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Externalizing the EU's Justice and Home Affairs to Southeast Asia: Prospects and Limitations

Felix Heiduk, *German Institute for International and Security Affairs*

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Abstract

The transnational security dimension ascribed to many phenomena such as terrorism, drug trafficking, pandemics, or people smuggling has led to increased pressures to increase cooperation across national borders to 'fight' or 'manage' many of the new, transnational security threats. Against this background the EU has sought to promote its own norms and ideas, policy preferences and its own model of regional cooperation and integration in her external affairs. A number of recent studies have examined the growing potency of the EU to actively promote ideas and policy preferences in its neighborhood as well as with the U.S., however, scant attention has been given to EU cooperation with other regional organizations. By closely examining the EU's cooperation with ASEAN in two policy fields deemed central within JHA – human trafficking and counter terrorism – this article seeks not only to broaden the empirical basis of respective scholarship, but additionally seeks to connect the empirical findings with the wider debate on the EU's ability to externalize its internal security governance. The study finds that despite numerous declarations and plan of actions, very little policy transfer has actually taken place between the EU and ASEAN. It argues that any attempt to externalize or transfer policy is met by long-standing ideas and norms, policy paradigms and an established specific modus operandi of regional cooperation within ASEAN itself. This will continue to make nigh impossible any externalization of EU JHA policies to Southeast Asia for the foreseeable future.

Keywords

JHA; ASEAN; Counter Terrorism; Human Trafficking; Interregionalism

INTRODUCTION

The transnational security dimension ascribed to many phenomena such as terrorism, drug trafficking, pandemics, or human trafficking has led to increased pressures to increase cooperation across national borders to 'fight' or 'manage' many of the new, transnational security threats. The European Security Strategy (ESS) describes the post-Cold War environment as 'one of increasingly open borders in which the internal and external aspects of security are indissolubly linked' (European Union 2003b: 3). The perceived diffusion between internal and external security has not only accelerated demands for greater cooperation between the EU and third states and international organizations, but also provided the EU with larger policy-making competencies. Subsequently the EU has over the last decade or so established policies in a number of different policy fields, which seek to guide the behavior of its member states within the EU, as well as the EU's external cooperation.¹

With regard to external cooperation the EU has portrayed itself as a model for effective as well as legitimate governance (Boerzel and Risse 2009). As a consequence, the EU has sought to promote its own norms and ideas, as well as its own model of regional cooperation and integration, in her external affairs. With regard to the policy areas under study in this article, this has most commonly become associated with the EU's so-called rights-based approach in counter terrorism, as well as the EU's human security focus in fighting human trafficking.² Whereas the EU's security role initially was

regarded by various analysts as a 'paper tiger' (Bures 2006), a number of recent studies have examined the growing potency of the EU to actively promote its own respective norms and ideas in its neighborhood as well as with the U.S. (Kaunert and Léonard 2011; Kaunert 2009; Wolff, Wichmann, and Mounier 2009; Mounier 2007). Scant attention, however, has been paid to the EU's role in other parts of the world. Especially research on the EU's cooperation with what has arguably emerged as the second most successful regional organization after the EU, ASEAN, in policy fields related to JHA is, with few exceptions, almost non-existent (Chevallier-Govers 2012; Maier-Kapp 2012; Floristella 2013).

By closely examining the EU's cooperation with ASEAN in two policy fields deemed central within JHA – human trafficking and counter terrorism – this paper seeks not only to broaden the empirical basis of scholarship, but additionally seeks to connect the empirical findings with the wider debates on the EU's ability to externalize³ its internal security governance to third states and other regional organizations. Both, terrorism and human trafficking, have a strong regional and international dimension to it (Broadhurst and Le 2013; Abuza 2003; Ramakrishna and Tan 2003; Lee 2013). Given that, through the Lisbon Treaty and the ASEAN Charter, both regional organizations gained legal personality granting them the legal capacity and the powers to act in international affairs, EU-ASEAN cooperation in policy fields often associated with so-called non-traditional security also makes for an interesting case study of how the EU conducts inter-regional affairs. This article builds on earlier research, which found that despite numerous declarations and plan of actions, very little policy transfer has actually taken place between the EU and ASEAN (Heiduk 2009, 2014). The earlier research, however, made very little contribution in terms of explaining this observation. It is all the more puzzling, as the EU repeatedly has often been ascribed to be a "model" for regional integration processes in other parts of the world. At least, in the words of former ASEAN General Secretary Ong Keng Yong, the EU is viewed as a provider of ideas and best practices: 'The very nature of ASEAN as an intergovernmental organization differs from that of the EU. However, we are looking for good ideas and best practices, and the European Union certainly has plenty of these' (Yong 2007). More specifically, instances such as the modeling of ASEAN's Committee of Permanent Representatives (CPR) on the EU's Committee of Permanent Representatives (Coreper) have thrown up questions on institutional mimesis regarding ASEAN (Murray and Moxon-Browne 2013). Furthermore, the EU's relationship with ASEAN and its member states has for the most part been an asymmetrical one of donor and recipient. Brussels has provided funding as well as capacity building to ASEAN institutions on a large scale for years.⁴ While the term "assistance" has been replaced with "cooperation" in recent documents, the relationship has remained one-sided in the sense that ASEAN or its member states have provided very little, if anything, in terms of ideas on regional integration or capacity building to Brussels-based institutions (Lim 2012). Against this background this article poses the question: How can we explain the observation that there has been so little externalization or policy transfer in the field of JHA between the EU and ASEAN?

Established scholarship in the field of EU Studies has traditionally been inward-looking when seeking to explain failure of the EU to externalize its own policy preferences, i.e. by blaming low levels of Europeanization and weak regional institutions in Brussels. This paper, however, argues that we have to turn our analytical focus away from what is assumed to be the 'norm innovator' or 'promoter' (the EU) and towards the supposed 'norm or policy taker' (in our case ASEAN) to be able to give a more rounded answer to the question. By tracing the development of regional policies in the aforementioned two policy fields within Southeast Asia the paper finds that any attempt to externalize or transfer of EU norms is met by long-standing ideas and norms, policy paradigms and an established specific modus operandi of regional cooperation in Southeast Asia. It is the so-called ASEAN-way, which, I argue, will continue to make nigh impossible any externalization of EU norms in the area of non-traditional security to Southeast Asia for the foreseeable future. More so, if anything

it has been ASEAN, not the EU, which successfully managed to externalize its very own norms and its modus operandi into its external relations with the EU in the area of non-traditional security.

NORM EXTERNALIZATION, TRANSFER AND TRANSLATION

There has been a burgeoning academic debate during the last decade on the externalization of EU policies, hereby understood as attempts 'to transfer the EU's rules and policies to third countries and international organisations' (Lavenex and Schimmelfennig 2009: 791), in recent years. It has been argued that it is essentially Europe's 'normative power', which defines its particular role in international affairs. Understood as the power to shape ideas and 'conceptions of normal' in world politics. The EU's normative power rests on its ability to project its core values, defined by Manners as 'peace', 'liberty', 'democracy', 'rule of law' and 'human rights', as well as its very own model of regional integration, to areas outside its own borders (Manners 2002). More so, the promotion of democracy, human rights and regional integration is not simply an attempt to introduce particular normative standards into its external relations, but these ideas are considered to be enablers of security and prosperity outside of the EU's borders, too. The EU's so-called rights-based, normative approach has found repercussions in numerous policy fields, one of them being the EU's approach to counter terrorism. With regard to counter terrorism cooperation with third states the EU's counter terrorism strategy paper states that '... outside the Union we must promote even more vigorously good governance, human rights, democracy as well as education and economic prosperity, and engage in conflict resolution'. The document also speaks of a rights-based approach in the context of pursuing terrorists across borders: 'Our objectives are to impede terrorists' planning, disrupt their networks and the activities of recruiters to terrorism, cut off terrorists' funding and access to attack materials, and bring them to justice, while continuing to respect human rights and international law' (European Union 2005). This has led some to describe the EU as a 'clearing house for regional norms' with a 'specific mandate to ensure that states' counter terrorism activities are conducted in conformity with the relevant regional and international human rights law' (Ewi 2013, 165). The rights-based approach has seemingly also come to shape the EU's relations with ASEAN as exemplified in the 2015 strategy paper, which states that the EU is 'supporting dedicated human rights dialogues at both the regional and bilateral level' and 'as part of the effort to build a more mature and more political partnership, the EU is also keen to work constructively with ASEAN to promote and protect international human rights standards' (European Parliament and European Council 2015). A recent joint statement also echoes Europe's normative approach by stating that 'the Ministers agreed on the importance of continued cooperation to promote respect for human rights and the rule of law' (European Union 2014).

Regarding the success (or failure) of externalization processes, the current literature draws on four broad sets of factors. The first set of factors ('degree of Europeanization') claims that the modes and the impact of externalization are primarily shaped by the EU's internal modes of governance. Essentially the argument hereby is that the degree of Europeanization in any given policy field has a strong impact on the scope and depth of the externalization of said policies beyond the EU's borders (Keohane 2008: 129; Monar 2007). The higher the degree of Europeanization the more the EU is able to externalize its policy preferences (Rees 2006: 4). A second set of factors highlights the degree of institutional similarities between the EU, as well as its member states, and those of third states. Accordingly, the more the domestic structures and practices of other actors resemble those of the EU, the more likely a successful externalization becomes (Shapiro and Byman 2006). A third strand of research claims that the power resources the EU holds vis-à-vis third states and other actors ('relative distribution of power') are the main explanatory factor when trying to understand externalization processes. Accordingly, it is the ability of the EU to ensure third country compliance

with its own rules and policy preferences through the pressuring medium of future accession which has been viewed as the main explanatory factor. This has been framed as the EU's 'governance by conditionality' approach, whereby the EU is able to make compliance with its own norms and policies (laid out in the Copenhagen criteria) a condition candidate countries have to fulfil to become EU members (Schimmelfennig and Sedelmeier 2004).

Although the aforementioned sets of factors produce different explanations for the EU's ability to externalize its internal security interests (or the lack thereof), they all conceive of externalization as a hierarchical, coercive, top-down process. However, while the EU has certainly wielded coercive power to comply with EU law towards member states and candidate countries, the use of such coercive powers has very limited applicability outside of the EU's direct neighborhood. 'Instead, it has relied on capacity-building (technical and financial assistance) and socialization (political dialogue, technical cooperation) to induce domestic reforms' (Börzel and Risse 2012: 195). In line with this critique, Lavenex and Wichmann (2009: 85) conceived of a different, horizontal mode of externalization – that of externalization through non-hierarchical, voluntary networks between formally equal partners (Lavenex and Wichmann 2009: 86).

While the distinction between coercive (vertical) and network (horizontal) modes of the externalization of EU policies is important to incorporate coercive and voluntary forms, it tells us very little about either the process of externalization itself or the role the recipient plays in it. The established concepts conceive of the transfer of norms and ideas as a linear, quasi-mechanistic process, whereby the externalization starts with norm innovation by the EU and / or its member states, which is subsequently externalized (or 'send') elsewhere, and ends with the adoption (or the lack thereof) of norms by a third country or organization. As a result of a successful adoption, local practices and institutions begin to resemble those of the EU. Notwithstanding the (at least theoretical) possibility of such a linear transfer, such conceptualization closes the door on the agency of the norm taker. Recently, the neglect of the recipients' agency in determining what norms and ideas are imported and how this process takes place has been identified as a theoretical blind spot in the debate (Stone 2012; Björkdahl et. al. 2015). As noted by McCann, 'policies, models and ideas are not moved around like gifts at a birthday party or like jars on shelves, where the mobilization does not change the character and content of the mobilized objects' (McCann 2011: 120)

Accordingly, it can be assumed that the 'demand side' or the 'norm taker' exercises agency by translating, by interpreting and by ascribing meaning to external norms and ideas on the basis of already existing 'cognitive priors', 'local norms' (Acharya 2004) and 'cultural fillers' (Manners 2002). With this in mind, various scholars have taken issue with the implicit assumption, prevailing in much of the literature on the externalization of EU policies (c.f. Heiduk 2014; Heiduk 2009; Kaunert and Léonard 2011; Chevallier-Govers 2012; Joffé 2008), that norm transfer or norm externalization is essentially undertaken by rational agents skimming norms, ideas and policies around the world for the objectively 'best', most successful one to import based on the assumption that they will provide for similar (successful) results in a different place (and often time) (Stone 1999; Dolowitz and Marsh 2000). This has led newer approaches towards a research agenda, which heavily focuses on the inter-subjective constitution of norms, ideas, meanings, and knowledge. Freeman (2009) for example speaks of 'translations' rather than 'transfers' or 'externalizations' of norms, ideas and policies, during which a series of interpretations and disruptions occurs. Similarly, Björkdahl has also emphasized the importance of frictions between norm-maker and norm-taker 'to reflect a complex, multi-layered process of norm export and import' (Björkdahl et al. 2015: 5). From such a conceptual starting point, externalization constraints are not simply to be found with regard to different institutional set-ups, the high transaction costs of alterations, or resistance of entrenched elites (Benson and Jordan 2011), but are closely tied to social factors such as world views, norms, and identities.

In view of that, and based on various empirical studies that suggest that externalization processes rarely, if ever, result in a complete adoption of EU norms, ideas and policies by third parties, a recent study has organized responses to norm exports along four ideal types: adoption, adaptation, resistance, and rejection. Adoption entails a complete transfer of EU norms resulting in local practices fully complying with the newly imported norms. Adaptation involves changing EU norms so that they fit with local practices while the original normative content remains intact. Resistance is adaptation in reverse in that it entails a few gradual change in local practices and institutions, often 'to give an impression of adoption or adaptation', while leaving the majority of local norms and practices largely unchanged. Rejection involves continuing divergence of local norms and practices from European ones. This is to prompt us to take serious in our analysis the assumption, that 'despite structural constraints such as asymmetries of economic and political power, norm-takers exercise agency' (Björkdahl et al. 2015: 5). Hence the conceptual point of departure of this paper is to conceive of externalization not simply as a top-down process largely depending on the capacities and mechanisms of the EU, but to take serious the agency of the norm taker as interpreter / translator in the process, as well as his prior embeddedness in established norms, institutions and practices.

EXAMINING THE NORM TAKER: ASEAN AND THE ASEAN-WAY

Examining the political rhetoric and terminology currently used by ASEAN certainly invokes connotations to the EU way of regional integration: ASEAN documents repeatedly speak of "regional integration" and the organization has, as part of the Bali Concord II in 2003, committed itself, amongst other things, to build a "single market" as well as a "single production base" by the end of 2015. Furthermore, a number of ASEAN institutions such as the ASEAN Human Rights Declaration or the Committee of Permanent Representatives have been modelled after similar EU institutions (Jetschke and Murray 2012; Murray and Moxon-Browne 2013). The ostensible convergence in political rhetoric and institutional design notwithstanding, ASEAN and the EU have traditionally pursued different paths of regional integration (Acharya 2000). The adoption of EU-coined rhetoric and institutions has not led to a convergence on a common path towards regional integration. Whereas the EU's integration process has been characterized by the pooling (of some degree) of national sovereignty, its institutionalization, and its legalistic character, the ASEAN integration process has been exclusively intergovernmental and characterized by the "ASEAN-way" as a set of ideas and norms dissimilar to that inherent to the EU's integration process. Central to the so-called ASEAN-way are the notions of sovereignty, equality, territorial integrity and non-interference among member states and to preserve regional autonomy. Article 2 of ASEAN's founding document, the ASEAN Treaty of Amity and Co-operation (TAC), states that it aims to espouse the independence and sovereignty of its members; the right of its members to exist without external interference; and non-interference in the internal affairs. In addition, article 13 calls for the resolution of conflicts between member states through non-violent, non-confrontational, friendly means. The roots of ASEAN's informal, consensual, non-legalistic style of decision-making lie in the organizations' initial focus on regional security. Against the backdrop of the Cold War and increasing tensions between neighboring states in the region,⁵ ASEAN's primary *raison d'être* was to ensure regional peace and stability, build trust between its members, minimize the influence of external powers and provide for regional solutions to regional problems.

As Acharya has pointed out, the ASEAN-way as such 'incorporates a set of well-known principles, e.g. non-interference in the domestic affairs of each other, non-use of force, pacific settlement of disputes, respect for the sovereignty and territorial integrity of member states, that can be found in the Charter of the United Nations as well as regional political and security organizations elsewhere in

the world' (Acharya 1997: 329). Hence ASEAN's code of conduct converges with international norms rather than to diverge away from them. Where the ASEAN way actually diverges is with regard to the 'operationalization' of its code of conduct (Acharya 1997: 330). In order to preserve the member states' sovereignty and to ensure non-inference, ASEAN decision-making rests on the principles of discussion and consultancy (*musyawarah*), consensus (*mufakat*), as well as a sense of community (*gotong royong*). Consensus is aimed for through consultation. Whilst this does not necessarily always have to entail unanimity, it certainly involves a consultation process, which specifically focusses on the amalgamation of the basic interests of all members. The heterogeneity of the ten member states in terms of their political systems, levels of economic development and their socio-cultural systems tends to draw out decision-making processes and often results in the lowest common denominator. ASEAN's primary mode of activity hereby is inter-governmental meetings among the representatives of the ten member states. Hence the organization disposes of a sense of shared purpose based around a set of core norms (the "ASEAN way"). As such these norms are more than mere talking points; they have developed into uniformly held norms, which socialized the member states into a specific modus operandi of policy-making at the regional level for over 40 years.

Fast forward to 2015, more than 40 years after the signing of the Bangkok Declaration, which led to the founding of ASEAN, and the ASEAN-way remains central to ASEAN's internal modus operandi. More so, its genuine sense of a regional political identity also manifests itself in ASEAN's relations with the rest of the world. ASEAN has been active, much like the EU, in promoting its very own modus operandi in its external affairs. It has been successful to socialize its many of its neighbors, including China, Japan and Australia, into ASEAN-led multilateral dialogue forums such as the ARF (ASEAN Regional Forum) or the East-Asia Summit. The ASEAN hereby provides the normative foundations for these multilateral dialogue forums and has left a mark on operational procedures in that they attain to consensual decision-making, high levels of informality and a rejection of institutionalized forms of cooperation (Dosch 2012).

EU-ASEAN COOPERATION IN THE AREA OF NON-TRADITIONAL SECURITY (NTS)

The EU's relations with ASEAN from ASEAN foundation in 1967 until the 1990s were marked by the absence of an institutional framework, consisting of informal contact between European and Southeast Asian states. Hence the relations between the two regions have traditionally been characterized as almost exclusively dominated by economic concerns with little concerns for security cooperation (Robles Jr. 2006; Umbach 2008; Wong 2012; Holmes 2013). A beginning formalization of the relations between the EU and ASEAN only commenced after the end of the Cold War. The 1994's EU's Asia Strategy ('Toward a new Asia Strategy') defined Asia as a strategically important region and identified a number of policy areas for closer cooperation, i.e. poverty reduction and environmental protection, but was still mainly dominated by economic aspects (European Commission 2003). The beginning institutionalization of the EU's relations with Asia also led to the establishment of ASEM (Asia Europe Meetings) in 1996 – an informal forum for ad hoc dialogues on the ministerial level, which also holds bi-annual meetings of the heads of states.

It wasn't until the 2002 Bali bombings, which cost the lives of 49 EU citizens, that security concerns, specifically transnational terrorism, made it on to the EU-ASEAN agenda. This resulted in an EU-ASEAN "Joint Declaration to Combat Terrorism" in 2003 which called for closer cooperation between Europe and Southeast Asia (European Union 2003a). 2003 also saw the publication of the EU's first ASEAN strategy paper ("A new partnership with Southeast Asia"), which listed 'the fight against terrorism' and 'mainstreaming JHA' as strategic priorities of the EU (European Commission 2003). It

is hereby stated that human rights aspects and democratic governance 'should be promoted in all aspects of policy dialogue and development cooperation, through building constructive partnerships with ASEAN and national governments based on dialogue, encouragement and effective support' (European Commission 2003: 3).

The broadening of the EU's agenda with regard to ASEAN also touched upon more general strategic documents, such as the EU's "A Strategy for the External Dimension of JHA: Global Freedom, Security and Justice" published in 2005. The document explicitly refers to the Bali bombings as its point of reference for calling for an intensification of international counter terrorism cooperation (Council of the European Union 2005). The aforementioned documents, however, while formalizing EU-ASEAN relations, did not venture beyond non-binding, very general letters of intent with regard to closer cooperation between the EU and ASEAN. 2007's "Nuremberg Declaration" refined the strategic priorities laid out in the "New partnership with Southeast Asia" and established 'political and security cooperation' as one of its five inter-regional areas for closer co-operation. The section on political and security cooperation states that EU and ASEAN aim for '... closer cooperation in addressing and combating terrorism, trafficking in human beings, drug trafficking, sea piracy, arms smuggling, money laundering, cyber-crime and related trans-national crime...' (European Commission 2007a: 3). Besides this, its relevance with regard to the focus of this paper lies with the accompanying Plan of Action (PoA) intent to implement the Nuremberg Declaration between 2007 – 2012 (European Commission 2007b). For the first time the non-binding letters of intent to be found in previous were to be accompanied by a PoA which lists concrete policy measures to be implemented. Upon its expiry in 2012, the EU-ASEAN Ministerial Meeting in Brunei released a new PoA for the years 2013-2017 (European Commission 2012).

Both PoA's consist of stated objectives and planned activities, which by and large draw on facilitating (and deepening) political dialogue, the exchange of best practices and, to a lesser extent, capacity building. While a range of workshops, seminars and visits to EU institutions is listed in the annex of the 2007-2012 PoA, none of these activities are directly linked to issues such as counter terrorism or human trafficking. Instead the listed activities in the annexes include, amongst others, a seminar on anti-personnel landmines and a workshop on small arms and light weapons. More so, with regard to the political dialogues mentioned in the PoA's, the PoA's do not foresee the creation of new interregional dialogue forums, but refer to previously established forums in the context of the EU-ASEAN Ministerial meetings, forums at UN level and the ASEAN Regional Forum (ARF). For example with regard to human trafficking the 2007-2012 PoA calls for the support of 'ASEAN's efforts, where practicable, in combating trafficking in persons through existing programs, projects or activities and intensify cooperation between ASEAN and EU with regard to supporting the ASEAN Declaration against Trafficking in Persons particularly Women and Children, recommendations of SOMTC Work Programme on Trafficking in Persons, the ASEAN Plan of Action for Cooperation on Immigration Matters and, when appropriate, the Palermo Convention and its protocols' (European Commission 2007b, 3). Similarly, the document calls for 'support the implementation of the ASEAN Convention on Counter Terrorism and promote the full and effective implementation of the UN Security Council's Resolutions related to terrorism as well as ratification or accession, as the case may be, and implementation of the international conventions relating to counter terrorism and relevant resolutions of the United Nations on measures aimed at countering international terrorism, including assisting ASEAN Member Countries in capacity building' (European Commission 2007b: 2).

The PoA for the years 2013 – 2017 is for the most part extending measures and activities listed in the first PoA. The main focus is again on dialogue forums and the exchange of best practices through formats such as seminars and workshops. Hereby it is again the ARF that is deemed the central forum for security affairs. In the 2013 – 2017 PoA technical assistance takes up more room as the EU aims to support newly created ASEAN institutions such as the Jakarta Centre for Law Enforcement

Cooperation (JCLEC), the Southeast Asia Regional Centre for Counter-Terrorism (SEARCCT) and the International Law Enforcement Academy (ILEA). The PoA also sets out the implementation of an ASEAN-EU Comprehensive Border Management Programme with the aim of improving border management in ASEAN member states. Additionally the document, in contrast with its predecessor aims to explore ‘...the establishment of a regular policy dialogue on counter terrorism’ (European Commission 2012: 2).

To be sure, the aforementioned declarations and plan of actions have established a range of new forums for the transfer of norms and ideas through information exchange, sharing of best practices, and capacity building, such as various dialogue fora (Senior Official Meetings, Joint Committees), partnership agreements, joint action plans and strategy papers. More so, the Bandar Seri Begawan Plan of Action to strengthen the ASEAN-EU Enhanced Partnership (2013-2017) integrated fighting terrorism as well as human trafficking amongst its priorities. However, while the newly established forums theoretically open up space for the transfer of ideas and norms, they do not fall on some sort of terra nullius. The following examination of the assumed norm taker (ASEAN) shows that ASEAN had various intra-regional agreements and policy guidelines established in the respective policy fields, which pre-date the Nuremberg declaration from 2007 by a decade.

ASEAN AND THE FIGHT AGAINST TRANSNATIONAL ORGANIZED CRIME

A 2006 report by ASEAN summarizes ASEAN’s response to human trafficking as, broadly speaking, driven by the respective national criminal justice systems. It also states that: ‘This focus is not meant to detract from other important responses to trafficking, such as prevention activities and the reintegration of victims. It does, however, reflect a growing acceptance of the key role that criminal justice agencies must play, at both the national and regional levels, in the fight against trafficking’ (ASEAN 2006, 86). The measures listed on the report to implement such a criminal justice response effectively within Southeast Asia are the sharing of expertise and experience by the respective national agencies bilaterally and at the regional level; the development of mutual legal assistance and extradition treaties; ensuring coherence of the individual member states’ approaches to human trafficking with international norms established by the UN Trafficking Protocol; and the harmonization of donor efforts at the national level amongst others. Thus intergovernmental policy harmonization, rather than regional integration, can be deduced as the *modus operandi* in ASEAN’s fight against transnational crime and human trafficking. ASEAN’s approach therefore incorporates key tenets of the ASEAN way such as non-interference and absolute respect for the national sovereignty of the other member states.

It is the outcome of more than ten-year old policy process, which dates back to the mid-1990s. At that time human trafficking and terrorism were, amongst other areas of concern, bundled together under the umbrella term “Transnational Organized Crime (TOC)” before evolving into single areas of concern in the 2000s (ASEAN 1997a). In 1997 the member states signed the “ASEAN Declaration on Transnational Crime” in Manila, including a section on human trafficking, in which the member states agreed to ‘strengthen cooperation at the regional level’; ‘to convene an ASEAN Ministerial Meeting on Transnational Crime’, and to ‘hold discussion (...) about bilateral and regional agreements on issues such as mutual legal assistance’ (ASEAN 1997b). At the ASEAN level cooperation at senior level takes place through the ASEAN Ministerial Meeting on Transnational Crime while senior officials cooperate through the ASEAN Senior Officials Meeting on Transnational Crime (SOMTC). ASEAN Police chiefs also meet regularly in the context of ASEANPOL to discuss prospects for greater operation cooperation between the member states. At subsequent AMMTC’s (ASEAN Ministerial Meeting on Transnational Crime) awareness of transnational crime grew and it

was decidedly regarded as an issue of concern for the stability of the states in the region and for economic prosperity (ASEAN 1999). All of this, however, was clad into a non-binding language in line with ASEAN's key norms of non-interference and national sovereignty. The aforementioned "Manila declaration" for example stressed regional action by, amongst other measures, 'harmonizing, as appropriate, existing laws' (ASEAN 1997b). Hereby various issues have been discussed at the regional level, including law enforcement, airport security, intelligence sharing, and bomb detection amongst others. Activities listed in the ASEAN Plan of Action to Combat Transnational Crime include: information exchange; the harmonization of national policies; best practice exchanges between national law enforcement agencies; strengthening regional capabilities to fight transnational criminal activities; and the establishment of the ASEAN Center for Combating Transnational Crime (ASEAN 1998).

This is not to say that attempts towards a more formalized approach, including legally binding regional agreements, were not made. Former Secretary-Generals, as well as certain member states such as Indonesia or the Philippines, have at various time called for more regional integration. Within the inherent tension between ASEAN's sacrosanct norms on the one hand (the "ASEAN-way"), and the need for increased regional cooperation if not integration when faced with transnational issues on the other, the pendulum, however, constantly swung in the direction of the ASEAN way. The 2004 ASEAN Declaration Against Trafficking in Persons reaffirmed the inter-governmental approach inherent to the preceding declarations and agreements. It states that ASEAN member states will fight human trafficking 'to the extent permitted by their respective domestic laws and policies' (ASEAN 2004) thus reiterating ASEAN's sacrosanct norms of non-interference and absolute national sovereignty. This approach is reaffirmed in the ASEAN Handbook on international legal cooperation in cases of human trafficking, too (ASEAN 2010). It has also become the dominant modus operandi in ASEAN-driven multilateral cooperation such as ASEAN+3 (China, S. Korea, and Japan), ASEAN+6 (India, Australia and New Zealand), the ARF (ASEAN Regional Forum), the East Asia Summit and the Bali Process on People Smuggling, Trafficking in Persons and related Transnational Crime. ASEAN's firm position on national sovereignty has also hampered the actual implementation of international and regional norms on fighting human trafficking in the face of transnational challenges such as the ongoing regional refugee crisis involving the Rohingyas, the discovery of mass graves of trafficked persons in Malaysia and Thailand and allegations of slavery in Thailand's seafood industry. Myanmar, for example, signed the ASEAN Convention Against Trafficking in Persons in late 2015. At the same time it declared the plight of the Rohingya a domestic matter and subsequently had the issue removed from the regional agenda (Goh 2015). More so, while some member states have changed domestic legislation in line with the stipulations found in the ASEAN Declaration Against Trafficking in Persons, others have failed to prosecute any traffickers or failed to investigate cases of forced labor (U.S. Department of State 2015). Similarly, while the majority of ASEAN member states have become parties to the UN's "Protocol to Prevent, Suppress and Punish Trafficking in Persons", others haven't. The same can be said with regard to the track record of ASEAN member states' compliance with the U.S.' "Trafficking Victims Protection Act". ASEAN simply lacks any mechanism to enforce implementation of anti-trafficking norms across its members. As a result, member states like Thailand continue to violate respective international and ASEAN agreements.

A similar picture emerges when one examines ASEAN's counter terrorism efforts. Article 3 of ASEAN's convention on counter terrorism launched in 2007 states that: 'The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-interference in the internal affairs of other Parties'. Article 4 reiterates the "ASEAN-way" further by stating that: 'Nothing in this Convention entitles a Party to undertake, in the territory of another Party, the exercise of jurisdiction or

performance of functions which are exclusively reserved for the authorities of that other Party by its domestic laws' (ASEAN 2007). The measures to implement ASEAN's counter terrorism conventions include the promotion of capacity building through regional meetings; cross-border cooperation; intelligence and information sharing; and to overall strengthen the capabilities and the readiness of the respective member state agencies to deal with all forms of terrorism (ASEAN 2007). Regional counter terrorism thus has rested predominantly on enhancing national capabilities rather than building up institutions at the regional level. Like the ASEAN Center for Combating Transnational Crime, a regional body on counter terrorism has not progressed beyond respective declarations of intent. Hence ASEAN's approach has been aptly described in a report as: 'Cooperation in fighting terrorism in Southeast Asia has largely been limited to bilateral or trilateral efforts, involving only a few of the ten ASEAN countries. As an organization, ASEAN has made numerous statements and adopted many declarations about its intentions to prevent and combat terrorism. Its members have a mixed record, however, in incorporating these decisions or commitments into their respective national legislation or practice' (Center on Global Counter-Terrorism Cooperation 2007: 7).

ASEAN's approach to counter terrorism is the outcome of a more than decade old policy process which goes back to the aforementioned Manila Declaration on Transnational Crime in 1997, which name terrorism as one of the transnational crime issues Southeast Asian states should be most concerned with. The areas laid out for intensified regional cooperation were intelligence sharing, extradition, law enforcement cooperation, airport security and the creation of national anti-terrorism units. However, cooperation essentially remained at the level of declarations of the willingness of member states to work together to combat terrorism. The necessity to adopt a regional approach to counter terrorism gained new impetus after 9/11 when ASEAN leaders issued the ASEAN Declaration on Joint Action to Counter Terrorism in late 2001. In a move to formulate a specific regional position towards to U.S.-led "Global War on Terror", which was at the time well underway with a military operation against the Taliban, the declaration defines ASEAN's approach by rejecting any attempts to link terrorism with any race or religion as well as by stressing the importance of the UN charter and associated norms: '...efforts to counter terrorism must be conducted in accordance with the Charter of the United Nations, and all of its relevant resolutions'. The latter signifies the centrality of the UN multilateral framework on counter terrorism as ASEAN's primary point of reference for regional as well as international counter terrorism cooperation. The declaration also calls for the 'strengthening of national mechanisms to combat terrorism' and to 'deepen cooperation among our front-line law enforcement agencies in combatting terrorism and sharing best practices' (ASEAN 2001). It did not, however, mark a break with the Association's well-established principles of non-interference and absolute respect for national sovereignty. Subsequent declarations adopted after the terror attacks in Bali 2002 and Jakarta 2005, as well as communiques by the AMMTC on counter terrorism, have mainly echoed established positions without introducing any deeper cooperative, or even integrationist, measures (Emmers 2009).

In efforts to deepen regional collaboration, military intelligence directors of Malaysia, Singapore, Indonesia, Thailand and Brunei have held a number of informal meetings to discuss intelligence sharing to counter Southeast Asia's main transnational terrorist network Jemaah Islamiyah (JI). Under the guise of Interpol the police chiefs of numerous ASEAN member states have exchanged best practices and experiences in counter terrorism measures. And ASEAN foreign ministers also discussed regional collaboration efforts against terrorism at a number of meetings. Nonetheless, the implementation of counter terrorism measures highlighted by ASEAN such as intelligence sharing has taken place bilaterally and trilaterally between various member states. An example is the Anti-Terrorism Pact signed by Malaysia, Indonesia and the Philippines in an effort to bolster cooperation

in the fight against terrorism. Thailand, Brunei and Cambodia later joined the pact (Ramakrishna 2006).

ASEAN's collective emphasis on inter-governmental approaches to counter terrorism is also discernible in the ASEAN Security Community (ASC) endorsed at the Bali Summit 2003, where a proposal for a plan of action on counter terrorism calling for the establishment of a ASEAN peacekeeping force, a counter terrorism center and the promotion of democracy and human rights by Indonesia was rejected. The proposal had included measures such as the promotion of human rights, which in the eyes of member states like Vietnam and Myanmar would have related to their own domestic affairs and thus infringed on their national sovereignty. This non-binding agreement, like its predecessors, gives national laws precedence over the numerous regional provisions mentioned in the ASC agreement. This resulted in a what was described as a 'watered down version' of the plan of action, which 'no longer included the idea of introducing more flexible application of the non-interference principle' (Emmers 2009: 172). Hence the ASEAN policy processes on human trafficking and counter terrorism, consisting of a reoccurring circle of pledges and meetings as well as non-binding declarations and communiqués, underline the much-derided ASEAN way as the organizations *modus operandi*. Regional institutions are noticeably weak or absent, as the failure to establish the planned ASEAN Center for Combating Transnational Crime indicates. Instead, ASEAN's efforts are focused on policy harmonization across its members, thereby prioritizing the responsibility of the individual member states and resulting in closer inter-state bilateral and trilateral cooperation to tackle issues related to human trafficking and terrorism.

What's more, the key principles of the ASEAN way have been introduced into ASEAN's security cooperation with external actors. The ASEAN Regional Forum (ARF), the principal multilateral forum for regional security cooperation in Asia, was created after the 1993 ASEAN Ministerial Meeting against the background of a changing security environment in the Asia-Pacific after the end of the Cold War. The emergence of new transnational security challenges, as well as a change in great power politics due to the demise of the Soviet Union and the rise of China, led ASEAN to create a new security forum that would foster regional security and stability on the basis of ASEAN's specific norms and *modus operandi*. The ARF is the only security dialogue forum in the Asia-Pacific that the EU participates in (it is neither a member of the EAS nor the ADMM+). The first ARF meeting in 1994 in Bangkok endorsed 'the purposes and principles of ASEAN Treaty of Amity and Cooperation in Southeast Asia as a code of conduct governing relations between states and a unique diplomatic instrument for regional confidence-building, preventive diplomacy, and political and security cooperation' (ARF 1994). The statement goes further, stating that 'there would be great hope for the Asia-Pacific if the whole region could emulate ASEAN's record of enhancing the peace and prosperity of its participants'. The ARF's emulation of the ASEAN-way was re-affirmed in 2003 when the chairman's statement declared the ARF to be 'a venue for multilateral and bilateral dialogue and consultations and the establishment of effective principles for dialogue and cooperation, featuring decision-making by consensus, non-interference, incremental progress and moving at a pace comfortable to all' (ARF 2003). Moreover, as Weber explains, 'during its first ten years, the ARF largely held workshops with the main purpose of disseminating the 'ASEAN way' (...) thereby earning it the label of a 'norm brewery'' (Weber 2013, 346). A further example of ASEAN's role as the 'norm brewer' in the ARF can be found in the ARF's "Statement on Strengthening Transport Security against International Terrorism" which stresses 'the need to respect independence, sovereign equality and territorial integrity of states, the principles of non-interference in the internal affairs of states and non-use of force or threat of force' (ASEAN Regional Forum 2004). This has not gone uncontested by ARF members such as the U.S., Australia or the EU: 'A common theme that has emerged (...) is the tension between participating states who underscore the importance of adherence to ARF's norms and principles on sovereignty and non-interference, on the one hand, and

those that stress the need to implement cooperation agreements that to some extent impinge on these very fundamental norms and principles, on the other hand' (Morada 2010: 31). However, attempts to depart from these fundamental norms and principles anchored in the ASEAN-way have been futile so far due to the resistance of most ASEAN member states.

The ASEAN member states have also made efforts to retain control over the operational aspects of the ARF: All ARF meetings are chaired by the chairman of ASEAN and ASEAN member states provide the venues for the ARF's annual meetings. The ASEAN consensus principle always governs all ARF meetings. And the heads of any ARF's inter-sessional group meetings, which are headed by two participating states, at all times have to include one ASEAN member state. For the inter-sessional year 2015/16 the EU assumed co-chairmanship, together with Cambodia, of the inter-sessional group meetings on counter-terrorism and transnational crime issues. Hence ASEAN's own model of cooperative security has been largely externalized to the wider regional sphere through the ASEAN-driven establishment of the ARF. More so, the ARF vision statement, adopted by the ARF ministers in 2009, called for the accession of all ARF-participants to the TAC and for full adherence to the TAC's 'purposes and principles' (ARF 2009). Through accession to the TAC the so-called ASEAN-way, including mutual respect, equality, non-interference, and peaceful conflict resolution, has essentially been codified into ASEAN's relations with third states and other regional organizations. By acceding to the TAC in July of 2012, and, more generally, by recognizing ASEAN as the driving force of regional security, the EU has essentially subscribed to the ASEAN way in its relations with ASEAN (Fitriani 2015: 135). The ARF, and ASEAN's centrality in it, is, as laid out in in the Bandar Seri Begawan PoA, at the center of EU-ASEAN security cooperation. Regarding security cooperation the PoA calls for a strengthening of 'ASEAN's centrality in the evolving architecture' and the enhancement of the ARF 'with ASEAN as the primary driving force in promoting peace and stability, as well as dialogue and cooperation, in the Asia-Pacific region'(European Commission 2012: 1). Furthermore, with regard to practical cooperation between the EU and ASEAN the PoA calls for consultations on transnational crime and trafficking in persons to be 'in accordance with the respective domestic laws and policies' (European Commission 2012: 2), thereby reflecting ASEAN member states concerns over non-interference and absolute national sovereignty.

In turn it is ASEAN's firm position on national sovereignty and non-interference, and their fastening in ASEAN's cooperation with the EU (and other external actors) that has limited the actual implementation of international and regional norms on counter terrorism in the region. For example, ASEAN has over the past decade or so at various times emphasized the need for compliance with international law in the fight against terrorism. The organization has in principle recognized international law as the normative framework for counter-terrorism. Nonetheless serious issues remain at the practical level. Firstly, while some ASEAN member states have modified or newly introduced counter terrorism legislation in line with key propositions stipulated in regional agreements, others possess no such legislation at all. More so, some of the states possessing counter terrorism legislation that openly violate international and regional human rights norms. Malaysia's Prevention of Terrorism Act for example grants the Prevention of Terrorism Board the power to order two-year detention or five-year restriction orders without charge. The board's decisions are not subject to a judicial review and its orders can be renewed indefinitely. Similarly, Singapore's Internal Security Act allows for the arrest and detention of persons for virtually unlimited periods without charge or judicial review, too. Generally, ASEAN member states have continued to operate with deference to their domestic laws while placing ASEAN and international norms behind their respective national interests. ASEAN, as a regional organization that strictly adheres to state sovereignty and non-interference, lacks any mechanism to implement counter terrorism and anti-trafficking norms across its members.

CONCLUSION

This article's conceptual starting point was to understand any externalization or transfer of norms as not simply as a choice made by rational actors browsing for the "best" norms, ideas and practices out there, but to pay attention to the 'local norms' and cultural fillers' of the norm taker and his embeddedness in particular norms, institutional legacies and long-held policy paradigms. In contrast to much of the existing literature on externalization processes by the EU we have thus diverted our analytical focus away from Brussels and towards the norms and modus operandi of ASEAN to answer the question why, despite rhetorical commitments to greater cooperation between the two regional organizations and the EU being often considered a model and source of inspiration for ASEAN, cooperation in the field of non-traditional security remains very much in its infancy.

On the basis of tracing the developments in ASEAN in the respective policy fields, the article argues that attempts by external actors such as the EU to externalize their norms to ASEAN are subsequently confronted by long-standing norms, policy paradigms and a specific modus operandi (often summarized under the label "ASEAN way"), which make nigh impossible any externalization of EU policies to Southeast Asia for the foreseeable future. Hence even where we find a (gradual) adoption of EU coined political rhetoric or similarities in institutional design this is not to be equated with norm adoption. Rather, the findings of this article showcase the resistance of ASEAN member states as their normative practices have remained largely untouched. The ASEAN way, with its focus on sovereignty, equality, territorial integrity, regional autonomy and non-interference among member states has socialized the member states into a an strictly intergovernmental, non-legalistic, informal modus operandi which diverges strongly from the pooling of national sovereignty, the institutionalization and the legally-binding character of European integration.

To be sure, the relations between the EU and ASEAN have developed from an almost exclusively economic focus to the incorporation of new forums (Senior Official Meetings, Joint Committees) as well as joint declarations and joint plans of actions 'in the field of security affairs. And issues such as counter terrorism or human trafficking have been integrated into the inter-regional agenda. However, while these forums certainly open up space for the transfer of ideas, best practices and policies, any such transfer from the EU to ASEAN has been heavily constrained by ASEAN's own norms and particular modus operandi. Coming from there, we can furthermore assume that changes on the institutional level of the EU's cooperation with ASEAN, such as the recent appointment of an EU Ambassador dedicated to ASEAN, will not significantly alter these findings for the foreseeable future. Moreover, we found a number of cases where it has been ASEAN, rather than the EU, who has been successful in transferring its own norms and specific modus operandi into its external relations with Europe (and other powers) through the successful introduction of the ASEAN-way into various multilateral dialogue forums (Sukma 2010).

CORRESPONDENCE ADDRESS

Felix Heiduk, Stiftung Wissenschaft und Politik. German Institute for International and Security Affairs, Ludwigkirchplatz 3 – 4, 10719 Berlin, Germany [Felix.Heiduk@swp-berlin.org]

¹ In the field of human trafficking for example these include, amongst others, the EU Strategy towards the Eradication of Trafficking in Human Beings (2012-2016), the Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims (2011/36), the Directive on Temporary Residence Permits for Victims of Trafficking in Human Beings (2004/81/EC), and the Action Oriented Paper (AOP) on strengthening the EU external dimension on combating trafficking in human beings.

² See for example EU Directive 36/2011 on human trafficking.

³ While there are various cases where the EU has been able to directly externalize its own policy preferences to other actors, e.g. by directly setting standards for consumer product safety to ensure that only safe products are sold within the EU, this is the exception rather than the rule. More often, externalization takes place in the sense of the EU providing norms and ideas as well as 'a model of cooperation to be emulated' (Björkdahl u. a. 2015, 1). Thus I conceive of externalization mainly as the spread of norms and ideas from one actor, or group of actors, to another.

⁴ See for example the current ASEAN Regional Integration Support from the EU (ARISE) program funded by Brussels.

⁵ This relates specifically to the armed confrontations ("konfrontasi") between Indonesia and Malaysia, but also tensions between Malaysia and the Philippines during the 1960s.

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