REGIONAL ECONOMIC INTEGRATION IN EUROPE AND SOUTH-EAST ASIA: THE PRINCIPLE OF SUPRANATIONALITY AND SOVEREIGNTY IN GOVERNING E-COMMERCE UNDER INTERNATIONAL LAW*

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Regional integration, especially that of an economic nature, has become a trend within the progress and development of international organisations in the last decade. Geographical factors also affects the economic, social, and political directions in which states are driven towards. Two of the most prominent examples of these peculiar allied unique cooperations are none other than the Association of South East Nations (ASEAN) and the European Union (EU). Both the EU and ASEAN have become trendsetters of global economic cooperation and integration.

Introduction

If we are to begin with the traditional flow of defining things first, a description of what the EU and ASEAN are shall be presented first. But this might be more of a challenge for one of them than the other. The EU is in a state of 'becoming' and not 'being', therefore a static description of its essence is of relatively little assistance in describing or explaining it. It might not be exactly the same, but similar progress is seen from ASEAN where its cooperation is becoming more and more liberalised.

In light of globalisation and the double edged knife of pros and cons that it brings, markets are rapidly growing and opening up to foreign companies. In Asia, the market has opened up to European companies, vice versa in the European market. Other than raising the high-value of added production, the internal market provides a stage for producers to innovate towards new demands as well as increasing the scale of research and development (Ilkovitz et al. 2007). All of these instances are boosted even more with the existence of e-commerce.

With inevitable and unstoppable technological advancement, the global phenomenon of market expansion reaches both the EU and ASEAN, highlighting particularities and local innovations in both markets. Both entities share the same dream of making cross-border trade between participating countries completely liberalized; each with their own unique cultural identities. Having a different market, consumer trends, and shopping behaviour will determine the different legal framework each entity must have. Within these, each policy must adhere to either their principle of supranationality or sovereignty respectively.

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The UNCITRAL Model Law acts as an exemplary framework attempting to meet and embrace the challenges of the internet (Lim 2007). National governments and regional cooperation has been endorsing e-commerce's development, acknowledging the benefits that can be harvested from its commercial growth. These are not limited to only economic benefits, but also social and political ones. Hence, this article will try to provide a brief description from the general perspectives of how each of these economic developments have progressed, leading to the current integration and cooperation that it is today. Highlighting the preeminent characteristic that the EU and ASEAN has, principally the doctrine of supranationality and sovereignty that characterises each of these associations. At the end, a brief example towards the framework and advancement of e-commerce in each region will be elaborated.

1. The Progress and Development of the EU's Economic integration and the Legal Framework for E-Commerce

1.1. The evolution of regional economic integration in the EU

It is daring to say that the current form of integration for the European region has not yet reached its final form. Despite the never-ending progress of EU enlargement, there are still barriers of social and political integration that are intended to be maximized. It has been proven that the process of monetary and political integration has a long pedigree and are not simply novelties dreamt up by Jacques Delors in the late 1980s (Shaw 2000). Through an ideal periscope, the European allegiance is brought together by the common pursuit of the higher goals of peace, prosperity, and stability (Shaw 2000). In this context, we will discuss the former ideal elements leaning more towards the commercial sphere.

The economic integration of the European Union went from an early period of capitalist organisation that commercially developed and transformed tomarket integration which were all achieved in parallel with national political unity (Shaw 2000). The early years of the European Economic Community were fuelled by the launch of a common market, the consolidation of the economic policies of member states, and the harmonization of the development of economic communities within a standard blueprint (Craig & de Búrca 2007). One of the most notable peculiarities of economic integration in Europe is that the social dimension within the internal market has always been on the agenda, despite it being a runner up in the schedule. Most of these social concerns relate to the rights of workers which are considered a quintessential dimension of the economic community (Craig & de Búrca 2007).

A novelty of EU's evolution from a community into becoming a union is none other than the judicial contribution of the European Court of Justice to the supranational dynamic of the community (Community Charter of Fundamental Social Rights of Workers 1989). At times where the Community's political process isn't so much active, the Court gives various contributions towards the legal development which is at the heart of the integration process (C-120/78).

1.2. Constitutional framework of the European Union

The reform process of the EU's constitutional framework was fuelled by the realisation that the broad range of problems should be resolved and guarded from a higher and broader constituency (Craig & de Búrca 2007). This was still inherent to the supranational principle that the EU adopted, bestowing the Union with legal personality. This principle is based on the cooperation of member states to confer some (most) of their sovereign powers to the organisation that implements these authorities as an independent legal entity (Hamulak & Stehlík 2013).

The EU has an overlapping and compound definition, different from a traditional international organisation. This means that it owns the sovereign powers to regulate the relations between member sates within its territory, it divides and distributes the powers of the member states, as well as determines the legal personality of its member states (Hamulak & Stehlík 2013). This leads to the EU having a peculiar constitutional framework combining a federal and confederate system with an international organisation (Weiler 1999).

The co-existence of unity and fragmentation living paradoxically at the heart of the EU becomes its very own cursed blessing. While the EU is a single unit, it consists of thriving complex subsystems of different decision-making techniques and provisions for flexible liberalising solutions. The importance of this constitutional determination is that the order of overlapping legal frameworks could be governed easily with the uniform core values of collective democracy, liberty, fundamental rights, and the rule of law (Shaw 2000).

1.3. The nature of EU Law and its impact on national legal order

Despite having a special constitutional framework of its own, it still contains little indication of the precise nature of the relationship between EU law and the domestic law of its member states (Shaw 2000). The evolution of the supranational legal order has been developed further through the judicial process. While the larger legal perspective is built open the principles of conferral and subsidiarity, as well as the delineation and use of EU powers (Van Den Brink 2017). A more acute description of this can be found in the distinction between its legal instruments: regulations and directives, each of which determines the relation between EU and the Member States.

The legislative impact of the EU determines the rights and obligations of not just its member states, but also its citizens. For example, in the context of the internal market, individuals may benefit from the rights directly granted to them to invoke violations and infringements by the member states. The same goes for other aspects of legislation of the four freedoms.

1.4. Development of the EU Economics in the Internal Market and the progress of E-Commerce

In the mid 1980s, a project was initiated to unite the European Economic Community into a single market to end the period of economic, political, and monetary crisis of the

earlier years. This was to restore the confidence of European businesses and to boost the quality of European companies through the formation of a more integrated, competitive, and innovative market place (Ilzkovitz et al. 2007). Conclusively, by delimiting the cross- border barriers, the internal market serves as a tool to promote wider economic integration and to increase the competition especially amongst large sources of macro economics (Ilzkovitz et al. 2007).

A new strategy has been introduced in the EU to transform the internal market via digitalization. The EU has taken legislative steps towards connecting the digital single market (EC 2015). This new strategy is focused on creating a better access for consumers and businesses to online goods and services across Europe, developing flourishing services by creating an adequate backdrop for digital networks, as well as maximising the growth of the European digital economy by promoting investment in ICT infrastructures and technologies (Rosic 2019).

In achieving such aims, the EU's substantive rules in the form of regulations, directives, decisions, as well as recommendations are to be unified and harmonised with the national rules by means of both negative and positive integration (Barnard & Scott 2002). The EU's electronic commerce directive (Directive 2000/31/EC) functions as a preparatory for Europe's transition to a knowledge-based economy, by ensuring that information society services benefit from EU internal market and the principles of freedom (Lim 2007). The directive aims to harmonise areas such as the freedom of establishment, transparency obligations for operators and commercial communications, conclusions and validity of electronic contracts, internet intermediaries' liabilities, online dispute settlement, and the role of national authorities (Directive 2000/31/EC). Conclusively, the EU's legal framework towards e-commerce appears to be implementing a new approach.

2. The Evolution of ASEAN's Economic Cooperation and the Legal Framework of E-Commerce

2.1. Evolving from cooperation into integration: The contrast of ASEAN's institutional framework

In the late 1950s and 1960s, many Southeast Asian countries were still in a fragile state and were very young in terms of national development (particularly those who were recently liberated from colonialisation). At this time, each country focused on their own domestic matters to strengthen internal security and economic development (Keling et al. 2011). The main factors of regionalisation in Southeast Asia are the aims of regional politics, peace, conflict solution, security, and ultimately economic development and cooperation. Similar to the European Community, the initial epiphany for an integration was initiated from bilateral and multilateral economic agreements such as the Southeast Asia Friendship and Economic Treaty (SEAFET).

The Bangkok Declaration (ASEAN Declaration 1967) consists of the aims and objectives of ASEAN as well as the initial organization's blueprint. It provides the basic principles containing the unique 'ASEAN Way'. This is the fundamental contrast between the European Union and ASEAN whereby the ASEAN Way acts as a principle

that regards the member states as a group of sovereign nations that must respect the principle of non-interference and consensus decision making, as opposed to the European Union, where its very foundation is built upon the pooling of sovereignty. Thus, the outcome of its policies, laws, and regulations has a distinctive manifestation towards the member states.

After the Bangkok Declaration, the quintessential step of evolution came along with the ASEAN Charter enhancing the Association with a more legitimized institutional integrity. The signing of the ASEAN Charter in 2007 marks the highest milestone of institutional framework achievements coupled with the blueprints of the three ASEAN Communities. The charter came into force in December 2008 and serves as a foundation for all three of the ASEAN communities and provides their legal status and institutional framework. The charter legally binds all 10 of the ASEAN member states (ASEAN Charter 2008).

In contrast with the European Union, the major policy-making body of ASEAN does not belong to a judicial body or parliaments, rather it is given to the ASEAN summit which comprises of the Heads of State or Government of the member states. Not having a supranational nature, domestic courts have no role at all to contribute towards the legislation process. Thus, there are many limits to the opportunities of member states to actively influence the policy-making process when compared to the members of the European Union. This shows that even though the integration process is vivid, it is still within the boundaries of cooperation between member states.

The extent of ASEAN integration would never go beyond or even close to what the European Union has achieved. This is something completely acceptable since the two are fundamentally different economically, such as the member states' GDP per capita; politically, considering the various legal systems belonging to the ASEAN member states; and constitutionally, referring to the Bangkok Declaration, which states that the intention of ASEAN was merely to the extent of cooperation, partnerships, and mutual assistance (Ewing-Chow & Hsien-Li 2013).

2.2. ASEAN's e-commerce framework

The revolution of e-commerce in Southeast Asia has presented a vast economic potential by being the largest share of the world's business-to-consumer market. This region pays serious attention to creating a suitable environment of e-commerce by prioritising policies of a legal and regulatory framework, by attempts of 'harmonising' the laws and standards and by promoting infrastructure (ESCAP 2018).

In 1999, the leaders of ASEAN initiated the E-ASEAN project through an agreement signed in 2000 promoting a productive ASEAN e-space (Chen 2017) by enhancing Information and Communications Technology (ICT) sector competitiveness, reducing the digital divide within and among individual member states, promoting partnership between the public and private sectors, as well as trade and investment liberalisation in ICT goods and services (e-ASEAN Framework Agreement 2000).

The ASEAN economic cooperation is divided into several focused aspects such as the ASEAN Industrial Projects, ASEAN Investment Area, ASEAN Economic Caucus, and the ASEAN Free Trade Area. It is under the sectoral bodies of the ASEAN

Economic Ministers that e-commerce is governed. The two main legal documents are the ASEAN Digital Integration Framework and its action plan. The action plan prioritises areas in order to facilitate seamless trade, to protect data and to support digital trade and innovation, to enable seamless digital payments, to broaden the digital talent base, to foster entrepreneurship and to coordinate actions. The institutional framework belongs to the ASEAN Coordinating Committee on Electronic Commerce (ACCEC).

The ASEAN Agreement on Electronic Commerce is the primary legal framework for e-commerce in ASEAN. This agreement was previously endorsed by the ASEAN Economic Ministers in 2018. Under this regulation, member states are committed to maintain, or adopt as soon as practicable, laws and regulations governing electronic transactions, taking into account the applicable international conventions related to the subject. It has covered aspects of transparency, cooperation, cross-border data and information flows, as well as consumer protection and privacy.

There are a few challenges that ASEAN and the member states have to overcome in relation to expanding the utilisation of e-commerce in the region (Kimura & Chen 2017). First, realising that due to geographical limitations, the connectivity between different parts of metropolitan and rural areas in developing countries needs to be equalised. Second, services need to be improved, particularly those relating to a reliable credit guarantee system. Platforms need to be established for collecting and integrating information from various sources and to provide users with service packages (Kimura & Chen 2017).

On a general note, ASEAN needs to actively maximise e-commerce opportunities and at the same time minimise the risks. First, by adapting to the global economic digitalisation using its capacity in technology adoption and new innovations. Second, by properly gravitating the market through the utilization of internet-savvy populations such as in Malaysia, Indonesia, and Singapore, representing consumers that are directly linked to e-commerce. Last, by fulfilling development needs in the fields of technology, markets, and policy to prepare member states for performing business (Kimura & Chen 2017).

In particular, with regard to the legal framework, having the flexibility and high respect for sovereignty that ASEAN adopts, the association still needs to consistently negotiate on new rules with both public and private parties in order to efficiently prevent ‘grey’ zones of international commerce such as tax evasion, counterfeit products, and intellectual property rights violations (Kimura & Chen 2017). This will all lead to ASEAN having an inclusive policy and legal framework that could accommodate not only the market demand, but also the member states’ needs.

Conclusion

The EU and ASEAN are perceived as role models for regional integration and international organization in the last decade. Both are technically the products of states’ moral realisation to cooperate and work together to build a better community amongst themselves. The product of these various progress and vast competition created unique characteristics for each region, having their own dreams and fears that reflect their own

economical, political, and social trajectories. Above all, economy is prioritised in both regions and acts as a catalyst of rapid development. One of the examples put in the context of globalisation is the birth of e-commerce being nurtured by two different mothers.

It is doubtless that e-commerce will continue to challenge many pre-existing laws and norms that are common within each geographical region and jurisdiction. The ability to embrace and control the rapid development of e-commerce will rely highly on authorities and legislative bodies to determine where such activities take place.

The rapid development of e-commerce is a double-edged knife where, on one side, the digitalisation of the economy facilitates international trade for consumers in terms of easier, more cost- and time-efficient cross-border access creating more opportunities for goods, services, and innovative business models. On the other side, each regional market faces a higher degree of external competition and development gaps will not stay behind waiting for countries to catch up with the progress.

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