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BOOK REVIEW

Investing the ASEAN Way: Theories and Practices of Economic Integration in Southeast Asia

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The ASEAN Community, guided by its three pillars ASPC, AEC, and ASCC¹ established in 2003 as part of the ASEAN Vision 2020, has highlighted the wish for closer integration among the 10 Southeast Asian member states. Under the AEC pillar, ASEAN envisions the creation of a single market with a free flow of investment. Foreign Direct Investment (FDI) inflow to Southeast Asia has been progressively positive and ASEAN remains the biggest recipient of FDI in the developing world. Thus, focusing on the investment regime is crucial in understanding the evolution of ASEAN institution building.

Sungjoon Cho² and Jürgen Kurtz's³ recent book *Investing the ASEAN Way* contributes to filling the gap left by International Economy Law in understanding ASEAN's institutional evolution. They address the "legalization" status in the ASEAN investment regime.

Legalization is defined as the conscious employment of norms through formal and binding instruments within an institutional setting. General wisdom sees that the higher the legalization level, the better for the institution because it enhanced the level of stability and predictability. Legalization supports trade and investment liberalization because they further incentivize economic activities.⁴

Legalization has been treated as a holy grail amongst international organizations and government actors. However, this legalization logic does not apply within ASEAN as the ASEAN investment regime exhibits "de-legalization" elements (p. 182).

Instead of judging ASEAN as a failure in terms of successful legalization, Cho and Kurtz argue in defense of ASEAN that de-legalization is better suited to the unique evolution of ASEAN institution building. ASEAN is a state-centric organization where the historical experience of the Cold War and the region's socio-cultural character give birth to its distinct "ASEAN Way". The ASEAN Way highlights the main principles of sovereignty primacy, non-intervention, and preferences of informal settings. These principles stand at odds with legalization, which demands sovereignty trade.

Cho and Kurtz's analysis on the ASEAN investment regime debunks several mainstream perspectives on ASEAN and highlights the ASEAN Way as the institution's core norm. Cho and Kurtz thus start out by discussing the main

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1. The Association of Southeast Asian Nations (ASEAN) declared the formal establishment of the ASEAN Community in 2015. The ASEAN Community illustrated the ASEAN shared vision of a durable, peaceful, stable, and prosperous region. It aims to establish a truly rule-based, people-oriented community where ASEAN peoples continue to participate in and benefit fully from the ongoing process of ASEAN integration and community building. There are three pillars supporting the Community Project: (i) ASEAN Political-Security Community (APSC) aiming to ensure regional peace and a just, democratic, and harmonious environment, (ii) ASEAN Economic Community (AEC) aiming for the realization of the region's end goal of economic integration, and (iii) ASEAN Socio-Cultural Community (ASCC) aiming for the realization of the full potential of ASEAN citizens.

2. Sungjoon Cho is Professor of Law at the Chicago-Kent College of Law specializing in Comparative and Foreign Law, International Business, International Law and International Trade. Cho also represented the government of the Republic of Korea (ROK) in negotiations under the World Trade Organization (WTO) and the Organization for Economic Cooperation and Development (OECD).

3. Kurtz is the Director of the International Investment Law Program of the Institute for International Law and the Humanities (ILAH) at Melbourne Law School. He is a former Emile Noël Fellow at the Jean Monnet Center for International and Regional Economic Law & Justice at New York University Law School and Fernand Braudel Senior Fellow at the European University Institute (EUI), Florence, among others.

4. Abbott and Snidal argue that international legalization in all its forms must be considered one of the most significant institutional features of international relations. See Abbott, Kenneth W. and Duncan Snidal (2000), *Hard and Soft Law in International Governance*, *International Organization* 54 (3), p. 421, 423.

5. The nomothetic approach seeks to capture the large-scale social patterns that compose the reality of international politics and international law in terms of supposedly universal mechanisms. In other words, it focuses on general laws that allow for generalization of social patterns.

6. One criticism addressed to ASEAN is the number of meetings it holds per year. ASEAN's institutional structure is supported by several levels of decision-making process. The highest one is the ASEAN Summit, the highest policy-making body in ASEAN comprising the head of states or governments of ASEAN member States, held twice a year. The ASEAN Coordinating Council (ACC) comprises the ASEAN foreign ministers and meets at least twice a year to prepare for the ASEAN Summit. The ACC coordinates the implementation of the mandate of ASEAN leaders and all cross-pillar initiatives of ASEAN. The ASEAN Community Council was created to support the ASEAN Community

conceptual contestations in understanding ASEAN. They stress the growth of the ASEAN investment regime from the loose 1987 Agreed Framework to the 1999 ASEAN Comprehensive Investment Agreement's (ACIA) community-inspired 'telos'. This institutional evolution highlights the constructivist logic by focusing on the role of ASEAN's common identity in economic integration.

Second, Cho and Kurtz's focus on de-legalization provides an alternative approach to Western standardization on ASEAN institutional effectiveness. They question the efficacy of global standards in investment regimes. ASEAN fell into the path-dependency of Global Investment Law (GIL) and the Bilateral Investment Treaty (BIT) model. However, it drifts away in the process, generating a different investment regime exclusive to ASEAN. This "is possible because of the norms inherent in the ASEAN Way, coupled with negative learning on GIL implementation. This has also prohibited the full adoption of the global regulation regime.

Third, Cho and Kurtz argue against the nomothetic approach.⁵ They disagree with the divorce between law and norms, as they see that the concept of legalization "should not be defined as detached from the Southeast Asian sociocultural context" (p. 137). They question the neglect of the socio-cultural factor in legalization scholarship and further emphasize that conceptualization in ASEAN must be "contextualized" in consideration to the unique culture, history and tradition (p. 137). Therefore, the norms of the ASEAN Way matter because they embody the inherent setting of cognitive, social, and historical experiences that determine ASEAN's distinct pathway.

ASEAN scholars have long highlighted the importance of ASEAN's unique norms as a strength instead of a weakness and Cho and Kurtz add to these voices in defending ASEAN's distinct and perhaps incomparable nature. They especially seem to share the frustration with futile comparison with the EU and also strongly oppose the argument that the ASEAN investment regime is a failure.

The de-legalization approach stresses the workability of the ASEAN framework. Cho and Kurtz, therefore, present a condensed argument of what ASEAN scholars have consistently tried to argue, namely that ASEAN institutional principles are determining forces in shaping its development. However, just like most ASEAN scholars, Cho and Kurtz also pay close attention to the obvious drawbacks of the ASEAN principle and acknowledge the limiting forces of the ASEAN Way. For example, the deep roots of the region's realist mindset created what Cho and Kurtz dub as "reverse open regionalism" (p. 184). Sovereignty primacy creates a gap between the intra-ASEAN and extra-ASEAN investment treatments.

Because reverse open regionalism accorded exclusive preferential treatment to states outside of ASEAN, this gap caused internal discrimination. As a result, the extra-ASEAN investment is higher than the intra-ASEAN investment. (Ibid.)

Reverse open regionalism is disruptive for ASEAN centrality due to the hub-spokes system. The asymmetrical relations will benefit the hub unless the spokes (ASEAN member states) establish regional rim protection. Cho and Kurtz, by seeking constructivist assistance, suggest that building a stronger collective identity would help to overcome this problem. Cho and Kurtz argue further that in order to strengthen the intra-ASEAN investment regime, the diagnosed gap must be filled not by more legalization, but by human agency.

initiative. The Community Council supervises all three pillars of ASEAN and under their purview is the relevant ASEAN Sectoral Ministerial Bodies level. Including the Senior Official Meetings (SOM) and Technical Officer Meetings, the ASEAN decision-making and negotiation processes are multi-leveled and multifaceted.

Many scholars have argued that agency socialization matters for shaping a common identity. However, its role remains vague and is yet to be conceptually developed. In noting this, Cho and Kurtz also seem to reject the critique of ASEAN of having too many and too frequent meetings.⁶ These meetings, however, facilitate the socialization process of human agency by fostering a shared habit of engagement even when a formal mandate is non-existent. Nevertheless, challenges remain: Firstly, the primacy of state (public)-led negotiation limits non-state (private) sector contribution. Secondly, the rotation of public servants turns this (re)socialization process into a long journey and considerable time may be needed before such a habit is created and implemented.

In conclusion, I would note that Cho and Kurtz's legalization vs. de-legalization concept can be fruitfully employed to explain not only the economic but also the political behavior of ASEAN. Through this lens, the ASEAN Way as the determining principle shaping ASEAN institutionalism should not be treated as a weakness but rather seen as a mechanism that has provided relative protection for ASEAN member states. Furthermore, the evolution of the ASEAN investment regime affirms ASEAN's ability to morph its institutional setup. Cho and Kurtz's approach allows them to convincingly show that ASEAN's (middle) Way between confirming to high legalization of GIL and, at the same time, incorporating the distinct character of the ASEAN Way is the reason behind the extent of ASEAN institutional agility.



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