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THE HISTORY OF ESTABLISHING THE ASEAN INTERGOVERNMENTAL COMMISSION ON HUMAN RIGHTS: THE EXTERNAL WORLD AND INTERNAL REGIONAL DYNAMICS

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ABSTRACT

This paper examines the historical establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) by analyzing the convergence of external pressures and internal regional dynamics. It identifies three primary macro-level drivers: the influence of the Western unipolar moment following the Cold War, the search for international credibility and relevance, and the domestic processes of democratization within key Southeast Asian states. The establishment of AICHR also served as a strategic response to the sensitivities of post-colonial statehood and the preservation of state sovereignty. By creating its own regional mechanism, ASEAN sought to emulate the institutional paradigms of the European Union, the African Union, and the Organization of American States, thereby signaling its legitimacy to the international community. Crucially, AICHR was conceived as a 'buffer' against external interference, allowing regional elites to control the human rights narrative and protect themselves from the perceived threats of 'unwanted globalization' or foreign policy tools used by Western partners to infringe on domestic affairs. This statist approach prioritizes a state-based security view of human rights over a society- or individual-based perspective, framing human rights as a component of national development and capacity building.

KEYWORDS: ASEAN, Human Rights Regionalism, Human Rights ASEAN, ASEAN Human Rights.

INTRODUCTION¹

The establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) marks a transformative phase in Southeast Asian regionalism, driven by a convergence of shifting global dynamics and internal political evolutions (ASEAN, 2007). During the Cold War, the original five ASEAN member states, along with Brunei, derived their collective identity and purpose from a staunchly anti-communist stance and their alignment within the Western sphere of influence. This collective unity was centered on a security-driven mission, particularly in managing the conflict in Indochina and isolating Vietnamese intervention in Democratic Kampuchea. However, the dissolution of the Cold War order necessitated a search for a new mission to ensure the organization's continued relevance in an increasingly globalized world. This transition saw regional integration shift toward economic connectivity and global markets, which in turn tied ASEAN's international attraction to its internal cohesion and stability.

Central to this institutional evolution was the urgent requirement for ASEAN to bolster its international credibility and project the image of a 'serious,' rules-based organization. Diplomatic leaders within the region recognized that the bloc could no longer afford to appear 'allergic' to human rights if it wished to maintain its standing among global partners and economic stakeholders. Consequently, the establishment of a human rights body was framed as an essential component of the ASEAN Charter, intended to demonstrate a level of political commitment and accountability comparable to other regional entities. By emulating the institutional paradigms of the European Union, the African Union, and the Organization of American States, ASEAN sought to validate its integration process and fulfill the expectations of the international community while maintaining a degree of regional agency.

This regional movement was further catalyzed by a period of significant liberal penetration and democratic transition within key member states between 1991 and 2010. The domestic democratization of Indonesia, the Philippines, and Thailand played a pivotal role, as these nations opened their systems of governance and allowed civil society organizations (CSOs) to exert bottom-up pressure on regional policy. For these democratizing

states, the incorporation of human rights norms into the ASEAN framework was both a reflection of their national interests and a strategic effort to control the regional narrative. This era effectively began to delegitimize the 'Asian Values' debate which had previously prioritized a developmental state model over individual rights leading to a 'tipping point' for regional human rights institutionalization.

Despite these liberalizing trends, the creation of AICHR was also deeply rooted in a desire to safeguard state sovereignty and mitigate external interference. For post-colonial states in Southeast Asia, the memory of colonization remains a powerful motivator, fueling a persistent fear that human rights could be utilized by Western powers as a tool for unilateral intervention in domestic affairs. In this context, AICHR was conceived as a strategic 'buffer' against unwanted external pressure, allowing ASEAN governments to manage human rights issues on their own terms rather than submitting to outside authorities. This statist approach ensures that the commission remains an intergovernmental body focused on national security and state power, rather than an independent authority that might threaten the prerogatives of regional elites. Thus, AICHR stands as a complex institutional compromise between the demands of global normative subscription and the traditional ASEAN principle of non-intervention.

This paper is an historical analysis which answers an important question which the current literature fails to address in a comprehensive and unified manner. Why was AICHR established? This article argues that AICHR's establishment had two primary factors external motivations from factors external to the region and internal motivations to the region. This article will deal comprehensively with the later. The article draws on secondary data as well as primary interview data garnered from over a dozen interviews with former AICHR representatives, government officials, practitioners and scholars which are heavily cited in the literature and have studies human rights in ASEAN extensively.

The article will address two fundamental internal factors to the region of ASEAN to answer for the first time in a comprehensive manner; why AICHR was established. The article will answer two primary factors which are:

1. Trends of democratization in the post-Cold War period within ASEAN;
2. ASEAN member states split mixing with ASEAN

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principles of sovereignty and non-intervention and normative culture.

The article will first address the need for ASEAN states to maintain credibility in the post-Cold War world, specifically with regard to the Asian Financial Crisis and to keep ASEAN 'on the radar' of the great powers. Second, was the trend of liberalization and democratization which was growing and spreading throughout the region from the 1980s. Connected to these both was regional integration within ASEAN and the move to establish an ASEAN Community. Growing calls to include human rights within the ASEAN community building process could not be avoided due to pressure from within ASEAN states civil societies and externally due to the unipolar moment of international relations.

Why was AICHR established?

I will argue that the establishment of AICHR in large part is due to two primary factors that encompass factors external and internal to the region. This article deals with the context of the post Cold War world and ASEAN member states desire or need to remain relevant in a world which was no longer subject the reason for ASEAN's existence; Communism. This question was intertwined with regional integration within ASEAN along economic and trade lines after 1992 to build or construct an ASEAN Community. Second, was to satisfy the desire of some member states which had begun and intensified their internal governance processes of liberalization and democratization in the 1980's and 1990's. These two factors were intertwined and came together during the unipolar period of Western hegemony to produce a regional human rights organization in the last region of the world to not have one. These factors explain, from an external to internal perspective why the AICHR was established.

Maintaining Credibility and Relevance in the Post-Cold War World

Connected to the external connections and asymmetries between ASEAN states and the West in the immediate post-Cold War period was the need to stay relevant and find a new mission (Narine, 2012 p. 158). The original five (5) ASEAN member states and Brunei after accession in 1984 found continuity and purpose in the fact that they were to differing degrees within the Western sphere of influence during the Cold War and their governments and elites were distinctly anti-communist (Interview with Former ASEAN Foreign Minister, 2023; Jones, 2012; Kivimäki, 2001; Moller, 1998 p. 1100; Mount, 1979;

Poon-Kim, 1977; Simon, 1987; van der Kroef, 1974; van der Kroef, 1978; Interview with ASEAN scholar A, 2023). This sense of collective unity and pride of purpose in stopping communism at the Mekong River after America's ignominious exit from the Indochinese war was a strong point of ASEAN collectivity and power on the international stage.

The first aspect of this was of course to engage with America in the Indochinese War and then after the fall of Saigon in 1975 to continue the fight against the Vietnamese in the United Nations (Federspiel, 1984; Galbraith, 1975; Simon, 1987; Stirling, 1979; Stirling, 1980). The second aspect was the continuing collective fight to isolate and not allow legitimization and consolidation of Vietnamese intervention in Democratic Kampuchea after the ouster of the Khmer Rouge in 1979 (Caballero-Anthony, 2014; Evans, 2004 p. 273; Jones, 2012; Jones and Jenne, 2015; Leifer, 1999 p. 30; Moller, 1998; Narine, 1998 p. 204-208; Pervez, 2019 p. 184; Simon, 1987; Soon, 1982). With the end of the Cold War and regional integration shifting to economic connectivity and global markets there was dramatic economic growth and development in ASEAN and this new impetus gave ASEAN the reason to move forward (Interview with Former ASEAN Foreign Minister, 2023). Economic success thus tied economic performance to internal cohesion whereby "much of ASEAN's credibility and attraction to the outside world was built on the economic success of many of its members...ASEAN's other strong points were the stability in the regional and a good measure of cohesion among its members" Petcharamesree, 2015 p. 172).

The need for internal credibility is underscored by the notion that "ASEAN must adhere to the principle of non-intervention in internal affairs but at the same time find a way to address new problems and challenges which could damage ASEAN's credibility if left unaddressed" (Than, 2005 p. 20). This point was underscored by Philippine Foreign Secretary Alberto Romulo who noted that the ASEAN Charter and creation of a human rights body would give "more credibility in the international community" (Philstar Global, 2007a). Malaysian Foreign Minister Syed Hamid Albar echoed this point noting that all ASEAN Foreign Ministers saw that "we must be seen not to be allergic, or not supportive of human rights" (Philstar Global, 2007b). Important in this equation is the search for a new motivating factor for internal cohesion with the lack of a distinct communist threat for ASEAN frontline states. Combined with the previous portion on the need to keep external forces at bay in a shifting globalizing world ASEAN as a regional entity needed to deal with regional issues on

its own or risk external intervention of some sort. Former AICHR representative Rafendi Djamins' insights are a twinning of the two abovementioned points. He argues that AICHR was born of the 1993 turning point where human rights advocates were able to target the international human rights system for a regional mechanism in ASEAN based on complementarity. This was pushed by the Working Group internal to ASEAN and part of the community building effort within ASEAN that was connected to the ASEAN Charter. The search for common regional principles of good governance, rule of law and democracy was connected to human rights in the process and reinforced by the sense that;

"if you want to be a charter based regional governmental organization you cannot avoid to also pick up universal values with regard to democracy, good governance and respect to international principles. ASEAN wants to be seen as a 'serious' an organization that is legally binding with more credibility, instead of a loose organization not really held together by much" (Interview with AICHR Representative A, 2023).

The same point was echoed by long time human rights advocate and lawyer and Secretary-General of the Working Group who noted that

"the purpose of AICHR is the implementation of the ASEAN charter...demonstrate being more rules based by showing accountability and a level of political commitment. Demonstrating the commitment to human rights was recognized by all states regardless of their reasons" (Interview with Working Group for ASEAN Human Rights Mechanism member, 2024).

The second order phenomenon connected to maintaining relevance is the long memory of colonialism of which all ASEAN member states were subjected notwithstanding Siamese semi-colonialization. The sensitivity to external coercion and the desire to order the region in accordance with national objectives of economy, social development and security arrangements cannot be overstated among post-colonial states (Narine, 1998 p. 197).

The nature of post-coloniality is one of limited agency, in the sense of being vulnerable to the external environment along many axis. This point was brought forth by a former delegate who noted that

"Western norms are dominant and there is a need among ASEAN states to belong to the international community. Institutions of the international system are managed by Western states and this is a powerful incentive to act according to those norms. There is always the fear of external intervention as the

memory of empire and being colonized is not far. Being colonized is not a pleasant memory for many and that fear of being colonized in any form is a strong factor for ASEAN states. There is also the need to legitimize ASEAN integration. Other regions already had human rights institutions and its accepted as being part of the regional integration paradigm" (Interview with Anonymous Former Delegate to AICHR Member State, 2023).

The process of state-building in Southeast Asia and post coloniality is intertwined heavily with a steadfast approach to state sovereignty which cannot be overstated. Fears of regional elites to external interference in domestic affairs cuts to heart of the human rights issue. Human rights by their very nature are threats to erosion of national sovereignty and decision-making to outside authorities or substate actors against the state itself (Busse, 1999; Caballero-Anthony, 1998; Jackson, 1999; Nishikawa, 2007 p. 45). In another respect ASEAN institutions and AICHR can be understood as a buffer from external interference where "ASEAN governments perceived as the foreign powers' unilateral push for unwanted globalization" (Bae, 2018). Most striking is the revelation by a senior ASEAN member state official from a BCMLSV (Brunei, Cambodia, Myanmar, Lao PDR, Singapore or Vietnam) state who views AICHR through the lens of

"human rights are popular around the world and all governments say good things about human rights, all UN and ASEAN documents promote democracy. European human rights, African and American human rights, so why not ASEAN human rights as well? So, we have human rights as well so we have institutions to talk with others" (Interview with Senior ASEAN member state official, 2023).

The later view the fact that the African Union, the Organization of American States, and the European Union all have human rights mechanisms is constantly noted" when "Ali Alatas, asked '[h]ow can we avoid having the [AICHR] when all other regional organizations have one already?" (Katsumata, 2004; Munro, 2011 p. 1202).

This gives heavy credence to the articulations above whereby AICHR is viewed by some regional elites as a necessary but possibly dangerous institution that could, if left to its own devices be an independent threat to state and elite power. This statist view is articulated by Ba and Narine as being indicative of most ASEAN initiatives, especially with regard to human rights where ASEAN states take a state-based security approach to human rights issues rather than a society or individual based view (Ba, 2010 p. 212; Interview with ASEAN scholar A, 2023).

Katsumata and Narine have argued and interview data confirm that within the context of credibility and image, there was a need to appear legitimate in the eyes of Western partners and the larger global community. The paradigm of Western hegemony, dictated subscription to human rights and democratic norms of rhetoric and behavior. In this context the reform agenda of ASEAN to transform it from an organization of a 'talking shop' to one of legal standing with a more substantive role to play and a larger breadth of integrative initiatives was sought with human rights being a necessary rejoinder to the ASEAN Community project. The wish to emulate or perhaps mimic human rights mechanisms of other regions and states is driving factor to include human rights language, principles and a regional mechanism in the ASEAN Charter (Duxberry and Tan, 2019 p. 61; Interview with Anonymous WTO official, 2023; Interview with ASEAN scholar B, 2023; Interview with ASEAN scholar C, 2023; Interview with ASEAN scholar D, 2023; Interview with ASEAN scholar E, 2023; Interview with ASEAN scholar F, 2023; Interview with Former ASEAN Foreign Minister, 2023; Katsumata, 2009; Narine, 2012 p. 367;).

The important take away from the above is twofold; ASEAN integration initiatives are largely due to external factors linked to the need keep ASEAN connectivity and stay relevant with its economic, security and political partners outside of the region. Primary factors connected to human rights in the post-Cold War era is the "need to make ASEAN more cohesive and transparent in the image of the EU, look better to external actors connected to globalization and push of global supply chains connected to human rights of Western partners" (Interview with Former ASEAN Foreign Minister, 2023).

Liberalism and Democratization in Southeast Asia

It has been argued by scholars that the period of time between 1991-2010 was the period of greatest liberal penetration in Southeast Asia. Furthermore, claims were made that the organic processes of democratic transitions in important ASEAN states would lead to greater participatory regionalism and

a more open liberal regional organization of ASEAN (Acharya, 1999, 2003, 2010b; Jones, 2025b; Jones, 2025c). This line of argument hinged on the important ASEAN states of Indonesia, Philippines and Thailand opening their domestic systems of governance and the effect the possible 'domino' effect this would have ASEAN writ large (Ryu and Ortuoste, 2014). Whilst, there is some evidence that is true in the case of collective ASEAN action towards Myanmar in 2007-2009 it is not the only factor involved in explaining ASEAN's position. There are a number of factors at play such as sub-state action coming from the ASEAN Interparliamentary Myanmar Caucus as well as fears of external intervention and the ASEAN credibility gap.² Nonetheless, democratization and increased liberalization among the abovementioned states is an important factor at play for explaining the establishment of AICHR.

During the 1990's and 2000's some important ASEAN member states began the process of democratization, namely Indonesia the Philippines and Thailand with Malaysia and Singapore progressing with democratic transitions. Thailand's process of democratization, notwithstanding periodic military coups began in earnest with the end of Prem Thinsulanont Prime Ministership in August 1988 and subsequent election of Chatchai Choonavan who assumed the PM position on August 4. After the short lived military government elections produced a government headed by coup general PM Suchinda Kraprayoon which kicked mass street protests, a military crackdown which ended in monarchial intervention and a restoration of democracy through the caretaker government of Anand Panyarachun (Bhuchongkul, 1992; Bunbongkarn, 1992; Iacopino and Jones, 1992). After the restoration of democratic rule, Thailand entered a period of democratic reforms throughout the 1990's and into the mid 2000's.³ This period of democratic transition has since been derailed by multiple military coups beginning in 2006 with the latest in 2014.⁴ The Philippines began its process of uninterrupted democratization with the downfall of Ferdinand Marcos in 1986 whilst Indonesia began its domestic processes in 1998 with the fall of President Suharto in the wake of the Asian Economic Crisis. Within the context governance

² See Emmerson, 2005; Haacke, 2006a; Haacke, 2006b; Haacke, 2008; Jones, 2009; Rüländ, 2009 for the role of the AIPMC and sub-state actors in advocating for change in ASEAN vis-à-vis Myanmar.

³ See Buergin and Kessler, 2000; Englehart, 2003; Gibaja, 2023; King, 1992; King, 1993; Lynch, 2004; Maisrikrod, 1993; Maisrikrod and Hewison, 1997; Neher, 1994; Neher, 1996; Phongpaichit and Baker, 2004 for detailed analysis of democratization and military intervention in Thai politics.

⁴ See Baker, 2014; Chachavalpongpun, 2011; Chambers, 2010; Chambers, 2013; Connors and Hewison, 2008; Kongkirati, 2016; Kongkirati, 2018; McCargo, 2019; Pongsudhirak, 2008 for detailed analysis of more recent military interventions and the effects this has had in Thai politics.

transition to more open forms of government, democratization created the political space for civil society organizations to operate more freely and put pressure on levers of power from the bottom up. This is evident in the case of all three countries but especially pronounced in the Philippines and Indonesia with thriving NGOs and activists networks pressuring their respective governments.⁵ The push upwards from civil society is noted in the lack of formalized networks within AICHR and the fact that AICHR recognizes only one actual human rights NGO as an accredited member (ASEAN, 2021; Jones, 2025a). Gerard captures well the way in which ASEAN elites have corralled CSOs and seeks to limit engagement to one of individuals rather than a collective power of AICHR (Gerard, 2013; Gerard, 2014a; Gerard, 2014b; Gerard, 2015). Djamin places strong emphasis on this point in time and the forces of democratization within ASEAN as being a major factor stating;

“forces coming from within the member states, those states that were democratizing within ASEAN, Indonesia/Thailand/Philippines. After 10 years of democratization the forces coming from like-minded member states that we as an organization need to have a charter...with human rights norms in our constitutions and in ASEAN” (Interview with AICHR Representative B, 2023).

Within the context of ASEAN and the move towards a human rights body Acharya argues that in the late 1990's and 2000's there was changing nature of ASEAN's political culture and slight shifts in ASEAN norms. This is evidenced by Thai governments of Chatchai and the post-crisis Democrats as embodying the shift towards greater democracy and its effects on regionalism as well as Indonesia's democratic turn post-Suharto and the friction this caused with its authoritarian neighbors of Malaysia and Singapore (Acharya, 2003). The process of democratization is highlighted by Eldridge and Jones by viewing ASEAN through an historical lens and seeing the problematic implementation of human rights and discourse within the context of its member states and their governance systems (Eldridge, 2002 chpts 3, 4, 5; Huxley, 2008; Jones, 1996). Stauffer localizes the implementation issue squarely at the domestic level of institutional legal and political processes arguing that only way to institutionalize human rights in ASEAN is through pressure and inducements on the ASEAN governments (Stauffer, 2011). Dosch takes

this further by arguing that in the lead up to the ASEAN Charter and during the various mechanistic iterations a large degree of pressure was leveraged by ASEAN ISIS and NGOs on the HLTF, EPG and ASEAN governments via ISIS of Indonesia and Philippines (Dosch, 2008). Santiago provides a dual interpretation of the democratization thesis which is interesting stating that AICHR was “part of the moment of the time of liberalization coming into the region and some states wanting human rights and of common interests to have a mechanism to control the narrative” (Interview with Working Group for an ASEAN Human Rights Mechanism member, 2024). This is interesting as democratization as a process is understood as one which is contested at the national level and threatens some domestic interests which seek to control the process for internal and external purposes.

Manea frames the human rights processes in ASEAN from the period of time of 1998-2009 as being a distinct period where the 'Asian Values' debate had been delegitimized. ASEAN's reorientation of ASEAN human rights dialogues as the developmental state model which legitimized authoritarian rule and repression of individual human rights as long as economic development and aggregated prosperity were provided for by the state in a quasi-social quid pro quo social contract with the Asian Financial Crisis being a stimulating factor (Manea, 2009). Tan and Ng have intimated that this period of time allowed the region to reach a human rights 'tipping point' where human rights and modernity were allowed to meet and come together to the extent that a turning point was made with regard to a regional mechanism Interview with ASEAN scholar D; 2023; Tan, 2011). Interestingly, Ryu and Ortuoste have argued that the global level insufficient due to lack of sustained and viable opposition by great powers in the foreign policies (USA EU) to make countries in ASEAN comply with HR norms via foreign policies. However, they preface this by distinctly pointing to domestic processes of democratization of key states (Philippines Thailand Indonesia) and the ASEAN community project as being decisive factors for driving regional human rights. Furthermore, the ASEAN human rights regime is but part and parcel of the larger regional framework to keep ASEAN relevant in its engagement with the international community (Ryu and Ortuoste, 2014). This view is echoed strongly by interview data, that certain key

⁵ See (Bello and Gershman, 1990; Bunte, 2016; Bunte and Ufen, 2008; Franco, 2002; Hara, 2001; IDEA 2000; Liddle, 2002; Miranda, 2003; Rivera, 2011; Slater, 2023; Suny, 2005; Tadem, 2006; Thompson, 1996; Yadiz and Pakpahan, 2019 for expansive analysis on role that civil society has played in the Philippines and Indonesia and the effects CSOs have had on opening up political space.

ASEAN countries to a large degree can be drivers of limited human rights institutionalization.

Practitioners have noted that democratization in important ASEAN states was a stimulating factor for regional action in the sense of

“liberal states saw an opportunity to set up an organization and they took this as it reflected national interests. They set up an institution in the liberal sense and with an attempt to find consensus on what human rights mean regionally” (Interview with Anonymous Former Delegate to AICHR Member State, 2023).

This was further reinforced by scholarly thoughts that noted

“internally within ASEAN there were already processes well underway to liberalize and democratize and this was a signal to external actors” (Interview with ASEAN scholar F, 2023).

Important ASEAN states played a strong role as noted by a few scholars and practitioners who stated “democratization in the region was a pattern, especially in Indonesia, Thailand and Philippines. They opened up and felt pressure from below in civil society. The growing mass of civil society was met by receptive leadership in liberal ASEAN states” (Interview with ASEAN scholar G, 2023).

“liberalization was part of the moment of time. Liberalization was coming into the region and some states that were more liberal wanted human rights and had a common interest. They were able establish a mechanism and were able to control the narrative within ASEAN to push a liberal agenda” (Interview with Working Group for an ASEAN Human Rights Mechanism member, 2024).

It must further be prefaced that domestic democratization processes during the period did not take place in a vacuum but were mixing with other external and internal factors within and external to the region in order to produce the final outcome of a regional human rights mechanism.

The argument of democratization is an important factor in explaining the establishment of AICHR. However, it is a problematic and unstable factor in the sense that the regional processes of human rights institutionalism is inextricably linked to domestic

processes of human rights institutionalism and democratic consolidation. It is all too obvious that over the preceding decade there has been significant backsliding in the region in Indonesia, the Philippines and Thailand which have prohibited cohesion and consensus on serious regional issues in ASEAN (Camroux, 2016; Heydarian, 2017; Kongkirati, 2018; Peou, 2014; Regalado and Robinson, 2023; Rüländ, 2012; Rüländ, 2021; Thongnoi, 2023). The non-linear manner of democratic transition and lack of democratic consolidation in Thailand the Philippines points towards an unstable institutionalization of human rights in ASEAN and a difficult evolutionary path for AICHR.

CONCLUSION

It has been argued that there are three primary macro reasons for the establishment of AICHR, external pressure of the unipolar Western moment, the need for credibility to an external world and state signaling and internal regional processes of democratization in the post-cold war period. Fear of those same Western partners using human rights as a foreign policy tool to infringe on state sovereignty. The need to appear relevant in the post-cold war era though a renewed integration project in ASEAN which was largely focused on economic interaction but came with external and internal ‘political strings’ attached of human rights from Western partners but also ASEAN members which were democratizing more ‘liberal’ in outlook. These three macro factors combined with the need to find a new reason for ASEAN integration in the absence of an ideological primer led ASEAN states to focus on economic integration. However, with economic integration the context of the 1990s and 2000s led ASEAN states to incorporate human rights into their regional agenda, many times against their wishes. These processes serve to further strengthen the previous argument that contestation of ideas towards human rights were balanced against state prerogatives of sovereignty and maintaining state power for security purposes. Security purposes straightforwardly can be understood as national development in the economic realm thus transferred to the larger state capacity sphere.

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