Compliance on the road to the ASEAN Economic Community

A Comparison between ASEAN Member States

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II. Abbreviation

AEC	ASEAN Economic Union
AECB	ASEAN Economic Blueprint
ADB	Asian Development Bank
AFTA	ASEAN Free Trade Area
AMS	ASEAN Member States
ASEAN	Association of South East Asian Nations
ASEAN IPA	ASEAN Intellectual Property Association
CARI	CIMB ASEAN Research Institute
CLMV	Cambodia, Lao, Myanmar & Vietnam
CTE	Cultural Traditional Expressions
DB	Deutsche Bank
DSM	Dispute Settlement Mechanism
EU	European Union
FDI	Foreign Direct Investment
FTA	Free Trade Area
GCR	Global Competitiveness Report
GR	Genetic Resources
ICC	International Chamber of Commerce
ILO	International Labor Organization
IMF	International Monetary Funds
IP	Intellectual Property
IPR	Intellectual Property Rights
R&D	Research & Development
SRI	Scientific Research Institutions
TK	Traditional Knowledge
UNASUR	Union of South American Nations
UNDP	United Nations Development Program
USTR	United States Trade Representative
WB	World Bank
WEF	World Economic Forum
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

III. Summary

This study aimed to find explanations for compliance or non-compliance with the agreements on intellectual property rights regarding the ASEAN Economic Community (AEC). Within this research it is argued that state interest and institutional capacity can influence the compliance of states with international agreements. In this line it is argued that a greater state interest in IP, which is formulated as being more able to create IP, will make it more likely that a state is willing to comply, and thus does comply, with IP related international agreements. Next to that it is argued that a greater institutional capacity enables states to implement international agreements, such as the AEC IPR agreements, within the agreed timeframe. Moreover, this research thrived on the assumption that a greater interest in IP and a greater institutional capacity were positively correlated with compliance, whereas lesser state interest and a lesser institutional capacity were expected to be negatively correlated with compliance, and thus positively correlated to non-compliance. In order to track the compliance or non-compliance of its member states, the ASEAN Secretariat publishes Scorecards. So far, two Scorecards have been published, presenting the compliance scores of the ASEAN Member States for phase 1 and 2, the period of 2008-2011, on the road to the AEC. Based on the results of the scorecard it became clear that Singapore, Malaysia, the Philippines, Indonesia, Thailand and Vietnam did comply, whereas Lao, Brunei, Cambodia and Myanmar did not comply with the AEC IPR agreements in phase 1 and 2. The expectation in this research was that higher scores on the various indicators within the variables of state interest and institutional capacity would make compliance more likely, whereas lower scores on the various indicators would make compliance less likely. Consequently, it was expected that the complying states would have higher scores on the various indicators than the non-complying states. Based on the results in this research this expectation can be seen as valid, as the complying member states have, in general, scored higher than the non-complying member states regarding the indicators as selected for state interest and institutional capacity. Therefore, the data of this research regarding compliance and non-compliance on the AEC IPR agreements suggests that, in line with various theories, a greater state interest and/or a greater institutional capacity will make it more likely that a state complies, whereas a lesser state interest and/or a lesser make it less likely that a state complies.

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1. Introduction

Recent decades have been dominated by the phenomenon of globalization in which the world has become more and more interconnected due to increased technological possibilities, which enables states to connect more rapidly and more frequently against far lower cost than ever before (Koster & De Beer, 2009: 107). Within this era of globalization, the phenomenon of regionalization has occurred in which states within a specific world region engage in economic and political relationships (Hettne & Söderbaum, 2000: 13). Consequently, regionalization also refers to a limited number of possible participants linked together, and restricted, by geographical relations (Hettne & Söderbaum, 2000: 13; Koremos, Lipson & Snidal, 2001: 770). Moreover, regionalization can be seen as a responds to globalization, as regions strengthened their ties in order to play a role in the interconnected world and in order to cope with international and regional opportunities and problems (Koster & de Beer, 2009: 107). Of all regional organizations, the European Union forms the most well-known and advanced example. Nonetheless there are other examples, such as the African Union and the Union of South American Nations (UNASUR). This research will focus on the Asian counterpart: the Association of South East Asian Nations, the ASEAN, as the ASEAN is set for further integration with the completion of a single market and production base in 2015. Moreover, the ASEAN can be seen as one of the most successful regional organization of 'the South', and thus of the developing countries (Stubbs, 2008: 452; Narnine, 2007: 414).

In recent years, further integration in both regional- and international organizations has become subject of heavy criticism. This is partly due to the economic crisis and the growing inequality of power of the developing countries in international organizations (Molle, 2014). For instance, looking at the European Union, and the *eurocrisis*, a strong anti-European sentiment has spread throughout Europe, which has called against further integration of the EU (The Guardian, 2015). Additionally, these anti-movements regarding further integration have strengthened an increase of bilateral and informal forms of cooperation (Keukeleire & Hooijmaaijers, 2014). Yet, the ASEAN seems to be an exception to this growing process towards bilateral and informal forms of cooperation, as the ASEAN heads to further integration, with the establishment of an economic community. This makes the ASEAN a curious case.

The ASEAN was established in 1967 by its 'founding fathers': Indonesia, Malaysia, the Philippines, Singapore and Thailand and (Narnine, 2007: 414). The ASEAN is characterized as an intergovernmental organization (Stubbs: 2008: 454). In this line Warleigh (2008: 29) categorizes the ASEAN as a form of '*network regionalization*':

''A regional identity-driven response to globalization, which may acquire significant or more limited range of powers, but relies primarily on non-institutionalized or intergovernmental working methods''

In the early years, a period between 1960 and 1995, various ASEAN Member States experienced exceptional economic growth that was higher than in any other continent, as they took advantage of the opportunities of globalization (Sarel, 1996: 1). However, the ASEAN region suffered severely from the economic crisis of 1997, which started in Thailand and spread throughout Asia (Narnine, 2008: 419). Moreover, next to a period of economic success, the ASEAN expanded, as Brunei, Vietnam, Lao, Cambodia and Myanmar became members (Cockerham, 2009: 173-74). However, the expansion had some disadvantages. For instance, most new member states had different political regimes, some new members - Cambodia - still struggled with political instability and Myanmar caused a stir due to a consequent violation of human rights. Moreover, the inclusion of the new members provided a severe increase of differences in social and economic development (Cockerham, 2009: 174). For instance, Singapore - the most developed country within the ASEAN - scores significantly better on FDI inflows, governance indicators and other development and economic indicators compared to for example Myanmar or Cambodia (Buracom, 2014: 125).

Nonetheless, in recent years the ASEAN has made steps towards a more integrated community. One major success was the signing of the ASEAN Charter in 2007, marking the thirtieth birthday of the organization (Narine, 2008: 422). The ASEAN, which once started as an attempt to foster economic relations in order to create a secure region, now stands on three pillars: the economic pillar, socio-cultural pillar and the security pillar (Ibid: 422). Moreover, the ASEAN has established a vision for 2020 (ASEAN, 2015). One of the most important milestones within the 2020 vision has to be the establishment of the ASEAN Economic Community (AEC) by 2015, which can be seen as a tremendous step towards further integration (ASEAN, 2014: 1). The AEC implies the creation of a single common market and production base, built on the principles of prosperity and economic development, which are drafted within an Economic Blueprint (Ibid: 1). The Blueprint is a unique step within the ASEAN, as it is the first time that the ASEAN devised a Blueprint in order to achieve its objective (Soesatro, 2008: 48). Interestingly, the AEC Blueprint has a more binding character than any other agreement in ASEAN history, as it is a binding declaration of commitments to which the member states must abide (Ibid: 48).

Moreover, the Blueprint can be seen as a step away from the, for ASEAN characteristic, process-driven integration and towards an integration based on clear timeframes and defined goals (Ibid: 48). The binding character of this blueprint is surprising as the ASEAN operates according to what is called 'the ASEAN-Way', which refers to the decision-making process that emphasizes values such as consultation, non-interference, mutual respect, cooperation and consensus (Cockerham, 2009: 167; 181; Stubbs, 2008: 458). Moreover, the binding character is interesting as the ASEAN has always been a largely voluntary organization based on non-binding agreements (Soesatro, 2008: 2). Besides, history has proven that the perseverance of state-sovereignty remains a severe constraint on the integration of various regional institutions (Yahamoto, 2012: 10). Next to that, further integration can have severe national implications, as the recent eurocrisis and immigrant crisis in the EU show (The Guardian, 2015; NBC, 2015).

In order to get a grip on the state of implementations made by the ASEAN as a whole, and the various member states individually, on the road to the AEC, the ASEAN has introduced a Scorecard that measures the implementation rate of both the ASEAN as a whole as well as the rates of the various Member States individually. In total there are four strategic phases ([1]: 2008-2009, [2]: 2010-2011, [3]: 2012-2013 & [4]: 2014-2015). Each strategic phase consists out of various measures within all kinds of sectors, such as transport, taxation and IPR, which need to be implemented within the time period of the specific phase (Soesatro, 2008: 49). However, the AEC Scorecard has its limitations, as it only gives an overview of which of the ASEAN members are on track with the implementation of their commitments on the road towards the AEC (Rillo, 2013: 21). The latest report of this Scorecard measures phase 1 (2008-2009) and 2 (2010-2011). Therefore, this research will focus on the 2008-2011 period, as it signifies the period in which the ASEAN Member States were deemed to implement the agreements regarding the AEC. In this period the ASEAN Member States as a whole implemented 65,9% of the measures on the road to the AEC (ASEAN Secretariat, 2012: 8). Looking at table 1, it is visible that the individual member states score very similar on the implementation of measures in most topics. However, a few differences stand out regarding the implementation of the member states. Those are the implementation scores for Small-Medium Enterprise Development and Intellectual Property Rights (IPR). This research will focus on the latter, on IPR. Regarding IPR, the ASEAN has set out a set of measures in order to create and stimulate an innovative and creative community with goals such as stronger inter-ASEAN cooperation, the participation of the ASEAN Member States in the global IP community and an increase of awareness regarding the importance of IP and IP protection within the region (ASEAN IPR SME Helpdesk, 2015). However, the IPR measures and plans of the ASEAN will be, more extensively, discussed in chapter 6.

	Free Flow of Goods	Free Flow of Services	Free Flow of Investment	Free Flow of Capital	Free Flow of Skilled Labor	Priority Integration Sectors	Food, Agriculture & Forestry	Competitive Policy	Consumer Protection	Intellectual Property Rights	Transport	Energy	Mineral	ICT	Taxation	E-commerce	SME Development	Initiative ASEAN Integration	External Economic Relations
Brunei	-	-	-	V	V	V	-	V	-	-	-	-	V	V	V	V	-	-	-
Cambodia	-	-	-	V	V	V	-	V	-	-	-	-	V	V	X	V	-	-	-
Indonesia	-	-	-	V	V	V	-	V	V	-	-	-	V	V	V	V	V	-	-
Lao	-	-	-	V	V	V	-	V	-	-	-	-	V	V	V	V	-	-	-
Malaysia	-	-	-	V	V	V	-	V	-	V	-	-	V	V	V	V	V	-	-
Myanmar	-	-	-	-	V	V	-	V	-	-	-	-	V	V	V	V	-	-	-
Philippines	-	-	-	V	V	V	-	V	-	V	-	-	V	V	V	V	-	-	-
Singapore	-	-	-	V	V	V	-	V	-	V	-	-	V	V	V	V	V	-	-
Thailand	-	-	-	V	V	V	-	V	-	V	-	-	V	V	V	V	V	-	-
Vietnam	-	-	-	V	V	V	-	V	-	V	-	-	V	V	V	V	-	-	-
ASEAN	-	-	-	V	V	V	-	V	-	-	-	-	V	V	X	V	-	-	-

Table 1: Scorecard Phase 1 & 2 (2008-2011) AEC Blueprint (ASEAN Secretariat, 2012: 24)

V = Fully Implemented by AMS

- = Partly, more than 50%, Implemented by AMS

X = Not Implemented by AMS

Nonetheless, the difference in implementation scores regarding IPR agreements is interesting, as solid IPR policies are often seen as a fundamental condition for a good economic environment (ICC, 2005: 5). Moreover, IPR related issues are prominent within major international organizations such as the WTO. The WTO has established an agreement on intellectual property rights, which is called TRIPS: Agreement on Trade Related Aspects of Intellectual Property Rights, to which every WTO Member State has to comply (WTO, 2015). The agreement is considered to be a fundamental agreement within the WTO framework, as the TRIPS agreement provides the basic protection that is needed in order to stimulate innovation and creativity within a society (Ibid). By strengthening agreements on IPR one gives the possibility to protect their ideas and inventions for a certain period of time. This fits the definition as given by the WTO: *''Intellectual property rights are the rights given to people over the creations of their minds''* (WTO, 2015). Next to that, there is another large international organization that deals with IPR

related topics, namely the Word Intellectual Property Organization (WIPO). The WIPO is an international organization that consists of 188 members to this date (WIPO, 2015). Furthermore, as all ASEAN countries, at the moment of writing, are WTO en WIPO Members, it is interesting to see the differences in compliance on the ASEAN agreements regarding IPR. Furthermore, the development of IP law in the ASEAN has not attracted as much attention as the development of IP among its big neighbors China and India (Antons, 2006: 1). However, with the upcoming ASEAN Economic Community, the ASEAN attempts to be a counterforce to the likes of India and China. In this light, IPR related laws and agreements play a key role, as a strong and comprehensive IPR landscape within the ASEAN region can be a positive influence on the inflow of FDI and the further development of the economy trough creativity, a transfer of technology and innovation. Therefore, this research will focus on the differences on compliance on the IPR agreements and the reasons for compliance and non-compliance of the ASEAN Member States. Moreover, this research will aim to explain why this difference occurs, which comes together in the following research question:

How can the differences of implementation scores of the ASEAN Member States regarding the ASEAN Economic Community (AEC) Intellectual Property Rights agreements for phase 1 & 2 (2008-2011) be explained?

In order to shed a light on this topic, this research question is divided into five sub questions:

1. What Compliance?
2. Which factors can influence whether or not states comply with international agreements?
3. What is the ASEAN Economic Community (AEC)?
4. What IPR agreements and measures has the ASEAN established?
5. How can the differences in the implementation scores (compliance or non-compliance) of the ASEAN Member States be explained?

1.1. Social Relevance

Regionalism is a phenomenon that has become increasingly relevant over the past decades. Well-known examples are the further integration of the EU and the occurrence of the ASEAN and the UNASUR. These regional organizations have an impact on the societies of the various member states. Therefore, studying the topic of regionalization has a great social relevance. Regarding, the ASEAN, the organization is heading towards the ASEAN Economic Community, which will be a tremendous change in the region for companies, inhabitants and the organization itself. In order to make the AEC a success it is vital that all the member states

comply with the agreements made in the AECB, as it is necessary to create an equal playing field within the community. Consequently, it is relevant to study why member states do or do not comply with the agreed measures in the ECB as it can shed a light on the developments within the organization and can serve as a source for future improvements.

1.2. Theoretical Relevance

This research is theoretically relevant, as little research has been done regarding the ASEAN and compliance, let alone regarding the AEC and compliance. Moreover, Raustiala and Slaughter (2002: 548) argue that, back in 2002, research on compliance was a relatively young field, as not much research was done on the topic at that point. Therefore, this research can contribute to the relatively new research topic of compliance. Moreover, the implementation-levels of the ASEAN Member States in order to complete the AEC so far have been historically successful for the ASEAN with an implementation percentage of 65,9% in the period between 2008-2011. Moreover, there is a gap regarding IPR related research and the ASEAN. As mentioned, most IPR related research has focused on the large neighboring states of India and China. However, with the establishment of the AEC, the ASEAN region will become ever more of relevance as it opens new opportunities for companies and investments. Therefore, it is theoretically relevant to investigate the correlations between IPR related indicators and compliance in order to enlarge the knowledge on the question why states do or do not comply with international, and international IPR related, agreements. Moreover, in this line, this research will explore whether or not the theories regarding factors that influence compliance or non-compliance with international agreements are applicable for the ASEAN.

1.3. Readers Guide

This Master's thesis starts with a literature review in which theories regarding compliance and factors that influence compliance are explored. Consequently, sub question 1 (what is compliance?) and sub question 2 (which factors influence whether or not states comply with international agreements?) will be explored in chapter 2 (literature review) and operationalized in chapter 3 (operationalization). Next up, I am going to discuss the research design, the methods and techniques in chapter 4. Moving on, sub question 3 (what is the AEC?) and sub question 4 (What IPR agreements and measures has the ASEAN established?) will be answered in chapter 5. Continuing, the analysis in chapter 6 will seek an explanation for sub question 5 (How can the differences in the implementation scores (compliance or non-compliance) of the ASEAN Member States be explained?). Lastly, this research will end with a conclusion in chapter 7 by answering the question which factors have or have not influenced compliance of the ASEAN Member States with the AEC IPR agreements.

2. Literature Review

Within the literature review I will explore previous research regarding compliance and factors that can influence whether or not a state complies. In order to do so I am going to explore a great range of literature regarding compliance, varying from compliance in international organizations such as the European Union, to compliance within the ASEAN, and compliance and Intellectual Property Rights Moreover, by examining previous conducted research regarding these topics, I aim to identify research gaps to which this research could provide an answer. Furthermore, the selection of two factors that I am going to use within this research based on a best fit between the theory and this research topic.

2.1. What is Compliance?

The topic of compliance has been rising in importance as a research topic within the academic world (Raustiala and Slaughter, 2002: 548). International, or regional, organizations can provide a framework and a setting in which agreements and resolutions can be agreed upon. After the agreements or resolutions are drafted and agreed upon the next step for the member states is to implement these agreements and resolutions. Besides, member states have to strive to comply with the targets as set in these agreements and resolutions. In this line, Simmons (1998: 77) defines compliance as: 'When the actual behavior of a subject is conform the prescribed behavior'. Moreover, Davies (2010: 454) defines compliance as a 'phenomena of on actor coming into alignment in behavioral practice with the standards and expectations of another'. On the other hand, non-compliance can therefore be seen as a state that does not act conform prescribed behavior or in line with the expectations of others (Simmons, 1998:77). However, a notion has to be made that implementation and compliance are not the same as a state can comply without the need to implement agreements if those agreements are already similar to national customs and law (Raustiala & Slaugther, 2002: 539).

In order to establish the AEC the members have agreed upon, in an intergovernmental manner, measures that need to be implemented and targets that need to be met before the end of 2015. In this line, the road to the AEC by the end of 2015 is divided into four phases with each phase having its own measures and targets to which the AMS should obey. In line with the concept of compliance states should act conform the prescribed behavior, and thus according to the agreements, as agreed upon for the AEC and within the four phases towards the AEC in order to fully comply with the agreements regarding the AEC. On the other hand, non-compliance occurs once an ASEAN Member State fails to act in accordance with the agreements regarding the AEC, and with the measures that are required within each of the four phases.

2.2. Which Factors can Influence Compliance?

In the literature, multiple causes for compliance, or non-compliance, have been found and researched in articles that focus on compliance often aim to explore why states comply with international- law and agreements as made within the context of an international organization, for instance on compliance of states with treaties of the World Trade Organization, the United Nations and the European Union on topics such as environmental and human right treaties. The aim of the paragraph, therefore, is to explore previously conducted research regarding compliance in order to strengthen the foundation of this thesis.

To start of, it is argued that control, monitoring and enforcement are key mechanisms in order to secure compliance (Tallberg, 2002: 624; Glen & Murgo, 2003: 604). However, as Glen and Murgo (2003: 604) argue, enforcement is often difficult in the anarchic international system, as there is no world government, no world police and no world judicial system. In this line, Koh (1997: 2603) argues that international rules are rarely enforced, but usually obeyed. Nonetheless, the Glen and Murgo (2003: 611) do find a positive relation between becoming a signatory on human rights treaties and the implementation of those agreements, as the human rights do seem to improve in signatory countries. Despite the argument that enforcement is often difficult within the international system, there are examples of international organizations that have improved their enforcement mechanisms. The most notable examples are the European Union and the World Trade organization. Regarding the European Union, Tallberg (2002: 633) argues that the supranational character of the European Court of Justice, which has the ability to impose sanctions on non-complying member states has a positive impact on compliance within the EU. The introduction of sanctions as an enforcement mechanism has strengthened the compliance system with in the EU. Moreover, Tallberg (2002) argues that the EU has evolved a decentralized monitoring systems as national courts protect EU rights and as both companies and citizens can go to court if they believe that a member state has not implemented the EU agreements timely and efficiently (Ibid: 620-21). Furthermore, Tallberg (2002: 624) has found that in the period between 1991 and 2000 the implementation rate of the EU Member States, regarding EU directives, increased from 90% to 96% (Tallberg, 2002: 624). The high implementation rate of the EU Member States is due to the fact that the European Union combines the aspects of the two streams - the enforcement and management perspective - within the compliance debate (Ibid: 609). In short, whereas the enforcement perspective argues that a coercive strategy of monitoring and sanctions will increase the implementation rate, the management perspective argues that a problem-solving approach based on capacity building, rule interpretation and transparency will increase the implementation rate within an international organization (Tallberg, 2002: 624; Koh, 1997: 2635-36). Within the EU, Tallberg argues, that monitoring,

sanctions, capacity building, social pressure and rule interpretation coexist in order increase the likeliness that states comply, as these instruments are mutually reinforcing (Ibid: 614). These characteristics within the EU are also mentioned within the literature review regarding compliance by Koh (1997) in which it is stated that state reputation and the fairness of the rules play a role in whether or not states comply. Furthermore, Davies (2010: 445) mentions that, in line with social pressure, within the United Nations the technique of persuasion is often used in order to make it more likely that states comply with the treaties and rules. Continuing on the enforcement and sanction mechanism within the EU, it is often argued that, next to the EU, the WTO has a fairly strong enforcement mechanism, which enables them to combine enforcement and management mechanisms, as the GATT/WTO has strengthened their Dispute Settlement System with more operational enforcement mechanisms (Ibid: 633). However, the mechanism of the WTO is incomparable to the mechanism of the EU, as the mechanism of the EU can have a punishing effect, whereas the WTO has merely a compensatory effect (Ibid: 634).

Furthermore, despite the fairly high implementation rate of the EU, non-compliance does occur. Often this is caused by defection incentives and capacity limitations of a member state (Tallberg, 2002: 626). The defection incentives occur when a state has to deal with increasing legal adjustments in order to comply (Ibid, 626). This finding is labeled by Falkner, Hartlapp and Treib (2007: 3) as the fit or misfit theory, in which it is stated that a fit or misfit between rules and existing institutional and regulatory national traditions determine the implementation performance of a member state. The larger the misfit the more difficult it will be for a state to implement the agreements (Ibid: 3). However, their research found that the misfit hypothesis did not adequately explain the cases as researched within their study. Moreover, continuing on the capacity limitations, it is argued that capacity limitations derive from gaps in quantity and quality of the administrative staff (Tallberg: 631). The capacity limitation argument is also coined by Simmons (1998: 83) who argues that states may be willing to implement the agreements, but lack the capacity to do so due to lack of finances, well-educated staff and the lack of quantity of staff. Consequently, states may not implement the agreements, not because they do not want to implement them, but because they lack the expertise, skills and thus the capacities to do so. The lack of capacity makes it more likely that a state is less able to comply with the agreements. These incapacities include factors such as a lack of knowledge, non-sufficient training of personnel and inadequate financial resources (Ibid: 83). Moreover, Institutional capacities determine the effectiveness of a government and the government bureaucracy needs to be efficient and effective in order to be able to implement agreements (UNDP, 2011: 271). The non-effectiveness of a state can be a cause for the non-implementation or delay of the implementation of the AEC IPR agreements, as the agreed upon timeframes could

not be met due to non-effectiveness. Furthermore, incapable staff can negatively impact the institutional capacity. This implies that the staff, the civil servants of the public organization, lack the expertise and skills in order to implement the AEC IPR agreements (UNDP, 2011: 274). In this line Simmons (1998: 83) argues that the administrative capacity is determined by, for instance, the availability of knowledge within the organization. The quality and knowledge of personnel is determined by their education. Moreover, the lack of knowledge can negatively influence the implementation rate of the organization (Ibid: 83). States in which a higher enrollment and higher level of education are often have a larger pool of qualified personal regarding their workforce. Furthermore, higher levels of education are required in order to deal with the, often difficult, IPR related laws and agreements.

Moreover, compliance is often discussed within the rational choice theory in which states are trying to use international organizations to advance their state goals (Koremos, Lipson & Snidal, 2001: 762). Within the rational-choice theory, international organizations emerge because states use international institutions to achieve their own goals; their state-interest (Koremos, Lipson & Snidal, 2001: 762; Koh, 1997: 2632). In this line, Koremos, Lipson and Snidal (2001: 762) argue that an international treaty is within the states interest once the state sees the proposal as, economic, social or politic, beneficial for their state. Next to that, Abbott & Snidal (2000: 422) conclude that actors are more willing to implement decisions based on a cost/benefit analysis. Consequently, states are more willing to comply if they benefit from the agreement. However, within these international organizations states are keen to preserve their sovereignty by remaining in control over their own territory. Therefore, sovereignty implies that governments retain the right to interpret and apply the international agreements in a selective manner (Ibid: 763). This is in line with a key-factor for the success of regionalization as described by Haas (1970: 614-16) in which he argues that states have to perceive benefits from the progress regardless if those benefits are distributed in an unequal way. Furthermore, this argument is in line with the realist view on the implementation rate as mentioned by Simmons (1998) and Koh (1997: 2632) in which power and self-interest play a role. Furthermore, Falkner (2007: 12) has established a three-world approach in which countries can be ordered and which also touches upon state interest as a key factor for compliance and non-compliance. Firstly, there is the world of domestic politics in which states comply, and on time, only when it is within their ambition and state interest. In this world a state will be less willing to comply once there is a conflict with their domestic concerns. Secondly, there is the world of neglect (Falkner, 2007: 12) in which states do not per se have an aspiration to comply. Compliance occurs when issue linking is possible, which can also be seen within the characteristics of state interest, for instance with domestic reforms. Non-compliance occurs, most of the time, and is

often due to bureaucratic failure and inefficiency. Thirdly, however, there is the world of law observance in which it is cultural expected to comply, and to comply on time, even when there are conflicting domestic interest. In this world non-compliance only occurs when states are non-aware. This third world more or less indicates that state interest does not matter for compliance or non-compliance. Instead culture matters for whether or not states comply

Additionally, Simmons (2000) names various factors that can influence the compliance of a state with international agreements. In her research she finds for instance that states are more likely to comply with an international agreement once they notice that neighboring countries within their region are implementing the agreement as well. This is in line with the arguments of Tai (2011: 25) who argues that sub-regional grouping and coordination can help to increase the implementation of the fast amount of international agreements that are not yet implemented, as he found a link between sub-regional grouping and an increased implementation record within the ASEAN. Moreover, she counters the argument that democracies have a better implementation record, an argument that is for instance mentioned by Koh (1997: 2632), by proving a stronger link between an adequate rule of law and compliance (Ibid: 829).

2.3. Compliance in the ASEAN

As the examples above show, there are many motives for compliance and non-compliance with the agreements of the various international organizations. However, regarding the ASEAN, little research has been done to the compliance of the member states within this international organization. The ASEAN remains an intergovernmental organization with a strong focus on sovereignty (Severino, 2011: 3). Consequently, the ASEAN, and especially its Secretariat, has limited powers to enforce its member states to comply. Therefore, it is not always a certainty that the agreements as made in the ASEAN are implemented by the member states. In this line, a research of the Eminent Person Group argued that the ASEAN did not lack vision and ideas, but that the organization lacked ensuring methods for compliance and effective implementation (Phan, 2014: 384). Besides, the group stated that the lack of compliance and effective implementation could undermine the credibility of the ASEAN and its goal towards the economic community (Ibid: 384). Nonetheless, up to 2007, in a period of nearly 47 years, the ASEAN has made progress, despite the fact that it lacked a strong legal basis (Ibid: 380). Starting from 2007, the ASEAN adopted the ASEAN Charter, which signified an important step, as it entrusts the ASEAN with legal capacity to act, to some extent, independently and on behalf of the member states (Ibid: 381). In general, the ASEAN has a success rate of around 40% regarding the implementation of the ASEAN agreements by the ASEAN Member States (AMS) (Tai, 2011: 25).

The rate of 40% is significantly lower than the compliance rate of 67,5%, which the ASEAN Member States have achieved so far on the road to the AEC for phase 1 and 2 (ASEAN Secretariat, 2012: 17).

However, this data does not indicate why the ASEAN Members do or do not comply with the various agreements made at the intergovernmental ASEAN level. In a study on reasons for non-compliance in the ASEAN, Phan (2014: 405-6) argues that the lack of implementation could be due to the lack of capacities of the ASEAN Member States, especially for its less-developed members states. In general a divide is made between the ASEAN-6 group of developed member states [Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand] and the CLMV group of less-developed member states [Cambodia, Lao, Myanmar & Vietnam] (ADB & ILO, 2014: 6). Especially the CLMV group needs extra time to strengthen their capacity in order to implement the various ASEAN agreements (Phan, 2014: 406). Consequently, these less-developed members need to improve their institutions, which is called: capacity building. Capacity building is a mechanism that is also mentioned in the previous paragraph (Tallberg, 2002: 614) as an important mechanism to stimulate compliance. Moreover, the arguments of Phan (2014) are in line with the arguments of Soesatro (2008: 48) who argues that the slow, or non-implementation, of the past initiatives of the ASEAN is due to the general lack of capacity of both the ASEAN and the individual member states. Therefore, arguing that the lack of capacity is not only an issue within the less-developed member states but also an institutional problem within the ASEAN organization and its Secretariat. Furthermore, various other authors, such as Kim (2011) and Stubbs (2000) indicate that the progress of integration within the ASEAN has been a rather slow one, which makes it no surprise that the ASEAN has a fairly low compliance rate of 40%. Both authors blame the slow progress of implementation, or the non-implementation, on the great emphasis on state-sovereignty and non-interference including a voting procedure based on unanimity, consensus and consultation. Or as this process is called: the ASEAN Way. Although the states have reached consensus upon an ASEAN agreement, the enforcement of these agreements remains weak.

2.4. Intellectual Property Rights and Compliance

Next, the concept of state interest has to be linked to the concept of IPR, or the interest in IPR protection. Regarding, the case of intellectual property rights, literature argues that the protection of IPR is pivotal in stimulating creativity and innovation within a country (ICC, 2005: 10). By stimulating innovation a state will fuel economic growth, as research often finds, according to the ICC (2005: 10), correlation between these two factors. Moreover, IPR protection can stimulate the inflow of foreign direct investment (FDI) in combination

with a transfer of technology (Kilgour 2008: 332). Moreover, not all states are evenly interested in IPR protection or in creating a stronger IPR landscape. IPR, research has indicated that less-developed countries tend to be net-consumers rather than net-creators of IP (Pupphavesa, 2009: 62). Net-consumers are countries that import IP due to their inability to create IP, whereas net-creators are countries in which IP is developed and thus created. Moreover, the ICC (2005: 10) indicates that various studies have demonstrated that IP protection is correlated with the level of economic development. Consequently, it is argued that less-developed states are less inclined to enforce IPR rights (Pupphaseva, 2009: 62). However, often these less-developed state are willing to provide a basic environment for IP protection in order to attract FDI and in order to attract technologies (Ibid: 62). Nonetheless, the less-developed countries often lack the expertise and capacity to create IP (see chapter 3.2.2.), which makes them less interested and driven in prioritizing and further strengthening their IP landscape. This is in line with the fact that firms in developed countries have been responsible for most of the technological innovations in the world (WIPO, 2009: 6). Moreover, these less-developed countries tend to have other priorities to tackle first, such as poverty and undernourishment. As a consequence, an agreement that focuses on IPR can be seen as in line with the state interest of the more-developed states within the ASEAN, as it is in line with the theory that less-developed states do not give a priority to protecting IP due to the fact that they are less able to create IP.

Nonetheless, the development of IP law in the ASEAN has not attracted as much attention to researchers compared to the development of IP among its big neighbors China and India (Antons, 2006: 1). However, with the establishment of the AEC the ASEAN will become an increasingly important player in the global economy with, for instance, high proportions of the global inflow of FDI, large foreign exchange reserves and an enormous population size (The Economist Intelligence Unit, 2014: 11). Consequently, the ASEAN will become more relevant than ever and a comprehensive IPR landscape within the region can play a key role in attracting more FDI and in stimulating the economy through creativity and innovation.

2.5. Why do States Comply?

In sum, there are many factors that can influence the compliance rate of a state regarding international agreements. These factors have been found in many articles and regarding member states of various international organizations such as the UN, the EU and the WTO. However, regarding the ASEAN, not much research has been conducted on compliance within the organization. Nonetheless, with the upcoming ASEAN Economic Community, compliance becomes an ever-important topic within the ASEAN, as compliance by the member states is necessary in order to create an equal playing field within the single market community.

Moreover, the language regarding the implementation of the measures is stricter and stronger than ever, as the member states have to abide to the ASEAN Economic Blueprint. Furthermore, within this literature it became clear that the compliance rates for the AEC are more than 20% higher than the normal compliance rate of ASEAN agreements, which is a remarkable finding. Next to that, less attention has been paid to IPR protection within the ASEAN, as the focus of IPR related research has mostly focused on the big neighboring states of China and India. However, with the upcoming AEC the ASEAN will become more relevant than ever, which makes it relevant to research the topic of IPR within the AEC, as IPR can contribute to growth, an increase in FDI inflow, creativity and development. Therefore this research will combine the two identified gaps, by researching factors, which could have influenced compliance and/or non-compliance of the various member states regarding AEC IPR agreements. In order to assess compliance within the ASEAN on the road to the AEC, I will select, based on the theories of factors that can influence compliance in the literature review, two factors, which fit best within the case of ASEAN and the IPR agreements.

The first factor that can influence compliance and that will be used within this research is state interest. The choice for state interest as a factor that can influence compliance is based on the assumption of Pupphaseva (2009: 62) who argued the divide between IP creators and IP consumers. Consequently, as this research focuses on compliance of ASEAN Member States with IPR related international agreements, a link has to be made between IP and compliance. By using the argument of Pupphaseva, a connection can be made between the IP creators and IP consumer argument and state interest, as the argument of Pupphaseva is that IP creators will be more inclined to implement and focus on IP protection than states which are less able to create IP, and are more within the category of IP consumers. Consequently, this argument implies that IP creators will have a greater state interest in IP protection. Therefore, it fits within the state interest theory in which states are more inclined to implement international agreements once they see a benefit in these agreements, which makes state interest an interesting factor to explore within this research as it is a good match regarding IPR agreements.

Secondly, the factor of institutional capacity will be explored. In the literature review regarding compliance research of the ASEAN, Phan (2014: 405-6) argues that in general, the lack of implementation could be due to the lack of capacities of the ASEAN Member States, especially for its less-developed members states. Besides, it is often argued that there are great developing gaps between the ASEAN Member States, especially by mentioning the development divide between the developed ASEAN-6 states of Brunei, Indonesia, Malaysia, the Philippines Singapore and Thailand, and the CLMV group of less-developed nations formed by Cambodia, Lao,

Myanmar and Vietnam. Moreover, the ASEAN puts extra emphasis on narrowing the development gap, for instance in the ASEAN 2020 vision:

''We commit ourselves to moving towards closer cohesion and economic integration, narrowing the gap in the level of development among Member Countries ... '' (ASEAN, 2015).

Therefore, it becomes relevant to research institutional capacity and the effects of this factor on compliance, as the different gaps in capacity of the ASEAN Member States can prove to be of influence regarding the question whether a state was more able or less able to comply and thus did or did not comply.

Consequently, this research will aim to fill the research gaps as identified earlier by investigating the whether or not state interest and institutional capacity could have been related to compliance or non-compliance within the ASEAN. In order to measure these two variables of state interest and institutional capacity, various indicators will be selected within the next chapter, the operationalization.

3. Operationalziation

This chapter addresses the conceptualization of the key concepts and variables. Moreover, based on the theoretical framework, and the conceptual model, in the previous chapter, various indicators will be set in order to measure the state interest and institutional capacity.

3.1. The Dependent Variables: Compliance & Non-Compliance

Firstly, the dependent variables will be presented. The dependent variables are compliance and non-compliance as defined in table 3. The concepts of compliance and non-compliance are considered as dependent variables as this research aims to answer the question, which factors influenced the ASEAN Member States in such a way that they did or did not comply with the AEC IPR agreements in phase 1 and 2 [2008-2011].

This research will draw information from the ASEAN Scorecard Phase 1 & 2 (ASEAN Secretariat, 2011) in order to assess whether or not a state did or did not comply with the agreements on the road to the AEC. Within the Scorecard a stoplight scheme is made in which green stands for compliance, orange stands for partly compliance and red stands for non-compliance. Therefore, green stands for compliance, whereas both orange and red stand for non-compliance regarding the results of the ASEAN Scorecard. However, although this research aims to find reasons for compliance and/or non-compliance for the AMS, it needs to be stressed that it is not within the scope of this research to assess the effects of the compliance or non-compliance for the AMS.

Nonetheless, there are critics on the ASEAN Scorecard. For instance, Basu Das (2013: 18) argues that the Scorecard needs to be enriched with information in order to create a more transparent picture of the progress of the ASEAN towards the AEC, as the aggregate scores fail to reveal the reasons for delays (Ibid: 17). For now, the Scorecards still lacks the fundamental information that is required in order to observe which measures have or have not been implemented (Ibid: 17). Consequently, this increases the difficulty for this research to track down the exact measure or measures which some ASEAN Member States failed to implement regarding the IPR agreements. This non-implementation led to an orange light - not fully complied - on the scorecard for some ASEAN Member States, and the orange light is seen as non-compliance within this research. However, whereas the scorecard fails to deliver the information on which measure or measure were not implemented and fails to give information on why these measure or measures were not implemented, this research will aim to provide information on factors which could have influenced compliance and non-compliance within the ASEAN. Therefore, although this critic on the ASEAN Scorecard can only be seen as a slight limitation, as this

research will continue on the same expectation, based on theoretical assumptions, on factors that can influence compliance.

Table 2: The Dependent Variables

Dependent Variable	Definition	Measure: - Do the selected member states implement the ASEAN IPR agreements (yes/no)?
Compliance	When the actual behavior of a subject conform the prescribed behavior (Simmons, 1998: 77).	• State has a green 'light' on the ASEAN Scorecard
Non-Compliance	When the actual behavior departs significantly from the prescribed behavior (Simmons, 1998: 77)	• State has an orange or red 'light' on the ASEAN Scorecard

3.2. The Independent Variables: factors that influence compliance

Within this research two independent variables are used, as explained in the theoretical chapter. These variables are expected to have an impact on the dependent variable of compliance. Firstly, the indicators regarding state interest will be discussed and secondly, the indicators regarding institutional capacity will be discussed.

3.2.1. Independent Variable I: State Interest

In the theoretical framework the concept of state interest was discussed. An international treaty, or set of rules, is within the states interest once the state sees the proposal as, economic, social or politic, beneficial for their state (Koremos, Lipson & Snidal, 2001: 762). However, states are often keen on preserving their sovereignty, which gives them the right to interpret and apply the international treaties in a selective manner (Ibid: 762-3). This research will focus on the economic aspect of state interest, as a states interest in IPR is related to the economic interest of a state. In this line it is argued that states with a higher capacity to create IP are more willing to invest in implementing IP related international agreements than states with a lesser capacity to create IP, the IP consumers. These aspects of state interest and IP interest lead to the following definition of state interest that will be used within this research:

''A state has an interest in implementing international IPR protection agreements once the economic environment within that state is more able to create IP rather than consume IP.'' (Pupphavesa et al, 2009: 62)

Based on this definition, various indicators from the World Economic Forum will be used in order to measure the state interest based on their ability to create IP. As this research could not address all possible indicators, I have looked at indicators or factors that are often mentioned as important for IP, such as innovation, research and development and research. Furthermore, I have selected these indicators based on the theoretic assumption that states that are more able to create IP are more willing to protect the IP landscape by the means of international agreements.

- *Innovation Capacity*. One of the key aspects of IPR is that it stimulates creativity and innovation (ICC, 2005: 5; ASEAN, 2011: 1). The more capacity the industry of a state has to innovate, the more likely it is for that state to have an interest in advancing their IPR landscape. If a state scores higher on this indicator compared to another state it can be seen as an indicator that the economy of a state with a higher score has a better suitable environment to create IP than the state with a lower score. Such an environment makes it more likely that IP protection is within the states interest, which makes the state with the higher score on innovation capacity more likely to comply with IPR related international agreements such as the AEC IPR agreements. Moreover, a lesser the innovation capacity and thus lower scores on this indicator, will make it less likely that IP protection is within the interest of a state, which will make it less likely that a state will comply.

- *Company Spending on Research and Development (R&D).* Companies tend to be willing to spend on R&D in order to innovate and in order to improve their company. However, they do want to be able to protect their newly found ideas as intellectual property. Consequently, a state that scores higher on this indicator compared to another state one can expect that companies are more able to create IP within that state, as companies invest more heavily in research and development within that state compared to the state with the lower score. Therefore, the economy within the state with the higher scores is more suitable for IP creation, which will enlarge the state interest and which will increase the likeliness that a state complies with IPR related international agreements, such as the AEC IPR agreements. On the contrary, lower scores will lower the state interest in IP protection, which will make it less likely that a state complies with IPR related international agreements.

- *Quality of Scientific Research Institutions (SRI)*. An institution in this indicator entails both governmental institutions as the research departments within universities. Having a higher score on SRI compared to another country indicates towards an environment that is better suitable for IP-creation, as the institutions will have more quality regarding the development of

new ideas, techniques and processes. Having such an environment enlarges the states interest to strengthen the IP landscape in order to stimulate creativity and innovation that is possible due to the high quality of SRI. On the other hand, lower scores will have a negative influence on the state interest regarding IP protection, which will make it less likely that a state complies with IPR related international agreements.

In sum, if a state has a higher score on the above indicators compared to the other state this is an indicator that the economy of that state is more advanced than that of its peer and that the environment within that state is more suitable for IP creation. Consequently, the state with higher scores will have a larger interest in IPR laws and agreements in order to protect and advance their economy. On the contrary, lower scores will lesser the capacity to create IP, which will have a negative influence on the state interest and will make it less likely that a state complies with IPR related international agreements. Therefore a positive correlation is expected between higher scores on the indicators and compliance and a negative correlation is expected between lower scores and compliance. This expectation can be seen in the hypothesis I, as displayed in chapter 2, and is in line with the statement by Pupphavesa (2009: 62) that advanced economies are net-creators of IP and that these states consequently have a larger interest in IP protection. This leads to the following hypothesis:

H₁: *Higher scores, compared to another state, regarding the State Interest Indicators [period: 2008-2011] make it more likely that a state complies, whereas lower scores, compared to another state, will make it less likely that a state complies.*

3.2.2. Independent Variable II: Institutional Capacity

Within the theoretical framework it is argued that the institutional capacity has an influence on the implementation, and thus on the level of compliance, of a state regarding international agreements. This research will continue, based on the a definition of institutional capacity from Simmons (1998: 83):

> *''The capacity and skills of public institutions required in order to*
> *implement the ASEAN IPR agreements''*

Within this research I have selected various indicators, from WEF and World Bank data, that point out the ability and efficiency of a state to implement agreements and legislation. These indicators are based on the factors, government effectiveness and skills through education, as mentioned within the theory, for instance by Simmons (1998) and Falkner (2007) and the UNDP (2011). In order to determine the effectiveness of a government, this research will start with one indicator from the World Bank Indicators (2015):

- *Government Effectiveness.* This indicator captures the perception of the quality of both the public services and the civil service. Moreover it gives an indicator of the quality of policy formulation and implementation and the government's credibility towards the commitment to such policies. The higher the score [-2,5 / 2,5] the more likely it is that the state has the capacity to implement the international agreements, such as the AEC IPR agreements, whereas lower scores will make it less likely that the state has the capacity to implement such agreements.

Moreover, Simmons (1998: 83) stressed that the institutional capacity is also determined by the quality of the personnel within the governmental organization and that the quality of the personnel is influenced by their education. Therefore, the level of education in a state will be measured based on various indicators. Firstly, a comparison will be made between the AMS based on their *(%gross) enrollment rates* regarding *secondary* and *tertiary* education, based on data of the World Bank (2015). The higher the enrollment rates (%gross), the more likely it is that the state has a greater percentage of a skilled and well-educated workforce, whereas lower enrollment rates (%gross) will have a negative influence on the percentage of a skilled and well work force. Within the enrollment rates a choice is made to exclude primary education, as primary education is not sufficient enough to cope with the complex IPR laws and regulations. For the complex IPR laws and regulations a minimum of, secondary, and preferably tertiary education is necessary.
Next to that, a high enrollment rate is not enough, as the quality of education plays an enormous role in the skill level that students can obtain. States can have a high enrollment rate, but once the quality of the education within that country is lacking it will provide quantity rather than quality regarding the skills and the education level of the workforce. In order to assess the quality of education, the following indicator from the WEF GCR will be used:

- *Quality of the Educational System*. This indicator assesses the capacity of the entire educational system to deliver qualified and skilled students in order to create a competitive economy. Higher scores will have a positive effect on the skills of the workforce within a country, whereas lower scores are expected to have a negative effect on the skills of the workforce within a country. More suitable personnel helps to increase the implementation score of the Member State in order to comply with the AEC IPR agreements.

In sum, within this research it will be argued that institutional capacity is determined by government effectiveness and by education. Therefore, the government effectiveness indicator from the World Bank will be used in order to assess the effectiveness of the governments of the ASEAN Member States, whereas the school enrollment (gross% secondary and tertiary) from the World Bank and the Quality of the educational system indicator from the World Economic

Forum will be used in order to assess the level of education, and thus skills, of the workforce within the various ASEAN Member States. Again, it is expected that higher scores on the institutional capacity indicators will make it more likely that a state can comply, whereas lower scores will make it less likely that a state can comply, which leads to the second hypothesis:

H2: *Higher scores, compared to another state, regarding the Institutional Capacity Indicators [period: 2008-2011] make it more likely that a state complies, whereas lower scores, compared to another state, will make it less likely that a state complies.*

3.2.3. Overview of the Independent Variables

Concluding, this research will use various indicators in order to assess the two independent variables within this research. It is expected that these two independent variables will have a positive effect or negative effect on the dependent variable of compliance. In order to give structure to the mentioned indicators within the two independent variables, table 4 is conducted in order to give an overview of the various indicators and the measures for the indicators.

Table 3: The independent Variables

Independent Variables	Definition	Measure
State interest	*''A state has a state interest in implementing international IPR protection agreements once the economic environment within that state is more able to create IP rather than consume IP.''* (Pupphavesa et al, 2009: 62)	1. Innovation Capacity (WEF) [scale 1-7] • 1 = exclusively from licensing or imitating foreign companies • 7 = by conducting formal research and pioneering their own new products and processes 2. Company Spending on Research and Development (WEF) [scale 1-7] • 1 = companies in the country do not spend money on R&D • 7 = companies in the country spend heavily on R&D 3. Quality of Scientific Research Institutions (SRI) (WEF) [scale 1-7] • 1 = scientific research institutions [government laboratories / university laboratories] are nonexistent • 7 = scientific research institutions [government laboratories / university laboratories] are the world's best
Institutional capacity	*''The capacity and skills of public institutions required in order to implement the ASEAN IPR agreements''* (Simmons, 1998: 83)	1. Government Effectiveness (World Bank: WGI) [scale 0%-100%] • -2.5 extremely weak government performance on indicator • 2.5 extremely strong government performance on indicator 2 & 3. Educational System Enrollment (World Bank Indicators) • (%Gross) Enrollment Secondary Education • (%Gross) Enrollment Tertiary Education 4. Quality of the Educational System (WEF) [scale 1-7] • 1 = does not meet the needs to be a competitive economy; • 7 = meets the needs to be a competitive economy

3.3. The Conceptual Model

Based on the conceptualization of the dependent- and independent variable(s), a conceptual model will be established in which the relationships between the dependent- and independent variables are presented. Consequently, the model presents how the dependent variables influence the independent variable of compliance.
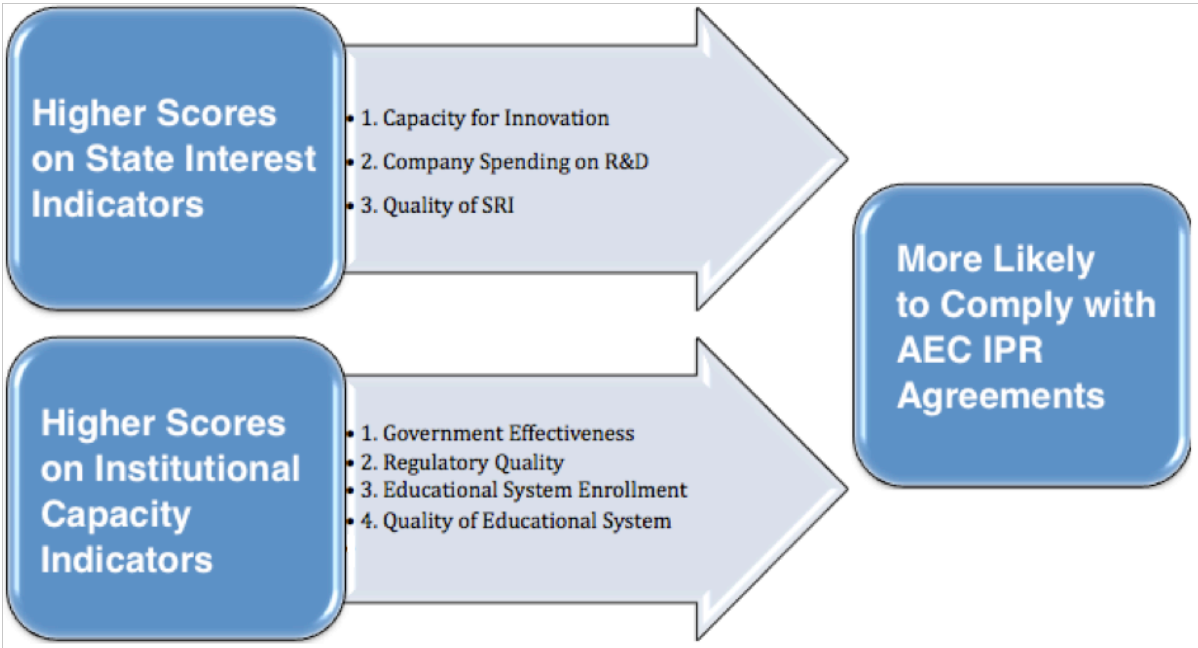

Figure 1: Conceptual Model and Factors for Compliance

The conceptual model indicates that higher scores on the various variables of a country compared to another state make it more likely that this state will implement, and is able to implement, the AEC IPR agreement. Therefore, higher scores on the indicators within the variables of state interest and institutional capacity make it more likely that a state will and can comply with the AEC IPR agreements. However, the conceptual model can also be used the other way around. This implies that a state that scores lower on the various indicators compared to another state is less likely to implement the measures and thus less likely to comply with the AEC IPR agreements. These expectations, including the aspect reversibility of the conceptual model, are also visible in the hypotheses. The hypotheses indicate towards a correlation that a higher score on an indicator will make it more likely that a state complies. However, the hypotheses can be reversibly used, as it is expected that the state with a lower score compared to another state is less likely to comply. Moreover, as the complying and non-complying ASEAN Member States are already known, the expectation of this research is that the complying states will have higher scores than the non-complying states, as higher scores increases the likeliness for compliance.

4. Research Design, Methods & Techniques

This research will be conducted according to the standards of qualitative research. More specifically, this research will be conducted along the lines of the co-variational (COV) model, as explained by Blatter and Haverland (2012). The methodological approach of the COV presents empiric evidence of the existence of co-variation between a dependent variable and the dependent variable within small N research (Ibid: 33). This co-variation induces causality between the dependent and independent variable. The choice for the COV design is made due to the fact that this research aims to explain the causes for compliance and non-compliance for a specific case, which is the ASEAN, and the AEC IPR agreements. Consequently, this research exists out of a small N, as the ASEAN has ten members and as this research aims to focus on all ten members (N=10). However, the N in this research can vary between 8 and 10, as data from Lao and Myanmar is lacking in the GCR of the WEF. The choice for a research in which the N can vary is made due to the fact that I want to research the compliance of the ASEAN as a whole in order to give a more generalizable answer for the ASEAN, regarding the question why states did or did not comply. Moreover, Lao and Myanmar are non-complying states regarding the AEC IPR agreements and by including them where possible, this research is better able to explore the results of the non-complying states and factors that influence this non-compliance. In order to clarify whether the N is 8 or 10, the N will be named for each indicator in the analysis.

Moreover, despite the more qualitative design of this research, quantitative data of time-series (2008-2011) will be used to examine the capacity and state interest. However, this data will be analyzed in a descriptive way and will thus not be used for quantitative methods. In this way, the data of the time-series will be used in order to examine patterns that occur over time. Furthermore, next to the time-series, the scores of each ASEAN Member States will be combined in an average of each member state based on their results in the 2008-2011 period. Besides, the member states will be ranked based on this combined average in order to see where the complying and non-complying member states rank for the 2008-2011 period. Moreover, the table with the average score of the member states will be used in order to test the hypothesis on the criteria as set in the next paragraph. Lastly, the data of the time-series and the average scores are used to compare the variations of the scores of the various indicators within the two independent variables and the potential effects that these differences in scores have on the dependent variable, which is in line with the research goal of a COV design (Blatter & Haverland, 2012: 35). Moreover, as explained in the theoretical chapter, this research acknowledges that many other factors can influence whether or not a state complies. However, as explained, a choice has been made to research the variables of state interest and institutional capacity, based on theoretical assumptions.

Nonetheless, the choice for this COV design has implications for the internal and external validity of the research (Van Thiel, 2007: P). On the one hand there is the internal validity, does one measure what one aims to measure (Ibid: 58). The COV design allows the research to address the topic in a deeper way compared to a research with a 'large N' design. For instance, it allows the researcher to conceptualize the concepts in a more specific way, which increases the internal validity of the research. In order to conceptualize the concepts in a specific way this research draws its concepts, the indicators, from both the WB and the WEF. Consequently, the used indicators are rather specific and the data is easily accessible, which increases the reliability of this research as it enables other researchers to re-conduct this research. On the other hand, there is the external validity, which implies the generalization of the research (Van Thiel, 2007: 59). It implies the extent to which outcomes of this research are generalizable to other international relations related topics with regards to the reasons for compliance and non-compliance. In this criterion this research has its limitations. The COV design, as is logical with a 'small N' design, deals only with a small number of cases. As mentioned this gives the possibility for deeper analysis, but consequently it deals with a specific context. It is due to this specific context that a research with a small N is often difficult to generalize to other cases. Moreover, in order to increase the validity and reliability of the research the selection of cases is crucial within of the COV design. Therefore, cases should not be selected in a random fashion (Blatter & Haverland, 2012: 42). On the contrary, during the selection the researcher should take in mind that the independent variable of interest varies. In line with the argument of Blatter and Haverland (2012), this research has carefully selected its variables based on the expectation that there are differences - ASEAN-6 and CLMV states - in development within the ASEAN.

4.1. Methods

The method that will be used is a combination of a secondary analysis and a content analysis (Van Thiel, 2007: 69). The secondary analysis will be based on the scores on the various indicators from the World Band and the World Economic Forum. However, these scores will be checked by content analysis of various sources, such as: resolutions, news articles, official statements and academic journals. All these sources are linked to the case studies of IPR and compliance in ASEAN. These checks are inserted in order to give information behind the scores. Next to that, by combining the scores of the WB and WEF with content from multiple sources this research will enlarge its reliability, as it checks whether or not the scores from the WB and WEF are correlated to the content of the various sources such as news papers and journals (Ibid: 57). The use of multiple sources is also called triangulation and helps to prevent biased information (Berg, 2009: 6).

4.2. Testing the Hypotheses

Lastly, these sources will be used in order to test, in the conclusion, the hypotheses as conducted in the theoretical chapter. This research will have a qualitative character and will consequently not test hypotheses based on signification levels. Nonetheless, in order to accept or reject a hypothesis, a minimum requirement will be set within this research, based on the expectation that higher scores on the indicators regarding the variables of state interest and institutional capacity will make it more likely that a state complies, whereas lower scores on the indicators regarding the variables of state interest and institutional capacity will make it less likely that a state complies. By setting these strict criteria, the validity of this research will increase. In order to accept or reject the two hypotheses, the hypotheses has to fulfill all of the following criteria, based on the ranking on the average scores of the ASEAN Member States in the 2008-2011 period:

1. The non-complying member states have to rank among the bottom scoring member states in the table with the average scores of the member states. With an N=8, this implies a criteria that the two, out of two, non-complying member states have to rank among the three lowest scoring member states. Whereas, with an N=10 this implies a criteria that 3 out of the 4 non-complying member states have to perform among the bottom four scoring member states.

2. The complying member states have to rank among the top scoring member states in the table with the average scores. Consequently, 5 out of the 6 complying member states have to perform among the best 6 scoring member states. However, whereas the non-complying member states vary from 2 to 4, depending on whether the N=8 or the N=10, the complying member states remain constant with a total of six complying member states. Therefore, the criteria for the complying member states will be the same despite the N being 8 or 10.

3. There will be a combined average for the complying and non-complying member states, by adding the results of the complying or non-complying member states together and by dividing this total through the amount of complying or non-complying member states. With this combined average, the criteria will be that the combined average for the complying member states has to be higher than the combined average of the non-complying member states.

4. If all 3 criteria, as stated above, are present by 2 out of the 3 indicators within state interest and 3 out of the 4 indicators for institutional capacity, the hypothesis will be accepted. On the contrary, if not all 3 criteria are present within 2 out of the 3 indicators within state interest and 3 out of the 4 indicators for institutional capacity, the hypothesis will be rejected.

In general, these criteria give allowance for one exception. For the N=10 there is an exception that a non-complying state can score within the top six, whereas there is also an exception that one complying member state can score among the bottom four states. The exception for the N=8 however is stricter, as there are lesser non-complying member states. Consequently, there is an exception that a complying member state scores among the lowest three scoring states. However, the non-complying member states can score, similar to the N=10, in the top six, but they cannot score higher than the sixth place, as they have to score within the bottom three states. Nonetheless, this research accepts that there can always be a complying and a non-complying member states that scores against the expectations of the hypothesis. Moreover, there is an exception that one of the indicators does not have to fulfill criteria 1, 2 and 3.

5. The Road to the ASEAN Economic Community

In order to understand the aim of the ASEAN with establish the AEC and its impact on the ASEAN Member States and the inhabitants of the ASEAN region, this chapter will give an overview on the most important aspects of the AEC. Moreover, the aspect of the IPR agreements will be explored, as it gives a foundation for the analysis in chapter 6.

5.1. The ASEAN Economic Community

The ASEAN aims to complete the AEC by the end of 2015. Within this research I will explore the compliance regarding the IPR measures for phase 1 & 2, which covers a period from 2008 until 2011. This section will give an overview of the AEC, as a basic understanding of the AEC is needed in order to continue this research.

The AEC can be seen as the end-goal of the bloc's economic integration as mentioned in the ASEAN 'Vision 2020' (DB, 2013: 6). It is the result of a growing cooperation between the 10 ASEAN Members in a period of over 50 years, in which most members have experienced tremendous economic growth (ADB & ILO, 2014: 1). However, challenges remain as the economic landscape is shifting towards other emerging markets in the Asian region, like China and India (Ibid: 1). The establishment of the AEC can be seen within this shifting landscape as the decision to establish the AEC was made in 2003, just after China joined the WTO and in a period in which India emerged as a investment market for multinational organizations (DB, 2013: 6). Therefore, the aim to establish an economic community can also be seen within the aim to stay and to be competitive towards the rise of these new economic powers. By further integration, the ASEAN countries can play a more substantial part in both the world economy as world politics compared to when they act individually (DB, 2013: 3). The ASEAN Member States are relatively small players in the economic and political spheres, but when they act as a group of nations they can be more influential. For example, if one sees the ASEAN as one country, the ASEAN will jump from the seventh to the fifth largest economy by 2018 (Economist Intelligent Unit, 2014: 8). Moreover the ASEAN is the fourth largest exporting bloc in the world and it will become the third largest by 2018 (Ibid: 9). Furthermore, 10% of the world population lives within the ASEAN territory, which makes the ASEAN the region with the third largest population in the world (Ibid: 8; Ibid: 11). Therefore, the ASEAN aims to further integrate in order to become one community.

The AEC is the first step towards an integrated community, as it will form the creation of a *single market and production base* (ASEAN Secretariat, 2008: 5). In order to fulfill the goal of the AEC a concrete blueprint has been established, the AECB. The Blueprint is a binding Declaration that contains 17 core elements - action points and implementation objectives - within 4 pillars (CARI, 2013: 1; ASEAN Secretariat, 2008; DB, 2013: 6-7).

*''**ADOPT** the AEC Blueprint which each ASEAN Member Country shall **abide** by and **implement** the AEC by 2015.''* (ASEAN Secretariat, 2008: 2).

These pillars and actions imply that the AECB goes beyond solely economic integration through liberalization of trade and investment (ADB & ILO, 2014: 4). The AECB aims to be more comprehensive by addressing the disparities within and between countries and enterprises. With this aim the ASEAN hopes to tackle the development divide and to accelerate the integration of the CLMV group (ASEAN Secretariat, 2008: 5).

Table 4: The Four AEC Pillars

Pillar 1: Single Market and Production Base	The free flow of goods, services, investments, capital and skilled labor and a focus on food, agriculture and forestry.
Pillar 2: Competitive Economic Region	Consumer protection, competition policy, intellectual property rights, taxation and infrastructural development.
Pillar 3: Equitable Economic Development	Narrowing the development divide and to accelerate economic integration of the newer members.
Pillar 4: Integration into the Global Economy	A coherent approach regarding external economic relations and an increase of ASEAN participation in global supply networks.

Lastly, the progress of the AEC is driven by consensus, based on the agreements between the Heads of State (DB, 2013: 7). There is no special organization in place to support the establishment of the AEC. The ASEAN Economic Ministers are accountable for the overall implementation of the AECB. Nonetheless, the ASEAN Secretary General has the responsibility to report the progress of the AEC. The main instrument to keep track of the progress of implementation of the AEC measures is the AEC Scorecard.

5.2. The AEC and Intellectual Property Rights

The IPR agreements are placed within the second pillar, the competitive economic region, of the ASEAN Economic Community Blueprint (ASEAN Secretariat, 2013: 19). Within the ASEAN Intellectual Property Rights Plan (2011 - 2014), Intellectual Property Rights are defined as:

"Intellectual property (IP) is an asset that a person can own, sell, license, or even give away at pleasure. Unlike other assets however, IP is mostly intangible and its distinct types, namely—(1) patents, (2) designs, (3) trademarks, and (4) copyrights—are assets that are borne from people's creativity and innovation, and the specific geographical locations concerned." (ASEAN Secretariat, 2011: 1).

This study focuses on the compliance results of the ASEAN Scorecard phase 1 and 2 (2008-2011). Within this timeframe there are two ASEAN IPR Action Plans applicable: the IPR plan 2004-2010 and the IPR plan 2011-2015. Next to that a Work Plan on IPR Cooperation has been drafted in 2006. This chapter gives an overview of the ambitions of the ASEAN towards the subject of IPR.

The ASEAN states in the AECB that the agreements regarding IPR serve multiple purposes. Firstly, it can serve as a stimulus to cultural, intellectual and artistic creativity and the efficient adaption and adoption of more advanced technologies (ASEAN Secretariat, 2008: 19). Secondly, the IPR agreements can serve as an incentive to stimulate creativity and invention and help to ensure a more proper access and benefits to all the various stakeholders in both the traditional and the new IPR (Ibid: 19). Thirdly, it can be a positive influence on the volume and quality of external trade and investment and the transfer of more advanced technologies to the ASEAN region. In order to strengthen the IP landscape in the ASEAN Member States, the ASEAN Secretariat encourages coordination between the AMS, which contribute to developing a regional identity and profile in IPR agreements of creation, protection, commercialization and enforcement (Ibid: 20).

Despite the various IPR plans, the key themes within these IPR plans remain roughly the same. For instance, improving IP awareness within the ASEAN remains an important objective. Moreover, all plans encourage a process of learning in which the less developed members increase their institutional capacity in order to cope with the IPR frameworks. However, it is argued that the new IP plan of (2011-2015) leaves more flexibility in order for the various member states to move in their own pace due to the differences in capacities (Siew-Kuan Ng, 2013: 146). Nonetheless, a focus capacity building remains visible in both plans such as within the IPR Action Plan (2011-2015) within strategic goal 1 in table 6:

Table 5: Example Improvement Institutional Capacity ASEAN IPR Action Plan [2011-15]   (ASEAN Secretariat, 2011: 5)

Initiative	Deliverables (examples)
4. Capacity building for patent professionals attorneys	(4.2.) Trainings, workshops, and other similar activities are conducted in response to identified training needs. (4.3.) ASEAN patent professionals are trained in the patent laws, regulations, and procedures of AMSs and high achieving IP offices in other regions.

Moreover, both IPR action plans encourage the ASEAN Member States to actively participate in the IPR related international organizations. Furthermore, this participation implies being active in the various bodies of these organizations, for instance in the various bodies of the WIPO. Besides, the agreements stress the need of the ASEAN Member States to become a signatory on some of the most recognized and important IPR treaties and agreements that are in place at the international level. Consequently, becoming a signatory to one of these agreements implies the implementation of rules made within these agreements and thus a process of amending existing laws and regulations in order to comply with the international agreements. In the first Action Plan this general aim is visible in the target called: *membership to international treaties* (ASEAN Secretariat, 2004: 4-5). Within this target the ASEAN Member States are advised to consider issues and implications of accession and compliance with international IP treaties. Especially, focusing on treaties such as the Madrid Protocol, Paris Convention for the Protection of Industrial Property, the Hague Agreement Concerning the International Deposit of Industrial Designs and the Berne Convention for the Protection of Literary and Artistic Work. Within the 2011-2015 IPR Action Plan, the focus on accession and implementation of international treaties is visible in various other initiatives and deliverables, such as initiative 14 in strategic goal 2:

Table 6: Example, Membership International Treaties ASEAN IPR Action Plan [2011-15]   (ASEAN Secretariat, 2011: 11)

Initiative	Deliverables (examples)
14. Accession to Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks by AMSs by 2015	14.1 Back logs are cleared, turn-around times are reduced, and infrastructures are in place for Madrid accession. 14.4. Support for Madrid accession is secured from major business groups. 14.5. Law is amended, if required, and/or regulations governing the filing of Madrid applications in AMSs are drafted. 14.6. IP Officers are trained in Madrid operations.

Lastly, the ASEAN has drafted priority actions regarding phase 1 and 2 of the ASEAN agreements on IPR in its AECB:

Table 7: AECB Priority Actions Phase 1 & 2 (ASEAN Secretariat, 2008: 49)

Priority actions	
Phase 1 (2008 - 2009)	**Phase 2 (2010 - 2011)**
Studies to be carried out on (some AECB examples): • Accession to the Madrid Protocol • The contribution of the copyright system to the economic development • Collective management societies and copyright tribunals • Identification of National TK, GR and CTE and collecting inventory	• Completion of studies carried out in collaboration with dialogue partners and follow up activities • To set a common goal to be attained so as to facilitate the development of copyright-based industries in AMC • Formation of national and regional on-line BDS networks • Capacity Building in collaboration with dialogue partners and among AMS (action is present in all the 4 phases) • Amendment of laws and procedures in each AMC • Amendments of laws and regulations for accession, as needed • On-going consultation and information exchanges on IPR protection among national enforcements agencies (action is present in all the 4 phases) • Identification of national Traditional Knowledge (TK), Genetic Resources (GR), Cultural Traditional Expressions (CTE) and collecting inventory

However, although the ASEAN has drafted various agreements that aim to create a comprehensive IP landscape within the ASEAN it remains unclear, which measures had to be undertaken by the AMS in the ASEAN Scorecard in order to comply. The Scorecard regarding a competitive economic region, presented in table 9, indicates that there were no measures to be implemented in phase 1, whereas five measures needed to be implemented in phase 2. Of the five measures that needed to be implemented by the AMS one measure has not been implemented according to the scorecard. However, as it remains unclear, which measures needed to be implemented, it also remains unclear, which measure is not implemented. Moreover, it remains unclear, if all non-complying states have failed to implemented the same measure or whether there are differences regarding in non-implementation of the various non-complying member states.

Table 8: Scorecard Competitive Economic Region (ASEAN Secretariat 2011: 11)

Scorecard Competitive Economic Region				
	Phase 1 (2008-2009)		**Phase 2 (2010-2011)**	
	Fully Implemented Measures	Not Fully Implemented measures	Fully Implemented Measures	Not Fully Implemented Measures
IPR	**X**	**X**	**4**	**1**

Moreover, research on the ASEAN Action Plans (2004-2010 & 2011-2015) on IPR, the ASEAN Work Plan on IPR and the IPR priorities actions in the AECB did not give an answer as well, as to which measures needed to be implemented according to the ASEAN Scorecard. For instance, the Action Plan (2011-2015) has 5 strategic goals, which could correspond with the 5 measures of the Scorecard in table 9. However, it is unlikely that these 5 strategic goals correspond with the 5 measures of the scorecard in table 9, as the Action Plan set out the goals for a period until 2015, whereas phase 2 of the Scorecard covers a period between 2010 and 2011. Furthermore, the priority actions of phase 2 in the AECB shows a confusing picture, as the AECB has 8 priority actions for phase 2 regarding IPR, whereas the Scorecard indicates that phase 2 consists out of 5 IPR related measures that needed to be implemented. Consequently, despite the various agreements on IPR, it remains unclear what the 5 measures, as measured in the Scorecard phase 2, were. This finding is in line with one of the critics, as mentioned in the operationalization (p: 21) regarding the ASEAN Scorecard, as this research was unable to identify the non-implemented measures (or measure) due to a lack of information in the scorecard and contradicting information in other action plans such as the IPR Action Plan 2011-2015. Nonetheless, despite the fact that information on which measure or measures were not implemented by the non-complying states, this research will continue by identifying whether or not state interest and institutional capacity have had an impact on compliance, which is the main goal of this research.

6. Compliance or Non-Compliance: did some Member States comply, whereas other Member States did not comply with the ASEAN IPR Agreements?

In this chapter I am going to compare how the various ASEAN Member States score on the various indicators as constructed in chapter 3. The AEC Scorecard indicated that, regarding the IPR agreements, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam did comply, whereas, Brunei, Cambodia, Lao and Myanmar did not comply. Consequently, based on this starting point, the expectation from the two hypotheses is that Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam will score higher than Brunei, Cambodia, Lao and Myanmar on the various indicators within the concepts of state interest and institutional capacity, as it is expected that higher scores - for the 2008-2011 period - on the indicators correlate with compliance on the AEC IPR agreements. Consequently, this chapter will explore whether or not the indicators of within the variables of state interest and institutional capacity correlate with compliance or non-compliance and can thus give an explanation for compliance or non-compliance of the ASEAN Member States. In order to seek for explanations for compliance or non-compliance, each indicator will be discussed within a separate figure.

6.1. State Interest and Compliance

Theories have shown that the protection of IP is within the states interest as it can be an impulse for the attraction of FDI and new technologies into a country. However, despite this general perceived benefit of IP protection a distinction can be made in the interest of a state regarding IP and IP protection based on the concepts of net-creators and net-consumers of IP. States in which an economic environment is present to be net-creators of IP are in general more willing to put emphasize on the protection of IPR in both their national laws as in the international environment through international treaties and organizations. On the other hand there are the net-consumers of IP, which are often the less developed countries. These countries can be seen as willing to create a basic IP landscape in order to attract FDI and technology. However, they lack the economic environment to create IP, which makes it not their main priority to put much more emphasis on protecting IP. Consequently, a framework of indicators is made in order to assess to which extend an ASEAN Member State has the economic environment to create IP. The more suitable the economic environment is regarding IP-creation, the more IP protection will be within the interest of the member state. Next to that, it is expected that a higher state interest is positively correlated with the likeliness that a state complies with the AEC IPR agreements, as these agreements aim to further strengthen the IP landscape of the ASEAN Member States. On the contrary, lower scores on the state interest indicators are expected to have a negative

influence on compliance, as lower scores make it less likely that a state complies. In order to assess the state interest, based on the capacity of their economic environment for enabling and stimulating IP creation, the following indicators from the WEF GCR are used: innovation capacity, quality of SRI and company spending on R&D. Unfortunately, the GCR the WEF does not contain information for Lao and Myanmar, which are both states that did not comply with the AEC IPR agreements. Therefore, all the figures regarding the indicators of state interest presents the data of eight ASEAN Member States (N=8), of which six (Indonesia, Malaysia, the Philippines, Singapore, Thailand & Vietnam) did comply and two (Brunei & Cambodia) did not comply.

6.1.1. Innovation Capacity

Figure 2 gives an overview of how the ASEAN Member States score regarding the innovation capacity indicator. Within the line of the general expectation of this research, it becomes visible that Brunei and Cambodia, as non-complying states, do indeed score below the other member states. This expectation is especially visible for 2008 and 2009. Other member states, for instance Malaysia and Singapore, score considerably higher and even rank among the top 20 out of more than the 140 assessed states within the GCR. The results for Singapore are often appointed to country's strong commitment for education and science (Washington Post, 2015). The same argument is mentioned for Malaysia, which aims to make the final push to a high-income country with a strong commitment for innovation and development (Meek & Olsson, 2013: 91). Next to the top member states, Vietnam, Indonesia and the Philippines, rank above the non-complying states for the majority of the period.

However, starting from 2010 an increase in scores can be seen for both Brunei and Cambodia. In 2010 both states even outscored, although slightly the Philippines, a state that scored slightly higher than both Brunei and Cambodia in 2010. Moreover, there is a tremendous drop regarding the scores of Vietnam. The drop of Vietnam, in combination with the steady increase of scores for Brunei and Cambodia, results in the fact that Vietnam is even outscored by Brunei and Cambodia in 2011. Besides, the positive increase in scores of Brunei and Cambodia even leads to both countries scoring among, although slightly lower, the score of Thailand.
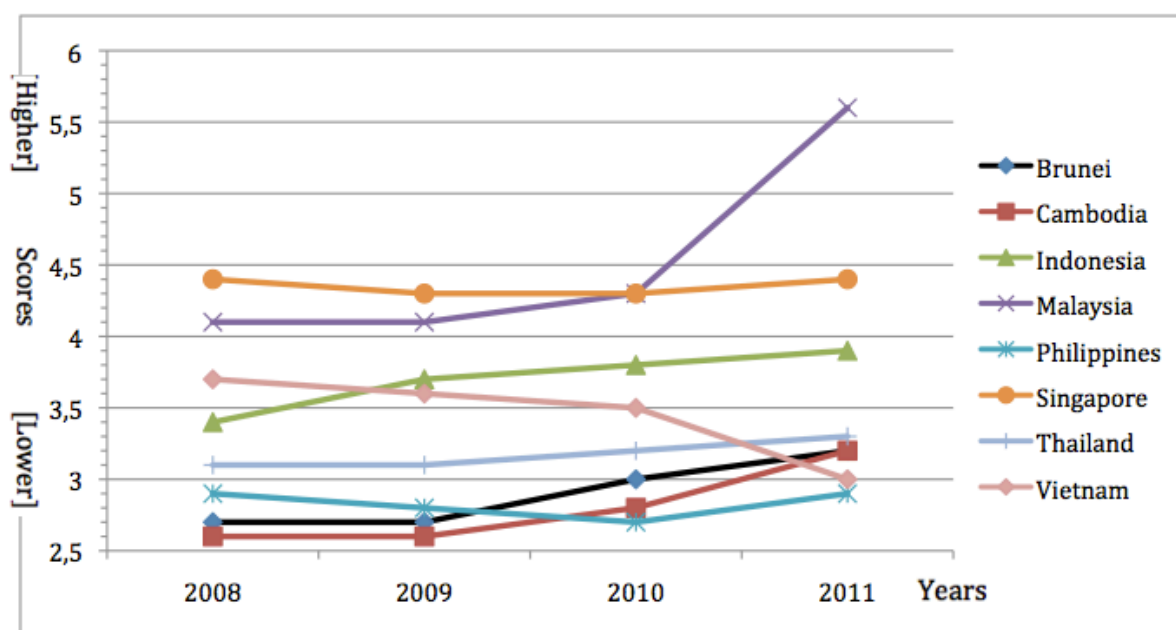
Figure 2: Innovation Capacity [scale 1-7]
* no data Lao & Myanmar

(WEF, 2009; 2010; 2011; 2012)

Table 9: Average Score Innovation Capacity

Rank	Member State	Average Score [2008-2011]	Comply (Yes/No?)
1.	Malaysia	4,53	Yes
2.	Singapore	4,35	Yes
3.	Indonesia	3,70	Yes
4.	Vietnam	3,45	Yes
5.	Thailand	3,18	Yes
6.	Brunei	2,90	No
7.	Philippines	2,83	Yes
8.	Cambodia	2,80	No
Complying States		3,67	
Non-Complying States		2,85	

Nonetheless, looking at figure 2, one can see that the non-complying states of Cambodia and Brunei score among the lowest scoring ASEAN Member States for the majority of the time. Moreover, assessing the average scores of the ASEAN Member States in table 9, it becomes visible that, in line with the expectation regarding state interest, Cambodia and Brunei rank on average among the three lowest scoring ASEAN Member States, whereas the whereas five complying member states - Malaysia, Singapore, Indonesia, Vietnam & Thailand rank within the top six scoring ASEAN Member States. Besides, the combined average score of the complying member states is remarkably higher than the average score of the non-complying members states. The only state that performs against the expectations is the Philippines.

6.1.2. Quality of Research Institutions

In figure 3 the results regarding the quality of the research institutions (SRI) are displayed. The quality of SRI indicates towards the ability of doing research and developing new processes within government- and university laboratories. The results of figure 3 show nearly the same pattern as the results regarding innovation capacity, with Singapore and Malaysia among the highest scoring member states. The high score of Malaysia is, for instance, subscribed to the

public institutions, which actively stimulate staff to take post-graduate studies (Meek & Olsson, 2013: 92). The high scores of Malaysia and Singapore are, again, followed by Indonesia, Vietnam and Thailand.
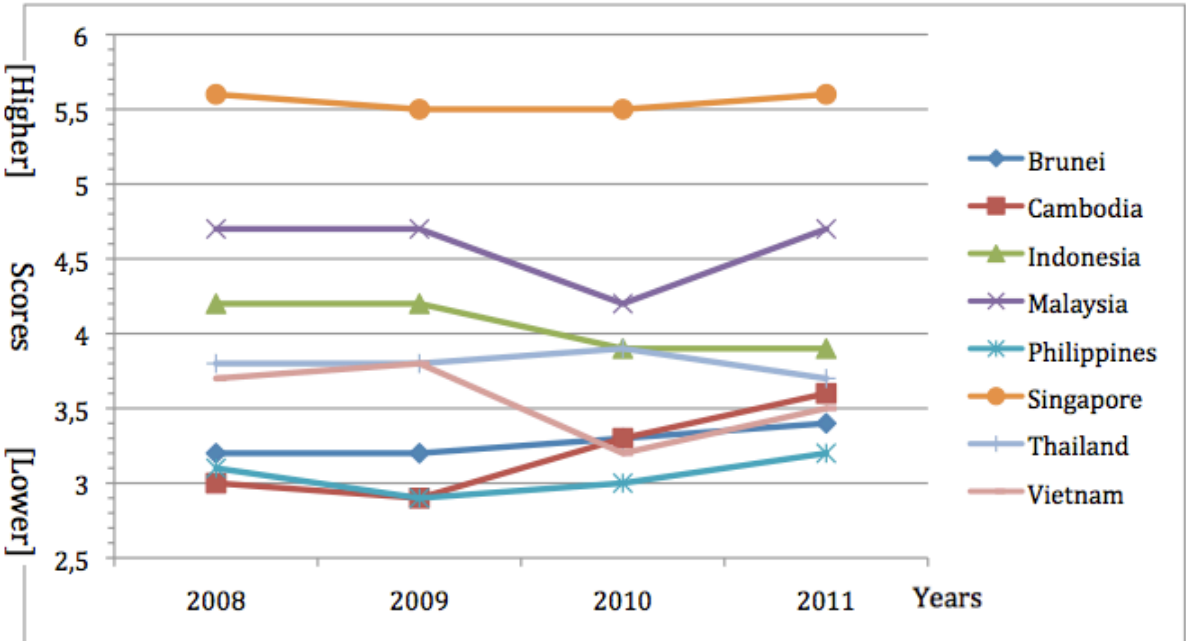

Figure 3: Quality of Scientific Research Institutions [scale 1-7]   (WEF, 2009; 2010; 2011; 2012)
* no data Lao & Myanmar

However, regarding the non-complying states, this time, only Cambodia starts with a score below the other six ASEAN Member States that did comply in 2008, as Brunei scores, slightly, higher than the Philippines. The Philippines scores, again, against the expectation, the lowest score in the 2009-2011 period. Nonetheless, the results have a similar pattern to the scores regarding innovation capacity. Cambodia has, again, an increasing score over the years, which results in high score in 2011 above the Philippines and Vietnam, which once more has a drop in scores starting from 2010. Therefore, in 2010, it becomes clear that two complying member states [the Philippines and Vietnam] have reached lower scores than the non-complying states of Brunei and Cambodia.

Nonetheless, in general, assessing the average scores of the ASEAN Member States in table 10, it becomes clear that the two non-complying score on average among the bottom three scoring member states in the 2008-2011 period. Besides, the combined average score of the complying states higher

Figure 10: Average Score Quality SRI

Rank	Member State	Average Score [2008-2011]	Comply (Yes/No?)
1.	Singapore	5,55	Yes
2.	Malaysia	4,58	Yes
3.	Indonesia	4,05	Yes
4.	Thailand	3,80	Yes
5.	Vietnam	3,55	Yes
6.	Brunei	3,28	No
7.	Cambodia	3,20	No
8.	Philippines	3,05	Yes
Complying States		**4,09**	
Non-Complying States		**3,24**	

than the average scores of the non-complying states. Moreover, five out of the six complying ASEAN Member States score among the top six scoring member states. Consequently, these results can be seen in line with the expectation that higher scores on the SRI indicator are positively correlated to compliance, as higher scores will have a positive influence on the state interest towards IPR. On the contrary, the results also hint that lower scores are negatively related to state interest, which makes compliance less likely.

6.1.3. Company Spending on Research and Development

The last indicator regarding state interest measures to which extend companies spend on research and development within a specific country. States in which companies spend more heavily on R&D are expected to have a greater interest in IP protection, as the results of R&D spending often require IP protection. Moreover, companies are less willing to spend on R&D if the results of R&D are less protected as intellectual property.
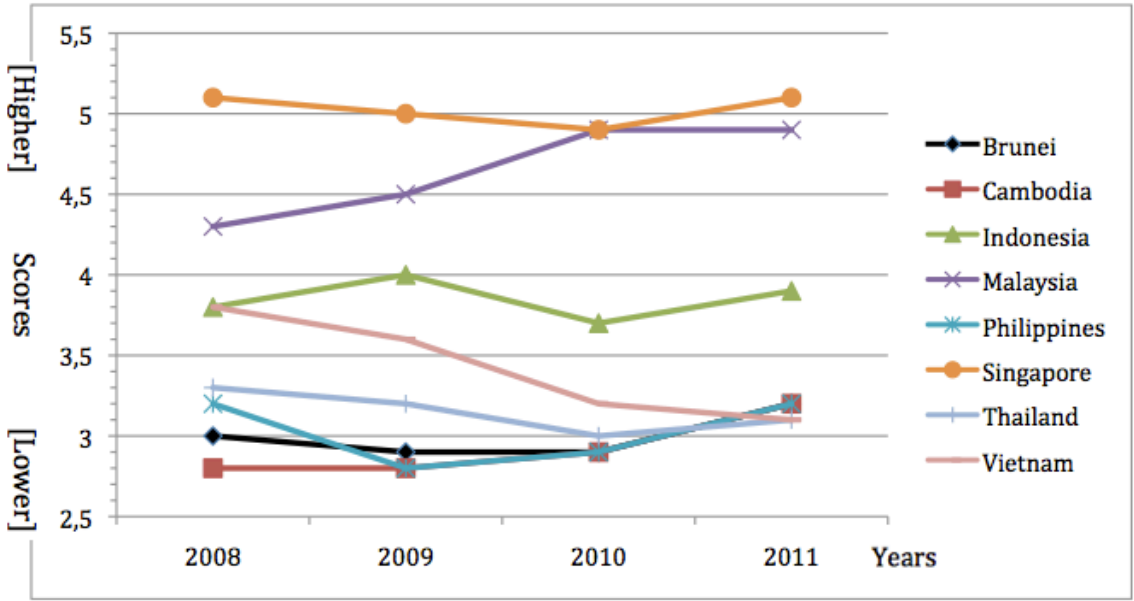
Figure 4: Company spending on Research Design and Development [scale 1-7]   (WEF, 2009; 2010; 2011; 2012
* no data Lao & Myanmar

Similar to the scores on the previous indicators it becomes visible, in figure 4, that the same member states achieve high scores. For instance, again Malaysia and Singapore are the two best scoring member states of the ASEAN. Likewise to the previous indicators, Indonesia and Vietnam are among the next best scoring member states Next to that, the non-complying states of Brunei and Cambodia start as the worst scoring countries, closely followed by, again, the Philippines. The scores of Cambodia are in line with the findings of an OECD rapport from Meek and Olsson (2013: 67), who argue that Cambodia still lags behind Thailand and Malaysia regarding the development of science and technology research. Although Cambodia has made progress, which is also visible in figure 4, the private-sector investment in research is sparse and

the government's views on research and innovation remains unclear (Ibid: 67). Moreover, within this indicator, a rather eye-catching phenomenon has happened, as in 2010 Brunei, Cambodia and the Philippines share the lowest score of all member states. Moreover, in 2011, Brunei and Cambodia even outscore, although slightly, Thailand, which has not happened with the previous two indicators. The low scores for Thailand are also mentioned by Meek and Olsson (2013: 138), who argue that the spending of companies on R&D in Thailand lacks behind most developing states in the Asian region.

Nonetheless, in the period of 2008-2011, the two non-complying member states score on average below the six complying member states. Moreover, table 11 indicates that the combined average score of the complying member states is remarkably above the average score of the non-complying states. Consequently, the findings are in line with the expectations of this research.

Table 11: Average Score R&D

Rank	Member State	Average Score [2008-2011]	Comply (Yes/No?)
1.	Singapore	5,03	Yes
2.	Malaysia	4,65	Yes
3.	Indonesia	3,85	Yes
4.	Vietnam	3,43	Yes
5.	Thailand	3,15	Yes
6.	Philippines	3,03	Yes
7.	Brunei	3,00	No
8.	Cambodia	2,92	No
Complying States		**3,86**	
Non-Complying States		**2,96**	

6.2. Institutional Capacity and Compliance

This section will explore the differences of Cambodia and Vietnam regarding their institutional capacity. Simmons (1998: 83) argues that states may be willing to comply with international agreements. However, these states may lack the institutional capacity to comply with the international agreements despite their willingness to comply. The level of institutional capacity varies greatly throughout the various ASEAN Member States. The ASEAN is upmost aware of the differences in development and names the narrowing of the development gap as one of the main focuses in the 2020 vision of the organization (ASEAN, 2015). The expectation with compliance and institutional capacity is that a higher score on the institutional capacity indicators compared to another state will have a positive effect on compliance, as it makes it more likely that the higher state can comply. On the contrary, lower scores make it more likely that a state will have difficulties with the implementation of agreements, such as the AEC IPR agreements, within the timeframe as agreed upon. Therefore, the expectation is that complying member states will score higher than the non-complying member states. In order to examine this expectation, the following indicators will be assessed: government effectiveness, enrollment (%Gross) for both secondary as tertiary education and the quality of education. In contrast to the indicators of regarding state interest, the indicators regarding institutional capacity do vary among the number of member states of which data is available. Therefore, for each individual indicator, the number of member states will be mentioned.

6.2.1. Government Effectiveness

Firstly, the results regarding government effectiveness will be discussed, based on data from the World Bank. The scale of the figure ranges from -2.5, which indicates a very weak government performance, to 2.5, which indicates a very strong government performance. Unlike the data of the WEF, the data of World Bank does include the scores for Lao and Myanmar. Therefore, this figure shows the data for all ten ASEAN Member States (N=10). Consequently, figure 5 displays the scores of the six states that did comply and four states that did not comply.
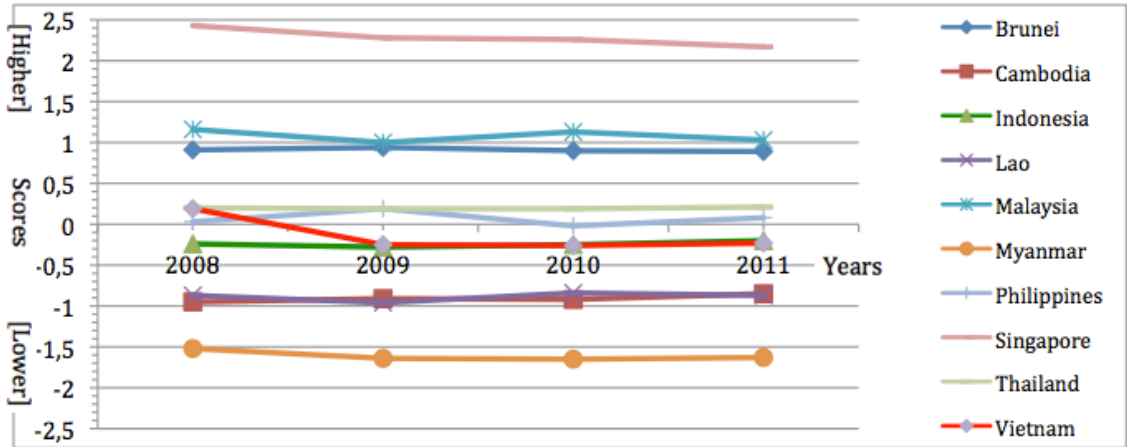

Figure 5: Government Effectiveness [scale -2.5 - 2.5   (World Bank, 2015)

What immediately catches the eye in figure 5 is that there are various gaps in scores between the member states. Similar to the indicators regarding state interest, Singapore and Malaysia are two best scoring member states. However, the non-complying state of Brunei ranks closely to Malaysia as third best scoring member state, which is against the expectation of the hypothesis. Consequently, this implies that Brunei has one of the most effective governments within the ASEAN. In this line, Brunei even ranks among the top 20% of most effective governments on global scale according to the ranking of the World Bank. After Brunei, there is a group of complying member states, existing out of Indonesia, the Philippines, Thailand and Vietnam, that scores between -0.5 and 0.5. After this group, the lowest scoring three member states occur of Cambodia, Lao and Myanmar, which are all non-complying states. These three states score significantly lower than the five complying states and significantly lower than Brunei, their fellow non-complying state. Moreover, Myanmar, scores considerably lower than the others as the worst of all ASEAN Member States. Consequently, this result implies that the governments of Cambodia, Lao and Myanmar can be seen as notably more ineffective compared to the other ASEAN Member States. The ineffectiveness of Cambodia, Lao and Myanmar could have limit the implementation process of the three member states. Moreover, there is nearly, no improvement in the scores for Cambodia, Lao and Myanmar, whereas the scores of Cambodia showed an increase over time at the state interest indicators.

That a lack governmental effectiveness and thus a lack of institutional capacity can be a problem for the non-complying member states is addressed by Mr. Bunnget, the Cambodian Chief of Legal Affairs at Bureau of Cooperation and Legal Affairs, Department of IPR, at the Ministry of Commerce, during a WTO Workshop in 2014, named: WTO Workshop Realizing Developmental of the IP System: LDCs Priority Needs for Technical and Financial Cooperation (Bunnget, 2014). During this WTO workshop, Mr. Bunnget stated that Cambodia dealt with several problems regarding the implementation, strengthening and enforcement of IPR. Among these problems Mr. Bunnget named human resources, such as limited experience and the lack of knowledge regarding IP as a major problem (Ibid: 12). Despite the fact that the WTO workshop took place in 2014, one can assume that the lack of human resources in order to deal with IPR related topics within the Cambodian government was as well present in the 2008-2011 period, as this workshop proves that the lack of human resources is an ongoing problem within the Cambodian governmental institutions that cope with IPR related topics. Next to that, research of Shou (2011: 110) showed that recruiting and maintaining qualified resources is a major challenge for the Cambodian government. Moreover, the United States Trade Representative (USTR), published a trade summary regarding Lao in which the USTR stated that Lao still lacks the governmental capacity to cope with IPR related aspects (USTR, 2015). Moreover, the USTR argues that Lao still has to adapt to the international IPR spectrum, as Lao is only a WTO member since 2013. Consequently, the government of Lao is relatively new to the global IPR related agreements of TRIPS, which makes it no surprise that the government, which is already considered as non-effective, has to become effective in coping with IPR related topics.

Table 12: Average Score Government Effectiveness

Nonetheless, in general, by assessing the average scores of the ASEAN Member States in table 12, it becomes clear that three out of the four non-complying member states score among the bottom four scoring member states. Moreover, the combined average score of the non-complying states is clearly lower than the complying member states. As already mentioned, the only exception is

Rank	Member State	Average Score [2008-2011]	Comply (Yes/No?)
1.	Singapore	2.29	Yes
2.	Malaysia	1,08	Yes
3.	Brunei	0,91	No
4.	Thailand	0,20	Yes
5.	Philippines	0,07	Yes
6.	Vietnam	-0,14	Yes
7.	Indonesia	-0,24	Yes
8.	Cambodia	-091	No
9.	Lao	-0,89	No
10.	Myanmar	-1,61	No
Complying States		**0,54**	
Non-Complying States		**-0,63**	

Brunei, ranked on average at the third place, as a non-complying member state, which is against the expectation of this research.

6.2.2. Educational Enrollment and Educational Quality

In this paragraph I will discus the last indicators regarding institutional capacity. It is argued institutional capacity is affected by the skills, or lack thereof, of the civil servants. As is mentioned before, the institutional capacity can be affected by many factors. One of these factors is education, as a relation is expected between the education the skills of the workforce. Consequently, the indicators of secondary enrollment, tertiary enrollment and the quality of education will be discussed.

Firstly, the **secondary school enrollment rates** will be discussed. However, a remark has to be made that data for some years for some states was not available. For instance, the Philippines only had data for 2008 and 2009 regarding secondary enrollment, whereas Singapore and Myanmar lack data for 2011. Nonetheless, this data does give an indication on were for instance the Philippines scores compared to the other ASEAN Member States. Therefore, it barely limits the purpose of this research. In general, if there is data missing for a member state regarding the enrollment rate indicators, this research will assume that the rates will follow the general trend line, which is - as figure 6 will show - a slightly upwards scope.
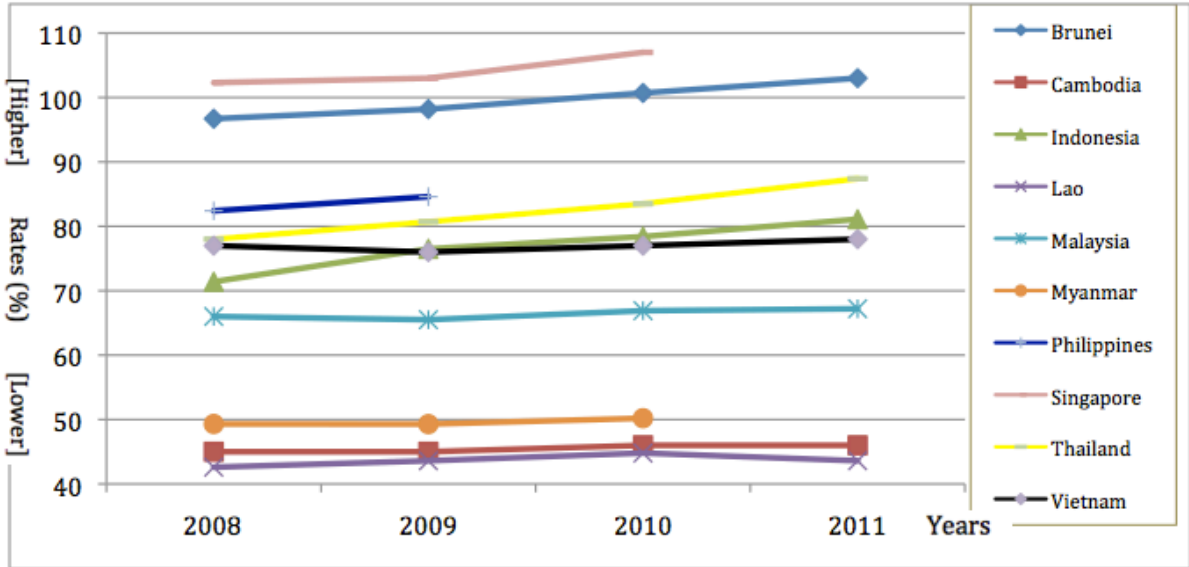
Figure 6: Enrollment (%Gross) Secondary Education   (World Bank, 2015; WEF, 2009; 2010; 2011; 2012)

At first glance, the school enrollment data for secondary education are in line with the expectation of this research, as figure 6 indicates that Cambodia, Lao and Myanmar have the lowest secondary school enrollment scores of all ASEAN Member States. However, just as with government effectiveness, Brunei scores among the best ASEAN Member States, as only Singapore has a higher secondary school enrollment. Within this research it is argued that high scores regarding enrollment rates has a positive effect on the skill set of the workforce within a state.

Moreover, the average scores of the ASEAN Member States give, naturally, a similar picture to figure 6. With the exception of Brunei, all non-complying member states rank among the bottom four scoring states. Furthermore, the combined average of the complying states is fairly higher than the combined non-complying member states. Therefore, the results of table 13 indicate towards a relation between higher

Rank	Member State	Average Score [2008-20011]	Comply (Yes/No?)
1.	Singapore*	104,10%	Yes
2.	Brunei	99,65%	No
3.	Philippines*	83,50%	Yes
4.	Thailand	82,40%	Yes
5.	Vietnam	77,00%	Yes
6.	Indonesia	76,85%	Yes
7.	Malaysia	66,40%	Yes
8.	Myanmar*	49,60%	No
9.	Cambodia	45,50%	No
10.	Lao	43,65%	No
Complying States		**81,71%**	
Non-Complying States		**59,60%**	
* No data available for some years			

scores and compliance and lower scores and non-compliance However, it is often argued that higher, tertiary, education is required in order to deal with the complex matters of IPR.

Regarding the **tertiary school enrollment rates** in figure 7, a similar pattern for the non-complying member states of Cambodia, Lao and Myanmar, can be found, as they have the three lowest enrollment rates. However, a remark has to be made that, for Myanmar, data for tertiary school enrollment was only available for the year 2011. Nonetheless, looking at the general slightly upwards trend of most member states, it can be expected that Myanmar would have had lower enrollment percentages than the complying member states for the remainder of the years.

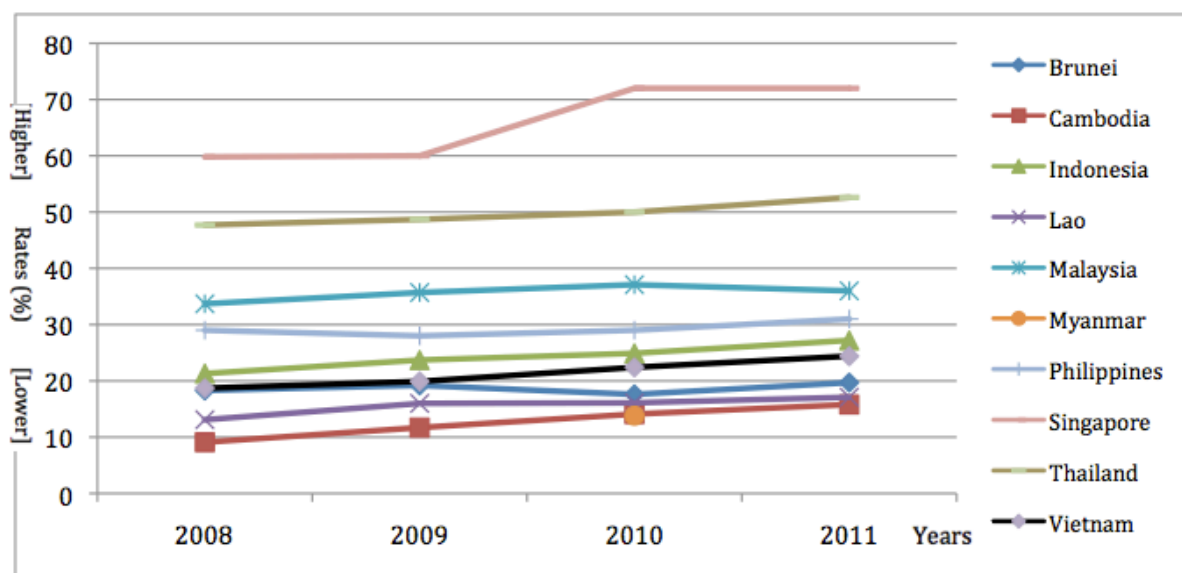*Figure 7: Enrollment (%Gross) Tertiary Education   (World Bank, Year; WEF, 2009; 2010; 2011; 2012)*

Furthermore, an interesting tertiary enrollment percentage can be seen for Brunei. Brunei ranks among the worst four member states regarding tertiary enrollment percentages, whereas Brunei had one of the highest enrollment rates regarding secondary education. The significant

drop of enrollment of tertiary education compared to secondary education can be ascribed to the fact that Brunei is mainly an oil exporting country. According to Mr. Gibbins, the Director of the Australian-based consultant company SGS Economics and Planning, the low tertiary enrollment percentages is due to Brunei being a oil exporting state in which the revenues are injected in the public service sector (Embassy of Brunei in Brussels, 2015). Therefore, he continues, it is less necessary for the workforce in Brunei to enroll in tertiary education, as jobs in the public service sector of Brunei often only require secondary education (Ibid). Therefore, with the low enrollment rate of Brunei regarding tertiary education compared to their enrollment rate for secondary education, figure 7 displays that, regarding the tertiary enrollment percentages, all the complying member states score above the non-complying member states.

Non-surprisingly, the average scores of the ASEAN Member States show a ranking in which all four the non-complying states rank among the bottom four scoring member states. On the contrary, this implies that all six complying member states scores above the non-complying member states and thus rank in the top six. Consequently, the top six consist out six complying member states and the bottom four consists out of four non-complying member

Table 14: Average Score Tertiary Education Enrollment

Rank	Member State	Average Score [2008-2011]	Comply (Yes/No?)
1.	Singapore	52,45%	Yes
2.	Thailand	49,75%	Yes
3.	Malaysia	35,63%	Yes
4.	Philippines	29,25%	Yes
5.	Indonesia	24,285	Yes
6.	Vietnam	20,85%	Yes
7.	Brunei	18,63%	No
8.	Lao	15,58%	No
9.	Myanmar*	13,81%	No
10.	Cambodia	12,68%	No
Complying States	**35,37%**		
Non-Complying States	**15,18%**		
* No data available for some years			

states. Moreover, the combined average of the complying member states is more than double the combined average of the non-complying member states. Therefore, table x seems to indicate a positive relation between higher tertiary educational enrollment rates and compliance and a positive relation between lower tertiary enrollment rates and non-compliance.

Lastly, the **quality of the educational system**, figure 8, will be discussed. After the enrollment percentages, it is important to assess the quality of the education, as the quality of the educational system can have an influence on the skills of the workforce. Enrollment rates can be high, but if the quality of education is poor it becomes more likely that the educational system delivers quantity over quality regarding the skills and education of the workforce. In contrast with the enrollment rates, figure 8 doest not provide data for Lao and Myanmar, as the quality of education indicator is deducted from the WEF GCR. Consequently, only two non-complying (Brunei and Cambodia) and the group of six compliers are presented.

Once more, Singapore and Malaysia form the leaders of the group. However, of the non-complying states, Brunei scores higher than Indonesia, Thailand and Vietnam, which are the three remaining complying states. Next to that, figure 8, displays that the score of Cambodia firstly lacks a little behind in, especially, 2008 but also in 2009. However in 2010, Cambodia, scores slightly above the scores of the complying member states of Thailand and Vietnam. Furthermore, the upward trend of Cambodia continues in 2011, in which Cambodia scores again higher than Thailand and Vietnam and just a little below the complying member states of Indonesia and the Philippines. Nonetheless, figure 8 displays that in the 2008-2011 period the top six scoring member states existed out of five complying member states. However, figure 8 also displays that, within the entire period the lowest three scoring member states do not consist out of two non-complying member states. The only non-complying member state that continually ranks among the least three scoring member states for the entire period is Cambodia.
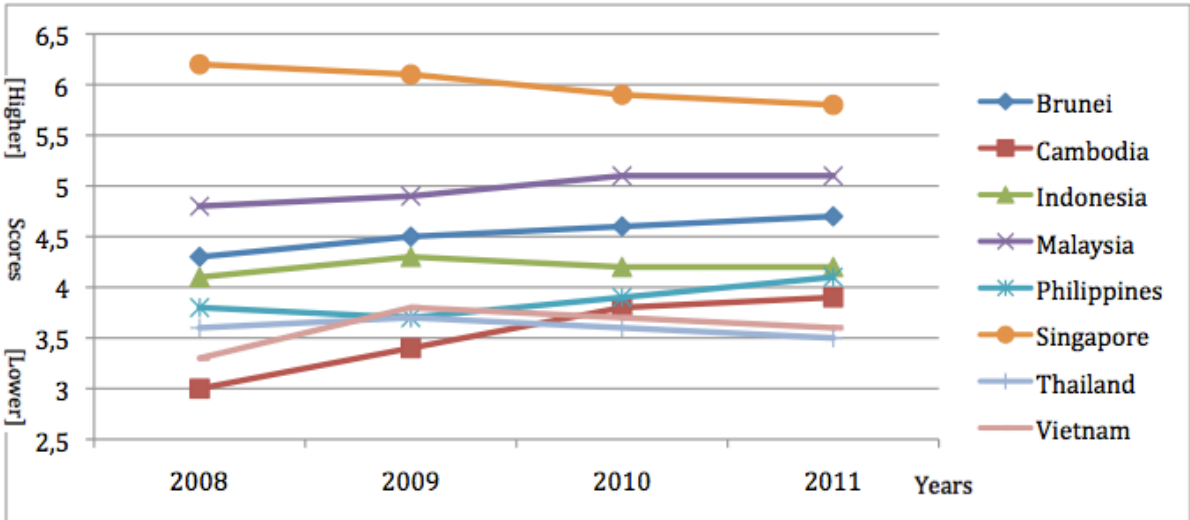

Figure 8: Quality of the Educational System [Scale 1-7]   (WEF, 2009; 2010; 2011; 2012)
*no data for Lao & Myanmar

However, in 2010 and 2011 Thailand and Vietnam even scored below Cambodia. Moreover, various sources do indicate that the quality of education in ASEAN Member States such as Vietnam, Cambodia and Thailand is poor. For instance in Cambodia, the quality of education lacks behind due to poor quality of the facilities and teachers (University World News, 2015). Moreover, the Vietnamese minister of education Vu Luan, argued that the quality of education in Vietnam is poor due to a great quantitative of poor universities (University World News, 2015a). Lastly, UNICEF mentions that the education of Thailand lacks behind with for instance low scores for math, reading and science (UNICEF, 2015).

Assessing the average scores of the ASEAN Member States, the contradicting results become visible. On the one hand, the complying member states do, based on the combined average score, score higher than the non-complying member states. However, the difference of scores between the complying and non-complying member states are not that large

Table 15: Average Scores Educational Quality

Rank	Member State	Average Score [2008-2011]	Comply (Yes/No?)
1.	Singapore	6,00	Yes
2.	Malaysia	4,98	Yes
3.	Brunei	4,53	No
4.	Indonesia	4,20	Yes
5.	Philippines	3,88	Yes
6.	Vietnam	3,60	Yes
7.	Thailand	3,60	Yes
8.	Cambodia	3,53	No
Complying States		4,38	
Non-Complying States		4,03	

as was visible with the other indicators. Next to that, of the two non-complying member states, only Cambodia performs among the bottom three scoring member states, as Brunei ranks fairly high, and against the expectations, at the third spot. Consequently, this indicator gives a rather mixed image based on the scores and ranks of the ASEAN Member States and the relation of compliance or non-compliance with the quality of education.

7. Do State Interest and Institutional Capacity have an influence on the Compliance of the ASEAN Member States with the AEC IPR Agreements?

This research started off with the question how the differences of implementation scores of the AMS regarding IPR agreements could be explained for phase 1 & 2 on the road towards the AEC. However, due to the vagueness of the ASEAN Scorecard, this research was unable to explore the measures that needed to be implemented by the ASEAN Member States. Consequently, this research was also unable to locate the measure(s) that Brunei, Cambodia, Lao and Myanmar failed to implement. Nonetheless, this research aimed to find factors that could have influenced whether or not a state complied with the AEC IPR agreements. It has been theoretically argued that both state interest and institutional capacity can have an influence towards whether or not a state does or does not comply with international agreements and various hypotheses have been created. Within these hypotheses, a general trend is expected in which a larger state interest regarding the international agreement and/or a greater institutional capacity of the states institutions will make it more likely that the state complies. On the other hand, the hypotheses imply that a lesser state interest in the agreement and/or a lesser institutional capacity will make it less likely that a state complies and thus more likely that a state does not comply. In order to measure the state interest and institutional capacity, various indicators have been selected. Regarding this indicators, the expectation was that higher scores would make compliance more likely, whereas lower scores would make compliance less likely. However, as the states that did comply and the states that did not comply were already know, based on the ASEAN Scorecard. Within the ASEN Scorecard it became visible that Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam did comply, whereas Brunei, Cambodia, Lao and Myanmar did not comply. Based on the theories and hypotheses, it was expected that the group of six complying states would score higher on the various indicators within the variables of state interest and institutional capacity than the four non-complying member states.

Firstly, the state interest will be discussed. Within this research the state interest is seen as the ability of the economy within a state to create IP. Consequently, indicators - innovation capacity, quality of SRI & company spending on R&D - have been selected, which can benefit the creation of IP within a state. The data of the indicators, table x, suggests that these three indicators have met the three criteria. Firstly, within all three indicators, the two non-complying member states rank among the bottom three scoring member states. Secondly, five out of six complying member states rank among the top 6 scoring member states. Thirdly, the data of the combined average for complying and non-complying member states indicates that complying member

states score higher than the non-complying member states. Therefore, all three the indicators show that there is a relation between state interest and compliance. Nonetheless, this research has left space for an exception, as a member state could perform against the expectations of this research. Within all indicators it became clear that one state proved to be a, negative, exception, as the Philippines - a complying state - ranked among the lowest three scoring member states for all three indicators. Regarding the quality of SRI, the Philippines even performed worse than the two non-complying states of Brunei and Cambodia. Nonetheless, in sum, the results indicate that a positive relation between higher scores, and thus a higher state interest, and compliance can be expected, whereas this data also indicates that a negative effect between low scores, and thus a lesser state interest and compliance can be expected. Therefore, the results of this research do indicate that state interest has an influence on compliance with international agreements such as the ASEAN IPR agreements, whether it is positive due to a greater state interest or negative due to a lesser state interest.

Table 10: Results on the State Interest Indicators

Red = Non-Complying States   Green = Complying States

Rank	Innovation Capacity		SRI		R&D	
	AMS	Score [1-7]	AMS	Score [1-7]	AMS	Score [1-7]
1.	Malaysia	4,53	Singapore	5,55	Singapore	5,03
2.	Singapore	4,35	Malaysia	4,58	Malaysia	4,65
3.	Indonesia	3,70	Indonesia	4,05	Indonesia	3,85
4.	Vietnam	3,45	Thailand	3,80	Vietnam	3,43
5.	Thailand	3,18	Vietnam	3,55	Thailand	3,15
6.	Brunei	2,90	Brunei	3,28	Philippines	3,03
7.	Philippines	2,83	Cambodia	3,20	Brunei	3,00
8.	Cambodia	2,80	Philippines	3,05	Cambodia	2,92
	Complying States	**3,67**	Complying States	**4,09**	Complying States	**3,86**
	Non-Complying States	**2,85**	Non-Complying States	**3,24**	Non-Complying States	**2,96**

Secondly, the institutional capacity will be discussed. Institutional capacity is, within this research, determined by the effectiveness of the government and the skill set of the civil servants. It is argued that skills are correlated to education. Therefore, indicators on the enrollment and quality of the education are selected among the indicators. Assessing the various indicators, it becomes clear that the result of the data within this research indicates towards a relation between high or low scores and compliance for the government effectiveness, secondary enrollment and tertiary enrollment indicators, as all three criteria for these indicators are met. Firstly, at least three out of the four (N=10) non-complying member states ranked among the four worst scoring member states. However, Brunei proved to be a positive exception regarding governmental effectiveness and secondary enrollment percentage, as Brunei

performed among the best scoring member states. Nonetheless, an exception was accepted within this research. Secondly, at least five out of the six complying member states scored within the top six for those three indicators. As mentioned, Brunei proved to be the only non-complying member state within the top six for the governmental effectiveness and secondary enrollment indicators, whereas Indonesia (government effectiveness) and Malaysia (secondary enrollment) fell out of the top six. Moreover, remarkably, regarding tertiary enrollment all complying member states performed above the non-complying member states. Thirdly, regarding all three indicators, all complying member states scored, combined, on average fairly higher than the non-complying member states.

Nonetheless, one indicator did not fulfill the criteria, which is the educational quality indicator. Cambodia was the only non-complying member state (N=8) in the bottom three scoring member states, as Brunei performed among the best scoring member states. Therefore, although the other two criteria were fulfilled, higher or lower scores on this indicator will not be seen as correlated with compliance. Nonetheless, as three out of the four indicators do indicate towards a relation between high or low scores and compliance, the general hypothesis that institutional capacity has an impact on compliance can be accepted. Higher scores on the indicators do hint towards an increased likeliness that a state complies, whereas lower scores do also indicate towards an increased likeliness that a state does not comply. Furthermore, this finding can be seen in line with the claim of many authors, such as Falkner (2007) and Simmons (1998) that institutional capacity, or the lack of institutional capacity can have an influence on compliance.

Table 11: Results on Institutional Capacity Indicators

Red = Non-Complying States   Green = Complying States

Rank	Government Effectiveness		Enrollment (%) Secondary		Enrollment (%) Tertiary		Quality of Education	
	AMS	[2.5] Score [-2.5]	AMS	Score	AMS	Score	AMS	[1] Score [7]
1.	Singapore	2.29	Singapore*	104,1%	Singapore	52,45%	Singapore	6,00
2.	Malaysia	1,08	Brunei	99,65%	Thailand	49,75%	Malaysia	4,98
3.	Brunei	0,91	Philippines*	83,50%	Malaysia	35,63%	Brunei	4,53
4.	Thailand	0,20	Thailand	82,40%	Philippines	29,25%	Indonesia	4,20
5.	Philippines	0,07	Vietnam	77,00%	Indonesia	24,285	Philippines	3,88
6.	Vietnam	-0,14	Indonesia	76,85%	Vietnam	20,85%	Vietnam	3,60
7.	Indonesia	-0,24	Malaysia	66,40%	Brunei	18,63%	Thailand	3,60
8.	Cambodia	-091	Myanmar*	49,60%	Lao	15,58%	Cambodia	3,53
9.	Lao	-0,89	Cambodia	45,50%	Myanmar*	13,81%		
10.	Myanmar	-1,61	Lao	43,65%	Cambodia	12,68%		
	Complying States	0,54	Complying States	81,7%	Complying States	35,37%	Complying States	4,38
	Non-Complying States	-0,63	Non-Complying States	59,6%	Non-Complying States	15,18%	Non-Complying States	4,03

In sum, most indicators scored in line with the expectation. Therefore, the results of this research, based on the average score of the ASEAN Member States on the indicators for the 2008-2011 period, suggest that both state interest and institutional capacity, based on the various selected indicators, can have a negative or positive effect on compliance. In line with the expectation, a greater state interest and/or greater institutional capacity does seem to make compliance more likely, whereas a lesser state interest and/or lesser institutional capacity does seem to make compliance less likely.

7.1. Discussion

The findings of this research have been in line with the expectations based on the information from other research and theories. Therefore, this research has contributed to strengthening the arguments made by for instance Simmons (1998), Tallberg (2002) and Falkner (2007) regarding the effect of institutional capacity and compliance and the arguments of Koremos, Lipson and Snidal (2001) regarding state interest. Next to that, this research has tried to provide a framework, based on WEF data and indicators, in which one can rank states based on their capacity to create IP, arguing that a greater capacity to create IP indicates towards a greater state interest in protecting IP. Consequently, this framework can be used in order to assess the statement of Pupphavesa (et al, 2009: 62) in which it is argued that net-creators of IP have a greater interest in IP protection through treaties and other IPR related international or regional agreements. Moreover, other WEF indicators, such as the availability of scientist and engineers in a country, can extend the framework of state interest, the ability to create IP. Therefore, this framework can form a basis to generalize the net-creator and net-consumer of IP argument to other research and to research with larger samples, as the focus on the ASEAN limited this research to investigate a larger sample (N). Nonetheless, the findings of this research do support the argument of Pupphavesa (2009), as higher scores on the state interest indicators, which suggested a greater economic environment suitable for net-creation of IP, made it more likely that a state complies due to a greater state interest.

However, despite the fact that most member states have scored in accordance with the expectation of the hypotheses, this research left room for exceptions. One notable exception to the expectation was visible on the state interest indicators, as the Philippines tend to score among the bottom three member states, and sometimes even as least performing member state. Therefore, the expectation would be that the Philippines would not have a great interest in IPR protection, which would make them less likely to comply. However, the Philippines did comply, despite this expected lesser state interest. Nonetheless, there does seem to be an explanation for

the compliance of the Philippines, as Antons (2006: 1) argues that the Philippines have one of the longest histories with IP laws of the ASEAN, due to their colonialist history as a colony of Spain. Within the fit or misfit theory, it is argued that compliance is more likely once a state already have similar laws and customs in place to which it has to comply in an international setting. Consequently, this could offer an explanation for the fact that the Philippines complied despite a lack of state interest based on the indicators within this research.

Moreover, an interesting finding in the analysis is the year 2011 in which the non-complying member states tend to outscore more complying member states than in the other three previous years. Therefore, the requirement, as set in this research, to have two non-complying member states in the bottom 3 (N=8) or three non-complying member states in the bottom 4 (N=10), is often not met in 2011. The higher scores for the non-complying member states and the lower scores for some complying member states in 2011 might have come to late in order to have an effect on compliance for phase 1 and 2, which ends at the end of 2011. Nonetheless, these scores in 2011 might have an influence on the compliance of the member states in the further road, phase 3 and 4, to the ASEAN Economic Community, as the results of this research do indicate a greater or lesser state interest and/or institutional capacity can influence the likeliness of compliance for the ASEAN Member States regarding the AEC IPR agreements.

Furthermore, continuing on the small N of this research, it also needs to be stressed that the WEF data did not provide data for Lao and Myanmar, which are two non-complying member states in the 2008-2011 period. However, starting from the GCR 2013-14, the rapport analysis the year 2012, the World Economic Forum has included Lao and Myanmar in their reports. Consequently, it could be interesting to further research the progress on the road to the AEC for phase 3 and 4 based, as it is now possible to analyze all the ASEAN Member State for both the indicators of the WEF and the World Bank, as the AEC is still a work in progress and the ASEAN still has to publish the Scorecards of phase 3 (2012-2013) and phase 4 (2014-2015). Moreover, this implies that a possibility remains that AMS, such as Cambodia and Brunei, will catch up with non-implemented measures of previous phases before the AEC enters into force.

Moreover, the time-period of 4 years (2008-2011) can be seen as a limitation, as a longer time period could give a broader overview and trend regarding the results on the variables of state interest and institutional capacity. This limitation is recognized. However, a limited time-period (2008-2011) is chosen, as this period gives an

overview of the state interest and institutional capacities during the period in which the implementation of the measures had to take place. Therefore, this period gives an overview of the current state of both countries, also arguing that both states had to implement the agreements in their current state regarding state interest and institutional capacities. Moreover, continuing on the Scorecard, this research was unable to locate which measures needed to be implemented by the member states and which measures were not implemented by the non-complying member states. However, it remains the question whether the upcoming ASEAN Scorecards will provide the information that is required in order to solve this problem.

Lastly, although this research acknowledges its limitations, it also stresses the opportunities that these limitations offer possibilities for further research. Future research can build on the results of this study by keeping a focus on the ASEAN on its road to the AEC, but also by generalizing the framework and results to other international agreements. Lastly, it remains to be seen how transparent the coming Scorecards will be. Clearly, a step in transparency has to be made in order to track the progress to the AEC. The ASEAN needs to clarify which measures are measured within each phase and within each subject in the Scorecard. Moreover, the ASEAN needs to clarify the measures on which a member state was unable to comply. Only when the transparency is increased one can truly assess the real progress of the ASEAN Member States on the road to the ASEAN Economic Community.

8. List of References

Abbott & Snidal (2001). Hard Law and Soft Law in International Governance. *International Organizations* (54:3), 421-456.

ADB & ILO. (2014). *ASEAN Community 2015: managing integration for better jobs and shared prosperity.*

Anh, L.H. *Strategies for Mobilizing Human and Financial Resources to Improve Patent Search and Examination Capability*

Antons, C. (2006). Intellectual Property Law in Southeast Asia: recent legislative and institutional developments. *Journal of Information, Law and Technology* (1-1), 1-11.

ASEAN. *ASEAN Vision 2020.* [http://www.asean.org/news/item/asean-vision-2020]. 20 Feb 2015.

ASEAN IPA. *IP Protection in Vietnam.* [http://www.aseanipa.org/index.php/members/viet-nam/185-ipguidesvietnam?limitstart=0]. 20 May 2015.

ASEAN IPR SME Helpdesk. (2014). *Intellectual Property and the ASEAN Economic Community in 2015.*

ASEAN Secretariat. (2004). *ASEAN Intellectual Property Right Action Plan (2004-2011).*

ASEAN Secretariat (2008). ASEAN Economic Community Blueprint.

ASEAN Secretariat. (2011). ASEAN Intellectual Property Right Action Plan (2011-2015).

ASEAN Secretariat. (2011). *ASEAN Economic Community Scorecard: Charting Progress Toward Regional Economic Integration - Phase 1 (2008-2009) & Phase 2 (2010-2011).*

Aspinwall, M. & Schneider, G. (2000). Same Menu, Seperate Tables: the Institutionalist Turn in Political Science and the Study of Europeas Integration. *European Journal of Political Research* (38), 1-36.

Avdeyeva, O. (2007). When Do States Comply with International Treaties? Policies on Violence Against Women in Post-Communist Countries. *International Studies Quarterly* (51), 877-900.

Basu Das, S. (2013). *Chapter 1: Assessing the Progress and Impediments Towards an ASEAN Economic Community [in ASEAN Economic Community Scorecard: Performance and Perception by Basu Das, S.].* Institute of Southeast Asian Studies.

Berg, B. (2009). *Qualitative Research Methods: for the social sciences (7th edition).* Boston, US: Pearson Education Inc.

Blatter, J. & Haverland, M., (2012). Chapter 2: *Design Case Studies: Explanatory Approaches in Small-N Research.* Palgrave MacMillan: Houndsmills.

Blizkovsky, P. (2012). Two Crises, Two Responses: Adjustment of Economic Governance in ASEAN and the European Union. *Asia Europe Journal* (9), 91-106.

Bunnget, T. (2014). *IP Development in Cambodia. WTO Workshop Realizing Developmental of the IP System: LDCs Priority Needs for Technical and Financial Cooperation, Geneva 12-13 June 2014.*

Buracom, P. (2014). ASEAN Economic Performance Institutional Effectiveness and Foreign Direct Investment. *Asian Affairs: an American Review* (41-3), 108-126.

Cambodia Daily. *Cambodia Far From Intellectual Property Targets.* [https://www.cambodiadaily.com/archives/cambodia-far-from-intellectual-property-targets-26805/]. 5 June 2015.

CARI. (2013). *The ASEAN Economic Community (AEC): an alternative Scorecard approach, the real status of implementation, challenges and bottlenecks.*

Cockerham, G. (2009). Regional Integration in ASEAN: Institutional Design and the ASEAN Way. *East Asia* (27), 165-185.

Davies, M. (2010). Rhetorical Inaction? Compliance and the Human Rights Council of the United Nations. *Alternatives (35)*, 449-468.

DB. (2013). *ASEAN Economic Community (AEC).*

EF. *EF English Proficiency Index (EPI).* [http://www.ef.nl/epi/]. 6 June 2015.

Embassy of Brunei in Brussels. *Brunei's low FDI linked to tertiary education index*. [http://bruneiembassy.be/bruneis-low-fdi-linked-to-tertiary-education-index/]. 19 August 2015.

Falkner, G., Hartlapp, M., & Treib, O. (2007). Worlds of Compliance: Why Leading Approaches to EU Implementation are only ' sometimes-true theories'. *European Journal of Political Research (46: 3)*, 395-416.

Glen, C. & Murgo, R. (2003). United Nations Human Rights Conventions: Obligations and Compliance. *Politics & Policy (31-4),* 596-619.

Hettne, B. & Söderbaum, F. (2000). Theorising the Rise of Regionness. *New Political Economy* (5:3), 457-473.

Hurrel, A. (1995). Explaining the Resurgence of Regionalism in World Politics. *Review of International Studies* (21:4), 331-358.

ICC. *Intellectual Property: Source of Innovation, Creativity, Growth and Progress.*

Keukeleire, S., & Hooijmaaijers, B. (2014). The BRICS and Other Emerging Power Alliances and Multilateral Organizations in the Asia-Pacific and the Global South: Challenges for the European Union and Its View on Multilateralism*. Journal of Common Market Studies*, 52(3), 582-599.

Kilgour, L. (2008). Building intellectual Property Management Capacity in Public Research Institutions in Vietnam: Current Needs and Future Directions. *Minn J.L. SCI & Tech* (9-1), 217-68.

Kim, M. (2011). Theorizing ASEAN Integration. *Asian Perspective* (35), 407-435.

Koh, H-H. (1997). Why do Nations Obey International Law? *Yale Faculty Scholarship Series Paper 2101.*

Koster, F & De Beer, P. (2009). *Sticking together or falling apart. Solidarity in an era of individualization and globalization.* Amsterdam: Amsterdam University Press.

Koremos, B., Lipson,, C. & Snidal, D. (2001). The Rational Design of International Institutions. *International Organizations* (55:4), 761-799.

Meek, L. & Olsson, A. (2013). *Effectiveness of Research and Innovation Management at Policy and Institutional Levels: Cambodia, Malaysia, Thailand and Vietnam.* Published by the OECD.

Molle, W. (2014). *Governing the World Economy.* London and New York. Routledge.

Narine, S. (2008). Forty Years of ASEAN: A Historical Review. *The Pacific Review* (21:4), 411-429.

Narjoko, D., Karita, P. & Wicaksono, T. (2009). Chapter 5: *Narrowing the Development Gap in ASEAN [in Realizing the ASEAN Economic Community: a comprehensive assessment by Plummer, M. & Yue, C.].* Institute of South East Asian Studies.

NBC. *Europe's Border Crisis.* [http://www.nbcnews.com/storyline/europes-border-crisis]. 20 August 2015.

Phan, H. (2014). Promoting Compliance: An Assessment of ASEAN Instruments Since the ASEAN Charter. *Syracuse Journal of International Law and Commerce* (41:2), 379-411.

Pupphavesa, W., Chaisrisawatsuk, S., Sudsawasd, S. & Ongkittikul, S. (2009). *Chapter 3: Competition Policy, Infrastructure and Intellectual Property Rights [in Realizing the ASEAN Economic Community: a comprehensive assessment* by Plummer, M. & Yue, C]. Institute of South East Asian Studies.

Raustiala, K. & Slaugter, A-M. (2002). International Law, International Relations and Compliance. *Princeton Law & Public Affairs (2: 2),* 538-558.

Rillo, A. (2013). *Chapter 2: Monitoring the ASEAN Economic Community Issues and Challenges [ASEAN Economic Community Scorecard by Basu Das, S.].* Institute of Southeast Asian Studies.

Sarel ,M. (1996). Growth in East Asia: what we can and what we cannot infer. *International Monetary Fund; Economic Issues* (1), 1-22.

Severino, R. *ASEAN: What it cannot do, what it can do and should do [in ASEAN Matters by Yoon, L.].* World Scientific Publishing Co: Singapore.

Shuo, W. (2011). Trends in Development and Issues Related to IP Systems in Three GMS Countries: Cambodia, Lao PDR and Thailand. *Ritsumeikan International Affairs* (10), 95-118.

Siew-Kuan Ng. E. (2013). ASEAN IP Harmonization: Striking the Delicate Balance. *Pace International Law Review* (25-1), 129-160.

Simmons, B. (1998). Compliance with International Agreements. *Annual Review of Political Science* (1), 75-93.

Soesastro, H. (2008). *Deepening Economic Integration - The ASEAN Economic Community and Beyond.* ERIA Research Project Report. Chiba: IDE- JETRO.

Stubbs, R. (2008). The ASEAN Alternative? Ideas, Institutions and the Challenge to 'Global' Governance. *The Pacific Review,* (21:4), 451-468.

Tai, B. (2011). *Chapter 4: Can we do anything about the unimplemented ASEAN Agreements? [in ASEAN Matters by Yoong, L.].* World Scientific Publishing Co: Singapore.

Tallberg, J. (2002). Paths to Compliance: Enforcement, Management, and the European Union. *International Organizations (56:3),* 609-643.

The Economist Intelligence Unit. (2014). *Re-drawing the ASEAN Map.*

The Guardian. *Britain joins the anti-EU tune played across the continent.* [http://www.theguardian.com/commentisfree/2014/may/26/martin-kettle-comment-britain-marching-to-different-drum]. 10 Feb 2015.

The Washington Post. *The secrets to Singapore's track record of innovation excellence.* [10 August 2015].

University World News. *Vietnam: Higher Education Quality poor, says minister.* [http://www.universityworldnews.com/article.php?story=2011120222340338]. 8 June 2015.

University World News. *Cambodia: Concern over Higher Education Quality as ASEAN Community Looms.* [http://www.universityworldnews.com/article.php?story=20120924142138123]. 7 June 2015a.

UNDP. (2013). Towards Realizing Industrial Development in Cambodia: an academic perspective. *Discussion Paper* (10).

UNICEF. *Thailand, Quality of Education.* [http://www.unicef.org/thailand/education_15799.html]. 15 July 2015.

University World News. *Concern over higher education quality as ASEAN community looms.* [http://www.universityworldnews.com/article.php?story=20120924142138123]. 11 June 2015.

University World News. *VIETNAM: Higher education quality poor, says minister.* [http://www.universityworldnews.com/article.php?story=2011120222340338]. 11 June 2015a.

USTR. *Laos.* [https://ustr.gov/sites/default/files/2014%20NTE%20Report%20on%20FTB%20Laos.pdf]. 15 August 2015.

Van Thiel, S. (2007). *Bestuurskundig Onderzoek.* Bussum: Coutinho.

Warleigh, H. (2008). Introduction: *Regionalism 'old' and 'new' and the Problem of Theory* in Regionalism and Global Governance: the Taming of Globalization. Routledge Taylor & Francis Group: Abingdon Oxon.

WEF. (2009). *The Global Competitiveness Report 2009-10.*

WEF. (2010). *The Global Competitiveness Report 2010-11.*

WEF. (2011). *The Global Competitiveness Report 2011-12.*

WEF. (2012). *The Global Competitiveness Report 2012-13.*

WIPO. (2015). *Member States.* [http://www.wipo.int/members/en/]. 15 May 2015.

WIPO. (2015a). *Cambodia.* [http://www.wipo.int/wipolex/en/profile.jsp?code=KH]. 15 May 2015.

WIPO. (2015b). *Vietnam.* [http://www.wipo.int/wipolex/en/profile.jsp?code=VN]. 15 May 2015.

Wong, M-H., Shankar, R. & Toh, R. (2011). *The ASEAN Competitiveness Report.* Asia Competitiveness Institute.

Woon, W. (2013). Dispute Settlement in ASEAN. *Korean Journal of International and Comparative Law,* (1), 92-104.

World Bank. *Databank.* [http://data.worldbank.org/indicator]. 28 Jan 2015.

World Bank Indicators. *The Worldwide Governance Indicators (WGI) project.* [http://info.worldbank.org/governance/wgi/index.aspx#home]. 20 May 2015.

World Bank Indicators (2015a). *Country Data Rapport for Vietnam, 1996-2013.*

World Bank Indicators (2015b). *Country Data Rapport for Cambodia, 1996-2013.*

WTO. *TRIPS.* [https://www.wto.org/english/tratop_e/trips_e/trips_e.htm]. 10 May 2015.

Yahamoto, Y. (2012). *Chapter 1: Asia and Regional Integration Theory: Between a Regional Complex and a Regional Society [in Regional Integration in South-East Asia: theoretical and historical perspective by* Amako, S., Matsuoka, S. & Horiuchi, K.]. United Nations University Press: Tokyo - New York - Paris.