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The Emerging ASEAN Approach to Mutual Recognition:

A Comparison with Europe, Trans-Tasman, and North America

Shintaro Hamanaka* and Sufian Jusoh**

September 2016

Abstract

Existing studies on mutual recognition agreements (MRAs) are mostly based on the European experience. In this paper, we will examine the ongoing attempts to establish a mutual recognition architecture in the Association of Southeast Asian Nations (ASEAN) and seek to explain the region's unique approach to MRAs, which can be classified as a "hub and spoke" model of mutual recognition. On one hand, ASEAN is attempting to establish a quasi-supranational ASEAN-level mechanism to confer "ASEAN qualification" effective in the entire ASEAN region. On the other hand, ASEAN MRAs respect members' national sovereignty, and it is national authorities, not ASEAN institutions, who have the ultimate power to approve or disapprove the supply of services by ASEAN qualification holders. Such a mixed approach to mutual recognition can be best understood as a centralized mechanism for learning-by-doing, rather than centralized recognition per se.

Keywords: Mutual recognition agreement (MRA), professional qualifications, trade in services, hub and spoke, supranational mechanism, ASEAN, regionalism

JEL classification: F15, F53, F55

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The Emerging ASEAN Approach to Mutual Recognition: A Comparison with Europe, Trans-Tasman, and North America

Shintaro Hamanaka and Sufian Jusoh

1. Introduction

The service sector is highly regulation-oriented, with regulations and established processes formalizing service transactions. Without such regulations, service transactions are often not categorized as a “service,” but rather fall under the umbrella of the informal sector. While it is understandable that domestic regulators need to adopt distinctive regulatory approaches for each service sector, we should note that regulations can be a serious obstacle to international trade. With the development of information and communications technology (ICT) and diminishing costs of air transport, services have become highly tradable. However, the international trade of services is unlikely to flourish if improper and unnecessary measures are adopted, due to conflicting regulations across countries.

While we seldom question the relevancy of regulations in domestic transactions, the question of whether regulations are necessary becomes critical in the case of international service transactions. For example, if a person goes on an overseas trip and has a traffic accident, he/she may require the use of a local hospital to consult with a medical doctor. This is one category of services trade, called “consumption abroad.” When the consumer returns to his or her home country and is required to communicate with the doctor abroad via phone or video conference (i.e., a cross-border transaction), this transaction may not be regarded as medical services in terms of the home country’s regulations or may even be disallowed.

One of the key characteristics of service sectors is the role played by qualification and license requirements, which can be a serious impediment to trade. This is especially true for professional services that usually require that certain qualifications be met. In the above example, the fundamental problem is that a medical doctor in one country may not be regarded as a medical doctor in other countries and “medical” treatments provided by non-medical doctors might be considered illegal. Even if service sectors are liberalized, the free flow of services can easily be nullified by qualification requirements because obtaining a new qualification that is recognized by the host country may be extremely burdensome. In order to overcome the problems associated with the differences in qualifications across countries, mutual recognition agreements (MRAs) are becoming increasingly important. An MRA is an effective complement to service liberalization agreements. Given the difference in qualification requirements across countries, the question is how to verify the common elements of qualifications so that service suppliers only have to fill any “gaps” in qualification requirements.

Despite the increasing significance of MRAs in trade policy for the service sector, our scholarly knowledge on MRAs is limited. While important conceptual works on service MRAs were done in the late 1990s and the early 2000s, the analytical focus of those works was on European countries (Nicolaïdis 1997, Nicolaïdis and Shaffer 2005, Nicolaïdis and Schmidt 2007, Trachtman 2007¹). Some recent studies have conducted solid analyses of ASEAN experiences with MRAs (Pruksacholavit 2014, Jurie and Lavenex 2015), but we still feel that the majority of these studies implicitly impose a European-focused model on ASEAN. While we do not deny that lessons can be drawn from other regions, deeper analysis of the ASEAN context for MRAs is required.

¹ It is interesting to note that articles in the *Journal of European Public Policy* from 2007 are some of the most commonly cited papers on MRAs in the recent literature.

Our goal is to contribute to the literature by conducting a theoretically informed descriptive analysis of the ASEAN approach to MRAs. We recognize that all MRA initiatives are unique and the future direction of MRAs in ASEAN may differ from European experiences. We compare the ASEAN approach with those taken in the European, Trans-Tasmanian, and North American MRAs and will highlight the unique aspects of ASEAN MRAs. Further, we will explain why such a unique approach is necessary, rather than suggesting that what must be done by ASEAN to be comparable to Europe or elsewhere.

We also believe that cross-regional analysis of MRAs sheds some light on the comparative studies on regional cooperation. While there is a rich accumulation of studies on comparison of FTAs and regional integration in Asia, Europe and elsewhere, the majority of these studies do not provide details on the mode of regulation or governance convergence. Mutual recognition has attracted little attention among scholars, at least from the comparative regional integration study perspective. However, because mutual recognition is closely related with the delegation of power to a partner or a third party, we believe that the uniqueness of integration projects in each region can be best showcased by analyzing MRAs. In line with some recent attempts to compare regional integration from the perspectives of governance design and mutual recognition (Duina 2015), we will reveal the fundamental nature of regional integration in ASEAN by studying the emerging and unique approach to service MRAs.

This paper is structured as follows. We will first classify several types of harmonization and recognition of qualification using the existing literature to provide the analytical framework of this study. Then, we will review the European Union, Trans-Tasmanian, and North American MRAs. After that, we will analyze the emerging ASEAN approach to MRAs, with a special focus on the MRA for engineering services. We will then highlight and explain the key features of the ASEAN model. The final section concludes.

2. Variety in Harmonization and Recognition

Above all, it is important to differentiate between qualifications and licenses. While there is no consensus about the exact meaning of these terms,² in this paper, the qualification requirements refer to competency assessments. However, qualifications alone are often insufficient to supply service. The other requirement is often a license, which is a kind of stamp or registration with which a person is actually allowed to supply a given service. In order to obtain a license, qualification is usually required. While we use the term “harmonization or recognition of qualifications” in the discussion below, it conceptually means “harmonization or recognition of qualifications and/or licenses.”

It is also necessary to distinguish between the substantive and procedural requirements for qualifications. Harmonization or recognition of qualifications conceptually entails harmonization and recognition of both the substantive requirements and the procedural requirements. Substantive requirements include professional standards that must be met. Procedural requirements for qualifications are the procedures that must be completed to demonstrate that the substantive requirements are met. Therefore, just because professional standards are harmonized or recognized does not necessarily mean that the procedures for obtaining qualifications are harmonized or recognized between countries. Unless harmonization and recognition cover procedures, its value is reduced.

2.1. Harmonization and Recognition

Harmonization of qualifications is an ideal solution to regulatory problems that hinder international trade of services. There are two types of harmonization of qualifications. First,

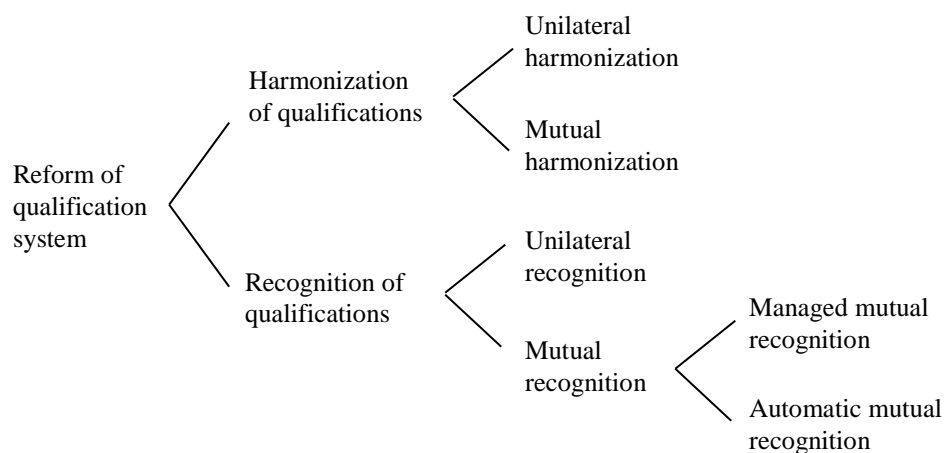
² There have been discussions on the definition of “qualification” and “license” at the Domestic Regulation Working Group as part of the WTO service trade negotiations.

harmonization can be conducted unilaterally. Countries may harmonize their qualifications according to an international regime. Because this type of harmonization usually focuses on harmonization of standards (or substantive requirements), it can be referred to as the “standardization of qualifications,” which implies that unilateral harmonization usually focuses on standards only.

The other type of harmonization is harmonization among concerned parties (mutual harmonization). In this case, harmonization of qualifications or licenses means that two or more countries establish a single set of criteria that a license or qualification holder must meet to supply services in any contracting parties’ territory without any additional local requirements. In other words, the concerned parties establish a system for common regional qualification that is effective within the contracting parties’ territory, which usually, but not always, leads to the abolishment of national qualification systems. Mutual harmonization usually involves both harmonization of standards and procedural requirements because the purpose of harmonization is to allow the service suppliers in partner countries to easily supply service in the host country. Once substantive requirements are harmonized among concerned parties in a mutual manner (e.g., regional qualification), procedures requirements are also likely to be mutually harmonized (e.g., creation of a regional accreditation agency). Harmonization of qualifications is, however, very challenging, because all countries have their own historical and cultural background within which their qualifications have developed in a distinct way. Further, domestic regulators usually want to maintain their regulatory powers for quality assurance and consumer protection purposes.

Recognition of qualifications, which is different from harmonization, is an alternative solution to this problem. In general, the term “recognition” is defined as “a selection by host (or importing) states of the rule of the home (or exporting) state, to the exclusion of the rule of the host state” (Trachtman 2007). Recognition is a governance decision that maintains regulatory autonomy, as no country is forced to accept a regulation unless they choose to recognize it (ibid). This “recognition” results from a country assenting to the equivalence, compatibility, or at least acceptability of the counterpart’s regulatory system. When a country recognizes another country’s qualifications, it can still keep its own qualification system, unlike in the case of harmonization of qualifications under which a new set of qualifications is established and becomes effective among contracting parties. Figure 1 provides a visualization of the choices involved when pursuing harmonization or recognition of qualifications.

Figure 1: Variation in Harmonization and Recognition



Source: Authors’ illustration

It should be noted that recognition of qualifications can be either full or partial. Full recognition means that a partner country's set of qualification requirements is equivalent to its own qualification requirements. In this case, individuals and businesses that hold a partner country's qualification should be allowed to supply services domestically without additional requirements. Less than full recognition (partial recognition) means that a partner's qualification system has common or equivalent requirements in some areas, but that unique requirements also exist in the host country's qualification system that must be met. In this case, applicants may be exempted from the common or equivalent requirements if they have already met them in their home country.

While harmonization and recognition of qualifications should be conceptually distinguished, it is important to understand that, in reality, they are closely related in terms of policy implementation. This is especially true for mutual recognition, which is one type of recognition of qualification that is the main topic of this paper (the distinction between mutual and unilateral recognition is discussed in Section 2.2). Mutual recognition is a prerequisite part of the harmonization process, as states engage in a collective assessment of the extent of harmonization necessary for free movement of services. Therefore, mutual recognition can be seen as the residual of harmonization. National regulations are thus mutually recognized to the extent that they have not been harmonized (Nicolaidis 1997).

2.2. Unilateral and Mutual Recognition

There are two main ways of recognizing qualifications: unilateral recognition and mutual recognition. Unilateral recognition occurs when Country X autonomously decides that the holders of qualifications from Country Y can freely supply such (professional) services in Country X. This may happen when Country X considers the qualifications of the two countries as equivalent. But a more likely scenario is that Country X regards other countries' qualification as being superior to its own. In such cases, Country X's qualification is less stringent than the qualification required in Country Y, which means that the qualification requirements of Country X are a subset of Country Y's qualification requirements. Therefore, it is not surprising that the authorities in Country X allow services suppliers who hold the qualification in Country Y to supply services in Country X. Unilateral recognition may be an effective tool for developing countries that lack qualified (professional) services suppliers. Naturally, unilateral recognition of qualifications involves both unilateral recognition of foreign standards and foreign procedures to issue qualification, because the idea is to allow foreign professionals to supply services domestically.

In contrast, "mutual recognition" denotes a narrow reciprocity, described by Keohane as a specific exchange of equivalent promises in the form of "You recognize my regulation, and I will recognize yours" (Nicolaidis 1997). Mutual recognition can be defined as "a contractual norm between governments whereby they agree to the transfer of regulatory authority from the host country (or jurisdiction³) where a transaction takes place, to the home country (or jurisdiction) from which a product, a person, a service or a firm originate" (ibid). This means that the acceptance of the regulatory conditions for goods and services required in the exporting/home country as equivalent to the conditions necessary in the importing/host country) (ibid).

Mutual recognition is based not on the process of achieving professional qualifications, but on the nature and quality of the outcome of that process (International Federation of Surveyors 2002). This has two important implications. First, mutual recognition allows each country to retain its own kind of professional education and training. Requirements that are essential to control the quality of outcomes can be kept. Second, mutual recognition encourages dialogue between professional organizations in each country in

³ Jurisdictions are generally sovereign states but they can also be sub-national units in federal entities.

order to investigate the nature of the professional activities, the professional qualifications, and the details of pre- and post-qualification education and training.⁴ As suggested by Nikolaidis and Schmidt (2007), mutual recognition should be thought of as the basis for dynamic processes of learning-by-doing and progressive liberalization. It ensures that “regulatory competition does not lead to consumer confusion and general downgrading of standards”.

MRAs are a type of agreement in which the respective regulatory authorities accept, in whole or in part, the regulatory authorizations obtained in the territory of the other party or parties to the agreement in granting their own authorization. MRAs create a situation in which two countries accept the fulfilment of certain requirements in the other country as equivalent to its own requirements on a mutual and reciprocal basis. MRAs focus on the activities authorized to be carried out under each registration and whether or not these are substantially the same or equivalent. Mutual recognition does not require that all practitioners’ qualifications be the same. Equivalence can be achieved through the imposition of conditions on registration. Because the principle of mutual recognition means that registration in a certain profession in one jurisdiction is sufficient grounds for registration in the equivalent occupation in another jurisdiction, the two or more jurisdictions agreeing to the MRA must come to terms on the methodologies for mutual recognition, such as the recognized qualifications, registration procedures, and professional practice and employment law issues such as insurance, trust funds, and registration fees.

Mutual recognition can be classified into automatic mutual recognition and managed mutual recognition. Under an automatic recognition system, a qualification from a partner country provides automatic access to the rest of the system, without the need to meet local requirements. In other words, professionals do not need to interact with host state authorities at all if the home state is only required to notify these the host authorities that the person in question is duly licensed and thus authorized to operate in its territory. In some cases, verification may be limited to producing simple forms of proof issued by the home country. Therefore, full automatic recognition, which is usually based on the philosophy of equivalence, is akin to harmonization of qualification, because national authorities abandon discretionary power in both cases. Automatic mutual recognition usually covers both standards and procedures, and typically only becomes possible after a significant level of harmonization of both standards and procedures is achieved. In addition, a significant level of trust among qualification agencies is necessary for automatic recognition, because without high level of trust, it is difficult to unconditionally accept the partner’s decision that a certain person satisfies the professional standards (procedural requirements).

Managed mutual recognition system refers to a mutual recognition system that allows that some discretion to be exercised by the authorities. Under a managed recognition system, if a professional is qualified to practice an occupation in their home country, then the professional has the right to practice in the same occupation in a partner country without having to requalify. However, recognition under a managed recognition system is not automatic and each professional has to apply to the authorities in the partner state where that professional plans to practice for the qualification to be assessed as being equivalent to the local ones. Managed mutual recognition requires only a minimal level of prior harmonization of standards. While some harmonization of procedural requirements can also expected to a certain degree, this is sometimes very challenging because countries and associations value maintaining the quality of the results from their domestic process, as discussed previously.

⁴ This is because mutual recognition assumes an appropriate process of pre-qualification education and training.

3. European Union, Trans-Tasmanian, and North American Approaches to MRAs

3.1. European Union

Above all, it is important to understand that a fundamental philosophy of European integration is the free flow of workers. European people have a right to move to fellow member countries to find a job. Whether or not a person can work as a professional in other countries is a different question because it relates to the recognition of qualifications (see below). However, the EU has mandated the abolition of nationality-based discrimination against workers in regard to employment, compensation, and other conditions of work and employment (Rubrico 2015). EU nationals do not need work permits for employment in any member states other than Croatia (ibid). The regulators are generally disallowed from testing for language competence.

Mutual recognition within the EU was first mentioned in the Treaty of Rome in relation to professional services and the mutual recognition of diplomas in the common market. The European Court of Justice (ECJ) applied the principles of mutual recognition by recognizing the equivalence of goods through the *Cassis de Dijon* case and others (Nicolaïdis and Schmidt 2007). However, the ECJ has not applied the principle recognized in the *Cassis de Dijon* case to the services sector.

In the EU, the idea of mutual recognition has developed in stages. In the first stage, which lasted until the mid-1970s, the basic idea was that equivalence is necessary for mutual recognition, that is, far-reaching harmonization is a prerequisite to mutual recognition. After the mid-1970s, it was considered that the equivalence of diplomas should be assessed in terms of comparability rather than similarity. While broad guidelines for the content of curricula were thought to facilitate mutual recognition, it later turned out that this approach is insufficient for the majority of service sectors. In the early 1980s, the EU departed from a diploma-centered approach by allowing for training and professional experience to play a concurrent role with formal educational attainment. A qualification holder in another country can opt directly for a specific profession rather than selecting the “equivalent” diploma or qualification in a host country. An emphasis was placed on finding ways to compensate for the gaps on case-by-case basis. It is in this way that managed recognition in the EU and the General System Directives (GSDs) of 1984 were adopted.

The current primary EU legislation on qualification recognition is the Qualifications Directive (The Directive 2005/36/EC⁵), which came into force in 2007, consolidating 15 Directives, 12 Main (Sectoral) Directives and three General System Directives into a single text. The main objectives of this directive is to encourage the free movement of skilled labor around Europe, and to rationalize, simplify, and improve the rules for the recognition of professional qualifications. The Qualifications Directive streamlined 15 separate legal instruments that had been in operation since the 1970s and covers more than 800 professions across Europe (though some professions such as the legal profession remain outside its scope). This means that an EU citizen with a professional qualification from one member state should be able to move and practice in another member state with relatively little friction.

Only selected professions are given automatic recognition in the EU. The Qualifications Directive allows automatic recognition of qualifications for professions in specified sectors: namely, doctors, nurses, midwives, pharmacists, dentists, veterinarians, and architects. The minimum training requirements for these professions have been harmonized across the EU.

Most regulated occupations are covered by the general recognition system of Qualifications Directive, which operates as a managed recognition system. Under the

⁵ Directive 2005/36/EC was recently amended by Directive 2013/55/EC.

general recognition system, if a professional is qualified to practice an occupation in an EU member state where he or she was trained, then the professional has the right to practice in the same occupation in another EU member state without having to requalify (European Commission 2004). Recognition under the general recognition system is not automatic and each professional has to apply to the authorities in the EU member state where he plans to practice for the qualification to be assessed as equivalent to the local ones. The applicant must possess evidence of academic or vocational qualifications and documentation of relevant training or experience, which must have been gained wholly or primarily within the EU or the EEA. If the professions are the same and the training broadly similar then the authorities are obliged to recognize, conditionally recognize, or refuse to recognize the qualifications within a reasonable time period. Professional experience may be used as a substitute for training if a professional's level of training was of shorter duration than required in the host country. In particular, practical experience is a key consideration with respect to recognition of vocational education qualifications, although the length of this experience that will be accepted can vary by country and may depend on the amount and type of training that has been undertaken. The *Certificate of Experience*, issued by the country where a person has trained and worked, can be provided as evidence. Compensatory measures may also include a period of adaptation or an aptitude test.⁶

Special or specific recognition systems apply to other professions that are not included in the provisions of the Qualifications Directive. These professions including sailors, statutory auditors, lawyers, commercial agents, aircraft controllers, and insurance intermediaries, which are normally governed by specific legal provisions and do not fall within the scope of the Directive. Hence, a special recognition system is established on a case-by-case basis, depending on the nature of each specific qualification.

Work on the EU's mutual recognition system is still in progress, and there are several problems to overcome. The EU recognizes that there is still a lack of awareness among enterprises and national authorities about the existence and workings of mutual recognition principles within the EU (European Commission 2007). The EU also recognizes that there is a lack of dialogue between competent authorities in different member states. These problems with the mutual recognition system are also costing the EU and the national authorities in terms of information gathering costs, compliance costs, and conformity assessment costs.

3.2. Trans-Tasmanian MRA (TTMRA)

The Trans-Tasmanian Mutual Recognition Agreement (TTMRA) was signed between Australia and New Zealand in 1992 and came into effect in 1997. It is based on the Australia–New Zealand Closer Economic Relations Trade Agreement (ANZCERTA). The TTMRA covers *all* registrable occupations, except for medicine (for doctors trained in Australia and New Zealand, mutual recognition-type arrangements already existed prior to the TTMRA). Under the Australian Mutual Recognition Act and the TTMRA equivalent, registration is defined as "... the licensing, approval, admission, certification (including by way of practicing certificates), or any other form of authorization, of a person required by or under legislation for carrying on an occupation."⁷

The TTMRA provides an example of a fully automatic recognition.⁸ Under the TTMRA, professional requirements must only pass an "equivalence test," without the need to spell out common standards and requirements for training professionals (Nicolaïdis and Schmidt, 2007). The TTMRA provides a system of "international licensing" whereby any national stamp from a country that is part of the system provides automatic access to the rest of the

⁶ For a discussion on this point and comparison with the Trans-Tasmanian system, see Shah and Long (2007).

⁷ *Mutual Recognition Act 1992*, s. 4.1.

⁸ In addition to TTMRA, there are other regional or bilateral arrangements such as the France-Quebec and Czech Project for Qualified Workers.

system, without any additional local requirements. The TTMRA provides that a person registered to practice an occupation in Australia is entitled to practice an equivalent occupation in New Zealand, and vice versa, without the need for further testing or examination, but the local registration authority must be notified of the intent to practice in the other country. The TTMRA also guarantees free movement of professionals. However, the TTMRA does not affect the operation of laws that regulate the manner of carrying on an occupation, such as trust accounts, fees, and continuing education.

In implementing the TTMRA, governments recognize that there may be potential differences between the jurisdictional requirements for the registration of occupations, for example, educational qualifications. To apply for registration under the TTMRA, individuals must forward written details of their registration in their home jurisdiction to the registration board in the second jurisdiction and sign a consent form enabling the registration board to undertake reasonable investigations relating to their application. The notice must be accompanied by a person's registration papers or include a copy and a statement certifying that the papers are authentic. The statements and other information contained in the notice must also be verified by statutory declaration.

Registration authorities have one month from the date of lodgment of the notice to formally grant, postpone, or refuse registration, failing which the person is entitled to immediate registration. When granted, registration takes effect from the date of lodgment of the notice. A registration authority may impose similar conditions that already apply to a person's original registration or which are necessary to achieve equivalence between occupations. The relevant registration authority determines what conditions should be imposed, based on its assessment of whether the activities authorized to be carried out under registration in the respective jurisdictions are substantially the same. These conditions may include the limiting of activities authorized by registration subject to the completion of further relevant training. Individuals should be advised in writing if conditions on registration are to be imposed. The registration authority is required to advise the person of his or her right to appeal the decision to the relevant tribunal. The person may also seek a statement setting out the registration authority's reasons in full.

If a person's initial registration is canceled, suspended, or subject to a condition on disciplinary grounds, or as a result of or in anticipation of criminal, civil, or disciplinary proceedings, then the person's registration under the TTMRA is affected in the same way. However, a registration body may reinstate any cancelled or suspended registration or waive any conditions if it thinks it appropriate in the circumstances.

3.3. NAFTA

The North American Free Trade Agreement (NAFTA) came into effect in 1995 among the three countries in North America: Canada, the United States, and Mexico. Under the NAFTA model, recognition is not included in the main agreement or framework but delegated to the various organizations or professional bodies. In addition to NAFTA itself, several free trade agreements signed between NAFTA countries and others follow the NAFTA model.

NAFTA Article 1210 concerns Licensing and Certification and Annex 1210.5 provides a blueprint of the mechanisms for mutual recognition in the NAFTA region. However, actual progress in the development of a MRA has been uneven across professions and the three countries are struggling to achieve the free flow of professional services. In medicine, psychology, veterinary medicine, and dentistry, bilateral recognition agreements pre-dating NAFTA continue to exist between Canada and the United States and remain outside the scope of NAFTA (Sá and Gaviria 2012).

There has been some progress on a MRA for three professions: engineering, accounting, and architecture. The first NAFTA MRA covered engineering and was signed in 1995 and

ratified in 1997. While all national-level engineering authorities endorsed the MRA, getting support from licensing authorities at a state/provincial level proved difficult, and Canada and Texas were the only jurisdictions that have implemented the original MRA, albeit with some amendments to the professional experience requirement. Reaching a wide consensus in the United States is the main obstacle to making progress on the trilateral MRA, and Mexico and Canada have negotiated a bilateral MRA on engineering independently of the United States (ibid).

In 2002, the corresponding bodies for the accounting profession in the three countries signed an MRA on accounting, which was renewed in 2008. The MRA grants recognition for certified accountants who pass an examination specific to the jurisdiction where they want to practice their profession and who have gained the minimum period of experience in the country (ibid). The MRA on accounting does not offer immediate licensing, but reduces the exam-taking load. For example, in the case of the United States, the exam is limited to subjects relating to United States-specific business law and taxation. However, individual US states may assess any work experience requirements on case-by-case basis (Sumption, Papademetriou, and Flamm 2013).

The NAFTA MRA on architects was signed in 2014. While the MRA appears to have established common requirements, the reality is that the MRA constituted the creation of regional qualifications in parallel with national qualifications. For instance, Mexico introduced new qualification and licensing processes in order to reach the same standards as the United States and Canada, which Sá and Gaviria (2012) referred to as “asymmetrical regionalism.” The introduction of new programs and processes brought about a two-path professional system whereby graduates can either go the national route and get their professional status and license to practice from the Ministry of Education, or pursue the NAFTA route by attending a NAFTA-accredited school that follows the newly standardized certification process. This second route is the only one that guarantees equivalent education, examination, and experience requirements to those of United States and Canadian professionals (ibid).

Regarding temporary entry, NAFTA provides for the free movement of professionals and free movement of business persons under Mode 4. Under Chapter 16 of NAFTA, four categories of professional service providers that meet the minimum standard set by the NAFTA countries can enter each member country temporarily to conduct business. Usually, the minimum requirements include a Baccalaureate or Licenciatura Degree and other requirements such as professional experience. A comprehensive list of professionals included in the four categories of professional services allowed temporary entry is shown in Table 1.

Table 1: Temporary Entry of Professionals under NAFTA

| | |
|------------------------------|--|
| General | Accountant, Architect, Computer Systems Analyst, Disaster Relief Insurance Claims Adjuster, Economist, Engineer, Forester, Graphic Designer, Hotel Manager, Industrial Designer, Interior Designer, Land Surveyor, Landscape Architect, Lawyer, Librarian, Management Consultant, Mathematician, Range Manager/Range Conservationist, Research Assistant, Scientific Technician/Technologist, Social Worker, Sylviculturist, Technical Publications Writer, Urban Planner, Vocational Counsellor |
| Medical/Allied Professionals | Dentist, Dietitian, Medical Laboratory Technologist, Nutritionist, Occupational Therapist, Pharmacist, Physician, Physiotherapist/Physical Therapist, Psychologist, Recreational Therapist, Registered Nurse, Veterinarian |
| Scientist | Agriculturist, Animal Breeder, Animal Scientist, Apiculturist, Astronomer, Biochemist, Biologist, Chemist, Dairy Scientist, Entomologist, Epidemiologist, Geneticist, Geologist, Geochemist, Geophysicist, Horticulturist, Meteorologist, Pharmacologist, Physicist, Plant Breeder, Poultry Scientist, Soil Scientist, Zoologist |
| Teacher | College, Seminary, University |

Source: Authors' compilation.

4. The ASEAN Approach to MRAs

In July 2003, the ASEAN Coordinating Committee on Services (CCS) established an Ad-Hoc Expert Group on Mutual Recognition Arrangements under its Business Services Sectoral Working Group with the objective of realizing framework agreements on mutual recognition. It was decided to adopt a sectoral approach in developing mutual recognition arrangements for the identified professional services in ASEAN. Based on the above, the following MRAs have been signed:

- MRA on Engineering Services (2005);
- MRA on Nursing Services (2006);
- MRA on Architectural Services (2007);
- Framework Arrangement for the Mutual Recognition of Surveying Qualifications (2007);
- Framework Arrangement for the Mutual Recognition of Accountancy Services (2009), leading to MRA on Accountancy Services (2014);
- MRA on Medical Practitioners (2009);
- MRA on Dental Practitioners (2009); and
- MRA on Tourism Professionals (2010).

All ASEAN MRAs are designed to strengthen the services sector to allow the movement of professionals and skilled workers within member states. However, because all services sectors are unique, the modalities of the MRAs vary significantly. ASEAN MRAs can be categorized into three groups. In the first group, the MRAs on Nursing Services, Medical Practitioners, and Dental Practitioners have had limited output to date, mainly because of the highly regulated nature of these service sectors. Therefore, it is not surprising if ASEAN member countries cannot agree upon the necessary requirements for an “ASEAN Dentist.” In contrast, the MRA on Tourism Professionals, which is the latest MRA in ASEAN, fits into a second category. This MRA has a potential to have a significant impact on tourism industry in ASEAN. Because tourism professions are unregulated, ASEAN member countries jointly established ASEAN Common Competency Standards for Tourism Professionals (ACCSTP), expecting that the ASEAN standards will be the basis for the future creation of tourism related qualifications in each country. The MRAs on Engineering, Architectural Services, and Accountancy form a third group, and are located somewhere in between. While these professions are regulated sectors, having some coordinated actions to facilitate mutual recognition within a supranational approach does not seem to be impossible. In this context, it is understandable why ASEAN initiated the work on MRAs in those sectors.

4.1. Case Study of ASEAN MRA on Engineering Profession

This section will focus on the third category of ASEAN MRAs because it highlights ASEAN’s distinctive approach to mutual recognition. The three MRAs in this category try to strike a delicate balance between establishing “regional qualifications” and “maintaining authority in member states.” While the analysis below mainly discusses the MRA on Engineering, the other two MRAs will be also mentioned in the next section when we analyze the ASEAN approaches to MRAs.

Professional Engineer (PE) Qualifications in ASEAN Member States

The MRA on Engineering Services defines “Engineering Services” as those the activities covered under Central Product Classification (CPC) Code 8672 of the Provisional CPC of the United Nations (Art. 2.7) Under CPC Code 8672, engineering services include advisory and consultative engineering services; engineering design services for the construction of foundations and building structures; engineering design services for mechanical and electrical installations for buildings; engineering design services for the construction of civil engineering works; engineering design services for industrial

processes and production; engineering design services; other engineering services during the construction and installation phase; and other engineering services.

Professional engineer refers to a natural person who holds the nationality of ASEAN member country; is assessed by a Professional Regulatory Authority (PRA) of any participating ASEAN Member country as being technical, morally, and legally qualified to undertake independent professional engineering practice; and is registered and licensed for such practice by the PRA. It is important to notice that professional engineer in the MRA context is an individual citizen of ASEAN member country, which implies that foreigners who have an engineering qualification in one of ASEAN states are outside the scope of the MRA, though the term “citizen” is undefined in the MRA. Therefore, it is impossible for foreigners to get a license from one member country (that issues license relatively easily) just to supply services in another member country.

A PRA is defined as the designated government body or its authorized agency in charge of regulating the practice of engineering services as listed in Appendix 1 of the document (Art. 2.11). As we can see in Table 2, different types of organizations have become PRAs in each country. Any amendment to this list can be made administratively by the ASEAN member states concerned and notified by the Secretary-General of ASEAN to all ASEAN member states. ASEAN member states may have different nomenclatures for this term.

Table 2: Professional Regulatory Authorities in ASEAN Countries

| Country | Professional Regulatory Authority (PRA) |
|-------------------|---|
| Brunei Darussalam | Ministry of Development |
| Cambodia | Ministry of Land Management, Urban Planning, and Construction |
| Indonesia | National Construction Services Development Board |
| Lao PDR | Lao Union of Science and Engineering Association |
| Malaysia | Board of Engineers Malaysia |
| Myanmar | Public Works Head Quarter, Ministry of Construction |
| The Philippines | Professional Regulation Commission and relevant Professional Regulatory Boards in Engineering |
| Singapore | Professional Engineers Board Singapore |
| Thailand | Council of Engineers |
| Viet Nam | Ministry of Construction |

Source: Authors' compilation.

ASEAN Chartered Professional Engineer (ACPE)

Article 3 of the MRA details the qualifications required for an engineer to be eligible to apply to the ASEAN Professional Engineer Coordinating Committee (ACPECC) for registration as an ASEAN Chartered Professional Engineer (ACPE). In order to be an ACPE, an engineer must:

- have completed an accredited engineering degree recognized by a professional engineering accreditation body, whether in the country of origin or host country, or assessed and recognized as having the equivalent of such a degree;
- be in possession of a current and valid professional registration or licensing certificate to practice engineering in the country of origin issued either by the PRA of the ASEAN Member States and in accordance with its policy on registration/licensing/certification of the practice of engineering or the Monitoring Committee in the relevant ASEAN member states;
- have acquired practical and diversified experience of not less than seven years after graduation, at least two years of which shall be in responsible charge of significant engineering work;

- be in compliance with Continuing Professional Development (CPD) policy of the country of origin at a satisfactory level; and
- have obtained certification from the PRA of the country of origin with no record of serious violation of local or international technical, professional or ethical standards for the practice of engineering.

The number of the registered ACPEs has been limited so far, and some analysts argued that the MRA is not really functioning. However, the number of ACPEs significantly increased in recent years, as Table 3 shows.

Table 3: The Number of ACPEs

| | 2012 | 2015 | 2016 |
|-------------------|------|------|------|
| Brunei Darussalam | 0 | 2 | 6 |
| Cambodia | 0 | 0 | 30 |
| Indonesia | 99 | 486 | 746 |
| Laos PDR | 0 | 0 | 11 |
| Malaysia | 149 | 207 | 261 |
| Myanmar | 0 | 101 | 200 |
| Philippines | 0 | 77 | 174 |
| Singapore | 183 | 229 | 235 |
| Thailand | 0 | 24 | 123 |
| Vietnam | 9 | 134 | 196 |
| Total Engineers | 440 | 1260 | 1982 |

Source: 2012 data (as of May 2012) is from Nikomborirak and Jitdumrong (2013); 2015 data (as of November 2015) is from Calibjo (2015); 2016 data is from ACPECC (available online at: <http://acpecc.net/v2/>, accessed on 15 July 2016).

The ACPECC has the authority to confer and withdraw the title of ACPE. The administration of the ACPE is coordinated by the ACPECC, which acts as an oversight body at the regional level and consists of one representative from the monitoring committee of each ASEAN member state. The ACPECC also has its own secretariat. The key functions of the ACPECC are:

- facilitating the development and maintenance of authoritative and reliable registers of ACPEs;
- promoting the acceptance of ACPEs in each participating ASEAN member country as possessing general technical and professional competence that is substantially equivalent to that of professional engineers registered or licensed in the country of origin;
- developing, monitoring, maintaining and promoting mutually acceptable standards and criteria for facilitating practice by ACPEs throughout the participating ASEAN member country;
- seeking to gain a greater understanding of existing barriers to such practice and to develop and promote strategies to help governments and licensing authorities reduce those barriers and manage their processes in an effective and non-discriminatory manner;
- through the mechanisms available within ASEAN, encouraging the relevant governments and licensing authorities to adopt and implement streamlined procedures for granting rights to practice to ACPEs;

- identifying and encouraging the implementation of best practice for the preparation and assessment of engineers intending to practice at the professional level; and
- continuing mutual monitoring and information exchange by whatever means that are considered most appropriate.

However, the status of ACPE does not automatically mean that the supply of engineering services in other ASEAN countries is permitted. With ACPE status, professional engineers may be able to obtain the status of Registered Foreign Professional Engineer (RFPE), which is necessary to supply services in other ASEAN countries.

Registered Foreign Professional Engineer (RFPE)

RFPE is defined in the MRA on Engineering Services (Art 2.13) as an ACPE who has successfully applied to and is authorized by the PRA of a host country. Once a professional engineer is registered as an ACPE, he or she shall be eligible to submit an application to any of the PRA in any of the ASEAM member states for the purpose of registering as a RFPE.

The PRA is the one that accepts applications from the ACPE and allow the ACPE to work in his country as a RFPE, and supervises the practice of RFPE to ensure their compliance with regulations. RFPEs are still required to comply with the host county laws and regulations such as obtaining a work permit from an immigration office and other permits from relevant licensing authorities. In addition, host countries may set quotas for RFPEs and limit the number of licenses or service suppliers. Furthermore, an RFPE is permitted to work, not in independent practice, but in collaboration with one or more professional engineers of the host country.⁹ While the number of RFPEs has been limited, the PRA in each ASEAN member state is in the process of accepting RFPEs. The number of RFPEs is expected to increase in the near future (Pathanasethpong 2016).¹⁰

However, it is more appropriate to consider that the ACPECC is attempting to streamline the procedures that each PRA uses to decide whether or not to accept an ACPE as a RFPE, rather than regarding the PRA as having exclusive power on the acceptance of RFPEs. In other words, ACPECC is attempting to set *both* substantive and procedural requirements for RFPE status, which could form the guiding principles for PRA decision making. As mentioned for the third function, the development of mutually acceptable standards and criteria for facilitating the practice of ACPE throughout ASEAN is an important task of the ACPECC. As mentioned for the fifth function, the adoption of streamlined procedures for granting ACPEs the right to practice by ASEAN member states is another important task of the ACPECC.

Under Article 5 of the MRA, any exemption from further assessment by the PRA in each ASEAN member state could only be concluded with the involvement and consent of the PRA concerned. On the other hand, the affected PRA may also require professional engineers seeking the right to independent practice to submit to some form of supplemental assessment under the purview of protecting the health, safety, environment, and welfare of the community.

Even if a person is recognized as an ACPE, the person would still be required to obtain a work permit and to comply with other requirements. The ACPE would also need to comply with other laws and regulations such as work permit requirements prior to being able to

⁹ In the case of engineers and accountants, foreign engineers and accountants should supply services in collaboration with local engineers and accountants. However, in the case of architect, independent practice is allowed.

¹⁰ At this stage, the number of RFPE is very limited in ASEAN Member States with the notable exception of Brunei (Fukunaga 2015, 14).

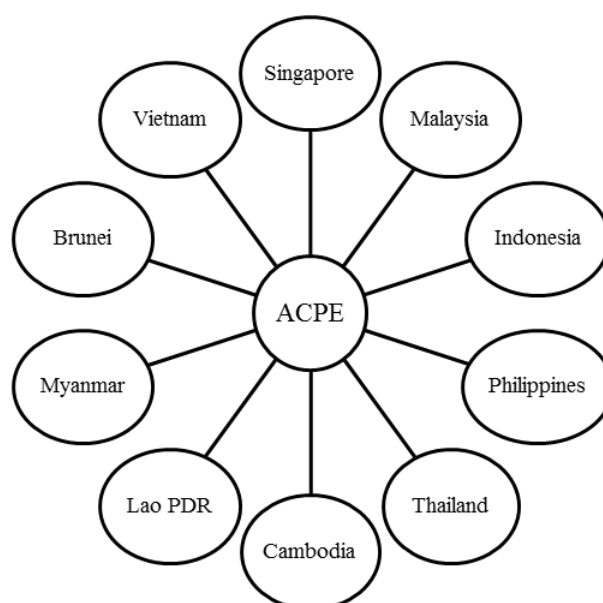
work in another ASEAN member state. If an ASEAN member state adopts the NAFTA model, an ACPE would be allowed to work in another ASEAN member state as the ACPE would not be required to seek immigration and work permits. ASEAN needs to address this shortcoming across all member states to overcome this barrier to free movement of natural person as Mode 4 would increase the level of mobility among the qualified professionals in ASEAN. This would also assist ASEAN member states that have a shortage of professional engineers to engage qualified engineers from other ASEAN member states.

4.2. Explaining the ASEAN Model

It seems safe to argue that there is no single model for MRAs and ASEAN is attempting to establish its own approach to MRAs, rather than following other regions' approach as discussed by Rubrico (2015). Unlike the EU, which follows the principle of "free" movement of workers, ASEAN is trying to achieve "freer" flow of skilled labor (Sugiyarto and Agunias 2014).

The structure of granting recognition is rather complicated under the engineering MRA, which can be classified as a "hub and spoke" modality of recognition (Figure 2). While it is widely said that ASEAN rejects supranational institutions (Murray 2010), it agreed to establish ACPECC as a quasi-supranational institution that confers ASEAN level qualification. Certain powers are delegated to the ASEAN-level institution regarding qualifications. Under this structure, simply having a qualification of one ASEAN country is not enough to be qualified as ACPE. ACPECC not only sets the standards to be met to be recognized as ACPE, but also has an authority to confer ACPE status. Without ACPE status, professionals cannot submit application to other ASEAN countries. At the same time, there is no real regional qualification that is effective throughout the region. ACPE is not a real regional qualification and obtaining ASEAN qualification is insufficient for professionals to supply service in other member countries. ASEAN qualification holders should submit an application to a national authority for assessment. Individuals should first obtain a license either in the country of origin or in the host country. On the basis of a license issued in one country, an engineer may get ACPE status, with which RFPE may be conferred.

Figure 2: Hub-and-Spoke Model of Recognition



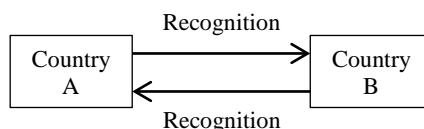
Source: Authors' illustration.

Further, one of the key requirements for applying for ACPE status is having at least seven years of “practical experience.” Interestingly, however, Section 1.3 of Appendix II of the Engineering MRA states that “the exact definition of practical experience shall be at discretion of monitoring Committee concerned (in each ASEAN member).” Thus, we cannot say that “practical experience” is an operational standard set at the regional level. Moreover, there is no agreement among the concerned parties regarding the appropriate procedures by which a candidate is assessed for “practical experience.”

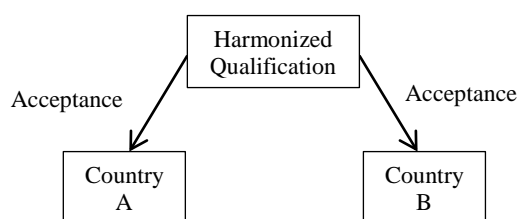
Thus, a key question remains: why does ASEAN need such a complicated MRA structure? First, in order to strike a balance between supranational power and sovereignty, such a hub and spoke approach is convenient. ASEAN members understand the necessity of limiting each national authority’s power to issue licenses to facilitate the integration of professional service markets in ASEAN. In this context, it is important to note that many ASEAN countries are an exporter of workers to other ASEAN members (e.g., from Thailand to Singapore) and at the same time, a recipient of workers from other members (e.g., from Lao PDR to Thailand). Hence, many ASEAN members understand the importance of striking a balance between home and host country’s interests. On the other hand, ASEAN members do not want the ASEAN institution to have exclusive power to issue qualification standards and licenses. In other words, in the engineering MRA, they want to reserve some power to reject the applicants for RFPE status. ASEAN is not ready to fully delegate power to the regional level at this stage. This is reasonable, because national authorities are the institutions that will be blamed if some accident regarding the supply of professional services occurs.

Figure 3: Models of Recognition

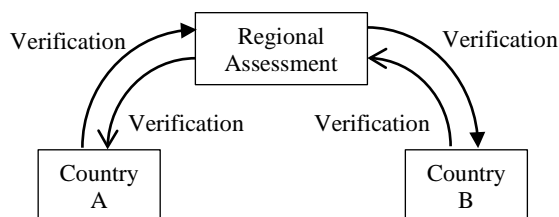
Direct Mutual Recognition



Harmonized Regional Qualification (top-down)



Hub and Spoke



Source: Authors’ illustration.

As illustrated in Figure 3, the hub-and-spoke model is in sharp contrast with the situation under which qualification in one country can be directly recognized by the authority in another member country. National authorities have full discretion under the direct mutual recognition model, while national authorities are expected to give some positive consideration to the result of regional assessment (e.g., ACPE) in deciding whether or not to confer local qualification/license under the hub-and-spoke model. It is also different from a regional qualification system wherein a harmonized qualification is effective throughout the region, which limits the discretion of national authorities. Unlike the regional qualification system, the hub-and-spoke model leaves some discretion to national authorities.

Second, the hub-and-spoke model can be understood as a centralized mechanism to facilitate mutual understanding and assistance regarding qualification and license system of other member countries. Given the differences in development level and different approaches to qualifications and licensing in each member country, it is not easy to significantly harmonize qualification and license standards and procedures at this stage. However, the centralized learning-by-doing approach can deepen the mutual understanding of other country's qualification and license systems. For example, experiences and knowledge accumulated at ACPECC could eventually lead to a common understanding about what "practical experience" means.

In this context, it is interesting to note that the centralized experience sharing system covers both "commonality assessment" and "gap assessment." There are requirements for professional engineers from each ASEAN country to be qualified as an ACPE, which can be regarded as common requirements. ASEAN members are jointly involved in the process of assessing conformity with the requirements at the ACPECC, which is useful for understanding commonality across countries. In addition, as already discussed, ACPECC is attempting to streamline the procedures in which each national PRA decides whether or not to accept an ACPE as a RFPE. Thus, experience assessing "additional requirements" is also shared among ASEAN countries. This seems to be natural given the fact that commonalities and gaps are different sides of the same coin. What is unique in ASEAN is that learning-by-doing is implemented in a centralized manner, which seems to be reasonable given the nature of experience and information sharing.

Third, the hub-and-spoke model is useful for developing the capacity of both national authorities and ASEAN institutions. Each ASEAN member must identify the PRA that is responsible for the regulation of engineering services in each country and acceptance of ACPE applications. In addition, ACPECC's capacity will also be strengthened in areas such as monitoring and information sharing of the performance of ACPE holders. The relationship between the capacity development of national authorities and creation of the quasi-supranational mechanism are intertwined, because ACPECC is comprised of PRAs of ASEAN members. On the one hand, the quasi-supranational mechanism strengthens national sovereignty and national capacity in terms of qualification and license policy. On the other hand, the function of quasi-supranational mechanisms such as ACPECC assumes the enhancement of national capacity. Thus, as has been widely said, ASEAN integration of professional services is a typical example of sovereignty enhancing cooperation (Capie and Evans 2007).

5. Conclusion

There is no single model for MRAs. The Trans-Tasmanian MRA follows the principle of automatic recognition, which means that participating countries (Australia and New Zealand) have established a system of international or regional licensing. The EU initially pursued recognition via similarity assessment that can only be achieved by the harmonization of standards (until mid-1970s) and then recognition via comparability assessment that can be achieved by the harmonization of curricula (from the mid-1970s to the early 1980s), it now follows a managed recognition policy for the majority of

qualifications. Despite the fundamental philosophy of free movement of workers, the EU's managed recognition system places emphasis on finding ways to compensate for any gaps or differences in qualification requirements on a case-by-case basis. The NAFTA countries seem to be struggling to make progress in MRA cooperation. A supranational approach is difficult, partly because the national-provincial problem appears to exist. In some case, regional qualification and national qualification co-exist in North America, which does not follow the original idea of mutual "recognition."

ASEAN is attempting to establish its own approach to MRAs, rather than following other regions' approaches. In ASEAN, free movement of workers is not the assumed goal; rather, it is trying to achieve "freer" movement for limited professions. While ASEAN MRAs in eight different service sectors adopt different modalities, three important professions (engineers, accountants, and architects) employ the so-called hub-and-spoke model. Under this model, professionals in one ASEAN country cannot be directly recognized in other ASEAN countries. Instead, professionals in one ASEAN country should first obtain the "ASEAN qualification," which then allows ASEAN qualification holders to be registered in other ASEAN countries as foreign professionals to supply services. ASEAN MRA institutions should be regarded as a centralized leaning-by-doing approach based on experience sharing, rather than a centralized recognition system *per se*.

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