



ASEAN at a Cross-Road

Concept Paper on the proposed ASEAN Charter

Syed Muntasir Mamun, PhD

Co-Contributors:

Sudarsono

Sutar Windargo

Tamel Vinsen Sidabutar

Y. Jatmiko Heru P

Papa Samba Seck

Table of Contents

Table of Contents	2
List of Tables.....	3
List of Figures.....	3
1. Introduction	4
2. Aim	4
3. Scope	4
4. ASEAN – a Primer	4
5. Background Forces.....	5
5.1. Forces of Democracy	6
5.2. Forces of Economic Liberalization	6
5.3. Development and Human Security	7
5.4. Changing to Meet Challenges	8
6. Comparison with Other Regional Organizations in Selected Parameters	9
6.1. ASEAN and SAARC.....	9
6.1.1. Historical Background of Formation.....	9
6.1.2. Coverage of Issues	9
6.1.3. Non-Integration Components	10
6.1.4. Process Employed for Attainment of Objectives.....	10
6.1.5. Governance	10
6.2. ASEAN and EU.....	11
6.2.1. History	11
6.2.2. Coverage.....	11
6.2.3. Objectives	11
6.2.4. Norms, Process, and Governance.....	11
6.2.5. Charter Provisions	11
6.2.6. Treaty on European Union.....	11
6.3. ASEAN and ECOWAS	12
6.3.1. History	12
6.3.2. Currency Cooperation	12
6.3.3. Free Movement of People	12
6.4. ASEAN and AU.....	12
6.4.1. Objectives	12
6.4.2. Overview.....	13
6.4.3. History of the African Union	13
6.4.4. Organs of the AU	13
6.4.4.1. Pan-African Parliament (PAP).....	13
6.4.4.2. Assembly of the African Union	14
6.4.4.3. African Commission.....	14
6.4.4.4. African Court of Justice	14
6.4.4.5. Executive Council	14
6.4.4.6. Permanent Representatives' Committee	14
6.4.4.7. Peace and Security Council.....	14
6.4.4.8. Economic, Social and Cultural Council	14
6.4.4.9. Specialized Technical Committees.....	14
6.4.4.10. Financial institutions.....	14
6.4.5. Current issues.....	14
6.5. ASEAN and GCC	14
6.5.1. Basis and Goals for Cooperation	14
6.5.2. Members of The Organization	15
6.5.3. The Structure of Organization.....	15
6.5.4. Amendments to the Charter	17
6.6. ASEAN and MERCOSUR.....	17
6.6.1. Short Historical Background / Facts	17
6.6.2. Coverage of Issues	17
6.6.3. Non Integration Component.....	17
6.6.4. Process.....	17
6.6.5. Governance	17
6.6.6. Charter / Provisions	17
7. Cornerstones Envisaged in the New ASEAN Charter	18
7.1. The ASEAN Way.....	18
7.2. The Rationale for an ASEAN Charter.....	19
7.2.1. Preamble.....	19
7.2.2. Establishment	19
7.2.3. Flag, Logo and ASEAN Day	19
7.2.4. Objectives	19
7.2.5. Principles	20
7.3. Regional Economic Integration as an End-Goal	22

8.	Facts and Fears of Drafting an ASEAN Charter	23
8.1.	Trends	23
8.2.	Challenges.....	23
8.3.	Implications.....	23
8.4.	The Charter: Why Charter?.....	24
8.5.	Purposes of the Charter.....	24
8.6.	Kuala Lumpur Declaration	24
8.7.	The EPG Report.....	24
9.	SWOT Analysis on ASEAN Economic Integration	25
9.1.	Strengths	25
9.2.	Weaknesses	26
9.3.	Opportunities	26
9.4.	Threats	26
10.	Policy Suggestions for Drafting the ASEAN Charter	26
10.1.	Main Principles of Economic Integration	27
10.2.	Impact of Globalization.....	28
10.3.	Clearly Defined Roadmap	28
10.4.	Decision-making Process and Institutions	28
10.5.	Building Trust	28

List of Tables

Table 1: Selected basic ASEAN indicators.....	7
---	---

List of Figures

Figure 1: The ASEAN Council	25
Figure 2: ASEAN action spectrum.....	27

1. Introduction

The future of the Association of South East Asian Nations (ASEAN) has recently been the subject of considerable speculation. For years, the countries comprising the group seemed poised to take on a major role in a coming Pacific Century—they were, after all, among the tiger economies, part of the Asian “miracle.” Then a financial crisis swept the region. Starting with the stark devaluation of the Thai Baht in mid 1997, the crisis affected the economies of all ASEAN members and many more in Asia. A sense of doom and gloom prevailed; the “miracle” was over. In addition, Indonesian forest fires in 1997 and 1998 blanketed the region with haze pollution, casting a literal and symbolic pall over the countries. Some feared that the region would lose a decade of progress and ASEAN’s past successes in forging growth, stability, and peace seemed forgotten. The group came under heavy criticism for its inability to effectively address the economic and environmental crises. Furthermore, questions over the wisdom of enlarging ASEAN to include Cambodia, Laos and Myanmar also arose. Now as we have safely begun a new millennium, the crisis seems to have passed as ASEAN leaders celebrate a return to growth. Economic indicators are generally positive, even the incidences of haze of pollution has been limited, with fires kept low by rain or dispersed by winds. Leaders of the Association of Southeast Asian Nations (ASEAN) adopted a blueprint for the charter at their annual summit in the Philippine resort island of Cebu in January 2007. The blueprint was devised by a group of “eminent persons” from all 10 ASEAN member states. A draft of the final charter is supposed to be presented to leaders at the 13th ASEAN Summit in Singapore later this year. How strength of the charter is going to be adopted might be changed ASEAN future especially when the charter is able to transform ASEAN from a group known for operating by consensus and staying out of each other’s affairs into a rules-based organization along the lines of the European Union. To this end, experts have noted that the charter should be simple, clear and determined to empower leaders to impose sanctions if there are serious breaches, including suspension or expulsion in extreme cases.

2. Aim

Southeast Asia in the 1960s was a turbulent region as regional countries were faced with managing the effects of de-colonization, confrontation with the forces of communism, and separatism. These newly independent countries were also pre-occupied with building their economies and national identities. ASEAN provided a regional framework of peace, stability and security. From its tentative beginnings in 1967, ASEAN has in the last four decades evolved into one of the most successful experiments in regionalism. It has served the region well in meeting and managing the numerous challenges that have confronted Southeast Asia and in the process has contributed to global peace and harmony. However, member countries recognize that the world today is far different from the one that confronted the ASEAN founding fathers in 1967. They realize that ASEAN as an organization is at a crossroad. With the rise of China and India and the recovery of Japan, and the challenges of enhanced trade liberalization and the need to build a socio-political regional architecture, ASEAN would have to make it more cohesive and integrated. ASEAN also has to address unprecedented non-traditional security challenges like SARS, avian flu and environmental hazards that demand expedient cross-border solutions.

In recognition of the difficult challenges facing the region, ASEAN governments have invited an Eminent Persons Group (EPG) to dwell on the issues and to advise on the policies to be taken into account in the framing of an ASEAN Charter. Such a charter would not only give ASEAN a much-needed legal personality but also serve to make it a more responsive, dynamic and integrated regional organization.

The paper presents a comprehensive brief on the future of ASEAN upon the drafting of an ASEAN Charter. In this paper, we try to address nagging questions like:

- What the current tendencies in the global and regional forum are
- At an age of 40: where ASEAN should go from now
- What will become of ASEAN with its proposed Charter in place.

3. Scope

In this paper, a comprehensive discussion will be presented on:

- (i) The background forces (or currents) that determine the regional dynamics in socio-political, economic, cultural, and security outlook in ASEAN
- (ii) Comparison of ASEAN with other regional organizations in selected parameters
- (iii) Cornerstones that have been envisaged in the new ASEAN Charter
- (iv) Facts and fears of drafting an ASEAN Charter
- (v) Policy suggestions for drafting the ASEAN Charter

4. ASEAN – a Primer

ASEAN, or the Association of Southeast Asian Nations, is a geo-political and economic organization of 10 countries located in Southeast Asia, which was formed on August 8, 1967 by Indonesia, Malaysia, the Philippines, Singapore, and Thailand as a display of solidarity against communist expansion in Vietnam and insurgency within their own borders. Its aims include the acceleration of economic growth, social progress, cultural development among its members, and the promotion of regional peace.

ASEAN was preceded by an organization called the Association of Southeast Asia (ASA), an alliance consisting of the Philippines, Malaysia, and Thailand that was formed in 1961. The bloc itself, however, was established on August 8, 1967, when foreign ministers of five countries—Indonesia, Malaysia, the Philippines, Singapore, and Thailand—met at the Thai Department of Foreign Affairs building in Bangkok and signed the ASEAN Declaration, more commonly known as the Bangkok Declaration. The five foreign ministers—Adam Malik of Indonesia, Narciso R. Ramos of the Philippines, Tun Abdul Razak of Malaysia, S. Rajaratnam of Singapore, and Thanat Khoman of Thailand—are considered as the organization's Founding Fathers.

The British protectorate of Brunei joined six days after the country became independent from the United Kingdom on January 8, 1984. The mainland states of Vietnam, Laos, and Myanmar were later admitted. Vietnam joined on July 28, 1995, while Laos and Myanmar were admitted on July 23, 1997. Cambodia became the newest member when it was admitted on April 30, 1999. The Melanesian state of Papua New Guinea has had observer status since 1976. In July 23, 2006, Jose Ramos Horta, Prime Minister of Timor-Leste, signed a formal request for membership and expected the accession process to last at least five years before the then-observer state became a full member. Australia is also interested in becoming a member, although this is opposed by some of the current members.

Beginning in 1997, the bloc began creating organizations within its framework with the intention of achieving this goal. ASEAN Plus Three was the first of these and was created to improve existing ties with the People's Republic of China, Japan, and South Korea. This was followed by the even larger East Asia Summit, which included these countries as well as India, Australia, and New Zealand. This new grouping acted as a prerequisite for the planned East Asia Community, which was supposedly patterned after the now-defunct European Community. The ASEAN Eminent Persons Group was created to study the possible successes and failures of this policy as well as the possibility of drafting an ASEAN Charter.

Currently, ASEAN holds meetings, known as the ASEAN Summit, where heads of government of each member meet to discuss and resolve regional issues, as well as to conduct other meetings with other countries outside of the bloc with the intention of promoting external relations. The ASEAN Leaders' Formal Summit was first held in Bali, Indonesia in 1976. Its third meeting was held in Manila in 1987 and during this meeting, it was decided that the leaders would meet every five years. Consequently, the fourth meeting was held in Singapore in 1992 where the leaders again agreed to meet more frequently, deciding to hold the summit every three years. In 2001, it was decided to meet annually to address urgent issues affecting the region. Member nations were assigned to be the summit host in alphabetical order except in the case of Myanmar which dropped its 2006 hosting rights in 2004 due to pressure from the United States and the European Union.

The formal summit meets for three days. The usual itinerary is as follows:

- (i) Leaders of member states would hold an internal organization meeting.
- (ii) Leaders of member states would hold a conference together with foreign ministers of the ASEAN Regional Forum.
- (iii) A meeting, known as ASEAN Plus Three, is set for leaders of three Dialogue Partners (People's Republic of China, Japan, South Korea)
- (iv) A separate meeting, known as ASEAN-CER, is set for another set of leaders of two Dialogue Partners (Australia, New Zealand).

5. Background Forces

While the worst of that crisis that once beseeched the region may indeed be over, we have decided on taking up a new course of action – on taking up the journey towards instituting a new and comprehensive legal structure for the ASEAN organization. Many challenges lie ahead and if ASEAN is to sustain the recovery, progress, and integration into the future, the organization will need to reform itself. Arguably, some changes have already begun in the crucible of the past crisis years. But what are the future challenges for the ASEAN nations to unite? It is required that we examine what incidences are likely to occur in the coming years¹. In this paper, we develop our arguments in line with the major forces that have traditionally shaped the region's economic and socio-cultural identity over the years.

¹ This section of the paper draws heavily from the article, "THE FUTURE OF ASEAN: An Assessment of Democracy, Economies and Institutions in Southeast Asia" by Simon Tay, Professor of Law at The National University of Singapore, Member of The Singapore Parliament, and Chairman of The Singapore Institute of International Affairs

5.1. Forces of Democracy

ASEAN countries have often been labeled "soft authoritarian" states.

Many member nations have voting democracies but limited freedoms for individuals and the media. A single party or regime—which precludes viable opposition parties—dominates most of the young democracies. Into the 1990s, most ASEAN countries propounded "Asian values" and regional approaches to human rights and democracy that emphasized differences in culture and developmental levels. The Philippines, with its emblem of "people power" after the fall of Marcos, was seen as an exception, an aberration. In this context, the first and most important change in ASEAN after the crisis is the rise of democracy. Democracy was strengthened in Thailand when people organized to demand government response to the pressures of the crisis. There have been street demonstrations as well as more liberal press discussion. Indonesia has seen perhaps the most dramatic surge in democracy. After 32 years of power, President Soeharto was swept from power during the crisis and many millions subsequently participated in elections that, for the first time, were widely accepted as free and fair. They have brought a coalition into office which, along with President Wahid and other centrist parties, will take steps for further reform. Democracy is no panacea of course.

Indonesia continues to face great political and economic challenges such as the integrity of the country, the role of the military in politics, and the insolvency of many banks and companies. Indeed, the democratic process of addressing these difficult concerns will be subject to new pressures and uncertainties. Democracy does, however, offer the prospect of winning wide consensus for such reforms and sustaining change. If Indonesia can consolidate democracy and provide good governance in this manner, the nation will be historically transformed. What happens in Indonesia is of great consequence to other ASEAN members and the nature of the association itself. Although ASEAN has a rotating chairmanship, Indonesia—due to size and history—has always been its epicenter. If Indonesia consolidates democracy, together with Thailand and the Philippines, the ethos of governance in ASEAN will shift. This has broad implications for other ASEAN members. In Malaysia, the crisis years have brought controversy and a growth in opposition, especially after the sacking of its deputy premier, Anwar Ibrahim – which, some experts claim worked as the harbinger for an eventual change of the head of the government after many years. For Singapore, the crisis induced a gradual opening so that leaders now openly want a civil society, but one that is cooperative rather than confrontational.

A movement in the region towards democracy can quicken that gradual opening, strengthening civil society or even opposition parties. Most of all, such a movement in ASEAN stands to impact members such as Laos, Vietnam and Myanmar, countries with one-party states and closed regimes. Democracy will not necessarily be a factor that all states will welcome, nor will it solve every state's problems. Indeed, if some ASEAN countries become more vigorously democratic and others do not, the differences may cause tensions between ASEAN members. But problematic or not, the democratic impulse set out in the crisis cannot be wished away even in these days of recovery. Democracy will—more than at any time in the past—be part of ASEAN's future.

5.2. Forces of Economic Liberalization

The great diversity of the countries of Southeast Asia, their widely different historical legacies, their divergent strategic outlooks, the diverse compositions of their populations, the uneasy nature of their recent relations, and the lack of a regional identity among their peoples have led their governments to prefer informal processes, weak regional institutions, and decisions by consensus. This has reassured the ASEAN members, even as they build confidence among themselves, that their national sovereignty, won so recently and with such difficulty, and that, in the case of some, the survival of the ruling regime, would not be threatened by their neighbors. They have gained the confidence that decisions would not be imposed on them by a combination of neighbors or through a strong supranational institution.

Considered more important, at times, than other shakers (shapers?) and movers of the region, the economies of the original ASEAN members and the NIEs (Newly Industrial Economies) have traditionally been relatively open to world trade and foreign investment. This example was attractive to the newer ASEAN members such as Vietnam and Laos. Thus, when the crisis hit, economies around the world were affected and all players watched the region closely to see how it would recover. The crisis did not lead to autarky as some feared; rather, economic cooperation among ASEAN countries increased, most notably through the implementation of a system to exchange financial information between governments. By subjecting the information to peer review, countries hoped to discourage policies that might lead to another devaluation and crisis. The crisis years also saw ASEAN leaders reaffirm and speed up their commitments to agreements for free trade and cross border investments. Despite this progress, the crisis has produced less happy progress, making many in the region doubt the NIE model.

For example, Malaysia, a very open economy, experimented with controls over capital flows and currency rates. This allowed the Mahathir government to shield Malaysian companies which preferred to unwind

their financial problems internally, behind protective barriers. Malaysia was not alone in attempting to lessen the impact of the crisis and to seek greater control over its economy: countries that were newer to the world market, such as Vietnam, Laos and Myanmar, slowed in their progress towards economic openness as well. On the other hand, Thailand responded to the crisis by opening up its economy, under IMF supervision. To enhance its competitiveness, Singapore also further liberalized key sectors, opening up banking and telecommunications to foreign competition. As such, the crisis years witnessed more than simply a slowdown in growth. Because of their varying reactions to the crisis, with different reforms and outlooks, the diversity of ASEAN economies widened. And with this, it potentially becomes harder for the group to achieve greater cooperation and harmonization in investment, trade, and financial policies. Whereas once the formula for the Asian miracle seemed agreed, there is now far less consensus on the suitable models and strategies for ASEAN's economic development.

Table 1: Selected basic ASEAN indicators

Country	Total land area	Total population ^{2/}	Population density ^{2/}	Annual population growth ^{2/}	Gross domestic product ^{3/} at current prices	Gross domestic product per capita at current prices	Merchandise trade ^{5/}			Foreign direct investments inflow ^{6/}
	thousand km ²	thousand	persons per km ²	percent	US\$ million	US\$	US\$ PPP ^{4/}	Exports	Imports	Total trade
	2005	2005	2005	2005	2005	2005	2005	2005	2005	2005
Brunei Darussalam	5.8	383	66	3.49	11 845.7	30 929.8	25 940.1	5 768.7	1 028.7	6 787.4
Cambodia	181.0	13 998	77	2.45	6 105.2	436.2	2 406.4	2 602.4	2 147.0	4 749.4
Indonesia	1 891.0	222 051	117	1.30	364 288.0	1 840.6	4 930.1	103 984.0	78 392.7	182 356.8
Lao PDR	237.0	6 135	26	2.53	3 527.4	574.9	2 280.4	254.7	423.8	678.3
Malaysia	330.0	26 888	81	2.14	149 728.9	5 810.7	11 993.1	161 248.7	131 720.1	292 968.8
Myanmar ^{1/}	677.0	57 289	85	2.30	11 951.0	209.6	1 589.1	3 514.8	2 115.5	5 630.2
The Philippines	300.0	86 910	290	1.96	117 131.8	1 347.7	5 102.1	47 037.0	51 523.0	98 560.0
Singapore	0.697	4 484	6 433	3.27	132 273.4	29 499.6	29 085.6	271 601.0	238 503.0	510 104.0
Thailand	513.0	65 233	127	0.73	206 552.1	3 166.4	9 488.3	129 948.5	126 848.5	256 797.0
Viet Nam	330.0	84 222	255	1.33	60 985.2	723.9	3 800.1	39 605.0	44 410.0	84 015.0
ASEAN	4 465.5	567 390	127	1.54	1 064 368.7	1 875.9	5 391.9	765 544.8	677 112.1	1 442 656.9
										38 082.9

Sources: ASEAN Finance and Macro-economic Surveillance Unit Database and ASEAN Statistical Yearbook 2008 (compiled/computed from data submission and/or websites of ASEAN Member Countries' national statistical offices, central banks, and other relevant government agencies)

IMF World Economic Outlook Database as of September 2008

Trade data for Brunei Darussalam, Cambodia, Lao PDR and Myanmar are from country submission thru National ASEAN Free Trade Area (NAFTA) Unit; for Indonesia from Bank Indonesia (www.bi.go.id); for Malaysia from the Malaysia Trade Development Corporation (www.mstad.org.my/foreignbuyer/Mstatredstats.htm); for the Philippines from the National Statistics Office (www.census.gov.ph); for Singapore from the Department of Statistics (www.singstat.gov.sg); for Thailand from the Bank of Thailand (www.bot.or.th); and for Viet Nam from the General Statistical Office (www.gso.gov.vn).

Symbols used

- not available as of publication time
- x not available/not compiled

Notes

- ^{1/} Myanmar GDP is based on fiscal year from April to March of the following year, and computed using derived foreign exchange rate based on IMF WEO data
- ^{2/} Refers to based on mid-year total population as published in the ASEAN Statistical Yearbook 2008
- ^{3/} GDP figures for Cambodia, Lao PDR, & Myanmar are derived using growth estimates from the IMF WEO database September 2008; Brunei data is estimated using foreign exchange rate for Q1-Q3 only.
- ^{4/} Recomputed based on IMF WEO estimates and actual country data
- ^{5/} All figures are preliminary as of 12 April 2007; figures for Brunei Darussalam, Cambodia and Lao PDR are Q1-Q3 data only.
- ^{6/} Refers to net inflow of foreign direct investments as measured in the balance of payments; also includes reinvested earnings

5.3. Development and Human Security

The economic crisis – which so manifestly besieged the shape of regional integration in the Southeast Asian nations, was not just a fall in macroeconomic indicators. Millions of people lost their jobs and fell below the poverty line. The efforts made in decades of growth were reversed almost overnight. For very many people, there was a new sense of insecurity. In particular, the crises experience exposed the vulnerability of the middle class and newly rich, who made their money during the "miracle years," to sudden shocks. Dealing with the human and social aftermath of the crisis will be an important future concern for ASEAN that goes beyond handouts and bandage policies. The crisis allowed observers to see how the years of rapid growth had extracted high costs in human and environmental terms, leaving persistent pockets of poverty. As such, new policies with greater inclusion and equity are being demanded. This will be a challenge for many ASEAN countries, which have generally failed to provide social safety nets. This is especially true for countries with larger populations, large disparities between urban and rural areas, and small elite groups that have tended to monopolize wealth.

5.4. Changing to Meet Challenges

Much of ASEAN's credibility and attraction to the outside world was built on the economic success of its members and their potential for greater growth. ASEAN's other strength was the stability of the South East Asian region and the good cohesion among its members. This allowed this grouping of mainly smaller and medium sized powers to unite and engage more powerful countries. The region, however, has changed in the crucible of the crisis. In 2007, growth has started to return to stable figures, but the halo of that "miracle" is gone. Competition with regions such as Latin America and others in Asia will be greater, especially China and India. Coming out of the crisis, there are greater diversity and divisions among ASEAN countries too, in politics as well as economics. Given these difficulties, how can ASEAN go forward? What should be the key principles and concerns for the group? Much, of course, depends on actions taken at the national level by the different and sovereign states in the region. There is a role, however, for regional institutions. ASEAN must set out to address four key concerns, also known as the four "E"s.

The first "E" is effectiveness. ASEAN has committed itself to an ambitious Hanoi Plan of Action, covering economic, social and political matters. Priorities must be established within this broad Plan. Moreover, concrete steps must be taken to implement those priorities. This is critical for the credibility of the grouping, as a demonstration of their will and ability.

The second "E" is the issue of enlargement. The core of ASEAN members must be able to engage and bring on board the newer members. Some, such as Vietnam, have doubts about economic openness. Others, such as Cambodia, face political instability. The question of Myanmar also looms large, as many in the international community continue to isolate the regime in that country because of its poor human rights record. ASEAN members must play a part in helping the new members meet these difficult political, economic, and social challenges as well as make necessary changes.

The third "E" is the environment and other aspects of economic progress. In the aftermath of the crisis, attention must also be given to the social, human and environmental dimensions of development. It is no longer sufficient that countries seek to grow at all costs. There are important questions of environmental protection, labor and human rights, and human security to address. It is no longer enough to enrich a small elite; ASEAN members must instead seek systems that promote greater equity as they develop. They should aim to provide jobs for the vast majority, and reach out to the most vulnerable, such as women and children.

The fourth "E" is engagement and addresses the need for ASEAN to engage with the East Asia trio of China, Japan and South Korea. Current meetings with the leaders of the East Asian Three should be further developed. In the medium to longer term, this can both strengthen ASEAN and help steady North East Asia. Closer connections between ASEAN and East Asia can also be a basis for greater engagements with the USA and other regions, such as Europe.

To achieve these four "E"s, ASEAN must learn to adapt its traditions as well as to learn important lessons from other regions. There must be both continuity and change. One primary tradition that needs revisiting is the policy of non-intervention by one state into the affairs of another. This is seen as a foundation stone of the ASEAN way and it need not be abandoned. Indeed, non-intervention is a cornerstone of all interstate relations.

Exceptions, however, must be found. Only then will true and stronger cooperation and coordination be possible. Part of this is the need for ASEAN to develop stronger and more coherent institutions. These need not be supranational authorities, akin to the European Community. But ASEAN countries must devolve sufficient authority to central institutions to enable them to review and coordinate between the different countries. This becomes essential as different economic and political differences emerge, although it is those same differences that make coordination harder to achieve. ASEAN governments must be willing to recognize the rising wave of civil society and non-governmental organizations. Greater participation of the peoples in the region is critical in increasing understanding, and solving cross-border problems, such as the haze of pollution. Where ASEAN has traditionally been a state-centric organization, regional institutions above the level of the state, and civil society organizations below that level, must increasingly come into play. In the 1960s, Southeast Asia seemed doomed to trouble and poverty as part of the "Asian drama" foreseen by skeptics. Nevertheless, several decades of growth defied such pessimism and led to euphoria over the Asian "miracle." Perhaps both the pessimism and euphoria are misplaced. ASEAN in the new century has been weakened by the crisis, but it has also been strengthened.

While the years of crisis have begun a process of change in the region, another crisis is still possible. The course of change may not run smoothly or easily. But if the countries in the region press ahead with the right reforms and take up appropriate policies and institutions, they will be transformed. Where once there was a troubled drama, with non-democratic but booming economies, there may yet rise countries that are democratic, economically dynamic, socially coherent, and on the path of sustainable development.

6. Comparison with Other Regional Organizations in Selected Parameters

This section presents a comparative scenario of ASEAN with other major regional organizations with regards to the following parameters – to ascertain a concrete course of action for drafting a charter of ASEAN:

- (i) Historical background of formation
- (ii) Coverage of issues
- (iii) Non-integration components
- (iv) Process employed for attainment of objectives
- (v) Governance

6.1. ASEAN and SAARC

6.1.1. Historical Background of Formation

The South Asian Association for Regional Cooperation (SAARC) comprises seven countries of South Asia, i.e. Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka, as of date. It is an Association based on the consciousness that in an increasingly interdependent world, the objectives of peace, freedom, social justice and economic prosperity are best achieved in the South Asian region by fostering mutual understanding, good neighborly relations and meaningful cooperation among the Member States which are bound by ties of history and culture. The idea of regional cooperation in South Asia was first mooted in May 1980. After consultations, the Foreign Secretaries of the seven countries met for the first time in Colombo in April 1981. This was followed by a meeting of the 'Committee of the Whole' (Colombo, August-September 1981) which identified five broad areas for regional cooperation. The Foreign Ministers of South Asia, at their first meeting (New Delhi, August 1983) adopted the Declaration on South Asian Regional Cooperation (SARC) and formally launched the Integrated Programme of Action (IPA), initially in five agreed areas of cooperation i.e. Agriculture, Rural Development, Telecommunications, Meteorology, Health and Population Activities. The Heads of State or Government at their First SAARC Summit (Dhaka, 7-8 December 1985) adopted the Charter, formally establishing the South Asian Association for Regional Cooperation (SAARC)². Afghanistan was added to the regional grouping at the behest of India on November 13, 2005³, and became recognized as a full member on April 3, 2007⁴. With the addition of Afghanistan, the total number of member states was raised to eight (8). In April 2006, the United States of America, People Republic of China⁵, and South Korea made formal requests to be granted observer status. The European Union has also indicated interest in being given observer status, and made a formal request for the same to the SAARC Council of Ministers meeting in July 2006⁶. On August 2, 2006 the foreign ministers of the SAARC countries agreed in principle to grant observer status to the US, South Korea and the European Union. On 4 March 2007 Iran⁷ requested observer status⁸. Both the Russian Federation and the Union of Myanmar have expressed their interest in joining SAARC⁹.

6.1.2. Coverage of Issues

Cooperation within the framework of the Association is based on respect for the principles of sovereign equality, territorial integrity, political independence, noninterference in the internal affairs of other States and mutual benefit. Such cooperation is to complement and not to substitute bilateral or multilateral cooperation, and such cooperation should be consistent with bilateral and multilateral obligations of Member States.

² List of SAARC summits: (i) December 7-8, 1985 at Dhaka; (ii) November 16-17, 1986 at Bangalore; (iii) November 2-4, 1987 at Katmandu; (iv) December 29-31, 1988 at Islamabad; (v) November 21-23, 1990 at Malé; (vi) December 21, 1991 at Colombo; (vii) April 10-11, 1993 at Dhaka; (viii) May 2-4, 1995 at New Delhi; (ix) May 12-14, 1997 at Malé; (x) July 29-31, 1998 at Colombo; (xi) January 4-6, 2002 at Katmandu; (xii) January 2-6, 2004 at Islamabad; (xiii) November 12-13, 2005 at Dhaka; (xiv) April 3-4, 2007 at New Delhi

³ www.timesofindia.indiatimes.com/articleshow/1293872.cms

⁴ <http://www.rferl.org/featuresarticle/2007/4/1813263c-be38-4742-8c3d-372e7c2b354c.html>

⁵ The People's Republic of China has shown its interest in joining SAARC. While Pakistan and Bangladesh support China's candidature, India is more reluctant about the prospect of Chinese membership, while Bhutan does not even have diplomatic relations with China. However, during the 2005 Dhaka summit, India agreed on granting observer status to the PRC along with Japan. In the 14th summit, Nepal announced its support for the membership of China. Pakistan, Bangladesh, and Nepal gave strong support for the membership of China

⁶ <http://www.ibnlive.com/news/sl-proposes-one-saarc-currency/37642-3.html>

⁷ The Islamic Republic of Iran is the only country in Southern Asia that is not a part of SAARC. Iran has traditionally enjoyed strong cultural, economic and political relationship with both India and Pakistan and has expressed its desire to become a member of the South Asian organization. On 22 February 2005, the Foreign Minister of Iran, Kamal Kharrazi, indicated Iran's interest in joining SAARC by saying that his country could provide the region with "East-West connectivity". However, due to the on-going row over Iran's nuclear facilities, it seems unlikely that Iran would be accepted as a member of the SAARC. On 3 March 2007, Iran asked to join the SAARC as an observer. SAARC Secretary-General Lyonpo Chenkyab Dorji responded by saying that Iran's request for observer status would be taken up during a meeting of ministers of foreign affairs of SAARC member countries in the 3 April summit in New Delhi.

⁸ http://english.people.com.cn/200703/04/eng20070304_354098.html

⁹ http://english.people.com.cn/200704/11/eng20070411_365640.html, and

http://news.monstersandcritics.com/india/news/article_1289939.php?Russia_keen_on_observer_status_at_SAARC

6.1.3. Non-Integration Components

All contentious bilateral negotiations have been constricted out of the SAARC Charter. The way into the composite formation envisaged in the SAARC charter is through "pull" effect, i.e., affecting a gradual intensification of political proximity through socio-economic collaboration.

6.1.4. Process Employed for Attainment of Objectives

Decisions at all levels in SAARC are to be taken on the basis of unanimity, and all bilateral and contentious issues are to be excluded from the deliberations of the Association.

6.1.5. Governance

The Summit meeting is the highest authority of the Association rests with the Heads of State or Government, who meet annually at the Summit level. To date, thirteen Summits have been held: Dhaka (1985), Bangalore (1986), Katmandu (1987), Islamabad (1988), Malé (1990), Colombo (1991), Dhaka (1993), New Delhi (1995), Malé (1997), Colombo (1998) Katmandu (2002), Islamabad (2004) and Dhaka (2005). The Council of Ministers – comprising of the Foreign Ministers of Member States, the Council is responsible for formulating policies; reviewing progress; deciding on new areas of cooperation; establishing additional mechanisms as deemed necessary; and deciding on other matters of general interest to the Association. The Council is expected to meet twice a year; and may also meet in extraordinary sessions by agreement of Member States. It has held twenty-seven regular sessions. Informal meetings of the Council are also held on the sidelines of the United Nations General Assembly Sessions in New York. Next, the Standing Committee comprising the Foreign Secretaries of Member States is entrusted with the task of overall monitoring and coordination of programmes; approving of projects and programmes, and modalities of financing; determining inter-sectoral priorities; mobilizing regional and external resources; and identifying new areas of cooperation. Usually this Committee meets twice a year, preceding the Council of Ministers and submits its reports to the Council of Ministers. It may also meet in special session as and when necessary, by agreement of Member States.

The Standing Committee is assisted by a Programming Committee (which is not a SAARC Charter body) comprising senior officials to scrutinize the Secretariat Budget, finalize the Calendar of Activities and take up any other matter assigned to it by the Standing Committee. The Programming Committee has also been entrusted to consider and submit to the Standing Committee recommendations for action on the Reports of the Technical Committees, SAARC Regional Centers and the SAARC Audio Visual Exchange (SAVE) Committee.

During the 12th SAARC Summit, seven Technical Committees was re-constituted, functioning in various fields under the agreed areas of cooperation. The Technical Committees formulate specialized programmes and projects in their respective fields under the SAARC Integrated Programme of Action (RIPA), which has been renamed as 'Regional Integrated Programme of Action (RIPA)'. These are also responsible for monitoring the implementation of such activities and submit their reports to the Standing Committee through the Programming Committee. Newly formed Technical Committees and their Chairs (for six years, i.e. up to 2009) are as follows:

- (i) TC- Agriculture and Rural Development (including Livestock and Fisheries) - India
- (ii) TC- Health and Population Activities (including nutrition and drug related issues)-Nepal
- (iii) TC - Women, Youth and Children - Bangladesh
- (iv) TC - Environment and Forestry - Bhutan
- (v) TC - Science and Technology and Meteorology - Pakistan
- (vi) TC - Human Resources Development (including Education, Skill Development, Arts, Culture and Sports) - Sri Lanka
- (vii) TC - Transport (including Land, Water, Railway and Civil Aviation)-India.

Working Groups [as formed during the 12th SAARC Summit...these enjoy the same status as TCs]

- (i) WG - Telecommunications & ICT - India
- (ii) WG - Biotechnology - Nepal
- (iii) WG - Intellectual Property Rights (including traditional knowledge)- India.
- (iv) WG - Tourism - Sri Lanka
- (v) WG - Energy - Pakistan

Also, since the establishment of the Association, a number of SAARC ministerial meetings have been held to focus attention on specific areas of common concern, and these have now become an integral part of the consultative structure.

6.2. ASEAN and EU

6.2.1. History

The European Union is set up with the aim of ending the bloody wars between neighbors, which culminated in the Second War II.

6.2.2. Coverage

The coverage of The European Union's activities including all kind of socio-cultural activities as follows:

- Economic and monetary affairs
- Education, training, youth
- Employment and social affairs
- Public health, food safety
- Justice, freedom and security
- Human right and human aid
- Taxation, customs
- Development, environment
- Agriculture, fisheries and maritime affairs, transport

6.2.3. Objectives

The main objectives of the European Union are to promote peace, the Union's values and well-being of its peoples.

6.2.4. Norms, Process, and Governance

The European Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights. Member states are characterized by pluralism, non discrimination, tolerance, justice, solidarity and equality between women and men.

Elements that are of consequence into the discussion are:

- Institutions
- Financial body
- Advisory bodies
- Inter-institutional bodies
- Decentralized bodies of the European Union (agencies)

6.2.5. Charter Provisions

- Establishment of the Union
- The values of the Union
- The Objective of the Union
- Fundamental freedoms and non-discrimination
- Relation between the Union and member states
- Union law
- Legal personality
- The symbols of the Union
- Fundamental rights
- Citizenship of the Union
- Conditions of eligibility and procedure for accession to the Union
- Suspension of Union membership rights
- The charter of fundamental rights of the Union
- Accession to the ECHR (European Convention for the Protection of Human Rights and Fundamental Freedoms)

6.2.6. Treaty on European Union

- a. Common provisions
- b. Provisions amending the Treaty establishing the European Economic Community with a view to establishing the European Community.
- c. Provisions amending the Treaty establishing the European Coal and Steel Community
- d. Provisions amending the Treaty establishing the European Atomic Energy Community.
- e. Provisions on a common foreign and security policy.

- f. Provisions on cooperation in the field of justice and home affairs
- g. Final provisions.

6.3. ASEAN and ECOWAS

6.3.1. History

The Economic Community of West African States (ECOWAS) is a regional group initially of sixteen countries, founded on May 28, 1975 when sixteen West African countries signed the Treaty of Lagos. Its mission is to promote economic integration. In 2000 Mauritania withdrew its membership from ECOWAS. It was founded to achieve "collective self-sufficiency" for the member states by means of economic and monetary union creating a single large trading bloc. The very slow progress towards this aim meant that the treaty was revised in Cotonou on July 24, 1993 towards a looser collaboration. The ECOWAS Secretariat and the Fund for Cooperation, Compensation and Development are its two main institutions to implement policies. The ECOWAS Fund was transformed into the ECOWAS Bank for Investment and Development in 2001

ECOWAS is one of the pillars of the African Economic Community.

Member states of ECOWAS are Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

6.3.2. Currency Cooperation

The West African CFA franc (XOF), created on December 26, 1945, is currently used in six formerly French-ruled African countries, as well as in Guinea-Bissau (former Portuguese colony). It is managed by the West African Economic and Monetary Union (UEMOA).

The Eco is the proposed name for the common currency the West African Monetary Zone (WAMZ) plans to introduce on 1 December 2009. The WAMZ includes the Anglophone countries of Gambia, Ghana, Nigeria, and Sierra Leone, and the Francophone nation of Guinea. Liberia is also interested in joining this monetary union. The ultimate goal is to unite the UEMOA and the WAMZ to form a single monetary zone in West Africa (ECOWAS), which Cape Verde would then also join.

6.3.3. Free Movement of People

- ECOWAS Travel certificate has entered into circulation in Burkina Faso, Gambia, Ghana, Guinea, Niger, Nigeria and Sierra Leone.
- ECOWAS Passport is printed and operational in Benin, Mali and Senegal
- Regional Security Cooperation:
- The ECOWAS nations have signed a non-aggression protocol in 1990 as well as two earlier agreements in 1978 and 1981. They have also signed a Protocol on Mutual Defense Assistance, in Freetown, Sierra Leone, on 29 May 1989 that was to create an Allied Armed Force of the Community (AAFC) as needed.

6.4. ASEAN and AU

The African Union (AU) is an organization consisting of fifty-three African states. Established in 2001, the AU was formed as a successor to the amalgamated African Economic Community (AEC) and the Organization of African Unity (OAU). Eventually, the AU aims to have a single currency and a single integrated defense force, as well as other institutions of state, including a cabinet for the AU Head of State. The purpose of the union is to help secure Africa's democracy, human rights, and a sustainable economy, especially by bringing an end to intra-African conflict and creating an effective common market.

6.4.1. Objectives

The objectives of the Union shall be to:

- (i) Achieve greater unity and solidarity between the African countries and the peoples of Africa;
- (ii) Defend the sovereignty, territorial integrity and independence of its Member States;
- (iii) Accelerate the political and socio-economic integration of the continent;
- (iv) Promote and defend African common positions on issues of interest to the continent and its peoples;
- (v) Encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights;
- (vi) Promote peace, security, and stability on the continent;
- (vii) Promote democratic principles and institutions, popular participation and good governance;
- (viii) Promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments;

- (ix) Establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations;
- (x) Promote sustainable development at the economic, social and cultural levels as well as the integration of African economies;
- (xi) Promote cooperation in all fields of human activity to raise the living standards of African peoples;
- (xii) Coordinate and harmonize policies between existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union;
- (xiii) Advance the development of the continent by promoting research in all fields, in particular in science and technology;
- (xiv) Work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent.

6.4.2. Overview

The highest decision making body in the AU is the AU Assembly of Heads of State, currently chaired by President Kufuor of Ghana, elected at the 8th ordinary meeting of the Assembly in January 2007. Its secretariat is the AU Commission, whose first chair is Alpha Oumar Konaré, former president of Mali, due to be replaced at the 9th AU summit to be held in Accra, Ghana, July 2007.

Other institutions of the AU include the Executive Council, made up of foreign ministers; the Permanent Representatives Committee, made up of the ambassadors to Addis Ababa of AU member states; the Pan African Parliament; and the Economic Social and Cultural Council (ECOSOCC), a civil society consultative body (see further below).

The AU covers the entire continent except for Morocco, which opposes the membership of Western Sahara as the Sahrawi Arab Democratic Republic. However, Morocco has a special status within the AU and benefits from the services available to all AU states from the institutions of the AU, such as the African Development Bank. Moroccan delegates also participate at important AU functions, and negotiations continue to try to resolve the conflict with the Polisario Front in Tindouf, Algeria and parts of Western Sahara.

The AU's first military intervention in a member state was the May 2003 deployment of a peacekeeping force of soldiers from South Africa, Ethiopia, and Mozambique to Burundi to oversee the implementation of the various agreements. AU troops are also deployed in Sudan for peacekeeping in the Darfur conflict.

6.4.3. History of the African Union

The historical foundations of the African Union originated in the Union of African States, an early confederation that was established by Kwame Nkrumah in the 1960s, as well as subsequent attempts to unite Africa, including the Organization of African Unity (OAU), which was established on May 25, 1963, and the African Economic Community in 1981. Critics argued that the OAU in particular did little to protect the rights and liberties of African citizens from their own political leaders, often dubbing it the "Dictators' Club". The idea of creating the AU was revived in the mid-1990s as a result of the efforts of the African Unification Front. The heads of state and government of the OAU issued the Sirte Declaration on September 9, 1999, calling for the establishment of an African Union. The Declaration was followed by summits at Lomé in 2000, when the Constitutive Act of the African Union was adopted, and at Lusaka in 2001, when the plan for the implementation of the African Union was adopted.

The African Union was launched in Durban on July 9, 2002, by its first president, South African Thabo Mbeki, at the first session of the Assembly of the African Union. The second session of the Assembly was in Maputo in 2003, and the third session in Addis Ababa on July 6, 2004.

Its Constitutive Act declares that it shall "invite and encourage the full participation of the African diasporas as an important part of our Continent, in the building of the African Union". The African Union Government has defined the African diasporas as "consisting of people of African origin living outside the continent, irrespective of their citizenship and nationality and who are willing to contribute to the development of the continent and the building of the African Union".

Morocco's withdrawal

The only African state which is not a member of the African Union is Morocco, which left the AU's predecessor, the Organization of African Unity (OAU), in 1984, when the other member states supported the Sahrawi nationalist Polisario Front's Sahrawi Arab Democratic Republic]. Some countries have since retracted their support for the Sahrawi Republic.

6.4.4. Organs of the AU

6.4.4.1. Pan-African Parliament (PAP)

To become the highest legislative body of the African Union. The seat of the PAP is at Midrand, South Africa. The Parliament is composed of 265 elected representatives from all fifty-three AU states, and intended to provide popular and civil-society participation in the processes of democratic governance. The current President of the Pan African Parliament is Gertrude Mongella of Tanzania.

6.4.4.2. Assembly of the African Union

Composed of heads of state and heads of government of AU states, the Assembly is currently the supreme governing body of the African Union. It is gradually devolving some of its decision-making powers to the Pan African Parliament. It meets once a year and makes its decisions by consensus or by a two-thirds majority. The current Chairman of the Assembly is John Kufuor, president of Ghana.

6.4.4.3. African Commission

The secretariat of the African Union, composed of ten commissioners and supporting staff and headquartered in Addis Ababa, Ethiopia. In a similar fashion to its European counterpart, the European Commission, it is responsible for the administration and co-ordination of the AU's activities and meetings.

6.4.4.4. African Court of Justice

To rule on human rights abuses in Africa. The court will consist of eleven judges elected by the Assembly. Kenya and Uganda have expressed interest in hosting the court.

6.4.4.5. Executive Council

Composed of ministers designated by the governments of members' states. It decides on matters such as foreign trade, social security, food, agriculture and communications, is accountable to the Assembly, and prepares material for the Assembly to discuss and approve.

6.4.4.6. Permanent Representatives' Committee

Consisting of nominated permanent representatives of member states, the Committee prepares the work for the Executive Council. (European Union equivalent: the Committee of Permanent Representatives (COREPER)).

6.4.4.7. Peace and Security Council

Proposed at the Lusaka Summit in 2001. It has fifteen members responsible for monitoring and intervening in conflicts, with an African force at its disposal. Similar in intent and operation to the United Nations Security Council.

6.4.4.8. Economic, Social and Cultural Council

An advisory organ composed of professional and civic representatives, similar to the European Economic and Social Committee. The interim chair of ECOSOCC is Nobel prizewinner Wangari Maathai of Kenya.

6.4.4.9. Specialized Technical Committees

These address Rural Economy and Agricultural Matters; Monetary and Financial Affairs; Trade, Customs, and Immigration Matters; Industry, Science and Technology, Energy, Natural Resources, and Environment; Transport, Communications, and Tourism; Health, Labor, and Social Affairs; Education, Culture, and Human Resources.

6.4.4.10. Financial institutions

African Central Bank, African Investment Bank, African Monetary Fund.

6.4.5. Current issues

The AU faces many challenges, including health issues such as combating malaria and the AIDS/HIV epidemic; political issues such as confronting undemocratic regimes and mediating in the many civil wars; economic issues such as improving the standard of living of millions of impoverished, uneducated Africans; ecological issues such as dealing with recurring famines, desertification, and lack of ecological sustainability; as well as the legal issue of the still-unfinished decolonization of Western Sahara.

6.5. ASEAN and GCC¹⁰

6.5.1. Basis and Goals for Cooperation

- Having common characteristics and similar systems founded on the creed of Islam (Deep religious and cultural ties link the six states)
- Reinforcing and serving Arab and Islamic causes as well as strengthening cooperation in all essential areas that concern their peoples and realizing their hopes for a better future on the path to unity of their States.

¹⁰ Text retrieved from <http://www.gcc-sg.org/charter.html>

6.5.2. Members of The Organization

1. The United Arab Emirates
2. The State of Bahrain
3. The Kingdom of Saudi Arabia
4. The Sultanate of Oman
5. The State of Qatar, and
6. The State of Kuwait

6.5.3. The Structure of Organization

THE COOPERATION COUNCIL - HEADQUARTERS IN RIYADH, SAUDI ARABIA

- To effect coordination, integration and inter-connection between Member States in all fields in order to achieve unity between them.
- To deepen and strengthen relations, links and areas of cooperation now prevailing between their peoples in various fields.
- To formulate similar regulations in various fields including economic and financial affairs, Commerce, customs and communications, Education and culture.
- To stimulate scientific and technological progress in the fields of industry, mining, agriculture, water and animal resources; to establish scientific research; to establish joint ventures and encourage cooperation by the private sector for the good of their peoples.

The Cooperation Council has following main organizations:

1. The Supreme Council to which shall be attached the Commission for Settlement of Disputes.
2. The Ministerial Council.
3. The Secretariat General.

Each of these organizations may establish sub-agencies as may be necessary.

SUPREME COUNCIL

- The highest authority: shall be formed of heads of member states. Its presidency shall be rotatory - based on the alphabetical order of the names of the member states.
- Holding one regular session every year in the territories of member states and considered valid if attend by two-thirds of the member states. Extraordinary sessions may be convened at the request of any member seconded by another member.

THE FUNCTIONS OF THE SUPREME COUNCIL

- Reviewing matters of interest to the member states.
- Laying down the higher policy for the Cooperation Council and the basic lines it should follow.
- Reviewing the recommendations, reports, studies and joint ventures submitted by the Ministerial Council for approval.
- Reviewing reports and studies, which the Secretary-General is charged to prepare.
- Approving the bases for dealing with other states and international organizations.
- Approving the rules of procedure of the Commission for the Settlement of Disputes and nominate its members.
- Appointing the Secretary-General.
- Amending the Charter of the Cooperation Council.
- Approving the Council's internal rules of procedure.
- Approving the budget of the Secretariat General.

VOTING IN THE SUPREME COUNCIL

- Each member - one vote.
- Resolutions on substantive matters - unanimous approval
- Resolutions on procedural matters - majority vote.

COMMISSION FOR THE SETTLEMENT OF DISPUTES

- Attached to the Supreme Council.
- The Supreme Council establish the composition of the Commission for every case on an "ad hoc" basis in accordance with the nature of the dispute.
- If a dispute arises over interpretation or implementation of the Charter and such dispute is not resolved within the Ministerial Council or the Supreme Council, the Supreme Council may refer such dispute to the Commission for the Settlement of Disputes.
- The Commission submit its recommendations or opinion, as applicable, to the Supreme Council for such action as the Supreme Council deems appropriate.

MINISTERIAL COUNCIL

- The Ministerial Council shall be formed of the Foreign Ministers of the member states or other delegated ministers. The Council Presidency shall be for the member state, which presided the last ordinary session of the Supreme Council, or if necessary, for the state which is next to preside the Supreme Council.
- The Ministerial Council shall convene every three months and may hold extraordinary sessions at the invitation of any member seconded by another member.
- The Ministerial Council shall determine the venue of its next session.
- A Council's meeting shall be deemed valid if attended by two-thirds of the member states.

FUNCTIONS OF THE MINISTERIAL COUNCIL

- Propose policies, prepare recommendations, studies and projects aimed at developing cooperation and coordination between member states in various fields and adopt the resolutions or recommendations required in this regard.
- Endeavor to encourage, develop and coordinate activities existing between member states in all fields. Resolutions adopted in such matters shall be referred to the Ministerial Council for further submission, with recommendations to the Supreme Council for appropriate action.
- Submit recommendations to the Ministers concerned to formulate policies whereby the Cooperation Council's resolutions may be put into effect.
- Encourage means of cooperation and coordination between the various private sector activities, develop existing cooperation between the member states' Chamber of Commerce and Industry, and encourage the movement within the GCC of workers who are citizens of the member states.
- Refer any of the various aspects of cooperation to one or more technical or specialized committee for study and presentation of appropriate recommendations.
- Review proposals related to amendments to this Charter and submit appropriate recommendations to the Supreme Council.
- Approve Rules of Procedure of both the Ministerial Council and the Secretariat General.
- Appoint the Assistant Secretaries-General, as nominated by the Secretary-General, for a period of three year, renewable.
- Approve periodic reports as well as internal rules and regulations relating to administrative and financial affairs proposed by the Secretary-General, and submit recommendations to the Supreme Council for approval of the budget of the Secretariat General.
- Make arrangements for meetings of the Supreme Council and prepare its agenda.
- Review matters referred to it by the Supreme Council.

VOTING IN THE MINISTERIAL COUNCIL

- Every member - one vote.
- Resolutions on substantive matters - unanimous vote of the member state present
- On procedural matters - majority vote.

THE SECRETARIAT GENERAL

- The Secretariat General headed by a Secretary-General who is assisted by assistants and a number of staff as required.
- The Secretary-General who is appointed by the Supreme Council shall be a citizen of one of the Cooperation Council states, for a period of three years, which may be renewed once only.
- The Secretary-General nominates the Assistant Secretaries-General.
- The Secretary-General appoints the Secretariat General staff from among the citizens of member states, and may not make exceptions without the approval of the Ministerial Council.
- The Secretary-General is directly responsible for the work of the Secretariat General and the smooth flow of work in its various organizations as well as representing the Cooperation Council with other parties within the limits of the authority vested in him.

FUNCTIONS OF THE SECRETARIAT GENERAL

- Prepare studies related to cooperation and coordination, and to integrated plans and programmes for member states' action.
- Prepare periodic reports on the work of the Cooperation Council.
- Follow up the implementation by the member states of the resolutions and recommendations of the Supreme Council and Ministerial Council.
- Prepare reports and studies requested by the Supreme Council or Ministerial Council.
- Prepare the draft of administrative and financial regulations commensurate with the growth of the Cooperation Council and its expanding responsibilities.
- Prepare the budgets and closing accounts of the Cooperation Council.
- Make preparations for meetings and prepare agendas and draft resolutions for the Ministerial Council.
- Recommend to the Chairman of the Ministerial Council the convening of an extraordinary session of the Council when necessary.
- Any other tasks entrusted to it by the Supreme Council or Ministerial Council.

BUDGET OF THE SECRETARIAT GENERAL

The Secretariat General shall have a budget to which the member states shall contribute in equal amounts.

6.5.4. Amendments to the Charter

- Any member state may request an amendment of this Charter.
- Request for Charter amendments shall be submitted to the Secretary-General who shall refer them to the member states at least four months prior to submission to the Ministerial Council.
- An amendment shall become effective if unanimously approved by the Supreme Council.

6.6. ASEAN and MERCOSUR

6.6.1. Short Historical Background / Facts

Mercosur (Mercado Común del Sur, or Common Market of the South) is a Regional Trade Agreement (RTA) between Brazil, Argentina, Uruguay, Venezuela, and Paraguay, founded in 1991 by the Treaty of Asunción, which was later amended and updated by the 1994 Treaty of Ouro Preto. Its purpose is to promote free trade and the fluid movement of goods, peoples, and currency. Mercosur origins trace back to 1985 when Presidents Raúl Alfonsín of Argentina and José Sarney of Brazil signed the Argentina-Brazil Integration and Economics Cooperation Program or PICE (Programa de Integración y Cooperación Económica Argentina-Brasil). Bolivia, Chile, Colombia, Ecuador and Peru currently have associate member status. Venezuela signed a membership agreement on 17 June 2006, and became a full member on July 4. The organization has a South and Central America integration vocation.

Mercosur comprises a population of more than 263 million people, and the combined Gross Domestic Product of the member nations is in excess of 2.42 trillion dollars a year (PPP) according to World Bank numbers, making Mercosur the fifth largest economy in the World.

6.6.2. Coverage of Issues

- Economic Integration

6.6.3. Non Integration Component

- Escape clause and Denunciation

6.6.4. Process

Some South Americans see Mercosur as giving the capability to combine resources to balance the activities of other global economic powers, especially the United States and the European Union. The organization could also potentially pre-empt the Free Trade Area of the Americas (FTAA); however, over half of the current Mercosur member countries rejected the FTAA proposal at the IV Cumbre de las Américas (IV Summit of the Americas) in Argentina in 2005. However, development of the South American Community of Nations seems to suggest that the countries of South America are not opposed to regional integration but merely wary of the United States-backed FTAA. The development of Mercosur was arguably weakened by the collapse of the Argentine economy in 2001 and it has still seen internal conflicts over trade policy, between Brazil and Argentina, Argentina and Uruguay, Paraguay and Brazil, etc. The free movement of individuals has been a matter of practical controversy, as Argentina unilaterally charges a 5 Pesos fee from Mercosur citizens going through the country. In December 2004 it signed a cooperation agreement with the Andean Community trade bloc (CAN) and they published a joint letter of intention for a future negotiations towards integrating all of South America. The prospect of increased political integration within the organization, as per the European Union and advocated by some, is still uncertain. Mercosur granted associate membership to all the Andean Community nations by virtue of the Economic Complementarity Agreements (Free Trade agreements) signed between the CAN and individual Mercosur members.

6.6.5. Governance

The administration and implementation of the Treaty of Asuncion, and of any specific agreements or decisions adopted during the transition period within the legal framework established thereby, shall be entrusted to the following organs:

- (a) The Council of the common market
- (b) The Common Market Group

6.6.6. Charter / Provisions

- 1991 Treaty of Asunción: Treaty Establishing a Common Market between the Argentine Republic, the Federal Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay
- 1994 Treaty of Ouro Preto: Amended the previous treaty

7. Cornerstones Envisaged in the New ASEAN Charter

7.1. The ASEAN Way

The Association of Southeast Asian Nations is almost 40 years old. Over its 38 years, ASEAN has operated without a formal charter¹¹. By preference, it has managed its affairs with a minimum of formality, with few legally binding arrangements, and with relatively weak regional institutions. ASEAN's founding document was a two-page "Declaration". It had no criteria for membership other than location in Southeast Asia and adherence to some general principles of international behavior. Most ASEAN agreements, even those that are technically binding, have been dependent on the voluntary compliance of member-states. There are no mechanisms for calling member-states to account in case of non-compliance with binding agreements. The ASEAN Secretariat, the closest thing that the association has to an executive, remains weak in terms of formal powers despite its strengthening in 1992. The great diversity of the countries of Southeast Asia, their widely different historical legacies, their divergent strategic outlooks, the diverse compositions of their populations, the uneasy nature of their recent relations, and the lack of a regional identity among their peoples have led their governments to prefer informal processes, weak regional institutions, and decisions by consensus. This has reassured the ASEAN members, even as they build confidence among themselves, that their national sovereignty, won so recently and with such difficulty, and that, in the case of some, the survival of the ruling regime, would not be threatened by their neighbors. They have gained the confidence that decisions would not be imposed on them by a combination of neighbors or through a strong supranational institution. Over most of ASEAN's existence, this loose, informal arrangement has served the association and its members well. The "ASEAN Way" and the association's very existence have enabled ASEAN to keep the peace among its members, promote regional stability and play a constructive role in the world out of proportion to its military might or economic heft.

The inevitable bilateral disputes have been managed and contained, some settled by legal or diplomatic means, certainly in non-violent ways. Certain norms of inter-state behavior have evolved over the years. Common economic purposes have been pursued through closer cooperation and moves towards regional economic integration. Relationships formed and cooperative practices developed have helped ASEAN countries, working together, deal with common regional problems like trans-boundary pollution, transnational crime and communicable diseases. On the basis of the ASEAN idea, links have been developed among non-governmental organizations, industry groups, professional associations, and cultural and educational institutions across the region. At the same time, ASEAN has remained open to the rest of the world and is closely engaged with the world's leading powers. ASEAN has the symbols and some institutions of a regional entity. It has a flag and a logo. It has a headquarters, a Secretariat, a Secretary-General, and a staff sworn to loyalty to the region rather than the countries of their nationality. The Secretariat enters into commercial and personnel contracts. Headquarters agreements have been concluded between the Secretary-General and the Indonesian Government. ASEAN has a budget. The Secretariat issues cheques against bank accounts in its name. Over the years, ASEAN has entered into agreements that are technically binding on its members. The Treaty of Amity and Cooperation in Southeast Asia lays down certain precepts governing the behavior of states-parties with respect to other states and establishes procedures for facilitating the peaceful settlement of disputes. The Southeast Asia Nuclear Weapons-Free Zone treaty commits the parties not to "develop, manufacture or otherwise acquire, possess or have control over nuclear weapons; ... station or transport nuclear weapons by any means; or ... test or use nuclear weapons" in the treaty's area of coverage or allow others to do any of these things (except for transport). It embodies other commitments related to nuclear weapons and nuclear waste.

The agreement on the ASEAN Free Trade Area obligates ASEAN members to bring down and remove tariff and non-tariff barriers to trade. ASEAN has separate agreements committing its members to the sector-by-sector liberalization of trade in services, the harmonization of product standards, mutual recognition arrangements, and the free flow of intra-ASEAN investments. ASEAN has concluded agreements on air cargo and on the facilitation of goods in transit, and it has one on multimodal transport ready to be signed. ASEAN's heads of government themselves signed an agreement on tourism, pledging their countries to take certain specific cooperative measures for developing and promoting tourism in the region. The agreement on trans-boundary haze pollution is already in force, although not all ASEAN members have ratified it. Thus, by these means, ASEAN has gained recognition as a regional entity and has, to a rising degree, acted as one.

¹¹ Ideas and references have been heavily drawn from the web-publication of "FRAMING THE ASEAN CHARTER - An ISEAS Perspective" by Rodolfo Severino

7.2. The Rationale for an ASEAN Charter

It is envisaged that a charter would establish the association as a juridical personality and a legal entity. It would make clear the association's objectives. The charter would enshrine the values and principles to which the association's members adhere and which, in a real sense, define its very nature. The charter would envision the arrangements for the further integration of the regional economy and define the institutions, mechanisms and processes for dealing with transnational problems. It would establish the organs of the association and delineate their respective functions, responsibilities, rights and limitations, the relationships among the organs, and their decision-making processes. Among these organs would be an objective and credible dispute-settlement mechanism. The charter would mark out the relationship between the association and the member-states. It would specify the ways for the charter to take effect and when. It would lay down rules for amendments to be made. Indicative recommendations for the contents of the proposed ASEAN Charter are as follows:

7.2.1. Preamble

The charter's preamble should briefly recall ASEAN's beginnings, development and achievements and lay down the reasons for having a charter.

7.2.2. Establishment

The charter should embody the member-states' agreement to establish ASEAN as a juridical personality and legal entity.

7.2.3. Flag, Logo and ASEAN Day

It should describe ASEAN's flag and logo, with detailed specifications. It might designate 8 August as ASEAN Day, to be observed as a public holiday in all ASEAN member-countries.

7.2.4. Objectives

Essential to any charter or constitutive act of an association is a statement of its objectives. In ASEAN's case, the association's objectives are stated in scattered ASEAN documents¹². The objectives indicated above might be merged with those set forth in the Bangkok Declaration of August 1967¹³, the Declaration of ASEAN Concord of 1976¹⁴, the Treaty of Amity and Cooperation in Southeast Asia of 1976, ASEAN Vision 2020 of 1997, the Declaration of ASEAN Concord of 2003, and the Vientiane Action Programme of 2004.

¹² They should include the following:

1. The well-being of the member-countries' peoples and the protection of their rights;
2. The maintenance of regional peace and stability;
3. The integration of the regional economy for its growth and competitiveness;
4. The narrowing of the development gap among ASEAN countries;
5. The reduction of poverty within ASEAN countries;
6. The conservation and protection of the region's environment for sustainable development;
7. Cooperation in dealing as a region with transnational regional problems;
8. The advancement of the common values that the region's peoples hold in common;
9. The cultivation of a sense of regional identity among the region's peoples;
10. The promotion of Southeast Asian and ASEAN studies;
11. The development or establishment of effective regional institutions for advancing the above objectives; and
12. Such other objectives as the heads of state or government may set down for the association

¹³ The 1967 Bangkok Declaration set these objectives for the new association:

1. To accelerate the economic growth, social progress and cultural development in the region through joint endeavors in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of South-East Asian Nations;
2. To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter;
3. To promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific and administrative fields;
4. To provide assistance to each other in the form of training and research facilities in the educational, professional, technical and administrative spheres;
5. To collaborate more effectively for the greater utilization of their agriculture and industries, the expansion of their trade, including the study of the problems of international commodity trade, the improvement of their transportation and communications facilities and the raising of the living standards of their peoples;
6. To promote South-East Asian studies;
7. To maintain close and beneficial cooperation with existing international and regional organizations with similar aims and purposes, and explore all avenues for even closer cooperation among themselves."

¹⁴ The Declaration of ASEAN Concord issued in Bali in February 1976 elaborated on these objectives by proclaiming certain "objectives and principles":

1. The stability of each member state and of the ASEAN region is an essential contribution to international peace and security. Each member state resolves to eliminate threats posed by subversion to its stability, thus strengthening national and ASEAN resilience.
2. Member states, individually and collectively, shall take active steps for the early establishment of the Zone of Peace, Freedom and Neutrality.

The Treaty of Amity and Cooperation in Southeast Asia of 1976 defines its purpose as being "to promote perpetual peace, everlasting amity and cooperation among their peoples, which would contribute to their strength, solidarity and closer relationship". On the other hand, The 1997 statement on ASEAN Vision 2020 gives a more detailed depiction of ASEAN's objectives for the first two decades of the 21st century. The Ha Noi Plan of Action, 1998, reaffirms these objectives while prescribing measures for attaining them. The first operative part of the Declaration of ASEAN Concord of 2003 reaffirms and builds upon the previous statements of ASEAN's objectives. The Vientiane Action Programme of 2004 spells out separate objectives for the political and security, economic, and socio-cultural areas. The proposed ASEAN Charter should codify the more fundamental of these objectives in a comprehensive way. In no case should they be less than those already agreed upon in previous ASEAN documents.

7.2.5. Principles

Almost all regional associations have common standards of conduct for member-countries to live by, common principles to adhere to. Such standards and principles are often criteria for membership in the association. The common standards and principles are, in turn, based on and reflect common values and norms. Common values and norms give credibility to the association and provide a basis for a regional identity and for the region's people to develop a sense of that identity. Without common values and norms, ASEAN cannot become a true community. It would be difficult to engender enough mutual trust for ASEAN to move quickly on regional economic integration, on effective regional cooperation, on strengthening regional institutions, and on ensuring regional stability.

The Charter of the Organization of American States embodies such common principles, values and norms. Among them are:

- Non-intervention in "matters that are within the internal jurisdiction of the Member States";
- The promotion and consolidation of "representative democracy, with due respect for the principle of nonintervention";
- The pacific settlement of disputes among the Member States;
- The "effective limitation of conventional weapons";
- The "effective exercise of representative democracy";
- "The elimination of extreme poverty" as "an essential part of the promotion and consolidation of representative democracy" and as "the common and shared responsibility of the American States";
- The condemnation of wars of aggression;
- "Social justice and social security" as "bases of lasting peace";
- The "fundamental rights of the individual without distinction as to race, nationality, creed, or sex"; and
- Justice, freedom and peace.

Article 4 of the Constitutive Act of the African Union lays down the following principles:

- a) Sovereign equality and interdependence among Member States of the Union;
- b) Respect of borders existing on achievement of independence;
- c) Participation of the African peoples in the activities of the Union;
- d) Establishment of a common defense policy for the African Continent;
- e) Peaceful resolution of conflicts among Member States of the Union through such appropriate means as may be decided upon by the Assembly;
- f) Prohibition of the use of force or threat to use force among Member States of the Union;
- g) Non-interference by any Member State in the internal affairs of another;
- h) The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity;
- i) Peaceful co-existence of Member States and their right to live in peace and security;
- j) The right of Member States to request intervention from the Union in order to restore peace and security;
- k) Promotion of self-reliance within the framework of the Union;
- l) Promotion of gender equality;
- m) Respect for democratic principles, human rights, the rule of law and good governance;
- n) Promotion of social justice to ensure balanced economic development;

3. The elimination of poverty, hunger, disease and illiteracy is a primary concern of member states. They shall therefore intensify cooperation in economic and social development, with particular emphasis on the promotion of social justice and on the improvement of the living standards of their peoples.

4. Natural disasters and other major calamities can retard the pace of development of member states. They shall extend, within their capabilities, assistance for relief of member states in distress.

5. Member states shall take cooperative action in their national and regional development programmes, utilizing as far as possible the resources available in the ASEAN region to broaden the complementarity of their respective economies.

6. Member states, in the spirit of ASEAN solidarity, shall rely exclusively on peaceful processes in the settlement of intraregional differences.

7. Member states shall strive, individually and collectively, to create conditions conducive to the promotion of peaceful cooperation among the nations of Southeast Asia on the basis of mutual respect and mutual benefit.

8. Member states shall vigorously develop an awareness of regional identity and exert all efforts to create a strong ASEAN community, respected by all and respecting all nations on the basis of mutually advantageous relationships, and in accordance with the principles of self-determination, sovereign equality and non-interference in the internal affairs of nations."

- o) Respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities;
- p) Condemnation and rejection of unconstitutional changes of governments"

In the light of the great political, cultural and historical diversity among the ASEAN members — greater than in the Americas or in Africa — one might think that it would be difficult, if not impossible, for ASEAN to adopt similar principles, values and norms in common. Yet, over the years, ASEAN has adopted, whether explicitly or implicitly, some such common principles, values and norms. Indeed, the Vientiane Action Programme envisions the proposed ASEAN charter as among "the strategies for shaping and sharing ... norms of good conduct in a democratic, tolerant, participatory and open community". Examples of norms that ASEAN has already adopted in scattered documents, like those enshrined in the OAS Charter or in the AU's Constitutive Act, may be classified into three categories:

A. Inter-state relations among ASEAN members:

- Respect for "justice and the rule of law in the relationship among countries of the region" (The ASEAN Declaration, 8 August 1967);
- Exclusive reliance on "peaceful processes in the settlement of intra-regional differences" (Declaration of ASEAN Concord, 24 February 1976, and subsequent documents);
- Mutual assistance in case of natural disasters and "other major calamities" (Declaration of ASEAN Concord, 24 February 1976);
- The development of an "awareness of regional identity" (Declaration of ASEAN Concord, 24 February 1976) and the promotion of "a common regional identity" (Declaration of ASEAN Concord II, 7 October 2003);
- The "fundamental principles" of the Treaty of Amity and Cooperation in Southeast Asia, 24 February 1976 (also embodied in other documents):
 - a. Mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations;
 - b. The right of every State to lead its national existence free from external interference, subversion or coercion;
 - c. Non-interference in the internal affairs of one another;
 - d. Settlement of differences or disputes by peaceful means;
 - e. Renunciation of the threat or use of force;
 - f. Effective cooperation among themselves.
- The undertakings in the Treaty on the Southeast Asia Nuclear Weapon-Free Zone, 15 December 1995;
- Freedom from "all other weapons of mass destruction" (ASEAN Vision 2020, 15 December 1997);
- The "principle of comprehensive security" (Declaration of ASEAN Concord II, 7 October 2003).

B. Relations with states outside the region:

- Adherence to "the principles of the United Nations Charter" (The ASEAN Declaration, 8 August 1967);
- "close and beneficial cooperation with existing international and regional organizations with similar aims and purposes" (The ASEAN Declaration, 8 August 1967);
- The "recognition of, and respect for, South East Asia as a Zone of Peace, Freedom and Neutrality, free from any form or manner of interference by outside Powers" (Zone of Peace, Freedom and Neutrality Declaration, 27 November 1971);
- "a strong ASEAN community, respected by all and respecting all nations on the basis of mutually advantageous relationships, and in accordance with the principles of self-determination, sovereign equality and non-interference in the internal affairs of nations" (Declaration of ASEAN Concord, 24 February 1976);
- Accession by non-regional states to the Treaty of Amity and Cooperation in Southeast Asia, 24 February 1976;
- "ASEAN as an effective force for peace, justice and moderation in the Asia-Pacific and in the world" (ASEAN Vision 2020, 15 December 1997);
- The ASEAN Regional Forum as "the main forum for regional security dialogue" (Declaration of ASEAN Concord II, 7 October 2003).

C. Standards of behavior within states:

- The "promotion of social justice" and "the improvement of the living standards of their peoples" (Declaration of ASEAN Concord, 24 February 1976);
- "A Community of Caring Societies" (ASEAN Vision 2020, 15 December 1997);
- "open ASEAN societies ... where all people enjoy equitable access to opportunities for total human development regardless of gender, race, religion, language, or social and cultural background;
- where strong families as the basic units of society tend to their members particularly the children, youth, women and elderly; and where the civil society is empowered and

gives special attention to the disadvantaged, disabled and marginalized and where social justice and the rule of law reign;

- our nations being governed with the consent and greater participation of the people with its focus on the welfare and dignity of the human person and the good of the community.”
- A “set of socio-political values and principles” (Declaration of ASEAN Concord II, 7 October 2003);
- The peaceful resolution of domestic political disputes (ASEAN Joint Statement on the Situation in the Philippines, 23 February 1986);
- “national reconciliation and dialogue among all parties concerned leading to a peaceful transition to democracy” (Joint Communiqué of the 36th ASEAN Ministerial Meeting, 17 June 2003, paragraph on Myanmar);
- “free and peaceful elections” as contributing to “the attainment of a just, democratic and harmonious Southeast Asia” (Joint Communiqué of the 37th ASEAN Ministerial Meeting, 30 June 2004, commenting on elections in Malaysia, Indonesia and the Philippines).

These could be the basis of the ASEAN principles, values and norms to be enshrined in the proposed charter. In addition, the charter could manifest ASEAN’s collective rejection of acts that all would find abhorrent, such as genocide, ethnic cleansing, torture, the use of rape as an instrument of state power or as a weapon of war, the worst forms of child labor, the use of child soldiers, and discrimination on the basis of gender, race, religion or ethnicity. Condemnations of such acts are embodied in international conventions that all ASEAN countries have signed, but placing them in the proposed ASEAN Charter would strengthen the region’s commitment to them, help promote a sense of community among ASEAN’s states and peoples, and project ASEAN as an association with standards. Member-states in egregious violation of the more fundamental of these norms, which the charter would define, ought to be subject to suspension from the decision-making processes of the association.

7.3. Regional Economic Integration as an End-Goal

The proposed ASEAN Charter is expected to set out the longer-term direction for ASEAN¹⁵. In terms of regional economic integration, that long-term direction and end-goal have already been articulated to some extent in the ASEAN Concord II (better known as the Bali Concord II). At the Ninth ASEAN Summit in Bali in October 2003, ASEAN leaders agreed to integrate their economies and establish an ASEAN Economic Community (AEC) by 2020. The AEC is one of three pillars (the other two being the ASEAN Security Community and the ASEAN Socio-cultural Community) that make up the ASEAN Community. In line with the ASEAN Vision 2020, it is envisaged that the AEC will be a single market and production base with free flow of goods, services, investments, capital and skilled labor. This bold project would require a higher degree of regional economic integration than what exists today in ASEAN. The ASEAN Economic Ministers’ High Level Task Force (HLTF) on Economic Integration has unveiled a slew of economic initiatives with clear deadlines to expedite the economic integration process to realize the AEC. These initiatives, which are annexed to the Bali Concord II, include:

- Fast-track integration of 11 priority sectors¹⁶
- Faster customs clearance and simplified customs procedures
- Elimination of barriers to trade
- Accelerated implementation of the mutual recognition arrangements (MRAs) for key sectors (e.g., electrical and electronic equipment and telecommunications equipment)
- Harmonization of standards and technical regulations.

One of the most important recommendations by the HLTF was the creation of a more effective dispute-settlement mechanism (DSM) with powers to make legally binding decisions in resolving trade disputes among member states. The number of trade disputes is likely rise significantly as the region moves towards a higher level of economic integration. Hence, a credible DSM would be absolutely critical for the AEC to succeed. The following measures will be undertaken to enhance the DSM:

- Establish a legal unit within the ASEAN Secretariat to provide legal advice on trade disputes
- Establish the ASEAN Consultation to Solve Trade and Investment Issues in order to provide quick resolution of operations problems (this would be similar to the EU mechanism)
- Establish the ASEAN Compliance Body

Economic integration within ASEAN has always been motivated by the need to make the region an attractive production base for domestic and foreign companies. By maximizing the complementarities among member countries to achieve economies of scale, and becoming an efficient manufacturer of

¹⁵ Ideas and data heavily drawn from web-publication “TOWARDS AN ASEAN CHARTER Regional Economic Integration” by Denis Hew

¹⁶ The 11 priority sectors are: electronics, e-ASEAN, healthcare, wood-based products, automotives, rubber-based products, textiles and apparels, agro-based products, fisheries, air travel and tourism.

products, ASEAN aims to become a single production base that would be a magnet for attracting FDI inflows.

An integrated ASEAN would also be an alternative to China as a regional production base for multinational corporations (MNCs). Some have referred to this as the "China+1" formula, as MNCs would prefer to diversify their risk by investing in an alternative regional site rather than "putting all their eggs" in one basket and investing solely in China.

Achieving a higher level of economic integration may seem daunting at first glance but ASEAN is not starting from scratch. This is because ASEAN has already put in place potential building blocks towards achieving the AEC. These potential building blocks would include economic integration initiatives, such as AFTA, the ASEAN Framework Agreement on Services (AFAS) and the ASEAN Investment Area (AIA). Looked at holistically, the formation of an AEC could be seen as a logical step up the economic integration ladder.

8. Facts and Fears of Drafting an ASEAN Charter

8.1. Trends

Certain global trends, such as those pointed out below, defines the strategic shift the world is experiencing today:

- Global war on terror
- Globalization à Liberalization
- Tendencies towards the creation of FTAs / RTAs – either as footsteps for ultimate global economic integration, or, more prominently, as a side-diversion of global economic integration
- Competition for resources, particularly energy and fresh water
- Multilateralism vs. regionalism
- Joint efforts against diseases, natural disasters
- Democratization of governance
- Anti-Corruption/Good Governance initiatives – role of the civil society
- Human Rights and intervention at sub-national levels by supra-national entities

8.2. Challenges

Challenges that manifest themselves in the process of intensification of raison d'être of ASEAN are:

- Reinforcement for ASEAN Community Building¹⁷
- Finalization of a Charter by the end of 2007
- Narrowing the differences in political systems as well as level of development between the ASEAN member countries
- Increasing the comfort level among ASEAN member countries in terms of negotiations and co-sponsoring certain initiatives
- Centrality of an ASEAN awareness and identity
- Streamlining of ASEAN meetings
- Completions of FTA Negotiations with Dialogue Partners [China, India, Japan, South Korea, Australia, New Zealand, EU, etc.]

8.3. Implications

Implications of stronger cooperation include:

- Greater integration domestic changes (legal, institution, etc.) ; harmonization
- Greater involvement of ASEAN with others ; transparency, standardization, selectivity
- Greater openness ; competition, specialization
- Greater challenges ; need to improve domestic rules and regulations, human resources, efficiency
- Greater opportunities ; improving people's welfare, narrowing the development gap
- Greater interaction ; people-centered/participation, public accountability
- Greater interdependency ; sovereignty/nationalism ?

¹⁷ ASEAN Community Building process include:

- ASEAN Security Community (ASC)
– Political development, norms setting, conflict prevention, approaches to conflict resolution, and post-conflict peace building

- ASEAN Economic Community (AEC)
– Free flow of goods, services, investment, a freer flow of capital, equitable economic development as well as reduce poverty and socio-economic disparities

- ASEAN Socio-Cultural Community (ASCC)
– Building a community of caring societies, managing the social impacts of economic integration, promoting environmental sustainability, and promoting an ASEAN identity.

8.4. The Charter: Why Charter?

- Most basic: ASEAN doesn't have an internationally-acknowledged legal personality at present
- ASEAN needs to reaffirm ASEAN's goals and principles
- ASEAN doesn't yet have a specific dispute-settlement mechanism among Member States
- ASEAN needs to provide a strong framework for cooperation in the future.

8.5. Purposes of the Charter

- To provide an internationally-acknowledged legal standing for ASEAN;
- To reaffirm ASEAN's goals and principles;
- To specify dispute-settlement mechanism among Member States;
- To provide a strong framework for cooperation in the future;
- To define rights and obligations of Member States;

8.6. Kuala Lumpur Declaration

11th ASEAN Summit, December 2005

- ASEAN Charter will be the legal and institutional framework to support the vision of ASEAN (Create Legal Personality)
- As the legal instrument of ASEAN, the Charter might have more binding effects in incorporating all the shared-value and common interest and cooperation of ASEAN
- Endorsement of ASEAN Leaders in 12th ASEAN Summit, Cebu 2007, of the EPG Report / recommendations on the ASEAN Charter
- Based on the EPG Report and 11th ASEAN Summit guidance the High Level Task Force (HLTF) appointed by the respective Leaders will prepare a draft to be submitted to the 13th ASEAN Summit this year:

8.7. The EPG Report

Principles of the Charter should attempt to:

- Reaffirm and codify the fundamental principles contained in the ASEAN's principal documents.
- Mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of Member States;
- Renunciation of the threat or the use of force in inter-State relations;
- Non-interference in the internal affairs of ASEAN Member States
- Adherence to the rule of law, good governance and democracy
- Respect for and protection of human rights
- Respect for principles of international law

Elements of the Charter should include:

- Clear definition of purposes and principles
- Distinct legal personality
- Definition of membership¹⁸
- Organs¹⁹
- Immunities and privileges
- Decision Making
- Settlement of Disputes
- Budget and Finance
- Administration and Procedures
- Identity and Symbol
- External Relations
- General and Final Provisions

¹⁸ (i) The ASEAN Council may consider taking any measures, including, among others, the suspension of rights and privileges, upon the proposal of Member States concerned and the recommendation of the ASEAN Foreign Ministers, for any breach by any Member States of the objectives, principles, and commitment as contained in the existing ASEAN declarations, agreements, concords, and treaties as well as norms and values adhered to by ASEAN; also (ii) Unless otherwise decided by the ASEAN Council in exceptional circumstances, there shall be no recourse to expulsion of membership.

¹⁹ Principal Organs of ASEAN include: (1) ASEAN Council, (2) Councils of the ASEAN Community, and (3) Secretariat-General of ASEAN. The other organs include: (1) ASEAN Committees, (2) ASEAN Permanent Representatives, (3) ASEAN National Secretariats, (4) ASEAN Committees in non-ASEAN Countries and International Organizations, (5) ASEAN Foundations, (6) ASEAN Institute.

Figure 1: The ASEAN Council

Decision Making Process in ASEAN has been emphasized to be based on consultation and consensus. If consensus cannot be reached, decisions may be taken through voting, either on the basis of a simple majority, or on a 2/3rd or 3/4th majority.

For "Dispute Settlement", disputes in the political and security field shall be resolved through the High Council of the TAC. It has been suggested that for disputes which concern the application or interpretation of ASEAN economic agreements, the ASEAN Protocol on Enhanced Dispute Settlement Mechanism will continue to provide the compliance monitoring, advisory, and consultative as well as enforcement mechanisms. It has also been proposed to establish other dispute settlement mechanisms for other types of dispute.

However, overcoming contentious issues through peaceful mechanisms remain a central philosophy of ASEAN. These include:

- The non-compliance issues in particular the temporary suspension of membership. Myanmar raised its concern over this particular issue.
- Decision making process. CLMV wants ASEAN maintain the consensus way and avoid voting.
- The ASEAN Union vision, most of ASEAN Countries view that it is not the right time to put this vision within the Charter because it is still perceived as a long term objective which could bias the priority to establish ASEAN Community.
- Establishment of ASEAN Special Funding and narrowing development gap.

9. SWOT Analysis on ASEAN Economic Integration

9.1. Strengths

- ASEAN has strong historical, cultural, and language affinities
- Common and unique values
- There are capital, intellectual, labor and skills
- There is a common willingness to cooperate in the endeavor to engage in economic

- integration in term of liberalization
- Liberalization phase has been sustained and tend to be accelerated

9.2. Weaknesses

- Different level of technological infrastructure
- Different level of a healthy investment environment and capital market
- Tussle between the “business and bureaucracy”
- Some restrictive ownership rules are still in place
- The political situation in Myanmar
- Different level of good governance

9.3. Opportunities

- Effective use of resources by improving the quality of ASEAN’s human and capital resources
- Strong enough to be more global competitive union
- Economic Integration and ASEAN Common Market, efficiencies of scale, lowered unit costs.
- Increased variety of goods available for everyone to buy.
- Increased volume

9.4. Threats

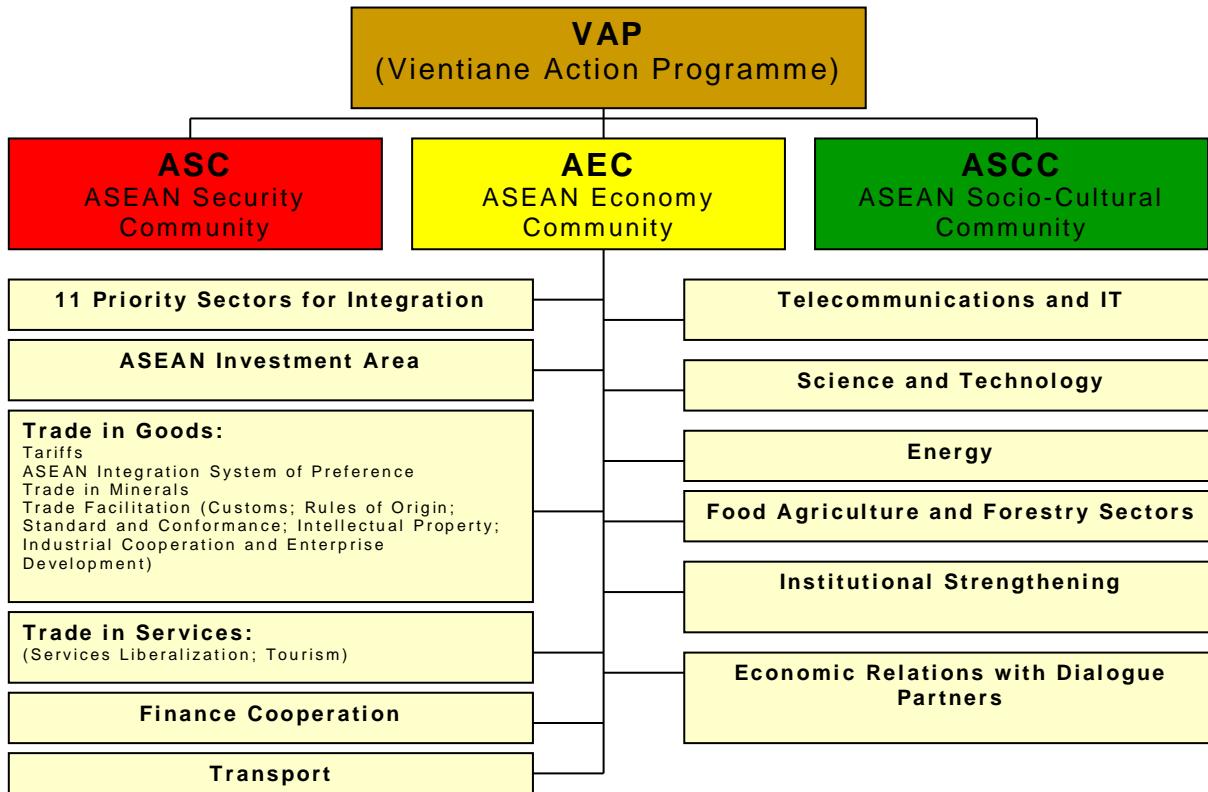
- Competition between foreign economic blocs
- Internal competition among ASEAN countries
- Fundamentalist and radical movements in several ASEAN member countries
- Highly trained labors are more mobile, forcing a dilemma on developing countries
- Negative consequences in the short run loom large

10. Policy Suggestions for Drafting the ASEAN Charter

What we present in this section is a comprehensive policy suggestion for the ASEAN to incorporate into the ASEAN (proposed) Charter. We have taken the EU model for a comparative analogy and consequent analysis.

First, we present the ASEAN action spectrum, which could be considered as a viable strategic programming bloc for the entire region.

Figure 2: ASEAN action spectrum



Some key points with regard to the European Union (EU) that ASEAN could make use of are as follows²⁰:

10.1. Main Principles of Economic Integration

Integration has to be a positive sum game for all so much so that it would always be better for a member state to be in rather than out of the union. Politically: stronger influence and better possibilities to shape and implement domestic political preferences. Economically: higher and sustainable growth rate leading to a higher living standard.

If we take the case of European integration over the decades after the second world war, two defining instances can be listed such as in the 1965 incident concerning France (boycott of institutions for six months) and when Margaret Thatcher in 1979 demanded "money back" given the sentiments that Britain was financing the EU at too high costs without hopes of returns. In both cases the "recalcitrant" member state was accommodated by a special political and/or economic arrangement. This underlines that the objective(s) for the integration applies for all, but special arrangements, i.e., of transitional nature can be agreed for one or more member-states. They all get there but not necessarily by the same road and at the same time. Looking at the state of the EU today, this is still the case. UK stood outside the Social Charter in the Treaty of Maastricht, several member states are outside the EURO and the Schengen arrangement regarding free passage at borders. It is thus pertinent for the Charter to be drafted in such a way that such difficult situations do not occur.

As we always have found, it was important for the EU to be a problem grinder. There must be common acceptance that integration is for the good of the member-states and for the population and that no problems are irrelevant. All member-states must come to the EU confident that their problem will be dealt with. And the population must feel that this is the case — the EU being relevant for them in their daily life and not only a political exercise at a high level or even worse an irritant. For this end to be met, a visible political objective exists, which includes the 1950s free trade to boost economic growth and to counter the threat posed by the Soviet Union. The Single European Act, Single Currency and Enlargement – all were incorporated into the EU structure much later. As it demonstrates, the regional organization must target a clear political problem that the people understand and feel is relevant. And it is advisable to highlight why these problems cannot be solved without the integration. The failure of the proposed Constitution in two member states was precisely because politicians did not manage to get across to the

²⁰ Ideas and information heavily drawn from web publication "TOWARDS AN ASEAN CHARTER - Lessons from the European Union" by Joergen Oerstroem Moeller

population and explain why the constitution was needed — they failed to communicate which political project demanded a constitution, what the existing treaties could not do.

10.2. Impact of Globalization

On the one hand, there is a need to ensure that the organization's own goals as well as those of the nation-states would be non-contradictory to rules set by multilateral organizations such as the WTO. At the same time, it is necessary to be aware that actions of one country have important impacts on its neighbors, i.e., economic policies and environmental rules such as building a nuclear power station close to an adjacent member state. Economic integration makes it possible for a nation-state to punch above its weight by letting the regional integration (EU as a case) put its position forward. On the other hand the integration imposes certain obligations that may work as constraints on the nation-state.

For the nation-state it is of vital importance to adopt an offensive approach — by taking an active role in international institutions to be sure that rules and decisions adopted by them are in conformity with its own interest. It thus pushes the burden of adjusting to international rules/decisions on other nation-states. At the same time it creates room for maneuver for itself, knowing that no domestic policies will run counter to the international set of rules. The defense of the nation-state's room of maneuver to shape its domestic policies starts at the international negotiating table and not by national legislation being more and more eroded as a bulwark by globalization.

10.3. Clearly Defined Roadmap

On how to proceed, the suggestion would be to proceed a step at a time. A roadmap would have to be clearly defined, starting from the basics before adding on in an incremental process. This would allow for changes and reversals. The EU started with a customs union, a common agricultural policy and a common external trade policy. They were all visible and easily understood as steps to promote growth. When tangible results are achieved the next steps can be taken. The EU experience shows that of the so-called four freedoms — goods, services, capital, persons — goods do not pose much difficulties, services and capital are more difficult to handle, but it can be done, while freedom for movement of persons is a very sensitive issue. In addition, so as to alleviate negative impacts, special instruments also had to be in place on several fronts such as provision of social funds, etc. Otherwise the disadvantaged member states and/or regions feel that they are left outside and deprived of benefits.

10.4. Decision-making Process and Institutions

A choice between intergovernmental and supranational decision making had to be made — the latter would require the pooling of sovereignty and be a legally binding act. The question of sovereignty was often misrepresented in the debate. Economic integration does not imply that member states abandon or lose sovereignty. They transfer sovereignty to exercise it in common with adjacent nation states pursuing analogous political goals. By doing so they adopt an offensive approach creating space for domestic policies and policies pursued by the group of nation-states forming the integration.

Again, this would be done in an incremental manner and while some parts remained intergovernmental, there are parts that go under a supranational decision-making process. A well-defined, specific platform as well as a pilot project in a specific area should be taken up. The most difficult step for the EU has been to engage the population and convince people that the EU institutions are not distant and far fetched institutions but institutions "for them", where they are represented. EU institutions are still not regarded as part of the political life in the same way as the national political institutions. The result is a gap of confidence and lack of trust between the institutions and the European population.

The population still does not see or agree that the ultimate objective for the economic integration is to move the decision-making process to the same level as the economy. Goods, capital etc, have jumped out of the national context to operate internationally. Economic integration is basically an attempt to catapult the political decision making to the same level. That is why the key words are the same for the national decision-making: legitimacy, accountability and transparency.

The members of the Commission (in principle one for each member state) are nominated by the member states but pledge not to pursue national interest (the President of the European Commission has to be approved by the European Parliament after a debate about his programme — this is no formality). The officials of the European Commission are recruited and promoted on merit. Every year exams rather like the Chinese mandarin system take place for candidates wishing to start a career as "eurocrats".

10.5. Building Trust

It is of the utmost importance to build trust among the members. Feedback and proper representation of the population are also most necessary. In the 1970s and 1980s the Europeans created the foundation for

what later became EUROland by classifying national economic and monetary policy as a policy of common interest. Countless meetings were organized to map out a common approach and member states looked to the EU for support when in difficulties.

Finally the 3 Cs, namely Coherence, Consistency and Continuity, are of paramount importance to ensure the smooth running of the daily work. The member-states must know the policies pursued by each other to prevent surprises undermining confidence and trust.

We live in an unprecedented era, when almost everywhere in Asia we see growth, progress and hope. But to realize the promise of stable and prosperous Southeast Asia, we need to continue to strengthen cooperation, resolve differences, and put in place a regional architecture which enables all countries to grow in peace. The solutions will be dynamic, evolving as Asia progresses. But however the future unfolds, ASEAN must continue to play a significant role, contributing to the region and prospering with it.

Notes: