Therefore, the Commission called for a clear roadmap toward accession in the Europe Agreements with the EU's Eastern neighbors in 1992 (European Commission 1992, pp. 18–19). At that point, however, the Heads of State and Government were still not unanimously committed to Eastern enlargement. Several member states such as France, Italy, Spain and Portugal remained skeptical about the economic capabilities of the CEEC and feared that unconditional accession might lead to an economic periphery within the EU.⁹ The uncertainties about the EU's standard of membership were a major obstacle in these debates. The Maastricht Treaty, signed earlier that year, had remained ambiguous about economic conditionality for accession candidates.¹⁰ Absent a clear formulation regarding issues such as the importance of economic

⁹Michalski and Wallace (1992, pp. 54–59) have presented a detailed analysis of individual member state positions regarding Eastern Enlargement.

¹⁰The Treaty counts market liberalism as one of the principles of the newly founded EU, but maintains that 'any European state' was eligible to join without laying down any further requirements (*Treaty on European Union* 1992, Article O).

liberalism for accession, actors were missing clear normative reference points for their arguments.

Only the Copenhagen European Council in 1993 consolidated the standard of membership by formulating the Copenhagen criteria, which also featured market liberalism, defined as the existence of a functioning market economy and the ability to compete on the single market (European Council 1993). The explicit formulation of conditions broke the stalemate by alleviating the concerns of enlargement skeptics within the EU. The summit resulted in a firm commitment to an expansion of the EU's borders to the East and a roadmap toward full membership, which included trade concessions and a 'structured relationship' consisting of high-level dialogue with representatives from the candidate countries. Institutionalizing the standard of membership thus enabled the EU to reform its secondary membership institutions in a way that both responded to enlargement demands and preserved its interests in political and economic stability.

In the following years, the EU further refined these institutions to put the Copenhagen agenda into practice. Besides internal reform to build capacities for dealing with an enlarged Union, this meant defining an accession procedure and ultimately deciding on membership applications. EU actors soon realized that despite the consolidation of the standard of membership, two important questions remained unresolved. First, the standard had to be specified and operationalized in order to make concrete decisions possible. In 1997, the European Commission released the Agenda 2000, an attempt to develop supposedly objective indicators for the eligibility of individual applicant states. However, these rules still left room for political considerations and did not prevent disagreements between different EU actors over the eligibility of individual candidate countries (Zielonka 2002, p. 8). Second, the rigidity of the standard was up for debate. The member states initially wanted the fulfillment of the Copenhagen criteria to be a prerequisite for opening negotiations in the first place. However, they ultimately gave up this restrictive interpretation in light of pressure from the Commission, which argued that it might alienate aspiring members (European Commission 1999; Prodi 1999). At the Helsinki European Council in 1999, they declared that admission negotiations would be conditional upon meeting the political criteria only, whereas the EU only expected full adherence upon accession proper. In accordance with this incremental approach, the EU created secondary institutions that provided rules and procedures for

gradually socializing potential member states into full adherence to the standard of membership. The ‘pre-accession strategy’ offered privileged relations for candidates before actual accession and a step-by-step intensification of cooperation in exchange for improved performance. In parallel, the EU signed Stability and Association Agreements with Croatia and Macedonia in 2001 that included a membership perspective. Through these frameworks, the EU effectively established an intermediate membership status (Christiansen et al. 2000; Inglis 2002). Accession candidates that partially fulfilled the membership could not accede the EU formally but they were regarded as legitimate actors of the European international society.

DEALING WITH A NEW NEIGHBORHOOD

On the basis of these new secondary institutions, the EU signed the Accession Treaties with the CEECs (plus Malta and Cyprus) in 2003. However, the Eastern Enlargement did not settle the question of how to define the EU’s boundaries. Once the decision to enlarge had been made, the discourse on the EU’s borders shifted further toward the periphery of the European international society, and the status of the NIS and the West Balkans came into focus. The Commission expected that the Eastern Enlargement would produce externalities in the adjoining countries both in the realm of security and Economic and Monetary Union, and argued that reigning in these effects was in the EU’s immediate interest (European Commission 1999, 2003, p. 6; Prodi 1999). This unintended consequence of formal enlargement made a dichotomous conception of the borders of Europe’s international society seem less appropriate than ever to secure the interests of the EU actors. These dynamics induced the next phase of institutional change.

External shocks rendered the question of how to deal with the new Eastern neighborhood particularly urgent. The violent conflicts in the collapsing Yugoslavian Republic provoked the question of whether excluding the West Balkan from the EU was in its security interest. Many political observers feared that an exclusive understanding of the EU’s borders could further destabilize the region. Already at the sidelines of the Copenhagen summit, the then French Prime Minister Edouard Balladur—echoing Mitterrand’s earlier Confederation plans—presented a plan for a European Pact including the Western European States, the CEEC, Belarus, Moldova, Russia and the Ukraine (Agence Europe 1993).

With a view to stabilizing the EU's neighbourhood, the proposal aimed at establishing new principles for membership in a broader post-Cold War European international society, such as a peaceful resolution of border conflicts and the protection of minority rights.

Besides reaffirming the notion of liberal democracy, therefore, Balladur's plan implicitly invoked classical primary institutions of international society such as national sovereignty and the principle of peaceful dispute settlement as a standard of membership. Respect for the more EU-specific institutions of Community constitutionalism or the *acquis communautaire* did not feature in this proposal. The outer circle of the European international society clearly was to take more conventional forms than its post-Westphalian EU core. The idea of a separate standard of membership for the periphery consequently shaped normative arguing about the neighborhood. The EU developed a policy of closer cooperation with the Southeast European Countries from 1996 on. As a first attempt at creating secondary institutions for this purpose, the EU launched a European Conference with all European states that aspired membership in, or were associated with, the EU. First held in 1998, the Conference was a platform to discuss security issues, justice and home affairs and economic cooperation. The EU's member states clarified early on that participation would be conditional on a commitment to shared principles, including good neighborliness, national sovereignty, the integrity and inviolability of external borders, the principles of international law and peaceful dispute settlement, and the 'principles upon which the European Union is founded' (Council of the European Union 1997, p. 5). Like Balladur's plan, this paints the picture of a rather conventional international society—apart from the vague invocation of EU principles, which was most likely a reference to the reiteration of liberal democratic standards in Art. F of the new Amsterdam Treaty.

The new, less rigid standard of membership for a wider European international society made it harder to justify the continued exclusion of the Eastern neighbors from organizational frameworks on normative grounds. Most of them fulfilled the standard more or less clearly, especially after the Council declared that a credible commitment to its principles, rather than verified compliance, would be sufficient for participation (European Parliament 2000, para. I). This enhanced the positional power of the EU's Eastern neighbor countries and legitimated their claims to organizational participation. It also explains why the Commission's preference for a comprehensive format eventually

prevailed over the member states' intention of inviting only the Central and Eastern European accession candidates (European Parliament 2000, para. I; Smith 2005, p. 762). Moldova, Russia, the Ukraine and the West Balkan states joined the forum in 2001.

Building on the European Conferences, the British and Swedish governments as well as the EU Commission flouted proposals for a more permanent institutional framework in 2002 (Lindh and Pagrotsky 2002; Solana and Patten 2002; Straw 2002). Although they differed with regard to the composition of participant states, all of these suggestions included some form of special neighbor status with privileged access to some elements of EU cooperation. Likewise, they were all conditional on a commitment to certain political or economic principles that were less demanding than the EU's own standard of membership. Building on these proposals, the Council eventually launched a New Neighbourhood Initiative for Ukraine, Moldova and Belarus in November 2002—at the same meeting in which it determined 1 May 2004 as the accession date of the new member states (Council of the European Union 2002). In a speech in December of the same year, then Commission President Romano Prodi (2002) described the rationale of this idea: against the background of instability in the Middle East and the Balkans, the EU needed to strengthen its profile as an international actor and promote the benefits of integration beyond its borders. Prodi effectively outlined a conceptualization of the European international society as made up by an EU core and a peripheral neighborhood. The EU as the hegemonic actor would determine its membership but, as he put it, '[a]ccession is not the only game in town'. By projecting a broader standard of membership into the periphery, it could socialize adjoining states into certain baseline primary institutions: 'The aim is to extend to this neighbouring region a set of principles, values and standards which define the very essence of the European Union'.

The Commission tried to concretize this plan with a communication entitled 'Wider Europe – Neighbourhood'. The paper develops the Neighbourhood Policy as a framework for bilateral Partnership and Cooperation as well as Association Agreements that aimed at graduated economic integration of the neighborhood with the EU (Whitman and Wolff 2010a, p. 5). Interestingly, it mentions 'aligning legislation with the *acquis*' (European Commission 2003, p. 4) alongside political, economic and institutional reforms as one of the expected contributions

of the neighbors. Although the adoption of the *acquis communautaire* would not be an ex ante prerequisite for participation, the paper suggested that the bilateral Action Plans should make it a condition for enhanced cooperation (European Commission 2003, p. 16). With the ‘Wider Europe’ plan, the EU institutions started applying a more demanding standard of membership to the neighborhood countries, but defined it in more graduated terms. In line with the ‘everything but institutions’ slogan, they declared that ‘[t]he level of ambition of the EU’s relationships with its neighbours will take into account the extent to which [common] values are effectively shared’ (European Commission 2004, p. 3). The more a country adhered to the standard of membership, the more would its status in Europe’s institutional structures be aligned to that of a full member—only falling short of formal accession.

The ENP was officially launched in 2003 with three NIS and later extended to the South Caucasus. In line with the Commission’s plans, the bilateral Action Plans of the framework reaffirm all primary institutions that had been constructed in Copenhagen a decade earlier—liberal democracy, market liberalism and, partly, the *acquis communautaire*—except one: Community constitutionalism. In the legal sphere, the EU merely demanded respect for (conventional) international law. It thus placed the neighbor states and EU-neighborhood relations outside of the EU’s own legal order but tied them into the wider regional international society.

In sum, the EU’s process of Eastern Enlargement had two main institutional dimensions. First, EU actors consolidated and explicated a standard of membership, which they then translated into secondary membership institutions that made the accession of the CEEC countries possible. Second, they differentiated the boundaries of the European international society (Behr 2007). On the level of primary institutions, the EU constructed a less demanding standard of membership for the periphery of the European international society, which was ambiguous about the *acquis communautaire* and reverted to conventional principles of international law instead of Community constitutionalism (cf. Diez and Whitman 2002). On the secondary level, the EU developed association frameworks and the ENP, which were based on an increasingly graduated instead of dichotomous interpretation of the standard of

membership (Friis and Murphy 1999; Smith 1996).¹¹ Using its hegemonic position and projecting the disciplining power of the standard of membership, the core EU member states created a ‘belt’ of peripheral states that is neither as pluralist or ‘thin’ as the global international society nor as solidarist or post-Westphalian as the core (Wæver 1996). Rather, the European periphery is an intermediate case, essentially pluralist but penetrated by some of the primary institutions of the core.

AN ‘ASEAN OF TEN’ AND THE ASIA-PACIFIC, c. 1986–1999

The 1990s saw a number of important changes in ASEAN’s institutional framework. On the one hand, ASEAN embarked on an enlargement process that resulted in the accession of Vietnam (1995), Myanmar and Laos (1997), and eventually Cambodia (1999). On the other hand, from the early 1990s, the organization pursued a strategy of extending the geographical scope of its institutions toward the broader Asia-Pacific region. In 1993, ASEAN and its dialogue partners decided to set up the ARF as a platform for regional conflict prevention. The institutionalization of the forum marks the expansion of primary and secondary institutions of the Southeast Asian international society into the wider Asia-Pacific region (Acharya 1997). Driven by the leadership of ASEAN member states, cooperation in the ARF is influenced by the principles, norms, rules and procedures that have shaped ASEAN since its inception. The enlargement of ASEAN in the 1990s thus mirrors that of the EU in that it comprised both the admission of new members and the construction of an ‘outer circle’ of its international society beyond its organizational membership.

Regionalist research has offered persuasive accounts of ASEAN’s security, economic and political motivations for enlarging its membership (Amer 1999; Narine 2002; Wesley 2003). Scholars adopting constructivist ideas have also emphasized the role of rhetorical commitments to pan-Southeast Asianism as a legitimating concept (Chin 1997; Severino 2006), or the desire of the original ASEAN member states to socialize their neighbors into the ASEAN Way of regional cooperation as an exercise in security-community building (Acharya 2012). However, none of these approaches explains a central episode in ASEAN’s enlargement.

¹¹These are not the only instances of gradual membership, as the opt-outs by several member states in various integration areas demonstrate.

In 1997, ASEAN suddenly put the accession of Cambodia, which they had originally planned to admit together with Myanmar and Laos, on the backburner despite the great symbolic importance attached to the goal of completing an ‘ASEAN of ten’ at the organization’s 30th birthday. Domestic upheaval in Cambodia certainly posed a challenge, but Myanmar’s human rights record was equally concerning at that time. As this section shows, the remarkable suspension of Cambodia’s accession process was connected to normative arguing that changed regional understandings about legitimate membership in ASEAN.

As to the emergence of an institutional framework for the wider Asia-Pacific region, the creation of the ARF has often been described as ASEAN’s response to the perceived instability of the post-Cold War security environment (Leifer 1996; Severino 2006). Through the ARF, ASEAN was able to promote its own security model beyond its own boundaries (Acharya 1997). While the importance of norms in the emergence of the ARF is beyond doubt, the Forum is not the result of a simple one-to-one extrapolation of ASEAN’s institutions into the Asia-Pacific, as several authors have suggested (Nesadurai and Khong 2007; Stubbs 2008; Yuzawa 2012). After all, it should surprise us that despite its long-standing commitment to principles of nonalignment, neutrality and anti-hegemonism, as well as its skepticism toward explicit security cooperation, ASEAN would suddenly spearhead the creation of an Asia-Pacific security institution, ‘with ASEAN being especially solicitous of the major powers’ (Nesadurai and Khong 2007, p. 69). Despite all similarities between ASEAN and the ARF, the institutionalization of the ARF in general and its membership scope in particular were in fact possible only through processes of normative contestation and change.

In contrast to the EU, which constructed a standard of membership almost haphazardly with each new enlargement round, ASEAN’s founders made sure to formulate conditions of membership from the very beginning. The Bangkok Declaration (ASEAN 1967) maintains that the Association is open for participation by ‘all States in the South-East Asian Region’. However, it also makes accession conditional on a commitment to the organization’s foundational principles. Taken together, these fundamental normative requirements formed a standard of membership that clearly took inspiration from the primary institutions of the global international society but also contained distinctively regional elements.

The arguably most restrictive criterion for participation spelled out in the Declaration is that members need to be located in Southeast Asia. Similar to the EU case, therefore, the standard of membership sets geographical limitations by means of a primary institution of, for want of a better word, Southeast Asianism. Chapter 4 recounted that Southeast Asia had become a geographical reference point for regionalism in the postindependence discourse of political leaders like Myanmar's Aung San. By the time of ASEAN's founding, there was a broad elite consensus about the boundaries of this area as encompassing the continental states of the Mekong region (excluding China) and the states of the Malay Archipelago. The only ambiguous cases were Papua New Guinea and Sri Lanka. The latter was even offered membership upon ASEAN's establishment in 1967 (Severino 2006, pp. 46–47). Eventually however, the view gained hold that both countries lay outside of the region. By consequence, when Sri Lanka formally applied for membership in the 1980s, ASEAN rejected its bid on the grounds that it was not a Southeast Asian country (Chin 1997, p. 5).

The principles of the Bangkok Declaration also contain well-rehearsed pledges to guarantee the principles of noninterference and national self-determination. The member states saw these principles not only as an internal code of conduct but also projected them externally. It clearly expected all regional actors to abide by them, as is evident from ASEAN's vocal condemnation of the Vietnamese invasion and subsequent occupation of Cambodia between 1977 and 1991.¹² The preamble also commits ASEAN members to the primary institution of international law and its principle of peaceful settlement of disputes. Nominally, ASEAN's standard of membership thus reflected the pluralism of the global international society at that time. However, as pointed out in Chapter 5, the notion peaceful dispute settlement was subject to a regionally specific interpretation in Southeast Asia, according to which conflicts should be resolved through informal practices of quiet diplomacy. The implication was that the best environment for dispute settlement was one where all involved actors could act in their 'comfort zone' and build personal trust. Public scrutiny, by contrast, would provoke

¹²See for example the Joint Communiqué of the 21st Ministerial Meeting (ASEAN 1988), where the occupation is condemned as a 'violation of the United Nations Charter and international law, of the right of the Kampuchean people to self-determination, and of the principle of noninterference in the internal affairs of a sovereign state'.

practices such as shaming, which were conducive to escalation, rather than effective settlement. Consequently, ASEAN members rejected formal fora of conflict prevention, management and resolution (Haacke 2009).

Chapter 4 demonstrated that debates about the role of major powers had shaped the establishment of ASEAN but a clear rejection of cooperation with external actors did not find its way into the organization's founding document. Despite the ambiguous formulations in the Bangkok Declaration, Southeast Asian leaders soon attempted to institutionalize anti-hegemonism as an additional primary institution in ASEAN's standard of membership. In the ZOPFAN Declaration of 1971, the member states asserted that 'the neutralization of South East Asia is a desirable objective' in order to bring about a region free from interference by outside powers. When Brunei acceded to ASEAN in 1984, it had to commit to all of the organization's declarations and treaties, including the ZOPFAN agreement (ASEAN 1984). This suggests that the institutionalization efforts were successful on paper. However, the exact meaning of anti-hegemonism remained disputed, and ASEAN had no problem to host members with a clear Western alignment such as Singapore, the Philippines and Thailand.

Given the rather permissive standard of membership, ASEAN's initially limited geographical scope was mostly due to a lack of interest among its neighbors. Vietnam, Laos, Cambodia and Myanmar were all traded as potential members at some point but their neutralist or isolationist foreign policy stance militated against participation. Generally, these four states were committed to a more radical interpretation of nonalignment, which made them skeptical toward the idea of becoming members (Aschhoff 2012, pp. 50–51; Chin 1997, pp. 6–7; Narine 2002, p. 40). As the principles of the Bangkok Declaration were inclusive and the primary institution of anti-hegemonism so diffuse, Southeast Asianism became the only consequential principle regarding ASEAN membership, as the Papuan and Sri Lankan cases illustrate.

ASEAN's secondary membership institutions were not very well developed. While the Bangkok Declaration did make accession conditional on a commitment to the organization's principles and objectives, ASEAN lacked an organizational body that could specify and develop these criteria, as the Commission did in the European case. The only formal enlargement document in the first 28 years of the Association's

existence, Brunei's accession treaty, was so generic that it could not set any substantial precedence for subsequent enlargements. By consequence, ASEAN's membership decisions were largely based on political considerations negotiated between the Foreign Ministers of the member states. This made its institutional arrangements quite flexible. For example, ASEAN granted observer status to Brunei in 1981, three years before its formal independence—quite a remarkable move for an organization emphasizing national sovereignty (Dhanabalan 1984). Apart from the intermediate status of observer, which implied participation in some of the organization's meetings but without access to decision-making, ASEAN's institutional boundaries were almost entirely dichotomous. ASEAN granted observer status without distinction to two types of countries: accession candidates, such as Brunei, and states with whom the maintenance of special relations was deemed beneficial but membership not desirable, such as Papua New Guinea (Chin 1997, p. 5). Apart from these arrangements, there were no dedicated enlargement procedures or a clear pre-accession strategy.

Except for Brunei's accession in 1985, ASEAN's borders underwent very limited change for the first 20-odd years of its existence. This is true for the membership composition as well as the standard membership. The fact that its substance—and the associated rules and procedures of accession—remained intact until the early 1990s can be attributed to feedback effects that provided the institutional constellation with stability. The monopolization of the enlargement discourse by the governments of member states led to strong power effects. The low degree of formalization of membership institutions was in line with their desire to maintain a maximum of political freedom in decisions about enlargement. Despite the overlay of regional politics by the Cold War logic, they managed to keep a certain independence in these decisions. Instead of appeasing the United States by positioning ASEAN as an anti-communist bloc and rejecting the accession of states from the Soviet sphere of influence out of principle, they made various overtures and extended formal invitations toward Cambodia, Laos, Myanmar, and Vietnam—the latter was offered ASEAN membership immediately after the North's victory in the Second Indochina War in 1975 (Anwar 2001, p. 28). Even though the organization later criticized Vietnam strongly for its occupation of Cambodia, ASEAN remained a non- rather than anti-communist regional organization and its members were not excessively concerned with possible impacts of enlargement on their major power relations. This stance suggests a strong hold by

regional governments over the institutional reproduction of the standard of membership.

References by ASEAN representatives to pan-Southeast Asian ideas were frequent throughout the Cold War (Severino 2006, pp. 41–50). As the confines of this region were hardly ever problematized but rather taken for granted, a certain degree of reification existed. The spatial imaginary of a united region undergirded the inclusion of Southeast Asianism as a geographic element of the standard of membership. At the same time, it let the limited membership of the organization appear as a transitory deficiency. Pan-regionalist ideas remained a strong symbolic concept, not least because the alternative geopolitical framework of bipolarity was not able to capture the logic of membership in ASEAN either. The adoption of Cold War alignment as an identity concept would have caused a problematic tension with the primary institution of anti-hegemonism, and the international relations of Southeast Asia were simply too complicated to be framed in the dualistic scheme of East-West divisions. The consequences of the Sino-Soviet rift on politics in Indochina, intra-Communist fighting in Cambodia and the development of the Non-Aligned Movement with its conception of a Third World all thwarted attempts to naturalize the partition of Southeast Asia into a Western ASEAN and a communist non-ASEAN camp.

Within the organizational framework of ASEAN, most national representatives were eager to avoid any appearance of ASEAN as a Western, anti-communist bloc aiming at defense cooperation. While several member states had vested interests in alliances with Western powers, their interest in avoiding intra-regional polarization militated against the construction of a more restrictive standard of membership. In the same vein, the rejection of great power involvement, however symbolic, was supposed to maximize the influence of ASEAN countries over regional affairs. In terms of geographic scope, the member states' security outlook allowed them to limit the promotion of peaceful dispute settlement norms to the realm of Southeast Asia. There was no question of extending the boundaries of the regional international society further into the Asia-Pacific, where ASEAN member states could count on the stabilizing effect of the US's role as an 'offshore balancer'.

When it comes to institutional linkages, the picture is rather mixed. ASEAN's weak formalization of enlargement rules and procedures set limits to vertical linkages between primary and secondary institutions. However, some limited institutionalization in the years after its

foundation demonstrates sensitivity on behalf of regional policymakers to maintain logical connections between the primary and the secondary institutional level. For example, the acknowledgment of the established *acquis* of treaties and declarations by Brunei in its accession treaty—a secondary institution—ensured a commitment to the standard of membership and thereby reinforced its primary institutions. On the other hand, the treaty did not specify or operationalize these institutions. Horizontal linkages were strong, as the standard of membership mostly combined primary institutions of a pluralist international society. The exception to this was the persistent tension, already emphasized in Chapter 5, between the primary institution of anti-hegemonism on the one hand and the principle of noninterference on the other.

A NEW STRATEGIC ENVIRONMENT AND THE ARF

Like in Europe, the end of the Cold War had a profound impact on the institutional landscape in Southeast Asia, although through different pathways. One of the main results of the end of superpower antagonism for regional politics was a rapprochement between Vietnam and the ASEAN member states. With dwindling support from the Soviet Union and a weak domestic economy, a new Vietnamese leadership introduced economic reforms under the banner of *Doi Moi* ('Renovation') in 1986 and gradually pulled back its forces from Cambodia. The shock of the end of the Cold War and Vietnam's diplomatic charm offensive had a considerable impact on the feedback effects surrounding the reproduction of ASEAN's boundaries, so that spaces for normative arguing about institutional change opened. The reification of Southeast Asia as a geographical point of reference was clearly strengthened because its alternative, the image of a region divided by East-West antagonism, appeared even more out of touch with reality than it had before. Those arguing for enhanced boundaries now presented the aim of bringing together all of Southeast Asia as a primordial goal of ASEAN. Naturally, the window of opportunity to accomplish 'One Southeast Asia' also forced ASEAN leaders to think about questions they had been putting off: at what price were they willing to realize their objective of including the entire region under ASEAN's wings? When and under what conditions could the Indochinese states and Myanmar join the organization? In other words, would the standard of membership and the enlargement procedures have to be adapted?

With respect to ASEAN actors' vested interests, the rapprochement resulted in a de-securitization of the neighboring Indochinese subregion. Instead, an economic logic increasingly came to dominate their perception of relations with Cambodia, Laos and Vietnam, although this was an uneven development. Thailand was particularly receptive toward Vietnam's overtures for better relations as they brought with them the prospect of a new area of economic cooperation, with Thailand at its center. As ASEAN's frontline state to Indochina, Thailand had always been particularly critical of the occupation of Cambodia (Weatherbee 1990). However, the opportunity to turn Indochina 'from battlefields into market places', as Thai Prime Minister Chatichai Choonhavan put it (cited in *Australian Financial Review* 1989), led to a pro-Vietnamese shift in the government. Singapore's leaders shared Thailand's interest but most of the more distant member states did not see similar benefits for their economies and, consequently, were initially less enthusiastic about enlargement.

Apart from de-securitizing Indochina, the changed security environment also prompted regional actors to conceptualize the regional boundaries in less restrictive ways. The governments of ASEAN member states were fearful that, with their Cold War animosities settled, the United States and the Soviet Union might repeal their military presence in the Asia-Pacific. Apart from the impact on their immediate bilateral security relations, they saw the possibility of a power vacuum and increasing instability in the region. Their preference was to keep the United States engaged as a security player in the Asia-Pacific and to socialize China into behavior that was predictable and consistent with their own approach to regional security. However, actively pursuing such an engagement meant to break with the traditional limitation of ASEAN's security outlook on the Southeast Asian region (Goh 2011; Yates 2017). It also put into question the established association of peaceful dispute settlement with informal diplomatic practices and the principle of rejecting any hegemonial aspirations of the major powers. In this way, ASEAN governments' redefined security preferences came in tension with the existing standard of membership, which constituted ASEAN as an exclusively Southeast Asian organization that tried to minimize outside intervention.

The first proposals for an Asia-Pacific wide forum to discuss security matters emerged in the late 1980s. These initial plans did not come from within ASEAN but from policy-makers from Russia, Canada, Australia

and Japan.¹³ At first, the response of ASEAN member states was lukewarm because of their long-standing aversion to anything that might be perceived as a defense alliance (Fukushima 2003, p. 81). However, as the Cold War unraveled, a more positive stance toward the idea materialized in ASEAN circles. The Indonesian government started supporting the idea of an Asia-Pacific security framework after Suharto's visit to China in 1990 (Leifer 1996, p. 8). In particular, the initiative by Japan's then Foreign Minister Taro Nakayama to establish a security dialogue based on ASEAN's Post-Ministerial Conferences (PMC) with its dialogue partners resonated strongly with ASEAN's leaders. Nakayama's proposal ascribed a leading role to ASEAN and envisaged that its principles and institutional characteristics should serve as a model for the new cooperation format (Acharya 2001, p. 174; Severino 2006, p. 9).

In 1991, the ASEAN-ISIS network of Southeast Asian think tanks produced an influential policy paper including a proposal for an Asia-Pacific Political Dialogue under ASEAN's leadership (ASEAN-ISIS 2006). The ASEAN Foreign Ministers took the same view when they outlined their vision for the Asia-Pacific region shortly after the publication of the think tank report:

The Foreign Ministers [...] were of the view that ZOPFAN, the Treaty of Amity and Cooperation in South East Asia and the PMC (Post Ministerial Conferences) process are appropriate bases for addressing the regional peace and security issues in the nineties. The Foreign Ministers reiterated that ASEAN, in responding to the challenges of the nineties, should be more dynamic and forward-looking. [...] They also recognised that ASEAN and other countries in the East Asia region and the broader Asia Pacific should engaged [sic!] in regular constructive consultations. (ASEAN 1991)

At the PMC immediately following the Foreign Ministers' meeting, ASEAN officials and their counterparts from the dialogue partners decided to extend the PMC's scope, which had hitherto focused on economic questions, to security matters (Singh 1992, p. 111). They thus linked the PMC's secondary institutions to the primary institution of international law and its principle of peaceful dispute settlement.

¹³Narine (2002, pp. 102–104) and Severino (2006, pp. 6–10) provide more detailed accounts of these proposals.

By adopting Nakayama's idea and making it an ASEAN initiative, ASEAN leaders reframed the debate about security cooperation as a project of extending the scope of the institutions of its international society beyond the confines of formal ASEAN membership.

This approach not only meant that ASEAN leaders were reinterpreting the principle of peaceful dispute settlement in a way that allowed for more formal diplomatic practices. It also put further strain on the already contested notion of anti-hegemonism (Kraft 2012, p. 63). The fact that Southeast Asian governments sought the inclusion of external powers as potential members in an ASEAN-affiliated security institution was a complete departure from the ZOPFAN Declaration's claim to rid Southeast Asia 'from any form or manner of interference by outside Powers'. So how could the changed security preferences be reconciled with the existing primary institutions? In an interview for the *Far Eastern Economic Review* (1991, p. 13), Indonesia's Foreign Minister Ali Alatas offered a reinterpretation: 'We can't keep the four powers [the USA, Japan, China and the Soviet Union] out of the region. But there must be equilibrium among them and between them and Southeast Asia'. According to this reading, the overarching objective of minimizing dependence on outside powers as articulated in the ZOPFAN Declaration was still valid but should be achieved through an active balancing policy by ASEAN's member states, not by excluding major powers altogether. The Singapore Declaration (ASEAN 1992) by the ASEAN leaders adumbrates this argument by incorporating a commitment of ZOPFAN 'taking into account changing circumstances', a minimal shift in rhetoric that legitimated intensified dialogues through the PMC. The equivocal reference to the ZOPFAN norms indicates that this reinterpretation was disputed at first, but later related documents affirmed the balancing dimension while abandoning the idea of neutrality (ASEAN-ISIS 1993, pp. 10, 16).

Even before the first PMC meeting on an Asia-Pacific security forum, ASEAN officials started discussing the question of membership. Nakayama's original proposal had been to limit membership to ASEAN and its dialogue partners. To many policymakers, this seemed impractical. A Malaysian Foreign Ministry official noted that '[i]f we are going to talk about political and security issues, it does not make sense if China and Russia and Vietnam and Laos are not included' (Wah 1993). The new standard of membership with a softened interpretation of anti-hegemonism made it possible to invite these states, as well as Papua New

Guinea, to the inaugural ARF meeting in 1994 (Acharya 2001, p. 171). Soon, however, the Forum's participants felt the need to establish formal criteria for membership—not least in response to North Korean and Myanmarese diplomats, who early on expressed a wish to participate in the ARF (*The Straits Times* 1994). While the North Korean request was turned down without any public statement, Myanmar was invited as a guest to the inaugural meeting by the Thai host government against the express objections of US government representatives (Acharya 2001, p. 173; Fujiwara 1994). Against the background of these seemingly arbitrary decisions, the ARF participants tasked the Indonesian chair to draw up a catalogue of membership criteria in 1995. This presented an opportunity to formulate a precise standard of membership for the emerging Asia-Pacific international society. However, the eventual suggestions merely present functional criteria, such as a relevance of new members for regional security issues, and procedures for membership decisions. The only broader normative commitment demanded from candidates is that they take a cooperative stance to regional security (ASEAN Regional Forum 1996). By invoking principles of multilateralism and peaceful dispute settlement, this document suggests a highly inclusive standard of membership modeled on the primary institutions of the global international society. ASEAN members now clearly associated international law with diplomatic practices that its specific Southeast Asian interpretation had not considered legitimate before.

By establishing the ARF (and later other frameworks like ASEAN+3 and the East Asia Summit), ASEAN expanded the institutions of the Southeast Asian international society beyond its organizational boundaries. However, this development did not imply an unchanged extrapolation of Southeast Asian institutions but was in fact only possible because normative arguing shifted the meanings of the principle of peaceful dispute settlement and the primary institution of anti-hegemonism. The new standard of membership of this wider Asia-Pacific region was inclusive to the point of being indiscriminate, so that concrete enlargement decisions on the level of secondary institutions followed a largely political logic. For example, ARF participants introduced an expansion moratorium in 1998 to consolidate the existing format, so that even states that might actually fulfill the standard of membership would be denied entry into the Forum (ASEAN Regional Forum 1998). Even North Korea's eventual entry in 2000 was made possible not by a fundamental reassessment of the regime's eligibility against the standard of membership but

by considerations of political expediency—the United States and its allies had used the prospect of accession as a bargaining chip in the conflict over nuclear armament (Agence France Presse 1999; Leifer 1996, p. 48).

HOW LIBERAL IS ASEAN? ADMITTING VIETNAM AND MYANMAR

In parallel to this expansion of the international society beyond ASEAN's formal membership, the organization itself departed on a path toward enlargement. Calls for expanding ASEAN date back at least as far as 1991, and Thai foreign policymakers were among the first advocates (Leifer 1996, p. 47; Vatikiotis 1991). Their economic interests in closer cooperation with Indochina were certainly important reasons for this proposal. However, even Indonesia's Foreign Minister Alatas, whose country was not one of the primary expected beneficiaries of closer economic ties, was positively inclined toward the idea. 'Now that Cambodia can hopefully be resolved', he said, 'we will go back to our original blueprint: Southeast Asia must become one, not a region of two polarized mini-blocs' (Far Eastern Economic Review 1991, p. 13). Later on, high-level officials from other member states also started lobbying hard for enlargement (Choo 1993; Business Times 1993).

There was thus a widespread openness to the idea of an 'ASEAN of ten' among representatives of the existing member states by the end of 1993. The question was on what conditions other regional states should be admitted. The existing standard of membership constituted ASEAN as a community of sovereign states in Southeast Asia that shared a firm commitment to non-interference, the peaceful settlement of disputes and, more controversially, the rejection of great power hegemony. Measured against these criteria, the states of post-conflict Indochina and Myanmar all qualified for accession. Nevertheless, the effects of enlargement on ASEAN were uncertain and it questioned certain tacit assumptions about the organization's identity. The pan-regional rhetoric notwithstanding, admitting several economically weak, politically unstable and partly Communist states was not straightforward at all for a club of pro-market and partially anti-Communist states.

In this normative crisis, the idea of introducing stronger conditionality soon entered the regional discourse. The government of Thailand, which had spearheaded the 'ASEAN of ten' campaign, took a demanding stance toward the accession candidates, especially regarding economic reforms (Jayanama 1991). Again, this is not surprising given that a consolidated liberalization of Vietnam's markets was a precondition

for Thailand to realize the full economic benefits of admitting its neighbor to ASEAN. In the same vein, Singapore's Prime Minister Goh Chok Tong (1991) made the deepening of ASEAN-Vietnam ties conditional on the successful implementation of the *Doi Moi* reform program. During a visit to Vietnam in March 1994, Goh even proposed an 18-month moratorium on the question of Vietnamese accession to increase the reform pressure. Despite these concerns, ASEAN did not enshrine market liberalism as a part of its standard of membership because representatives of the other member states mostly argued for quick and unconditional accession. Consequently, ASEAN's Foreign Ministers signaled their readiness to admit Vietnam as ASEAN's seventh member state in July 1994. At the same meeting, they also pledged to enhance the participation of Vietnam and Laos in ASEAN cooperation schemes to prepare the countries for eventual membership (ASEAN 1994; Isberto 1994). Instead of introducing a new primary institution to the standard of membership, the member states thus chose to minimize the risks of enlargement by creating flexible secondary institutions that effectively established a transitory membership status.

Despite the economic risks, Vietnam was an easy test for ASEAN's membership institutions, as the country had become an overall stable and internationally well-recognized state by the mid-1990s. Myanmar and Cambodia should provide a much more profound challenge because of their problematic human rights records and lingering internal instability. ASEAN officials needed to decide whether such internal political factors should play a role in the assessment of accession candidates. During much of the 1990s, the Myanmar military junta of the State Law and Order Restoration Council (SLORC) was the object of heavy criticism from the West for its disrespect of democratic and human rights principles. In ASEAN, meanwhile, liberal democracy had always played a subordinate role. The organization first officially acknowledged the importance of human rights as a universal principle in 1991 but emphasized that their 'implementation in the national context should remain within the competence and responsibility of each country' and 'that the international application of human rights be narrow and selective nor should it violate the sovereignty of nations' (ASEAN 1991). Nevertheless, liberal democracy also had champions within Southeast Asia, and there was indeed much contestation on how assertive the organization should be toward Myanmar. Against the will of the Philippine and Indonesian governments, it was not invited to the 25th

ASEAN Ministerial Meeting in 1992. ASEAN also delayed granting Myanmar the status of observer—originally planned for 1993—until 1996 (Acharya 2001, pp. 111–112). When the military junta cracked down on the oppositional National League for Democracy in 1996 and 1997, the Foreign Ministers of Malaysia and Thailand publicly put Myanmar's planned accession to ASEAN by 1997 in doubt, arguing that the leadership must first move ahead with democratization (Chin 1997; Stewart 1997).

However, these arguments never became a consensual view of ASEAN governments, let alone an official ASEAN position. Even critical member state representatives were sometimes reluctant to refer explicitly to liberal democratic standards and preferred to mask their reservations over Myanmar's domestic situation as concerns over the country's ability to participate in the newly established ASEAN Free Trade Area (Narine 2002, pp. 115–116). By foregrounding functional instead of explicitly normative arguments, they avoided invoking legitimacy criteria that could be seen as compromising ASEAN's primary institution of national sovereignty. Consequently, liberal democracy did not become a part of ASEAN's standard of membership, and Myanmar was admitted alongside Laos in 1997. The reasons for this were of course manifold and included the fear that the country might spin too far into the Chinese orbit of influence if rejected by ASEAN, misgivings about Western meddling and a wariness on the part of the nondemocratic ASEAN states about the potential consequences of repudiating Myanmar for their own regime security (Weatherbee 2015, pp. 93–95). As far as the normative background against which the admission could be justified is concerned, the historical context of regional primary institutions was crucial. Unlike the EC, ASEAN discourse did not build on a common democratic history. Instead, national sovereignty and its noninterference norm was a key reference point in the debates. Singapore's Prime Minister Goh justified the permissive attitude to Myanmar by asserting that 'we have always taken a position that the internal situation of a country is that country's concern'. Philippine President Fidel Ramos stated that 'as far as the internal politics within each country, well, we did not begin Asean by examining that and excluding those that had a different system from ours' (both cited in Khandeparkar 1997). Indonesia's Foreign Minister Alatas argued against changes in the standard of membership to guarantee equal treatment of all member states: 'it is impossible for Asean to apply criteria and conditions for Burma's entry which have never been applicable for

other members in the past' (cited in Acharya 2001, p. 112). At the same time, ASEAN officials refuted Western criticism as 'meddling' in Southeast Asian affairs (Narine 2002, p. 114). They used the noninterference norm, fueled by lingering anti-hegemonic sentiments, to ward off external calls for excluding Myanmar.

THE CAMBODIAN COUP AND THE PRIMARY INSTITUTION OF DOMESTIC POLITICAL STABILITY

Somewhat surprisingly, it was not Myanmar's but Cambodia's membership application that had the most profound effect on ASEAN's standard of membership. Originally, ASEAN had planned to admit Cambodia in 1997 alongside Laos and Myanmar. However, on 5 July, just weeks before the planned accession, violent conflict broke out between supporters of the First and Second Prime Ministers, Prince Ranariddh and Hun Sen. The clashes resulted in the ousting of Ranariddh, who temporarily fled the country, the takeover of governmental control by Hun Sen, and the suspension of the Senate and other constitutional bodies. In an urgently convened meeting on 10 July, the ASEAN Foreign Ministers agreed to delay Cambodia's entry. This decision stood in stark contrast to their statements from only a couple of weeks earlier. How could the organization justify its decision after its acquiescence regarding Myanmar?

An examination of the documents related to the Cambodian crisis shows that the member states' criticism focused not on liberal democratic standards but on the instability of the domestic political order and ensuing security threats. The first response of the ASEAN Standing Committee deplored the impact of unrest on the well-being of the Cambodian population (Severino 2006, p. 58). Subsequent ASEAN statements demanded the peaceful resolution of the conflict and the return to constitutional politics as preconditions for resuming the accession process (Kassim 1997; ASEAN 1997). Abdullah Ahmad Badawi, who was then Malaysia's Foreign Minister, said: 'All that we want to see is that the government is in place, the coalition will continue, that the national assembly will not be dissolved' (cited in Agence France Presse 1997).

This language refrained from using notions of liberal democracy or human rights, focusing instead on the ability of Cambodia to uphold

the constitutional order. The rationale was that domestic unrest would eventually threaten the stability of all the regional states. The idea that national resilience in the sense of *domestic political stability* and regional resilience were intertwined has its roots in the regionalist visions of anti-colonial political leaders like Aung San, Nehru and Chi Minh Ho (Acharya 2010). It had first been officially acknowledged in the Declaration of ASEAN Concord:

The stability of each member state and of the ASEAN region is an essential contribution to international peace and security. Each member state resolves to eliminate threats posed by subversion to its stability, thus strengthening national and ASEAN resilience. (ASEAN 1976)

Initially, ASEAN's appropriation of the national-regional stability nexus did not imply any prescription for the way in which its member states were governed. For example, ASEAN had remained silent on the events surrounding Ferdinand Marcos' rule under martial law and the blatant election fraud in 1986 in the Philippines. It also did not speak out against the coup d'état by the so-called National Peace Keeping Council in Thailand in 1991 (Chalermpananupap 1999). The proponents of the idea initially thought of the 'causal arrow' as flowing mostly from regional cooperation to domestic stability. Overall, the concept had represented a security doctrine promoting regional cooperation to prevent the subversion of established regimes, not an intrusive criterion of legitimate membership (Jorgensen-Dahl 1982, p. 102).

In the processes of normative arguing around the events in Cambodia, however, domestic political stability became elevated to a primary institution of the organization's standard of membership. The notion found its expression in the form of a norm prohibiting unconstitutional changes of government. The ASEAN Foreign Ministers had first expressed this view in 1991, when they demanded 'that no Cambodian party should be allowed to seize or retain power through force of arms' (ASEAN 1991). After the 1997 incidents, they clearly depicted the violation of this principle as the primary reason for the delay of Cambodia's entry into the organization. Singapore's Shunmugam Jayakumar (1997; see also 1998) was most explicit about this, counting the imperative of domestic political stability as one of the 'essential principles' of ASEAN cooperation:

Where force is used for an unconstitutional purpose, it is behaviour that ASEAN cannot ignore or condone. As a principled and constructive Organisation, ASEAN's reputation will be diminished if [it] does not register its dismay and displeasure at certain conduct unacceptable to the international community. [...] The use of force to overthrow the established government is a legitimate concern of the international community because it can also pose a threat to regional stability – a matter of concern to ASEAN.

In the same vein, his Indonesian colleague Alatas (1997) described the coup as a challenge to Southeast Asia as a whole. These statements are remarkable, given that the historic evidence for a long-standing norm against coups in ASEAN is weak and it was not part of its formal enlargement framework. Rather, ASEAN leaders introduced the normative justification *after the fact* of Cambodia's temporary exclusion.¹⁴ This mirrors the EU case, where broader normative concerns overrode legal ones in its decision to put the Association Agreement with Greece on ice.

In what may be the clearest sign of recognition of the anti-coup norm, the Cambodian representative¹⁵ at the July 1997 Ministerial Meeting, Ung Huot (1997), said:

[...] the operation which took place on 5th and 6th July 1997 [...] was not [a] so-called Coup d'Etat [as] has been alleged, but a legitimate action to prevent Cambodia from slipping into anarchy and a possible second genocide. [...] The Royal Government of Cambodia abides by the Constitution, promises to do everything, to maintain political stability, bringing about peace, democracy, the respect of human rights and the freedom of expression in Cambodia.

Rather than rejecting the validity of domestic political stability as a part of the standard of membership, the ruling Cambodian faction acknowledged it by framing its actions as a means to prevent domestic instability. Consequently, it complied with the demands by the ASEAN Foreign Ministers to hold elections, which resulted in the formation of a new coalition government in 1998. Although representatives from Indonesia, Malaysia, Myanmar and Vietnam pushed for announcing Cambodia's

¹⁴It is likely that the parallel debates in African regional organizations about an anti-coup norm influenced these developments.

¹⁵Cambodia was still allowed to participate in the ASEAN Ministerial Meetings as a guest.

accession at the Hanoi Summit in the same year, the Philippines, Singapore and Thailand insisted to wait until the Cambodian Senate would reconvene, in a clear sign of concern for a sustainable political transition (Singapore Ministry of Foreign Affairs 1998). It was only in 1999 that ASEAN finally admitted Cambodia.

The new emphasis on domestic political stability in ASEAN's standard of membership was in obvious tension with the primary institutions of national sovereignty and international law. How could the politics of a state affect its membership prospects if ASEAN claimed that these were internal affairs safeguarded by the nonintervention norm? How could ASEAN deny any state membership rights if its interpretation of international law rejected any formal adjudication and sanctioning and relied on quiet diplomacy for dispute settlement? ASEAN leaders tried to dodge these questions with contradictory rhetoric, such as Alatas's somewhat awkward reassurance that the delay of Cambodia's accession did by no means imply that ASEAN '[passed] judgement on who is right, who is wrong, who is legitimate or who is illegitimate, or whether there was a coup d'état' (cited in Agence France Presse 1997). ASEAN was also cautious to prevent antagonizing Cambodia. Even at the heights of the crisis, ASEAN member states did not revoke the country's membership perspective and maintained its observer status.

In an attempt to solve the tensions, some ASEAN leaders tried to introduce new policy concepts. For Anwar Ibrahim (1997), who was then Malaysia's Deputy Prime Minister, the lesson from the Cambodian crisis was that ASEAN must intervene 'before simmering problems erupt into full-blown crises'. He proposed a policy of constructive intervention, which justified exceptions to noninterference and quiet diplomacy in cases where the internal affairs of a member state threatened the security or welfare of the others. This conditional approach was an attempt to reconcile the tensions between national sovereignty, domestic political stability and the ASEAN-specific interpretation of international law. However, neither Anwar's proposal nor the slightly less intrusive idea of 'flexible engagement' by the then Thai Foreign Minister Surin Pitsuwan was able to establish horizontal linkages to the existing primary institutions of the Southeast Asian international society. The governments of the other ASEAN member states were wary about the potential impact on the primary institution of national sovereignty and rejected any far-reaching innovation (Acharya 2001). Without any concept clarifying the relation between domestic political stability, national

sovereignty and international law, the tension between the three primary institutions persisted.

Since 2006, the requirement of domestic political stability is legally enshrined in the ASEAN Charter, which counts the ‘adherence to the rule of law, good governance, the principles of democracy and constitutional government’ as a fundamental principle. Although this is a watered-down version of the original draft by the EPG, which had included the ‘rejection of unconstitutional and undemocratic changes in government’, the further institutionalization heightened the potential for institutional tensions. It begs the questions how to mediate between the intrusive logic of domestic political stability and national sovereignty, and how ASEAN could effectively address violations of the anti-coup norm without fundamentally challenging regional understandings of international law and dispute settlement. The lack of specification leaves a lot of room for political maneuvering, and in practice the tensions have been resolved in favor of the latter. Accordingly, ASEAN failed to produce a word of criticism, let alone impose sanctions or suspend membership rights, after the coup d’état in Thailand in 2014 (Woon 2016, pp. 64–65).

SUMMARY

The enlargement processes of the EC/EU and ASEAN were shaped by regional standards of membership, which defined principles for legitimate actorness and served as a basis for the secondary institutions that guided enlargement policies. In both cases, concrete enlargement cases triggered normative arguments that developed this standard by making it more explicit and adding new primary institutions. However, ambiguities such as tensions between primary institutions, a lack of specification and the question what would happen if candidates fulfilled the standard only partially complicated the translation of primary into secondary membership institutions. The contingent pathways of the EU’s and ASEAN’s enlargement result not only from different primary institutional contexts but also from diverging strategies to address these ambiguities. While both relied heavily on institutional differentiation as a strategy for reconciling enlargement practices with the complex normative structure of regional international societies, the EU also tried to operationalize the standard through the specification of secondary institutions whereas ASEAN relied more on political negotiations to resolve ambiguities.

In the EU, a common identity as democratic states served as the ground from which regional actors—initially the EP and the Commission, later also the member state governments—constructed a primary institution of liberal democracy. After the shock of the end of the Cold War, the Copenhagen criteria were a milestone in the development of the standard. However, attempts at operationalizing these criteria through secondary institutions were stunted by the question of partial fulfillment. The establishment of an accession process as well as the launch of the ENP were a way of addressing this issue by defining degrees of accession and association. The result is a regional international society made up of an EU core and a periphery beyond its formal boundaries. The standard of membership in the outer circle of this society is more pluralist than that of the inner circle of EU member states.

In the ASEAN case, the standard of membership experienced two main challenges in the 1990s. First, the shock of the end of the Cold War prompted regional actors to debunk the remains of the primary institution of nonalignment, which had put a brake on formal security cooperation on the regional level. They also reinterpreted the primary institution of international law in a way that made more extensive diplomatic security dialogue possible. Based on these developments in the standard of membership, ASEAN created the ARF as a secondary institutional framework for an international society of states that fulfilled ASEAN's substantial standard of membership but not the geographic criterion of Southeast Asianism. The differentiation of membership in the Asia-Pacific is less hierarchical than in the case of the EU's ENP because ASEAN lacks the power of using the prospect of full accession as a disciplining incentive. The second challenge came from the economic, security and political risks of incorporating the CLMV states into ASEAN. Instead of introducing market liberalism as a primary institution, they established flexible secondary institutions to prepare the candidates for eventual membership. While ASEAN leaders fended off criticism of Myanmar's human rights record and admitted the country, they introduced a new primary institution of domestic political stability to the standard in response to the Cambodian coup d'état. To mediate tensions between the primary institutions of domestic political stability on the one hand, and national sovereignty and international law on the other, ASEAN opted for political negotiation instead of operationalizing the standard into clear membership rules.

The question of regional boundaries remains unsettled for the EU and ASEAN. Both regional organizations are discussing further enlargement with the cases of the West Balkan states on the one hand, and Australia and East Timor on the other. At the same time, the Brexit vote came as a glaring reminder that diminishing membership is not just a theoretical possibility. Some states deliberately choose cooperation short of full membership or opt out of certain aspects of integration (Schimmelfennig 2016). The instability and increasing ‘fuzziness’ of membership also has repercussions on the primary institutions of the organizational cores in both regions. The EU’s enlargement and creation of intermediate membership statuses has undermined the institutional foundations of its post-Westphalian, solidaristic international society (Thomassen and Bäck 2009). In the Asia-Pacific, meanwhile, ASEAN struggles to maintain a credible claim to its ‘centrality’ in the ARF and ASEAN+ frameworks, as major powers are taking on a more active role. With its One Belt, One Road initiative, China is already advancing its own vision for a regional normative order. Under these circumstances, ASEAN states need to consider revising the normative basis of cooperation to maintain influence in Asia-Pacific affairs (Caballero-Anthony 2014). Further contestation and change are thus certain in both regions.

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CHAPTER 7

Conclusion

Since the creation of ASEAN and the EC/EU, processes of normative arguing have been shaping central episodes in their institutional development. Whenever regional actors debated innovations in organizational rules and procedures, they invoked existing norms, reinterpreted them or promoted new ones. These discourses reinforced long-standing ideas about regional politics but also continuously drove normative adaption and change. By influencing institutional innovation or stability at critical junctures, normative arguing has thus crucially shaped the historical pathways of regional organizations. This chapter draws together the main findings from the empirical analysis and discusses the main implications for theorizing about regional organizations and international society. Approaching the history of ASEAN and the EU from a comparative English School perspective yields two central lessons for our theoretical understanding of differences between regional organizations. They concern the importance of history and the implications of normative complexity for institution building.

THE IMPORTANCE OF HISTORY

Different capabilities, interests or ideas *in the present* cannot exhaustively explain differences between ASEAN and the EU. Alongside these synchronic factors commonly emphasized by Comparative Regionalism,

path dependence is one of the reasons why typical processes like the foundation, legal integration and enlargement of regional organizations can materialize in different forms. To grasp the effects of path dependence on differences between regional organizations, Comparative Regionalism research needs to look further back in time than it has usually done. The origins of the EU's and ASEAN's diverging institutional pathways lie roughly a hundred years in the past, when debates about the eroding normative foundations of the colonial international society emerged in Europe and Southeast Asia. For example, the EU's Cotonou framework for development cooperation is in part a colonial heritage, as are the provisions in the ARF's documents to secure ASEAN's centrality in the forum.

Path dependency does not equal institutional stasis. As the analysis of the ARF in Chapter 6 demonstrates, it is tempting but ultimately not helpful to overstate continuity in the normative underpinnings of regionalism. While the creation of the ARF resulted in the adoption of some of ASEAN's norms and organizational features in the wider Asia-Pacific region, it was in fact only possible because regional elites abandoned the primary institution of anti-hegemonism and reinterpreted the principles of international law regarding dispute settlement. The same is true for the EU's relations with its former colonies, which are addressed in Chapter 4. It is important to stress that developmentalism perpetuates structural asymmetries between Europe and the Global South. However, arguing that the formal recognition of the newly independent states' claim to sovereign equality in the Cotonou framework was entirely inconsequential would be overlooking the symbolic and constitutive significance of this acknowledgment for the former colonies, e.g., regarding their improved access to and discursive authority in international diplomatic fora.

The emphasis on historical conditions and processes bears out the argument made in Chapter 2 that the explanatory power of synchronous factors like power, interests and diffusion emphasized by alternative approaches depends on normative conditions. Their influence is mediated by the capacity of regional actors to draw on primary institutions as legitimation resources in the normative arguments about regional organizations. For example, the interests of government elites certainly influenced individual country positions regarding legal integration in ASEAN. The more illiberal CLMV states argued against far-reaching legal integration out of a desire to maintain domestic political control and guarantee regime security. They would possibly have done so even

if noninterference and the traditional nonjudicial interpretation of dispute settlement had not been long-standing principles of the Southeast Asian international society. However, the fact that these normative reference points existed provided them with strong legitimacy and significantly increased their positional power in the discursive struggle against the pro-integration governments despite being ostensibly weaker in material terms than the original ASEAN members.

The English School approach of this book not only makes the case that history matters but also *how* it matters. Due to the feedback effects surrounding institutional reproduction—power effects, reification, vested interests and institutional linkages—the institutional configurations of regional international societies are usually quite resistant to change. Institutional change becomes possible when these mechanisms are disturbed. Such opportunities present themselves when regional actors capitalize on the occurrence of external shocks, such as the end of the Cold War before the enlargement of ASEAN and the EU, or on endogenous sources such as tensions between different primary institutions or their norms, like the notions of national self-determination and imperial concert at the onset of decolonization. They can then influence the path along which the secondary institutions of a regional organization develop. However, actors still have to take into account the specific normative conditions that define the scope of what they can legitimately demand. The context of primary institutions therefore makes possible and limits change in the secondary institutions of regional organizations. Since secondary institutions also have constitutive characteristics, changes in the rules and procedures of regional organizations often create spaces for processes of normative arguing that in turn transform primary institutions. Therefore, the primary institutional context of regional organizations is not static but malleable, and dynamics between the two institutional levels can be a decisive factor in the historical pathways of regional organizations.

The comparison of legal integration in Chapter 5 demonstrates this point. In Europe, the primary institution of pooled sovereignty provided a constitutive context that made it possible to include secondary institutions like the preliminary ruling clause and the rules and procedures of the ECJ in the EC framework. Over the years, these secondary institutions became a space for decisive practices pushing for the institutionalization of new primary institutions, those of Community constitutionalism and liberal democracy. These, in turn, were important normative

reference points for the subsequent debates about secondary institutions for EU citizenship. In Southeast Asia, where a postcolonial interpretation of national sovereignty based on the noninterference principle prevailed, no counterpart to the ECJ was established. There was no powerful agent challenging the primary institution of international law, which therefore retained its conventional interpretation. While the ASEAN Secretariat argued for legal integration from the 1990s onwards, ASEAN's secondary institutions granted it only limited discursive authority, so that its calls did not find the same resonance as in the EU case.

THE IMPLICATIONS OF NORMATIVE COMPLEXITY

Despite the importance of the historical and normative context, the institutional development of regional organizations is at no point predetermined. In all the episodes, actors asserted and negotiated different positions on how to reform, abandon or replace existing secondary institutions. As such, the book substantiates, and transfers to the Southeast Asian and Europe case, the argument by Foot (2014) that secondary institutions are essentially shaped by contestation about primary institutions. The way in which these struggles unfold is a crucial factor for institutional development, and one that always involves an element of contingency. By consequence, the secondary institutions of a regional organization are not a direct effluence or a simple epiphenomenon of the respective region's primary institutions, as existing approaches to the role of norms in Comparative Regionalism assume.

Throughout the history of ASEAN and the EU, their normative contexts provided difficult conditions for institution building. Rather than being clear-cut and consistent, the regional primary institutions provided malleable, competing and ambiguous standards of legitimacy. Primary institutions can empower different types of actors and constitute divergent hierarchies of authority, as in the case of Europe, where the primary institutions of nationalism and pooled sovereignty have coexisted for the longest part of the EU's history. They can also legitimate competing policies, as evidenced by ASEAN's parallel emphasis on noninterference on the one hand and anti-hegemonism on the other. Finally, even where strong tensions are absent, individual primary institutions are usually too vague to prescribe concrete ways of action in their day-to-day application, as the Copenhagen criteria of the EU demonstrate.

The case studies reveal that there are three ideal-typical strategies in secondary institution building to deal with such ambiguities, which emphasize different modes of political practice: deliberation, technocratic operationalization and adjudication. Where regional actors rely on politics of deliberation, they create secondary institutions that constitute discursive spaces for arguing and impromptu negotiation.¹ A good example is the security implications of the Bangkok Declaration, which are analyzed in Chapter 4. ASEAN's founding document left the resolution of tensions between the norms of anti-hegemonism and noninterference to political considerations in concrete cases by remaining consciously vague with respect to the role of external security actors in the region. Instead, it provided a framework for regular consultation among government representatives, who would then decide ad hoc in the Ministerial Meetings and other formats whether conflicts like that with Vietnam over its invasion of Cambodia called for the involvement of external powers or should be resolved internally. If this type of secondary institution building dominates, subsequent change hinges on the successful introduction of new normative claims in the deliberative arenas. The reinterpretation of the principle of dispute settlement in Southeast Asia preceding the establishment of the ARF is a case in point.

A technocratic approach to addressing ambiguity in primary institutions, by contrast, provides formal prescriptions for action as concretely as possible. Rather than opening up discursive spaces, the goal is to minimize uncertainty about how to translate principles and norms into legitimate action. This attempt is visible in the enlargement rules and procedures of the EU developed after the Copenhagen Council in 1993, which are analyzed in Chapter 6. The pre-accession strategy was an attempt to specify and operationalize criteria for membership eligibility as well as the details of the accession process. If secondary institutionalization relies primarily on this logic, subsequent change will mainly be driven by unintended consequences of rulemaking. In the example of EU enlargement, the specification of membership criteria raised the question of how to deal with candidates that only partially

¹Unlike many scholars of political theory (e.g., Fishkin 1991), I do not use the term 'deliberation' in a normative sense. In my understanding, deliberation merely describes a process of decision-making based on normative arguing among actors with potentially different beliefs and interests. As such, it does not necessarily take place in inclusive, public settings involving all stakeholders.

fulfilled the criteria—an unforeseen problem that resulted in the differentiation of membership statuses.

Third, regional actors can establish an impartial authority tasked with evaluating the legitimacy of conduct in debated cases. Politics of adjudication then dominate the translation of ambiguity in regional primary institutions into rules and procedures. In cases of uncertainty over concrete obligations, this body clarifies them by interrogating the meaning of principles and norms, judging their relative importance and issuing more or less binding interpretations. Subsequent change on this institutional basis is possible either when the authority demands that existing secondary institutions be adapted because they are illegitimate in their current form, or when the accretion of case law drives change in the primary institutions. The ECJ's role in advancing the constitutionalization of EC law is an instance of the latter.

In decisive instances of institutionalization, European actors tended to choose secondary institutions that emphasized technocratic and adjudicative politics. Their Southeast Asian counterparts relied more heavily on frameworks for politics of deliberation, as is evident from the more informal, nonconfrontational and consensus-oriented rules and procedures of most ASEAN bodies. This finding resonates to some extent with the numerous characterizations of regionalism in Europe and Southeast Asia as legalistic versus informal or network-oriented (Higgott 2014; Jetschke 2009; Jones and Smith 2007; Katzenstein 2005; Mattli 1999; Yeo 2010). However, the analysis also reveals that a simple dualism overlooks important nuances. Secondary institutions in both regions usually contain elements of all three institutional logics. For example, dispute settlement in Southeast Asia is largely characterized by political deliberation but it also contains certain judicial elements and is increasingly being formalized. Even if Southeast Asian actors prefer to settle disputes in bilateral, informal settings, they have to take the 'shadow of hierarchy' (Héritier and Lehmkuhl 2008), i.e. the possibility of eventual referral to an independent judiciary, into account.

Still, the observation of different approaches to secondary institutionalization is important because it helps understand the dynamics of institutional stability and change in regional organizations. More technocratic and legal secondary institutions tend to have a more subversive impact on the feedback effects surrounding the reproduction of institutional configurations. In other words, they provide more endogenous pressure for change than deliberative secondary institutions.

Technocratic rules and procedures can realign interests because they distribute privileges in an unprecedented way. This was the case with the EEC's Association framework, which directed the foreign policy orientation of the collapsing European empires away from its former overseas territories. The most dynamic institutionalization strategy is the creation of new bodies with some kind of judicial authority, because adjudicative politics can alter power configurations and impinge on the positional power of national governments. As in the case of legal integration in Europe, it can alter the preference structures of domestic actors. Beyond that, however, the judicial body itself can directly promote changes in primary institutions or demand adaption in secondary institutions. If secondary institutions provide an arena for deliberation and ad hoc negotiation, on the other hand, this leads to power effects as existing power configurations are formalized and perpetuated. The closure of the discursive arena against potential challenges makes institutional innovation more difficult.

Because of the reliance on technocratic and judicial politics to address ambiguities, 'norm entrepreneurs' in Europe were often in a favorable position because endogenous dynamics improved their discursive position in the EU's normative arguments. Changes in the EU's organizational framework therefore often catalyzed transformations of primary institutions—especially when they coincided with exogenous shocks such as the end of the Cold War. In this way, change oscillated between the two institutional levels of the international societies, like in the case of legal integration. The mainly deliberative nature of ASEAN's secondary institutions did not disrupt the feedback effects in the same manner. They often hosted normative discourses that were subject to strong power effects and consolidated, rather than undermined, regional primary institutions. By consequence, exogenous shocks did not coincide with endogenous institutional dynamics to the same extent as in Europe, which made it harder for progressive actors in Southeast Asia to promote institutional reforms.

The emphasis on divergent institutionalization practices in the EU and ASEAN do not imply that Europe hosts more *advanced* secondary institutions than Southeast Asia. This position, evidenced by characterizations of (South-)East Asian regionalism as 'belated' (Beeson 2005, p. 978) or 'lagging' behind its European counterpart (Breslin et al. 2002, p. 11), and criticized as 'integration snobbery' by Murray (2010; see also Higgott 2006), is questionable for at least two reasons.

First, while regional organizations undergo common macro-processes like legal integration and enlargement, there is no evidence to support the idea of a teleological convergence on a common template of regional primary and secondary institutions. To the contrary, an English School perspective shows that the pathways of regional organizations are contingent and divergent because they unfold in specific and complex normative contexts. Southeast Asian elites never sought to emulate EU institutions, which is why a graded measurement of advance is problematic and it is more helpful to understand differences in qualitative terms.

Second, the EU's own historical record displays too many inconsistencies and ambivalences to regard it as a highly 'advanced' regional organization. Even at its inception, the communitarization of relations with former colonies through the Association framework helped resolve tensions between pooled sovereignty and national imperialism, but the colonial division between 'civilizers' and 'civilizees'—supposedly a thing of the past—is clearly lingering in the arrangement and continues to lead to tensions with actors from the Global South. Legal integration led to the establishment of citizenship rights, but they remained circumscribed and fell short of the expectations of many supporters. Finally, the EU's enlargement and the creation of the ENP have fundamentally reshaped the continent but also put in question the normative underpinnings of the EU itself. In fact, secondary institution building hardly ever seems to resolve ambiguities or end contestation on the primary level definitely. That is true for the EU as well as for ASEAN, where tensions over relations with great powers persist, regional dispute settlement mechanisms are undermined by a preference to resolve issues bilaterally or refer them to global bodies, and uneven reactions to the coups in Cambodia and Thailand have raised suspicions of double standards.

COMPARATIVE REGIONALISM: NORMS REVISITED

There is thus a strong case for fundamentally reappraising the role of norms and normative arguing for the institutional pathways of regional organizations. Most conventional accounts of norms in Comparative Regionalism treat them as fixed and consistent. By assuming that regional organizations are 'embedded' in a normative fabric, they ignore that these norms themselves are malleable and constantly subject to contestation. This is evident in the enlargement of the EC/EU, where the liberal democratic standard of membership—the set of primary institutions defining necessary qualities of an eligible member—was

not an exogenous precondition for enlargement (Schimmelfennig 2005) but actively constructed as existing members argued about the eligibility of accession candidates. It is also important for understanding regionalism in Southeast Asia, where the buzzword of the ‘ASEAN Way’ often reifies the normative underpinnings of ASEAN and uses them to explain regional idiosyncrasies (Narine 2002; Nesadurai and Khong 2007). Although the criticism of such approaches as essentialist (Börzel 2016, p. 50; Lenz and Marks 2016, p. 521) is sometimes overstated, the question of normative continuity or change should be an empirical one. Normative inertia may have obstructed change in some areas of ASEAN cooperation such as legal integration, but others such as enlargement were accompanied by important changes in the region’s primary institutions.

The institutional histories of ASEAN and the EU also show that normative ambiguity is the rule rather than the exception in regional international societies. This concerns not only instances where primary institutions are in obvious contradiction to each other, as in the opposition between pooled and national sovereignty. These are fundamental differences but they are also easily recognizable and can therefore be addressed in a forthright way in normative arguments. More problematic are cases of ‘polysemy’, where actors endorse the same primary institution nominally but interpret it in a different way (Costa Buranelli 2015). The long struggles over the meaning of nonalignment in Southeast Asia and the constitutional character of EC law in Europe illustrate that primary institutions do not have an inherent and obvious meaning but are contested concepts that actors need to make sense of in practice (Wiener 2009). Regional organizations do not simply ‘reflect’ a regional normative consensus, as the narratives of the ‘ASEAN Way’ and Europe’s ‘liberal community’ suggest. They are rather attempts to *enact* primary institutions by reconciling divergent interpretations in a single organizational framework. In these processes, the power to define meanings becomes an essential instrument that shapes whether tensions can be used by progressive actors to mobilize pressure for change or are suppressed for the sake of stability.

The English School’s traditional sensibility for institutional tensions thus highlights that while norms shape dynamics in the pathways of regional organization, the way in which they translate into organizational features is far from straightforward. By focusing on the politics of normative arguing and its stabilizing and transformative effects on primary

and secondary institutional structures, this book integrates the importance of both structure and agency for the development of organizational structures. A central methodological implication of this insight is that Comparative Regionalists should be mindful of the limits of comparison. The complex interplay of structure and agency and the contingency that arises from it means that isolating causal factors by comparing two or more regions is often impossible. That said, cross-regional comparison remains an immensely useful tool not just for creating powerful narratives of diverging institutional pathways but also for refining theoretical arguments and determining their scope conditions. Context-sensitive comparison can promote explanatory pluralism by highlighting that a specific narrative or explanation of organizational features might work well in some regions or dimensions of regionalism but not in others. Such a stance sheds new light on some open questions in Comparative Regionalism pointed out in Chapter 2, for example, why the explanatory power of functionalism varies from case to case. As the comparison of legal integration in Europe and Southeast Asia demonstrates, some primary institutional contexts are particularly conducive to functional arguments about organizational reform. Absent a firmly institutionalized primary institution of market liberalism, functionalist arguments for stronger dispute settlement did not reverberate strongly among ASEAN governments. Functionalism thus holds analytical value not as an automatic integration mechanism but as a specific mode of normative arguing that depends on resonance in a broader discursive context.

The approach also provides an explanation why there is continued resistance to the diffusion of institutional models, be it from the EU to other regions (Jetschke 2009; Wong 2012) or in the form of ‘downloading’ a global script (Börzel and van Hüllen 2015). Here, a focus on normative arguing elucidates how primary institutions function as regional predispositions for norm localization and, by extension, the adaptability of regional organizations to external influences. The successful adoption of supranational organizational models in pluralist regional international societies depends on whether the corresponding processes of normative arguing also transform the primary institutions in a way that legitimates new secondary institutions and stabilizes them in the long term through vertical linkages. An acknowledgment of this connection is especially important from the vantage point of the EU’s ambitions to promote regional integration in other regions (Börzel and Risse 2012; Jetschke and Murray 2011). When a regional organization adopts EU institutions

without transforming the underlying normative context, as in the adoption of an ASEAN Charter, this often results in hollow organizational forms that are disregarded in practice (Jetschke 2009; Jetschke and Rüländ 2009). Irrespective of the question whether the EU *should* act as a normative power abroad (Diez 2013; Manners 2002), the history of ASEAN demonstrates that primary institutional change in postcolonial spaces must be driven by local agency. Since the EU is not in a position to impose such adaptations on other regions, it must accept that the prospects of actively diffusing its own integration model are fairly limited (Lenz 2013). It can merely hope that its mere presence serves as a reference point for progressive local actors in the normative arguments of other regions.

REGIONAL ORGANIZATIONS IN A POSTHEGEMONIC INTERNATIONAL SOCIETY

The history of normative arguing in ASEAN and the EU sheds new light on the current disillusionment about regionalism that formed the point of departure of this book. Comparative Regionalism has struggled with the fact that although regional organizations are supposed to provide governance functions in accordance with their member states' preferences, they often seem to be less than optimal solutions to given problems and cause rather than solve crises (Beeson and Diez 2018; Jetschke 2009; Moxon-Browne 2015). From a purely rationalist point of view, these mixed performances must appear as deficiencies in their 'institutional design' (Acharya and Johnston 2007; Koremenos et al. 2001). An English School approach provides a more nuanced view by highlighting that such limitations and inconsistencies are an inevitable corollary of reproducing regional organizations in a dynamic and complex normative context. Such a view on institution building moderates our expectations of the adaptability of regional organizations (Quayle 2013). Seeing how an ambiguous fabric of primary institutions and previous institutional choices influence options for change makes it clear that regional organizations will not perfectly respond to economic or security demands because functional considerations are hardly ever the only rationality at play in discourses surrounding regional organizations. Certain organizational idiosyncrasies may appear as suboptimal in terms of input responsiveness or output performance but are reasonable if seen in the context of the

dynamic normative background and the institutional history in which they developed. If primary institutions display fundamental tensions, there is no silver bullet for the makers of regional organizations, no institutional choice that will simply resolve all contradictions.

The waning of US hegemony and the fragmentation of global governance have increased the normative tensions in international society, and will continue to do so in the future (Acharya 2015; Pouliot and Thérien 2017). This raises fundamental questions about the place of regions in a post-Western world order (Buzan 2004; Hurrell 2007). How will the increased contestation of global primary institutions affect the normative discourses surrounding regional organizations in different parts of the world? Because of the parallel existence of global and regional levels of international society, regional organizations will have to integrate different normative underpinnings and satisfy competing standards of legitimacy. An example is the attempt to reconcile the globally promoted institution of market liberalism with the strong emphasis on national sovereignty in the organizational framework of ‘regulatory regionalism’ in East Asia, i.e. the idea of economic integration through aligning national regulation rather than building supranational institutions (Higgott 2014). A systematic exploration of such translation and mediation efforts recasts the long-standing debate about the connection between globalization and regionalization by looking at how the relation between the two processes is shaped by normative conflicts and arguing.

Whether regional organizations will drive fragmentation by advancing irreconcilable visions of international society or serve as building blocks of a new normative consensus will depend on the ability of political actors to accommodate the diverging normative claims associated with global and regional primary institutions. Acknowledging that building institutions in international society is an inherently political process (Knudsen and Navari 2018; Spandler 2015) enables researchers to address pressing normative questions. In a fragmented international society, it becomes more important to discuss the ethical implications of norm ambiguity and conflict. Some primary institutions might have such a fundamental and overriding value that they should obtain primacy over others (Schmidt 2016). However, not all tensions can be resolved in such a hierarchical way, which is why their mediation through regional secondary institution building will be crucial. The different strategies identified in this book draw their legitimacy from different sources. While technocratic and judicial approaches provide some sense

of a regional rule of law and can make governance more effective, deliberative politics have the potential of enhancing the representation of diverse actors by accommodating a plurality of norm interpretations. The English School is particularly qualified to address these issues because of its rich tradition of normative theorizing and controversy, but other perspectives, including postcolonial and non-Western IR approaches, can also provide important insights. Independent of individual theoretical preferences, being attentive to the institutional politics of international society will help researchers understand the current transformations in world politics and their normative implications. Competing visions for regional order will be one of the main forms in which these changes manifest. Because diversity and regional pluralism can be desirable principles of international order but also sources of conflict and injustice, IR scholars need to continue studying how the politics of normative arguing shape global and regional institutions, and how they affect the chances of achieving a more just world order.

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