

INSTITUTION BUILDING THROUGH AN ASEAN CHARTER¹

Dr Carolina G. Hernandez

Introduction

East Asia is presently abuzz with a flurry of activities related to regionalisation and regionalism. Regionalisation or the process of setting up flexible, non-binding mechanisms for region-wide dialogue, consultations, and cooperation is evident in the rise of new bodies and mechanisms both at the intergovernmental and non-governmental levels in Southeast Asia, East Asia, and the broader Asia Pacific region following the end of the Cold War and the Asian financial crisis of 1997. They include mechanisms for economic, financial, political, security (including non-traditional security), and functional issues. Among them are the Council for Asia Pacific Security Cooperation (CSCAP, 1993), ASEAN Regional Forum (ARF, 1994), ASEAN +3 (1997), East Asia Vision Group (EAVG, 2000), East Asia Study Group (EASG, 2001), East Asia Forum (EAF, 2002), East Asia Congress (2003), and the East Asia Summit (EAS, 2005).

Regionalism or the process of bringing regional cooperation to a higher plane, increasing economic interdependence, and promoting integration with region-wide institutions that are ideally rules-based is evident in the increasing

movement of the Association of Southeast Asian Nations (ASEAN) from economic cooperation towards greater economic integration, enhanced political and security cooperation, and greater socio-cultural cooperation. This movement is reflected in the ASEAN Vision 2020 (1997), Hanoi Plan of Action (HPA, 1998-2004), Bali Concord II (October 2003), Vientiane Action Programme (VAP, November 2004), and the development and adoption of an ASEAN Charter (2005-2007).

ASEAN, the only fairly successful regional cooperation and integration body in the third world, and perhaps second only to the European Union (EU) in this regard, was established as a loose grouping of five Southeast Asian states in August 1967. Their stated goal was to promote regional stability through economic and functional cooperation, with declarations of intent rather than a charter and by-laws, highly informal and flexible processes, minimal structures built slowly and incrementally, non-binding decisions, voluntary compliance, and no costs for non-compliance. During the last decade, ASEAN appears to be at the cusp of its development, starting from its ambitious

Vision 2020 and its present pre-occupation of building an ASEAN Community by 2020, including the adoption of an ASEAN Charter by 2007-2008.

At 40, ASEAN has indeed reached a crossroads as never before in its four decades of life. How it will respond to the challenges of the 21st century, including the kind of paradigm shift regarding how it conducts business and change in mindset its Leaders are prepared to undertake to realise the ASEAN Community will spell the difference between a responsive, relevant, and resilient ASEAN able to adapt to changing times and a rigid, moribund, and irrelevant ASEAN.

This paper addresses the institutional evolution and development of ASEAN regionalism highlighting the current preoccupation to adopt an ASEAN Charter containing “bold measures” by 2007. This statement reflects the ASEAN Leaders’ recognition that bringing regional cooperation “to a higher plane”, presumably including regional integration not only in the economic and financial realms, but also in functional and even political and security areas is an unavoidable imperative for which the adoption of a charter is critical if it were to address successfully the challenges of the 21st century and to realise the ASEAN Community of three pillars embodied in the Bali Concord II.

Following this brief introduction, the paper is divided into three parts dealing with (1) an overview of ASEAN institutional evolution, (2) the development and adoption of an ASEAN Charter focusing on the process and track two participation by the ASEAN Institutes of Strategic and International Studies (ASEAN ISIS) in particular through its

memoranda on the subject, and an epilogue on how a charter can contribute to institution-building and what lies ahead in the drafting and adoption of an ASEAN Charter.

ASEAN Institutional Evolution: An Overview

As already noted above, ASEAN is well-known for its suspicion of and discomfort with formal institutions and processes, as it is reluctant to move too fast in the adoption and implementation of region-wide cooperation programs. Hence its 40 years of existence are marked by an institution-building process that has been painfully slow and incremental at best.

The Secretariat, Secretary-General, and the Leaders’ Summit

For nine years following its founding, ASEAN activities were carried out by special desks inside each of the original five member states’ foreign ministries.² A secretariat was established in Jakarta only after the first leaders’ summit held in 1976 in Bali - that summit itself took all of nine years before it could be held. Even then, the Leaders’ Summit as the highest decision-making body of ASEAN was not held regularly until after the Fourth Summit held in Singapore in 1992, when a decision was made to hold a formal summit every two years and an informal summit also every two years in between the formal summits. Until then ASEAN leaders held their summits irregularly: in 1979 in Kuala Lumpur, three years after

the first summit; in 1987 in Manila after another eight years; and then in 1992 in Singapore five years thereafter.

The Secretariat was headed by the Secretary-General. He was Secretary-General “of the ASEAN Secretariat” until after the Fourth Summit which granted ministerial rank to the office and made its occupant “the Secretary-General of ASEAN”. The Secretariat was invested with far too many responsibilities, yet far too little power of its own. The Secretary-General has very little elbow room for policy initiatives, and marched in accordance with the tune and cadence set by the ASEAN Leaders and Foreign Ministers.

Even in the appointment of the Secretary-General, the preference for a slow evolutionary and incremental approach is evident. Although the Leaders agreed to open this post to competition and to break the traditional rotational occupancy of major ASEAN positions (such as the Chair of the ASEAN Standing Committee, for example), in the end, the practice of alphabetical rotation akin to the EU Presidency prevailed.

Hence, the first Secretary-General of ASEAN under this “new regime” was Malaysian Dato Ajit Singh, followed by Philippine Rodolfo Severino, Jr, who was succeeded by the current Secretary-General, Singaporean Ong Keng Yong. It would be unimaginable at the moment for someone other than from Thailand to follow Secretary-General Ong. Thus, Thailand’s choice, former Foreign Minister Dr. Surin Pitsuwan was confirmed to serve as the next ASEAN Secretary-General for a term of five years beginning on 1 January 2008.

Indonesia’s Informal Leadership

Meetings of officials at various levels define decision-making in ASEAN. There are no bodies invested with region-wide powers to carry out the daily work of the grouping. As noted earlier, decision is through consultation and consensus, compliance is voluntary, and there are no penalties for non-compliance. Leadership is highly informal. This role has been traditionally played by Indonesia, the largest member state of ASEAN. Progress in regional cooperation tended to stall when Jakarta was in trouble, such as during and immediately after the Asian financial crisis of 1997, a stalling that spilled into other regional mechanisms in which ASEAN plays an important, if not a central role, such as in the Asia Pacific Economic Cooperation (APEC) forum, for example.

It will be recalled that in the beginning ASEAN member countries had a lukewarm attitude towards APEC for fear that their own internal cooperation processes would be undermined, and their role in the region diluted. It took the former Indonesian President Soeharto’s leadership to get all of the ASEAN member countries, particularly Malaysia to attend and support the second APEC summit held in Bogor, Indonesia. However, this semblance of ASEAN unity behind the APEC process waned dramatically after the crisis, so that no substantial progress was achieved particularly after its Subic/Manila summit

The “intrusion” by APEC into political-security issues such as the independence of East Timor from Indonesia and global terrorism following the 9-11 attacks against the United States does not sit well with ASEAN. It prefers to leave political-

security issues to the ASEAN Regional Forum (ARF) where it controls the chair and shapes the agenda and would like to confine APEC in which the world's largest economies are key players to economic issues.

Moreover, the Third ASEAN Leaders' Summit held in Manila in 1987 would not have taken place had it not been for Indonesia's leadership. Two problems stood in the way of holding this summit. One was the avowed refusal of former Malaysian Prime Minister Mahathir Mohamed to come to the Philippines unless Manila dropped its claim to Sabah. The second stumbling block was the concern for the safety of the Leaders should they come to Manila so soon after the failed coup attempt against the government of Corazon C. Aquino in August 1987. Soeharto prevailed over Mahathir to come and obtained the agreement of the Aquino government to allow a ship of the Indonesian Navy to dock in Manila Bay to ensure the safety of the Leaders and the peaceful holding of the Third Summit. In a very substantial and real way, this event expressed ASEAN's vote of confidence for the Aquino government, thereby boosting its legitimacy in no small measure.

Regional Stability through Economic and Functional Cooperation

ASEAN also framed its goal of achieving regional stability in terms of cooperation in the economic and functional fields out of concern that it might be mistaken for a military alliance at a time when the Cold War was at its hottest and the former Indochina was under siege from advancing

communist presence. Yet, its member countries were very reluctant to share markets.

Early economic cooperation schemes it adopted such as the ASEAN Joint Industrial Projects (AJIP) and the Preferential Trade Agreement (PTA) failed for this reason. And the successive failure of its economic cooperation activities led the outside world to assess it, rather harshly as a failure in economic integration, missing thereby ASEAN's main goal of promoting domestic and regional peace and stability through economic and functional cooperation.

It would take major global developments seen as likely to threaten the individual member states' economic prospects for ASEAN to move from economic cooperation to incipient economic integration.

Imperatives for Broadened Regional Cooperation and Regional Integration

Only with the perceived threat of closed regionalism as posed by a 'Fortress Europe' through the adoption of a single market in Western Europe as well as the establishment of the North American Free Trade Area (NAFTA) in the early 1990s did ASEAN move to establish the ASEAN Free Trade Area (AFTA), an experiment in regional economic integration that is far too little to make a real difference. What AFTA achieved is to provide a dress rehearsal for more meaningful integration measures in the future³, within Southeast Asia and beyond. Without these twin challenges to the member states' economic prospects, it is questionable if ASEAN member countries would have considered forming

AFTA at the time they did.

Another landmark event that served as a push factor for ASEAN incremental regionalism is the Asian financial crisis. This demonstrated to ASEAN in crystal clear terms that it could not rely on existing multilateral financial institutions, particularly the International Monetary Fund (IMF), to provide a solution to a similar financial crisis that could recur in the future. Thus, it embarked on an expansion of regionalism by forming together with China, Japan, and South Korea the ASEAN +3 process to deal with financial and monetary issues. The Chiang Mai Initiative established a system of currency swaps that would serve as a buffer should a similar financial crisis affect the ASEAN +3 countries in the future. Of course, the regional financial surveillance mechanism produced by this process remains less than a regional body with sufficient teeth in the case of non-compliance, because reporting one's financial accounts remains voluntary as well. Here ASEAN's preference for non-binding commitments prevails once more.

The crisis also pushed ASEAN to adopt its Vision 2020⁴ that would create "a concert of Southeast Asian nations" in the region, where the Treaty of Amity and Cooperation (TAC), the Bangkok Treaty establishing a Southeast Asian Nuclear Weapons-Free Zone (SEANWFZ), and the Declaration on a Zone of Peace, Freedom and Neutrality in Southeast Asia would govern and would be respected by non-ASEAN states, "a partnership in dynamic development" for deeper economic integration, "a community of caring societies" dealing effectively with social and functional challenges, and "an outward looking ASEAN" indicating its

commitment to open regionalism, including the institutional reform of the Secretariat which the realisation of this vision requires.

Aware that gross disparities in terms of economic development have created a two-tier ASEAN, it adopted the Hanoi Plan of Action (HPA) that would implement this vision during the first six years (1998-2004). It engaged its key dialogue partners to assist in the implementation of this plan, including the EU and Japan with the latter pursuing a detailed bilateral programme in this regard. Whether it is coincidental, Vietnam has now demonstrated that it is possible to erode the two-tier ASEAN by narrowing the divide between the older and new ASEAN member countries. Vietnam has arrived at the gate of economic prosperity and development! It could serve as a model and inspiration to Cambodia, Laos, and Myanmar showing that with the right mix of macro-economic structural reforms and political will of the country's leadership, peace and prosperity are achievable.

Concerned with the rise of China that was seen as one of the causes for its loss of competitiveness, ASEAN initially adopted the concept of making Southeast Asia an ASEAN economic community even ahead of the adoption of the Bali Concord II. Its finance ministers commissioned McKinsey & Company to conduct a study on ASEAN competitiveness. This study concluded that the main reason for ASEAN's loss of competitiveness is its division into ten separate markets and production bases, and showed that its member countries' macro-economic structures although fairly sound need further reforms.

The apparent solution is to embark on a path of closer economic integration, to create an ASEAN economic community that would create a single production base and market covering over half a billion people in Southeast Asia. The argument stressed that inasmuch as the Association already has the major elements of an economic community such as AFTA, the ASEAN Framework Agreement on Services (AFAS), and the Initiative for ASEAN Investments (IAI), customs harmonisation, and the like, it should not make taking this additional step all that difficult. ASEAN ISIS in cooperation with the ASEAN Economic Forum (AEF) of regional economists, and the Institute of Southeast Asian Studies (ISEAS) produced a report (Annex 1) on this matter in March 2003 for consideration by ASEAN decision makers.⁵ Thus, ASEAN ISIS contributed to the production of a report which was one of the bases for the official acceptance of the concept of an ASEAN economic community that would soon be concretised in the Bali Concord II of October 2003.

When Indonesia assumed the chair of the ASEAN Standing Committee in 2003 and hosted the Leaders' Summit in Bali in October 2003, Jakarta served notice that it was going to retake the role of ASEAN's informal leader by pushing the initiative of community building in ASEAN further. Thus, at the 10th Summit, Indonesia led ASEAN in adopting the Bali Concord II seeking to establish an ASEAN Community by 2020. This community would have three pillars: an ASEAN Economic Community (AEC) for enhanced economic cooperation, an ASEAN Security Community (ASC) for political and security cooperation, and an

ASEAN Socio-Cultural Community (ASCC) for functional cooperation and the building of sharing and caring societies in the region.

In November 2004, the ASEAN Leaders adopted the Vientiane Action Programme (VAP) containing a plan of action for the next six years (2004-2010). The content of this action program is ambitious, forward-looking, and in some parts bold and revolutionary. If only ASEAN would succeed! The ASC includes six elements the contents of which if successfully implemented would assure a form of levelling off in the political development of ASEAN member countries. These six elements are the shaping and sharing of norms, political development, conflict prevention, conflict resolution, post-conflict peace building, and implementing institutions. The latter contains a commitment to develop and adopt an ASEAN Charter as an institutional vehicle to realise the ASEAN Community.

The adoption of the Bali Concord II can be seen as a concrete recognition by the ASEAN Leaders that integration and community building requires some degree of similarities in economic, political, and socio-cultural development of member states. Unlike in the EU where these similarities in the economic and political fields are promoted through cohesion policies and funds used prior to formal admission, ASEAN does not have any admission criteria. Hence, the three pillars of the ASEAN Community represent the goal of achieving cohesion post facto or after the act of admission to the Association had been accomplished.

This movement of ASEAN from economic and functional cooperation to

economic integration and enhanced cooperation to include other fields, including political and security was also driven by domestic imperatives, such as the necessity for regimes to deliver on their people's expectations to live in conditions of domestic peace, prosperity, and stability on the one hand, and to gain regime legitimacy on the other hand.

These recent developments are a remarkable sign of progress in Southeast Asian regionalism, particularly in the light of ASEAN's long-standing commitment to the norms of the Westphalian international system that work to preserve the autonomy and sovereign independence of nation states. Equality of states, respect for their national sovereignty and territorial integrity, non-interference in their domestic affairs, peaceful resolution of conflicts, and non-threat and non-use of force are the operating norms of ASEAN. These have served to attract the participation in ASEAN activities and processes of countries long removed from the mainstream of regional interactions, such as Myanmar and China to join its processes and become active participants in its gamut of mechanisms including the ARF and the ASEAN +3, and in the case of Myanmar to become a member of ASEAN.

These norms and processes served as strategic confidence building measures that brought these countries out of their relative isolation from the region and the world into regional engagement. But ASEAN has reached a substantive and challenging crossroads where its norms and processes need to be transformed in response to these changing and challenging times, and in particular to realise the goals of Bali Concord II. The development and adoption of an ASEAN Charter seems to

be an imperative of this changed environment where ASEAN must move and act if it were to remain relevant as it retains its capacity for resilience. This time around, there would be a need to include the interests and expectations of the peoples of ASEAN in its goals as well as in the shaping of decisions. Thus, consultations with groups outside government circles, the use of track two dialogues, and recognition of initiatives to include the peoples in community-building began to gain currency in ASEAN official practice.

The Development of an ASEAN Charter: Process and Track Two Participation

At the 11th Summit of ASEAN Leaders in Kuala Lumpur on 12 December 2005, an agreement to have a formal charter for ASEAN was adopted. Subsequently, the ASEAN Leaders appointed an Eminent Persons Group (EPG) tasked to conduct a study and to make proposals for an ASEAN Charter. Composed of former high-ranking government officials, including former Philippine President Fidel V. Ramos, Malaysian Deputy Prime Minister Musa Hitam, and Indonesian Foreign Minister Ali Alatas the EPG was assisted by former officials with personal experience in working on ASEAN matters and other regional specialists. Former Indonesian Foreign Minister Ali Alatas sought the assistance of the ASEAN ISIS to propose ideas that, he hoped, would be incorporated into the EPG report to the ASEAN Leaders.

Involving Track Two: AI Participation

ASEAN ISIS (AI) has had a long history of providing inputs to ASEAN policy making.⁶ Its regular interface with the ASEAN Senior Officials Meeting (ASEAN SOM) started in 1991 when its memorandum, *A Time for Initiative: Proposals for Consideration of the Fourth ASEAN Summit* argued for the establishment of what we now know as the ARF, AFTA, and the Special SOM consisting of political and defence officials. Its earlier memorandum on human rights and the environment helped shape ASEAN perspectives on these matters, particularly during the 1990s debate on “Asian values”. One of its three flagship programs, the 14-year old ASEAN ISIS Colloquium on Human Rights (AICOHR) includes the future establishment of a regional human rights mechanism as a principal goal while it contributes through annual dialogues to the building of a human rights constituency in the region. The proposals for an ARF, AFTA, and a Special SOM were adopted by the Fourth Summit and the proposal to establish a regional human rights mechanism is part of the plans for the building of an ASEAN Security Community.

Since 1991, the Joint Communiqué of the ASEAN Annual Ministerial Meeting (AMM) has included a paragraph recognising the contribution of ASEAN ISIS to ASEAN activities including the provision of inputs to ASEAN policy-making. In fact, its third flagship project, the ASEAN People’s Assembly (APA) is recognised in the VAP as one of the regional mechanisms for the promotion of people-to-people contacts, particularly to ASEAN community building.⁷ Consequ-

ently, the response of ASEAN ISIS to the appeal for assistance in thinking through the issue of an ASEAN Charter was nothing but positive and immediate.

As soon as the request came to the Center for Strategic and International Studies (CSIS) - the Secretariat of ASEAN ISIS - the ASEAN ISIS Heads convened in Singapore in March 2006 and then in April 2006 in Ubud, Bali, Indonesia.⁸ With the material support of the Konrad Adenauer Stiftung (KAS), the ASEAN ISIS brainstorming on the ASEAN Charter produced a Memorandum on the ASEAN Charter (Annex 2). It then submitted the memorandum to the EPG, Philippine Secretary of Foreign Affairs Alberto G. Romulo, and Indonesian Foreign Minister Hassan Wirayuda, as well as ASEAN Secretary-General Ong Keng Yong on 18-19 April 2006 during the EPG meeting and the retreat of the ASEAN Foreign Ministers in Ubud, Bali, Indonesia.

At the Singapore brainstorming meeting, the ASEAN ISIS heads agreed that the Charter should be forward-looking and people-centred, two characteristics that are serious departures from the ASEAN way of doing things (viz., slow and status-quo oriented and state-centric). They agreed that while it is important to recognise ASEAN’s norms and principles and past achievements in the Charter, there have to be new elements particularly, new ideas and institutions to strengthen ASEAN and to enable it to achieve its goal of a three-pillared ASEAN Community. They agreed to include in their memorandum proposals for new structural and institutional arrangements, new norms particularly, the need for compliance with decisions made, the

application of sanctions for non-compliance, and various modes of decision making other than consensus for crucial matters as will be discussed below.

The ASEAN ISIS Memorandum on the ASEAN Charter, 18 April 2006

The memorandum includes prefatory parts such as introduction, rationale for a charter, purposes of the charter, and nature of the charter. The fourth part deals with the elements of the Charter and includes the objectives of ASEAN, its principles of cooperation, and the proposed organs and institutional arrangements (the ASEAN Summit, General Council for ASEAN Community, ASEAN Standing Committee, ASEAN Secretariat, ASEAN Court of Justice, ASEAN Peace and Reconciliation Council, ASEAN Consultative Processes, ASEAN External Relations, Decision-Making Process, Rights and Obligations, Forms of Sanctions, and Financial Matters). The fifth part contains a conclusion which argues that the charter is intended to provide ASEAN cooperation with a more solid basis to respond to the challenges brought about by changes in the national, regional, and global environment.

The most significant part of this memorandum for institution building is the fourth part containing the elements of a proposed ASEAN Charter, particularly the proposed organs and institutional arrangements. It recognises present institutional arrangements such as the Summit, the ASEAN Standing Committee, and the Secretariat. However, apart from the Summit as the highest decision making body of ASEAN, the two other structures

presently in existence are reformed to such an extent that they might as well be new organs. The ASEAN Standing Committee, for example, is one of the five proposed principal organs of ASEAN, but it shares only the name of the present ASEAN Standing Committee. It will be newly established with prescribed membership and the purpose to support the work of three councils corresponding to the three pillars of the ASEAN Community which are also new bodies.

The five proposed principal organs are: the Summit; the General Council composed of ministers responsible for the realisation of the AEC, ASC, and ASCC with three councils corresponding to each of the three pillars; the new ASEAN Standing Committee; the Secretariat which will be given new powers under the Secretary-General and deputies for each of the three pillars of the ASEAN Community; a new and independent ASEAN Court of Justice; and the ASEAN Peace and Reconciliation Council to serve as an advisory body for conflict prevention, conflict resolution, and post-conflict peace building, and to play a role in these areas when requested to do so. These two latter councils are directly connected to the building of an ASEAN Security Community. The Secretariat under the Secretary-General would be strengthened in particular by providing it with monitoring powers over decisions made by the various decision-making bodies. This would improve ASEAN's performance which is so far noted as grossly inadequate and lacking in implementation.

Another institutional innovation consists of consultative processes which ensure the involvement of peoples, civil society groups, private business, and

parliamentarians in the policy-making process, including agenda-setting and monitoring of the implementation of commitments undertaken by ASEAN member states. These consultative processes will help ensure that ASEAN and its charter will become and remain people-centred. Decision-making will continue to be done by consensus, but failing this, the memorandum proposes a two-thirds majority vote of member states. The other exception to consensual decision-making is in crucial matters where the member state under consideration is excluded from the consensus. These crucial matters are:

- (1) when a government comes to power through unconstitutional means such as a military coup;
- (2) when a democratically elected party (parties) is unlawfully prevented from constituting a government,
- (3) when a government is engaged in gross and sustained violations of human rights,
- (4) when a member state fails to make financial contribution and pay its dues to ASEAN, and
- (5) any other matter deemed as consistent and deliberate non-compliance with ASEAN principles.

It is notable that these crucial matters speak directly or indirectly to the elements of shaping and sharing of norms and political development envisioned in the ASEAN Security Community and the VAP.

Also new and an advancement in institution-building is the proposed adoption of sanctions for non-compliance, including exclusion from participation in ministerial-level meetings, suspension

from participation in all ASEAN meetings, limitation of government-to-government contacts and other similar measures, and any other measures agreed upon by the ASEAN Summit. This provision for sanctions is nothing but revolutionary in the history of institution-building in ASEAN.

Finally, to ensure these new arrangements work as intended the memorandum proposed a new funding scheme where member states are grouped into four categories of contributions based on a weighting of GDP (15%) and GDP per capita based on PPP (85%) which would result in a ratio of 1:24 between the lowest and the highest contributions. When truncated to 1:6 and slightly corrected for simplification, the four groups would be Brunei, Indonesia, Malaysia, Singapore, and Thailand as the highest contributing members (at 6), followed by the Philippines (at 4), then by Vietnam (at 3), and Cambodia, Laos, and Myanmar (at 1) at the lower end. This scheme is up for review every five years.⁹ A basic contribution to the ASEAN Development Fund is USD 1 million for every member state which can be topped up by voluntary contributions.

Realising the ASEAN Economic Community, ASEAN ISIS Memorandum No. 2/2006

The second memorandum ASEAN ISIS submitted to the EPG criticised existing mechanisms for economic integration in ASEAN as inadequate for the realisation of the ASEAN Economic Community whose declared goal is to make the region a single market and production base,

turning regional diversity “into opportunities for business complementation” such that ASEAN can become “a more dynamic and stronger segment of the global supply chain”. To do this, the AEC which is an “FTA plus” or a “Common Market minus” - since it does not provide for all the elements of a full common market, particularly the free flow of labour and capital – must aim, beyond 2020 to become a full Common Market.

In this regard, the memorandum stressed the need for the ASEAN Charter to ensure the realisation of the ASEAN Economic Community by encouraging ASEAN governments to move towards (1) broadening the goal of the AEC beyond 2020 towards a full Common Market, (2) ensuring that no member state gets left behind in the regional integration process, (3) depoliticising economic issues by making economic dispute settlement a legal process and removing economic integration from the control and management of bureaucrats and putting it in the hands of professionals working within the proposed monitoring-empowered Regional Units working within a strengthened ASEAN Secretariat, (4) creating a more effective Dispute Settlement Mechanism (DSM) with powers to make legally binding decisions, (5) adopting new measures to improve Rules of Origin (ROOs) and to deal with non-tariff measures (NTMs), and (6) improving investment and competitiveness as integration deepens through cooperation among the ASEAN governments in “behind-the-border-measures” which require political will to undertake.

It needs repeating that to realise the AEC the ASEAN Charter must encourage the ASEAN governments to move in the

direction of the above list. (See Annex 3) In this sense, the ASEAN Charter can help in regional economic institution building.

On Mechanisms to Reduce Gaps Among ASEAN Member States, ASEAN ISIS Memorandum No. 3/2006

The third memorandum produced by ASEAN ISIS for the EPG stressed the importance of treating Cambodia, Laos, Myanmar, and Vietnam (CLMV) differently from the older ASEAN member states. The rationale for this is that trade and investment liberalisation does not yield equal economic benefits to all states. As transition economies, the CLMV do not have “adequate market players, rules and regulations, institutions, and capacity to implement responsive and correct macroeconomic policies”.

Therefore, to narrow the development gap among the member states of ASEAN, the CLMV must be provided with a development agenda that reinforces trade and investment liberalisation and domestic restructuring. This agenda must include adequate development assistance in technical and financial areas to develop both institutional and human resource infrastructures for the CLMV. (See Annex 4)

Other research and training institutions in Southeast Asia came up with their own initiatives and proposals for an ASEAN Charter. Among them are two Singapore-based institutions: the Institute of Southeast Asian Studies (ISEAS) and the Institute of Defence and Strategic Studies (IDSS). These efforts however are not covered by this paper.

Epilogue

The thrust of this paper has been to analyse how regional institution-building in Southeast Asia might be served by the ASEAN Charter. In this regard, one can only surmise how this would work in practice. The EPG's task is only the beginning of the process of developing and adopting an ASEAN Charter. When it submitted its report to the 12th Summit in Mactan, Cebu, the Philippines, it was reported that it did not include a recommendation on a regional human rights mechanism. Philippine President Gloria Macapagal Arroyo who chaired the ASEAN Standing Committee in 2006-2007 and therefore, hosted the 12th Summit was reportedly the reason for the inclusion of a recommendation on this matter in the EPG report. The 12th Summit in January 2007 appointed the High Level Task Force to Draft the ASEAN Charter (HLTF) and tasked it to report to the Leaders at their next summit in Singapore in November 2007. It is widely known that the Leaders wish to adopt an ASEAN Charter by 2008 at the latest, to push the realisation of the ASEAN Economic Community forward to 2010-2015, and that of the ASEAN Community to 2015. Singapore, the host of the 13th Summit appears determined to adopt the ASEAN Charter during its watch.

In which ways can an ASEAN Charter work as an institution-building mechanism? *First*, the Charter is in itself a vehicle that establishes ASEAN as a legal personality, transforming it from a loose grouping of sovereign nation states to an intergovernmental organisation which is also a legal entity. Like the United Nations and other international organisations, it would possess rights and duties under

international law.

Second, as already explained above, at least one of the proposals for an ASEAN Charter contains bold measures including the establishment of new institutions, norms, and processes as well as the restructuring and/or strengthening of existing institutions such as the Secretariat and the Secretary-General. The proposal even argues for the adoption of binding decisions, moving away from consensual decision-making in crucial matters falling within the domestic affairs of member states, and the application of sanctions for non-compliance.

Third, consultative processes are proposed to be set up and to be institutionalised, although the non-governmental groups that would avail of these consultative mechanisms would not be part of official ASEAN. These consultative processes will enable people, civil society groups, private business, and parliamentarians to provide inputs in agenda-setting and decision-making, as well as to assist in monitoring the implementation of agreements. This will enable ASEAN to be more on target with respect to people's aspirations and assist ASEAN to remain focused on the implementation of agreed programmes and projects, making it a more effective organisation.

Fourth, the fact that the various proposals for institution-building through the ASEAN Charter are linked to the three pillars of the ASEAN Community would help ensure its achievement and institutional development. Without institution-building to be mandated and made compulsory by the Charter, the realisation of the ASEAN Community could be compromised.

Fifth, in the view of the ASEAN ISIS Heads, their first memorandum on the ASEAN Charter, although forward-looking and bold in many respects, also build upon existing mechanisms, norms, programmes, and visions of the grouping, and therefore are in congruence with ASEAN values, future goals, realisation of the challenges facing the Association, and what are required to meet these goals and challenges successfully. This represents institutional growth in ASEAN through adaptation.

At the same time, this approach of building upon existing institutions and processes should also facilitate the acceptance by the Leaders of many of the proposals outlined in the memorandum, assuming these ideas reach the Leaders' Summit and are not derailed in the long process between the submission of the memorandum, to the work of the EPG, through filtering by the SOM of the work of the HLTF, and the acceptance of the HLTF draft by Foreign Ministers at the July 2007 AMM before being elevated to the Leaders' Summit in November 2007.

In fact, such a derailment almost took place when the HLTF was admonished by the ASEAN Senior Officials to draft a charter that is "practical and implementable", a guideline contrary to the mandate given to the HLTF at the 12th Summit namely, to draft a charter that is "bold, visionary, and people-centred". The Senior Officials reportedly included in their marching orders given to the HLTF that the draft should include an enabling provision for a regional human rights body, but should not include sanctions and majority voting arrangements. This information was shared by the HLTF Chair at consultations

with civil society groups in various ASEAN locations while it was conducting its work.

A practical and implementable charter can not be bold, visionary, and people-centred since the current official practice in ASEAN is to preserve the *status quo* as far as possible, including its norms and principles, to pay only lip service to people's expectations, and to take the path of least resistance in general. The composition of the HLTF mostly of retired and active duty bureaucrats who generally prefer the stability of existing rules and regulations rather than venturing into unknown terrain, seeking approval instead of displeasure from their superiors, conducting business as usual in spite of sea changes happening at the domestic, regional, and global levels does not conduce to the production of a bold, visionary, and people-centred charter.

For this reason, the ASEAN ISIS Heads hoped that the HLTF would include some of their own who, at one time or another had publicly addressed the Leaders arguing that the time for foot-dragging in ASEAN is over and what ails it is the need to implement decisions already made. Unfortunately, this hope was in vain.

Nevertheless, the process of drafting the Charter demonstrated what leadership by the summit host (who caused the inclusion of a recommendation on the establishment of a regional human rights body in the EPG report to the 12th Summit) and forward-looking foreign ministers can do to help ASEAN community-building prosper. When the HLTF draft worded the enabling provision on a regional human rights commission simply as ASEAN "to consider the establishment of [...]", it was reported

that two foreign ministers, the Philippines' Alberto G. Romulo and Indonesia's Hassan Wirayuda insisted on its replacement as ASEAN "shall establish [...]" a regional human rights commission. And while sanctions and various forms of majority voting were not included in the draft submitted to the July 2007 AMM, it was understood that these issues will be negotiated further. Instead of using the term "sanctions", other terms such as "measures in the event of non-compliance" are reportedly being negotiated, as well as leaving to the consideration of the Leaders instances when departure from consensus decision-making would be made.

Whether the High Level Task Force would eventually take cognisance of the points made in this notably coherent first ASEANISIS memorandum independently of the EPG Report, and whether the ASEAN Leaders would accept many of the proposals in the memorandum are matters beyond anybody's predictive abilities. What is certain is that the first ASEAN ISIS memorandum on the ASEAN Charter will contribute richly to institution-building in ASEAN and facilitate the realisation of the ASEAN Community as well as to help regionalism and integration in Southeast Asia prosper if and when taken seriously at various levels of ASEAN decision-making.

It is this uncertainty over the quality of the draft ASEAN Charter that will be considered at the 13th Summit in November 2007 which has led some officials and analysts to argue that if the draft charter is not bold, visionary, and people-centred as envisioned by the 12th Summit, it might be wise to postpone its adoption at the 13th Summit,¹⁰ and instead continue negotiation and

refinement of this present draft until a draft is agreed upon that is more conducive to the realisation of the ASEAN Community and to meeting the challenges facing ASEAN in the 21st century.

List of Annexes

1. ASEAN Institutes of Strategic and International Studies (ASEAN ISIS). "A Track Two Report to ASEAN Policy Makers – Towards an ASEAN Economic Community." Jakarta, March 2003.
2. "The ASEAN Charter," ASEAN ISIS Memorandum No. 1/2006, Bali, Indonesia, 18 April 2006.
3. "Realising the ASEAN Economic Community," ASEAN ISIS Memorandum No.2/2006, August 2006.
4. "On Mechanisms in ASEAN to Reduce Gaps Among Members," ASEAN ISIS Memorandum No.3/2006, August 2006.

ANNEX 1

A Track Two Report to ASEAN Policy Makers: Towards an ASEAN Economic Community

Introduction

1. On 9 March 2003, a number of individuals representing members of ASEAN ISIS (Institutes of Strategic and International Studies), and the AEF (ASEAN) Economic Forum) met in Singapore to discuss the idea of an ASEAN Economic Community, policy directions for ASEAN and possible steps to be taken by ASEAN to realise that concept. The meeting was convened by SIIA (Singapore Institute of International Affairs) and CSIS (Centre for Strategic and International Studies) of Indonesia.
2. The meeting began with a presentation of the *Concept Paper on the ASEAN Economic Community* prepared by ISEAS, followed by a presentation of *A Policy Discussion Paper: Towards an ASEAN Economic Community* prepared by CSIS. The agenda included a brief presentation on the ASEAN Competitiveness Study Prepared by McKinsey and Company.
3. Participants agreed that the time has come for ASEAN to deepen and to accelerate its economic integration. The idea of an ASEAN Economic Community is seen as a logical extension of the various initiatives taken and implemented by ASEAN thus far towards greater economic integration. In other words, building an ASEAN Economic Community is the next logical step for ASEAN to take. This next step, however, requires a strong and firm commitment by ASEAN members to move forward in a credible and timely manner.
4. ASEAN's position on the regional and global stage has been adversely affected by developments in the past few years. ASEAN's challenge is not simply to restore its position or to catch up with the rapid progress in the region and the world. It needs to be ahead of the curve, at least in Asia. Deepening, and acceleration of regional economic integration, pursued through the ASEAN Economic Community project, will significantly elevate ASEAN's attractiveness as a global production base, drawing quality investments into the region and thus, will help sharpen the region's competitive edge. Deeper ASEAN integration is a key element in the grouping's growing trade and economic ties with other countries, and should proceed in tandem with such extra-regional efforts.
5. Diversity in the region, if properly capitalised on, can become ASEAN's greatest asset. Economic integration contributes to regional cohesion. This will strengthen ASEAN's bargaining power and geopolitical influence. The

ASEAN Economic Community Project, pursued in tandem with serious efforts to create an ASEAN Security Community, will transform the region into a zone of peace and prosperity, a force of stability in the wider region, and a constructive player on the global stage. These two efforts are mutually reinforcing.

6. Participants are of the view that the idea of an ASEAN Economic Community by 2020 is already firmly placed on the ASEAN agenda. It is important for ASEAN members to be more precise on the ultimate form of integration, to agree on the appropriate (sensible and feasible) path to achieving it, and to commit to greater institutional integration to successfully carry out the project. Participants are also of the view that the timeframe and credibility of the process are critical to the undertaking.

Ultimate Form of Integration

7. The vision for ASEAN economic integration, as contained in the ASEAN Vision 2020, envisaged “a stable, prosperous, and highly competitive ASEAN Economic Region in which there is a free flow of goods, services, investment, [and] a freer flow of capital.”
8. Participants suggest that there may be two ways to approach the task of formulating more precisely the ultimate form of integration. One way to do this is to start from where ASEAN is today and to define the

ASEAN Economic Community essentially as an “FTA Plus” arrangement that includes some elements of a common market. The other way to do this is to aim for the creation of a fully integrated market, and specifically address the areas where members will reserve deeper integration for a later stage, namely beyond 2020. The latter approach can be seen as a “common market minus” arrangement. This approach can be more liberalising. Its additional advantage lies in the explicit formulation of some kind of a “negative list” that can also be brought under the umbrella of the integration project.

9. A common market implies complete free flows of trade, including internal trade as in a customs union, as well as free mobility of labour and capital. Full mobility of labour involves the right to reside and to accept employment in all member countries, and mutual recognition of professional and technical qualifications. Full capital mobility requires lack of exchange controls, and full rights of establishment for firms in all countries. It has been argued that credible removal of tariffs may require policy harmonisation or common policies on taxes, wages, prices, etc. it may even require common rules governing competition and monopoly, and in environmental regulations. It is still a matter of controversy whether a full common market can be established without a single currency and a common system of prudential regulations of banks and other financial institutions.

10. Under the AFTA program, the region will achieve completely free flows of goods by 2020 already. In fact, the ASEAN-6 countries have adopted a 'target of zero' tariff AFTA by 2010, and the newer ASEAN member countries have advanced the deadline from 2018 to 2015 for most products. In fact, ASEAN members of APEC may also have introduced zero MFN tariffs by 2020. Under the AIA agreement, by 2020 there will already be free flow of investments, not only amongst ASEAN members but globally. In other words, by 2020 most – if not all – intra-ASEAN liberalisation in trade and investment will be multi-lateralised.
11. In view of the fact that by 2020 many ASEAN members will already adopt zero MFN tariffs and the other ASEAN members may have already brought down many of MFN tariffs to zero, ASEAN has the potential to embark on a programme to harmonise its external tariffs. This can be undertaken through progressive reduction of MFN tariffs by subsets of ASEAN members, especially those with higher tariffs. In the context of the WTO round, ASEAN members can develop common strategies to reduce their MFN tariffs. All these efforts help accelerate the free flow of internal trade (as in a customs union) and will significantly reduce transaction costs due to the progressive elimination of rules of origin requirements. It is indeed possible that by 2020 ASEAN will effectively become a customs union. This need not be seen as leading to the creation of a "Fortress ASEAN" because it results from progressive elimination of MFN tariffs. In moving in this direction, it should be recognised that some ASEAN members already have low or no tariffs (Brunei Darussalam and Singapore) and that these policies should be accommodated and indeed emulated by other ASEAN members.
12. The ASEAN Vision 2020 proposes to accelerate the liberalisation of trade in services. This will be pursued under the ASEAN Framework Agreement on Services (AFAS), which is meant to be more progressive than under the GATS (General Agreement on Trade in Services) of the WTO, namely GATS plus. In the area of services liberalisation, two issues need to be contemplated in greater depth. First, it is perhaps most important for ASEAN to focus on the sequencing of its services liberalisation, starting with cooperation in strengthening the regulatory environment and institutional capacity. Second, it may well be that the liberalisation of services should immediately be undertaken beyond ASEAN. This means the adoption of an ASEAN policy of global opening for its services sectors.
13. The ASEAN Vision 2020 specifically proposes to accelerate the free flow of professional services. There have been proposals to remove barriers to the movement of skilled labour in ASEAN. The free flow of professionals and skilled labour may be seen as an important element of investment

liberalisation in the region. Liberalisation for such skilled professionals should be prioritised. However, it should also be noted that significant movement of unskilled labour has already taken place in the region. Regularised flows are a means to creating a progressively liberal environment in this area. A common policy approach to regularise these flows should be brought under the umbrella of the integration project, taking into account the different population and geographical characteristics in each member state.

14. Free mobility of capital in ASEAN is another important element of investment liberalisation in the region. Financial sector liberalisation in the region should be focused on its appropriate sequencing and accordingly promote cooperation in strengthening the regulatory environment and institutional capacity. With a few exceptions, the region already has liberal exchange regimes. Concerns over the volatility of short-term capital flows are legitimate and can be addressed through the development of a common policy approach.
15. The development of common policy approaches could lead to the practice (and habit) of policy harmonisation that will also characterise the ASEAN Economic Community.

Path Towards Deeper Integration

16. An assessment of the region's "initial conditions" for integration suggests

that simultaneous trade and investment liberalisation should indeed be ASEAN's main vehicle for integration. In view of the gaps that exist amongst members of ASEAN, particularly between ASEAN-6 and CMLV, it appears that investments – more so than trade – provide the glue to hold ASEAN together. ASEAN has appropriately embarked on trade and investment liberalisation through AFTA and AIA. The next step is to consolidate these two undertakings. Fast tracking of specific sectors or areas may help build capacity and constituency.

17. Mutual trade dependence and relative symmetry were the main reasons for the reliance by the European Community (EC) on trade liberalisation alone as the engine for subsequent integration of factor and service markets. It should be noted that most services were left untouched by intra-EC liberalisation until the 1990s. Initially, this focused only on financial services, telecommunication, and transport. Later it was extended to include electronic commerce, electricity, and natural gas, railways, and postal services. The Single Market Programme in 1992 led to the introduction of mutual recognition of standards and a series of concrete measures to enhance competition in service markets.
18. ASEAN's economic integration project, which is driven by a deepening and acceleration of trade and investment liberalisation, will also need to introduce some safeguard mechanisms that are based on clear

- principles. Participants have stressed the importance of these safeguards but point to the need to ensure that they do not become obstacles to longer-term liberalisation efforts.
19. Attempts must always be made to achieve some overall balance of gains for members. This is the first principle. Experience elsewhere has shown that a trade-off can be made between net economic costs and political benefits for members. If this cannot be achieved, some flexibility can be adopted. This principle is known as ASEAN minus X (or 10-X). However, it may be more appropriate to formalise a two-speed ASEAN, which can involve different subsets of ASEAN members for the different areas of cooperation. The implementation of a two-speed ASEAN should be based on an agreement by all ASEAN members and on a case-by-case basis. It should be accompanied by commitments to and efforts to bridge the gaps within ASEAN.
 20. ASEAN may want to introduce the principle of redistribution of income or resources, which could be formalised into either compensation schemes or joint efforts to provide regional public goods that would benefit the less developed members of ASEAN most, so as to ensure political feasibility of the integration project.
 21. There may be a need to exclude, temporarily or even permanently, some sensitive sectors from the liberalisation objective. However, ASEAN must come to an agreement to bring these sectors under the umbrella of the integration project through a common policy approach. Such common policies can focus on managing production and trade. The use of domestic policy instruments (e.g. subsidies) as a substitute for trade policy should also come under some common discipline.
 22. A critical element of the integration project is the establishment of a credible dispute settlement mechanism (DSM). With the adoption of the Protocol on Dispute Settlement Mechanism in 1996, ASEAN has begun to move to more formalised dispute settlement mechanisms. However, dispute settlement within ASEAN should be taken out of the political realm (involving senior officials and ministers) and be brought into the legal realm. Participants strongly believe that the success of the undertaking will depend on the existence of a credible DSM. The composition, structure, and operation principles of the DSM should be clearly defined. Consent of all the parties to a dispute should be the core principle of the mechanism so as to be able to produce credible binding solutions.
 23. The adoption of a common external trade policy is another important element of the integration project. This is particularly the case since ASEAN as a group as well as individual ASEAN members have embarked on a series of preferential, discriminatory free trade agreements (FTAs). Such a common policy would include the development of a common ROO (rules of origin)

approach/methodology. It may also help define the role for the first mover(s) to use the FTA to strategically engage respective partners in the Southeast Asian region as a whole. ASEAN may need to embark, sooner rather than later, on harmonising the external tariffs of its members. Subsets of ASEAN can do this by forming separate customs unions that will also help accelerate the reduction of MFN tariffs.

Institutional Design

24. Participants believe that for ASEAN to be able to move ahead it must be transformed from being an inter-governmental cooperation structure into a regional institution. This process will be gradual, but a strategic introduction of its “regional units” into the existing structure can bring about significant results.
25. It is imperative that the ASEAN Secretariat be continuously strengthened. ASEAN be continuously strengthened. ASEAN governments must be ready to put greater resources into the ASEAN Secretariat. The principle of equal contribution by all members should be abandoned and be replaced by a more creative formula. A stronger ASEAN Secretariat can function as the driver and guardian of the integration objective. Existing units should gradually be transformed into regional units, staffed by nationals who are formally independent of governments. The ASEAN Secretariat

could eventually be transformed into an ASEAN Commission. National level political oversight continues to be provided by the AMM (with the assistance of SOM) and the AEMM (with the assistance of SEOM) or eventually an ASEAN Council of Ministers.

26. A DSM forms an integral part of the institution. As shown by experience elsewhere, a credible DSM can be established even at the early stages of institutional integration. A mechanism to monitor progress also needs to be established.

Recommendation

27. Participants believe that ASEAN policy makers can and should come up with a more precise understanding of the ultimate form of ASEAN economic integration. An ASEAN Economic Community as described in this Report is achievable in 2020. It is a logical extension of the various initiatives taken and implemented by ASEAN. It is also consistent with the ASEAN Vision 2020.
28. The main focus should be given to achieving genuinely and completely free flows of trade and investment as the main vehicle for ASEAN integration.
 - a) The most important step is the consistent implementation and acceleration of the AFTA and AIA programmes.
 - b) Measures should also be taken to seriously eliminate all non-tariff barriers.
 - c) Harmonisation of external tariffs

- must soon be introduced into the ASEAN agenda, especially amongst members with higher tariffs.
- d) A host of facilitation measures, such as harmonisation of customs procedures and standards, and other measures as proposed in the ISEAS Concept Paper and the ASEAN Competitiveness Study (ACS), are to be undertaken as part of the short term timeframe, namely in the next two years.
 - e) A credible DSM should be established also within the next two years.
 - f) ASEAN policy makers should officially adopt the principle of a “two-speed” ASEAN.
 - g) ASEAN policy makers should support the creation of “regional units” as a first step towards institutional integration. Regional units are staffed by nationals who are formally independent of governments.
- h) ASEAN should agree on introducing safeguard mechanisms, but these safeguards will be managed by the “regional units”.
 - i) Regional Units should also be given charge of other areas where common policy approaches have been adopted. This includes the management of development collaboration (e.g. IAI) and the monitoring of progress. In these two areas such regional units should be established immediately.
29. ASEAN member states should consider focusing on the effort to move towards an ASEAN Economic Community, with leaders giving strong political support and impetus to moving forward with the proposal.

Jakarta, March 20003

This report has been prepared by the Convenors of the Track 2 Meeting, namely the Centre for Strategic and International Studies (CSIS) of Indonesia and the Singapore Institute of International Affairs (SIIA) on the basis of discussions involving the following individuals:

Brunei Darussalam

- 1. Pengiran Osman Pengiran Haji Patra
- 2. Mr. Shahrin Mohd. Tamit
- 3. Ms. Shazainah Shariffudin

ASEAN ISIS (AI)
ASEAN Economic Forum (AEF)
AI

Cambodia

- 4. Dr. Kao Kim Hourn

AI

Institution Building through an ASEAN Charter

Indonesia

- | | |
|-----------------------|------------|
| 5. Mr. Jusuf Wanandi | AI |
| 6. Dr. Mari Pangetsu | AI and AEF |
| 7. Dr. Hadi Soesastro | AI and AEF |

Laos

- | | |
|------------------------------|----|
| 8. Amb. Sengchanh Soukhaseum | AI |
|------------------------------|----|

Malaysia

- | | |
|------------------------------|-----|
| 9. Dato' Moh. Jawhar Hassan | AI |
| 10. Dr. Mahani Zainal Abidin | AEF |

The Philippines

- | | |
|-------------------------------|----|
| 11. Dr. Carolina G. Hernandez | AI |
|-------------------------------|----|

Singapore

- | | |
|-----------------------|------------|
| 12. Mr. Simon Tay | AI |
| 13. Dr. Hank Lim | AI and AEF |
| 14. Dr. Chia Siow Yue | AEF |
| 15. Dr. Eric Teo | AI |

Thailand

- | | |
|---------------------------------|-----|
| 16. Dr. Chookiat Panasornprasit | AI |
| 17. Dr. Narongchai Akrasanee | AEF |

Vietnam

- | | |
|---------------------------|----|
| 18. Amb. Trinh Quang Tanh | AI |
|---------------------------|----|

The meeting was also attended by Dr. Denis Hew, who also made the presentation on the Report by ISEAS, Mr. Adam Schwarz and Ms. Eleanor Chye, who presented the ASEAN Competitiveness Study by McKinsey, and Ms. Yvonne Yew from the Singapore Ministry of Foreign Affairs as observer.

ANNEX 2

THE ASEAN CHARTER

**ASEAN Institutes of Strategic and International
Studies
(ASEAN-ISIS)**

**Memorandum
No. 1 / 2006**

**Bali, Indonesia
18 April 2006**

THE ASEAN CHARTER

ASEAN-ISIS Memorandum
No. 1 / 2006
Bali, Indonesia, 17 April 2006

A. Introduction

1. On 12 December 2005, leaders of the Association of Southeast Asian Nations (ASEAN), during the 11th Summit in Kuala Lumpur, decided that it is time for the Association to have a formal charter as the basis of cooperation. The decision should be seen as the basis not only for consolidating its achievements, but also for promoting further necessary changes in order to adapt to the changing environment and challenges.
2. The agreement to have a charter provides an opportunity for ASEAN to once again demonstrate its maturity and efficacy as a forward-looking organisation. Therefore, for ASEAN to move forward and engage in a meaningful cooperation in the future, this opportunity should not be missed. In this Memorandum, the ASEAN Institutes of Strategic and International Studies (ASEAN-ISIS) sets out to propose how such a charter should be conceived.

B. Rationale for a Charter

1. On the 8th August 2007, ASEAN will be 40 years old. Much has been accomplished within the span of four

decades of cooperation. ASEAN is now a regional home for all ten Southeast Asian countries. It has served the Member States well. Since its inception in August 1967, ASEAN has functioned as the bedrock of regional stability which, in turn, facilitated the attainment of prosperity. Both the quest for stability and the pursuit of prosperity have been carried out through cooperative efforts among Member States, in the spirit of togetherness and mutual-respect.

2. During the span of almost four decades of its existence, ASEAN has also established itself as an organisation capable of responding and adapting to the challenges of the day. That has been well demonstrated in three episodes of ASEAN's developments during which it has faced different challenges. First, during the first decade of formative years, ASEAN navigated well in nurturing intra-regional cooperation while managing challenges attendant to the Cold War. Intra-mural cooperation was primarily aimed at building trust among Member States, especially at leaders level.
3. The second period, which started from 1976, can be seen as a period of consolidation. Internally, ASEAN was

faced with the challenge of accelerating economic cooperation marked by the agreement on ASEAN Free Trade Area (AFTA) in 1993. On the political front, conflict in Indochina since 1978 presented the biggest challenge for ASEAN. As the dream of ASEAN-10 finally became a reality with the conclusion of conflict in Cambodia in 1990 and the inclusion of Vietnam and other Southeast Asian states into ASEAN, it embarked upon the task of managing the challenge of expansion and the need to adjust to a new role in the post-Cold War era.

4. The third period, the ascent of globalisation and the outbreak of economic crisis in 1997, presented more complex challenges to ASEAN at the turn of the 21st Century. Within the changing regional and international environment brought about by globalisation, ASEAN is now faced with the challenge of dealing with the resurgence of several problems, including terrorism and the need to deliver on the promise of economic prosperity to its people. There is also the problem of addressing a changing regional and global order occasioned by the rise of China and India.
5. Indeed, as it enters the 21st Century, ASEAN has set out for itself a noble goal of being a community of nations. As envisaged in the Declaration of ASEAN Concord II of 2003, Member States are now bonded together by a commitment to realise an ASEAN Community comprising of three integrated pillars of ASEAN Security Community, ASEAN Economic Community, and ASEAN Socio-Cultural Community. By transforming

itself into a Community, ASEAN seeks not only to ensure durable peace, stability and shared prosperity in Southeast Asia, but also to strengthen its role as the pivot in building peace and stability in the wider Asia-Pacific region. In other words, ASEAN has set out for itself the task of deepening intra-mural cooperation and enhancing extra-mural role, especially in its role as the driver of institution-building in the wider Asia-Pacific region.

6. Realising the ASEAN Economic Community requires deepening of regional economic integration. Past and current experience suggests that without adequate institutional mechanisms, including those that are regional in nature, progress cannot be assured. These institutional mechanisms should help pool resources more effectively, as well as share costs and distribute gains more equitably.
7. ASEAN is clearly aware that challenges to the realisation of these twin goals are formidable. It requires both the consolidation of regional cooperation and the enhancement of its capacity to act effectively in the international sphere. It necessitates organisational adjustments and the assertion of international identity. ASEAN needs to promote greater integration and to have a legal personality. In order to meet these challenges, ASEAN needs to ensure that the ASEAN agreements are effectively implemented. And, the drafting of an ASEAN Charter serves as an important step towards the fulfilment of such requirements. The ASEAN Charter will confer ASEAN

with a solid basis for intra-mural cooperation and for a more effective international role.

C. The Purposes of the Charter

The ASEAN Charter should serve the following purposes:

1. to establish ASEAN as a legal entity;
2. to stipulate ASEAN's goals and objectives;
3. to provide ASEAN with effective legal and institutional frameworks in order to achieve those goals and objectives;
4. to set the direction for ASEAN's future;
5. to define rights and obligations of Member States;
6. to specify ASEAN's working procedures and principles; and
7. to specify dispute-settlement mechanism among Member States

D. The Nature of the Charter

The ASEAN Charter should NOT be:

1. merely a codification of existing documents;
2. a justification for making the existing norms, values, principles and objectives unalterable and inflexible; and
3. state-centric.

The ASEAN Charter should be:

1. open to new ideas and forward-looking;

2. amenable to adjustments as the situation dictates;
3. based on the formation of an ASEAN Community which already provides a road-map for ASEAN; and
4. people-oriented

E. Elements of the Charter

1. Objectives of ASEAN

The objectives of ASEAN as a regional organisation have been set out in various documents. However, there is a need to group all objectives into a single body of document such as in the ASEAN Charter. Those objectives that must be included, among others, are:

- 1) to enhance peace and stability in the region;
- 2) to promote shared prosperity among the peoples of the region;
- 3) to ensure the well being of its people by enhancing human security and eradicating poverty, hunger, disease and illiteracy;
- 4) to strengthen mutual understanding, trust, and confidence through intensifying political and security cooperation;
- 5) to narrow development gaps among its Member States;
- 6) to accelerate regional economic integration;
- 7) to enhance ASEAN economic competitiveness;
- 8) to promote market-driven integration and open regionalism and facilitate the role of the private sector in national

- and regional development;
- 9) to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms;
 - 10) to enhance good governance in all spheres—political, economic and social;
 - 11) to promote and develop a community of caring societies;
 - 12) to develop and strengthen a common ASEAN identity among its peoples, whilst maintaining their individuality and celebrating their diversity; and
 - 13) to ensure that ASEAN remains an effective and constructive player in international affairs, contributing to regional and global peace, development and prosperity.

2. Principles of ASEAN Cooperation

The ASEAN Charter should serve as a legal document that guides the direction of ASEAN cooperation in the future. ASEAN, its people and its Member States, need to undertake to build the ASEAN Community and pursue the objectives of ASEAN in accordance with the following principles:

- 1) Respect for the dignity, human rights and well being of all peoples, regardless of race, religion, or gender.
- 2) Respect for the sovereignty and independence of all States.
- 3) Respect for the principle of sovereign equality and non-interference in the internal affairs of States.
- 4) Mutual consultation and cooperation on domestic matters that gravely affect

- the security and well-being of other Member States.¹¹
- 5) Promotion of peace through the subscription to the concept of cooperative and comprehensive security.
 - 6) Abstention from threat or use of force in inter-State relations and settlement of differences and disputes through peaceful means.
 - 7) Enhance the region's international competitiveness and outward-oriented look through regional economic cooperation.
 - 8) Utilise the market to primarily drive the process of economic integration, with the active role of the state, to facilitate efficient economic interactions by private actors, including small and medium enterprises.
 - 9) Strive for economic integration in tandem with efforts to narrow the development gaps and regional cooperation to lessen domestic adjustments to economic policies.
 - 10) Abstention from further strengthening and enhancing military alliances.¹²
 - 11) Preservation of Southeast Asia as a zone that is free of nuclear weapons and weapons of mass destruction.
 - 12) Commitment towards the prevention and punishment of international crimes including genocide.
 - 13) Adherence to constitutional and democratic change of government.
 - 14) Strict observance of international norms and international law in relations with each other and with other States, and faithful fulfilment of its obligations.

3. Organs and Institutional Arrangements

ASEAN should review and rationalise its existing institutional structure to enhance efficiency and effectiveness. The structure should (1) set the direction of the organisation, (2) facilitate the functions of the organisation and (3) ensure the implementation of its programs.

In order to carry out its functions effectively, the principal organs of ASEAN should comprise the following¹³:

- a. The ASEAN Summit.
- b. The General Council for ASEAN Community
- c. The ASEAN Standing Committee
- d. The ASEAN Secretariat
- e. The ASEAN Court of Justice
- f. The ASEAN Peace and Reconciliation Council

A. The ASEAN Summit

The ASEAN Summit shall be the supreme policy-making and decision-making body of ASEAN. It shall comprise the Heads of State/Government of ASEAN Member States, and convene at least once a year, and chaired by the ASEAN Heads of States/Government in rotation.

B. The General Council for ASEAN Community

The General Council for ASEAN Community comprises of ministers responsible for the realisation of the three pillars of the ASEAN Community, and consists of three councils:

1. Council for ASEAN Security

Community, chaired by the Foreign Minister of the hosting Member State;

2. Council for ASEAN Economic Community, chaired by the Minister responsible for international trade of the hosting Member State; and
3. Council for ASEAN Socio-Cultural Community, chaired by the Minister responsible for education and/or culture of the hosting Member State.

The Foreign Minister of the hosting Member State also functions as the Chair of the General Council for ASEAN Community.

The General Council for ASEAN Community is responsible for the implementation of the decisions of the ASEAN Summit and provides policy recommendations to the ASEAN Summit.

In order to support its functions, the General Council for ASEAN Community should (1) establish other ASEAN Ministerial and Official Bodies as it sees fit; and (2) engage and regularly consult with the peoples and civil society, the businesses, and Parliamentary representatives of ASEAN as part of its deliberative and decision-making processes.¹⁴

C. The ASEAN Standing Committee

In order to support the work of the three councils of the Council of ASEAN Community, ASEAN should establish the ASEAN Standing Committees comprising the ASEAN Committee for ASEAN Security Community, ASEAN Committee for ASEAN Economic Community, ASEAN Committee for ASEAN Socio-Cultural Community, the ASEAN Committee for External Relations, and

the ASEAN Committee for Budget and Administration Affairs.

Members of the ASEAN Committee shall be comprised of high level Permanent Representatives from each Member State, appointed by the respective Governments and accredited to ASEAN. The Permanent Representatives shall represent their respective governments at the ASEAN Standing Committee.

D. The ASEAN Secretariat

The ASEAN Secretary-General shall be the chief administrative officer of ASEAN, appointed by the ASEAN Summit upon the recommendation of the ASEAN governments.

The ASEAN Secretary-General should perform the following functions:

- a) Chair the ASEAN Standing Committee;
- b) Oversee the implementation of ASEAN programmes and measures;
- c) Service and ensure the proper functioning of all the organs of ASEAN;
- d) Provide advice on matters of interest to ASEAN;
- e) Conduct research and studies on matters of interest to ASEAN;
- f) Prepare and submit progress and compliance reports on programmes and actions mandated by ASEAN;
- g) Represent ASEAN in international forums when directed by the ASEAN Summit;
- h) Negotiate on behalf of ASEAN when authorised by the ASEAN Summit, and sign the resulting agreements on behalf of ASEAN;
- i) Assume confidence-building and conflict-resolution functions when requested and authorised by the

ASEAN Summit.

- j) Engage and regularly consult with the peoples and civil society, the businesses, and Parliamentary representatives of ASEAN as part of its above functions, especially (b), (d) and (f).

The ASEAN Secretariat should be located in Jakarta and comprise of the Secretary-General and five Deputies Secretary-General, namely, Deputy Secretary-General for Security Community, Deputy Secretary-General for Economic Community, Deputy Secretary-General for Socio-Cultural, Deputy Secretary-General for External Relations, and Deputy Secretary-General for Budget and Administrative Affairs.

Recruitment of ASEAN Secretariat staff should be based strictly on merit, competence and personal integrity and conducted with utmost transparency.

E. The ASEAN Court of Justice

Increasingly, ASEAN is concluding agreements that go beyond political commitments to include legally binding rules and obligations. ASEAN Member States also uphold norms and principles of international law in their relations inter se.

An ASEAN Court of Justice should be established as an independent body to ensure the timely resolution of any disputes that arise, based on the agreed rules and obligations, and the norms and principles of international law. The ASEAN Court of Justice should be empowered to take jurisdiction over:

- (1) ASEAN Free Trade Area (AFTA) and other economic agreements that set out binding rules;

- (2) Inter-state disputes between two and more ASEAN Member States that involve norms and principle of international law, where such disputes are referred by Member States;
- (3) Such other ASEAN agreements as may be agreed that include legally binding rules.

The ASEAN Court of Justice should comprise designated judges determined by Member States. Its existence should not deny the right to recourse of Member States to other judicial bodies such as the International Court of Justice (ICJ).

F. The ASEAN Peace and Reconciliation Council

To assist the Council for ASEAN Community, ASEAN should establish the ASEAN Peace and Reconciliation Council (APRC). The APRC will (1) help, in its advisory capacity, the General Council for ASEAN Community in the areas of conflict-prevention, conflict-resolution, and post-conflict peace-building, and (2) play a role in conflict-prevention, conflict-resolution, and post-conflict peace-building when requested.

Members of the ASEAN Peace and Reconciliation Council should be appointed by the respective governments of Member States. Each State shall appoint two members, one of which should be from the civil society, to serve in the Council for two years. The Chair of the Council should be determined by members themselves.

4. ASEAN Consultative Processes

ASEAN should not be an elitist club or a club limited to government officials. Therefore, ASEAN should establish consultative processes that ensure the involvement of peoples and civil society, the businesses and Parliamentary representatives of ASEAN. These consultative processes should aim to enable these different sectors of ASEAN to contribute towards ASEAN's agenda-setting, and help monitor the implementation of commitments made by ASEAN Member States.

5. ASEAN's External Relations

By acquiring the status as a legal entity, ASEAN's role and responsibility in international affairs would be greatly enhanced. This will require the sustenance of ASEAN's strategic centrality in attaining ASEAN objectives through cooperation with third countries and other regional and international organisations. In this regard, ASEAN should reaffirm its position as the primary driving force in ASEAN-initiated multilateral processes within the wider Asia-Pacific context.

ASEAN's external relations should be based on mutual respect for the independence, sovereignty, equality and territorial integrity. External cooperation should be aimed at helping ASEAN to achieve those objectives embodied in the three pillars of the ASEAN Community.

6. Decision-Making Process

The decision-making process in ASEAN should be based on consensus or, failing

this, by a two-thirds majority of the Member States.

On matters related to the ASEAN Security Community, decisions should be made on the basis of consensus, except in deciding crucial matters, when consensus of all Member States except the Member State under consideration is required.

The crucial matters consist of the following:

- a. when a government comes to power through unconstitutional means such as a military coup;
- b. when a democratically elected party (parties) is unlawfully prevented from constituting a government,
- c. when a government is engaged in a gross and sustained violation of human rights;
- d. when a Member States fail to make financial contribution and pay their dues to ASEAN; and
- e. any other matter deemed as consistent and deliberate non-compliance of ASEAN's principles.

7. Rights and Obligations

As ASEAN moves to become a legal entity with the promulgation of a Charter, it should clearly define rights and obligations of Member States, and specified sanctions accordingly.

Important obligations and rights should include:

- a. right to conduct its own affairs within domestic jurisdiction free from coercion from any other Member State;
- b. right to submit explanation in the event of the Summit deciding on sanctions;
- c. right to call for assistance from the Association;

- d. obligation to uphold and adhere to the principles of the Association;
- e. obligation to implement agreements; and
- f. obligation of Member States to make the payment to the contribution to the budget.

8. Forms of Sanctions

Sanctions to be imposed on a Member State may include:

- a. exclusion from participation in ministerial-level meetings;
- b. suspension from participation in all ASEAN meetings;
- c. limitation of government-to-government contacts and other similar measures; and
- d. any other measures agreed upon by the ASEAN Summit.

9. Financial Matters

ASEAN should replace the current system whereby all Member States contribute equal amounts to the budget of ASEAN. The contribution from the ASEAN Member States should be fixed according to a banded scale distinguishing among Member States in four bands.¹⁵

10. Review

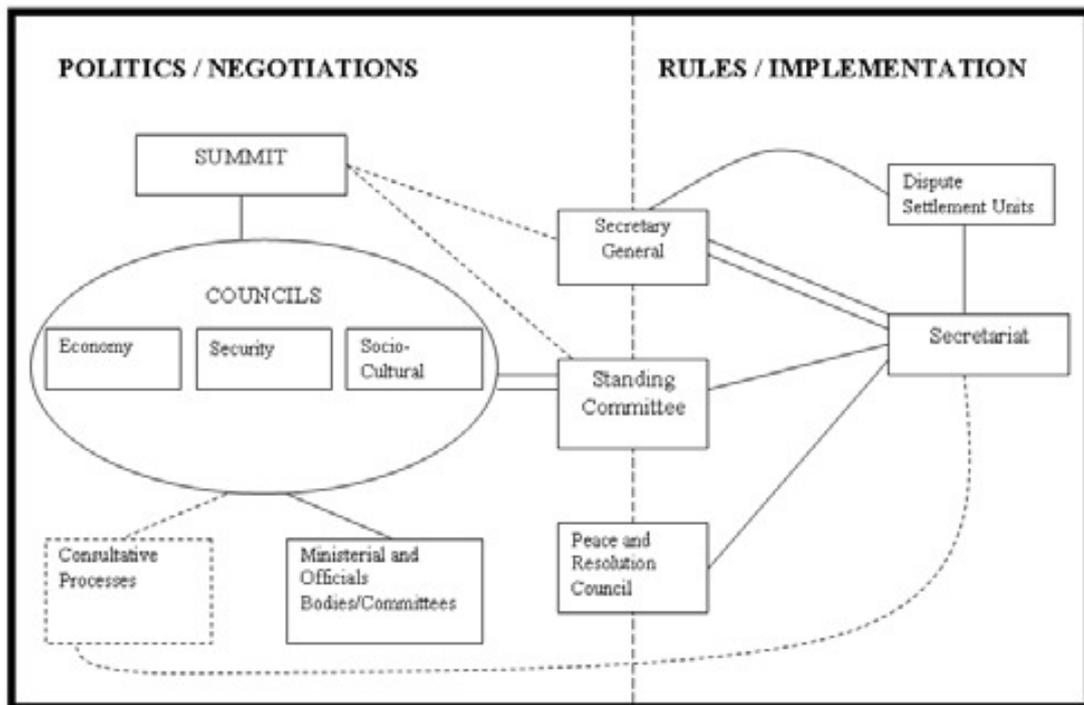
The Charter should be reviewed once in every five years or earlier.

F. Conclusion

The ASEAN Charter is meant to provide a more solid basis for ASEAN cooperation in responding to the challenges brought about by the changing national, regional, and global environment.

Appendix 1

Schematic representation of the principal organs of ASEAN



Appendix 2

Consultative Processes in ASEAN

ASEAN should not be an elitist club or a club limited to government officials. As ASEAN goes forward to integrate, decisions taken and policies set by ASEAN will increasingly affect the peoples, businesses and other sectors. Therefore, ASEAN should establish consultative processes that ensure the involvement of peoples and civil society, the businesses and Parliamentary representatives of ASEAN Member States.

These consultative processes should aim to enable these different sectors of ASEAN to contribute towards ASEAN's agenda-setting, and help monitor the implementation of commitments made by ASEAN Member States.

For this, ASEAN Charter should:

- (1) Empower and oblige its General Council to engage and regularly consult with the peoples and civil society, the businesses, and Parliamentary representatives of ASEAN as part of its deliberative and decision-making processes.
- (2) Empower and oblige the ASEAN Secretary-General and Secretariat to engage with these sectors of ASEAN societies, especially in its functions of overseeing the implementation of ASEAN programmes and measures and in preparing progress and compliance reports on programmes and actions mandated by ASEAN.

The specific modalities for consultations with the peoples and civil society, busi-

nesses and Parliamentary representatives of ASEAN, should be determined, respectively, by the General Council and ASEAN Secretary-General and Secretariat.

These modalities for consultations should be set with a view towards ensuring the fair representation of a broadest possible range of people and opinions. ASEAN should also encourage these different sectors of ASEAN societies to develop their own forums and organisations to better represent themselves and their points of view, and to recognise these different forums and organisations accordingly.

Appendix 3

Members' Contribution to ASEAN Budget

A. Secretariat Operating Budget

Currently members' contribution to the operating budget is equally distributed. In 2005, the total amount was \$8 million, or about 0.005% of the sum total of members' government revenues (budget). In comparison, the EU budget is about 1 to 2% of total government revenues.

- a. Increasing the Total Amount
ASEAN budget should be increased. This could be done gradually to reach 0.025% of total government revenues or an increase of 4 times from the current level by some date certain.
- b. Equitable Distribution
Members' contribution should reflect some notion of members' ability to

Institution Building through an ASEAN Charter

pay. In the EU, members' contribution reflects levels of GDP per capita with some adjustments. For ASEAN, a formula based on a weighting of GDP (15%) and GDP per capita based on PPP (85%) would result in a ratio of 1:24 between the lowest and highest contribution. If this ratio is truncated to 1:6 (in APEC this is about 1:12) and slightly corrected for simplification, this would result in the following four groups:

6	Brunei, Indonesia, Malaysia, Singapore, Thailand
4	Philippines
2	Vietnam
1	Cambodia, Laos, Myanmar

This distribution can be reviewed every 5 years.

B. ASEAN Development Fund

Currently members also contribute to an ASEAN Development Fund, to be used to fund projects. The basic contribution is US\$1,000,000, for each member. On top of this, members can make voluntary contributions. This amount also needs to be increased. Members' contribution could also be based on the formula for funding the Secretariat operating budget.

C. Voluntary Contribution

In addition to their compulsory contribution to the Secretariat Operating Budget and the ASEAN Fund, members

can make voluntary contributions to add to ASEAN's overall pool of funds. Some can go to the ASEAN Fund or for other special account/ad hoc funding.

In APEC, Japan and the US are the largest contributors to the operating budget, but Japan also makes an additional contribution to the so-called APEC Trade and Investment Liberalisation and Facilitation (TILF) Special Account. It is the only contributor to this account, and its contribution to this account is about 5 times that to the APEC operating budget (2004).

The principle to be applied here is that voluntary contribution should be transparent and be pledged on a multi-year (3 years) basis to allow for better planning for the use of the funds available.

ANNEX 3

**REALISING THE ASEAN
ECONOMIC COMMUNITY**

**ASEAN ISIS Memorandum
No.2/2006**

August 2006

Introduction

The vision for the ASEAN Economic Community (AEC) “is to create a stable, prosperous and highly competitive ASEAN economic region in which there is a free flow of goods, services, investment and a freer flow of capital, equitable economic development and reduced poverty and socio-economic disparities in year 2020.”

The end goal to achieve this vision to “establish ASEAN as a single market and production base, turning the diversity that characterises the region into opportunities for business complementation making ASEAN a more dynamic and stronger segment of the global supply chain.”

The ASEAN Charter can contribute to strengthening the efforts to realise the AEC. At their Summit in 2003, ASEAN leaders have agreed to establish an AEC by 2020. There is talk about bringing forward the date of its realisation to 2015. This will pose a major challenge for ASEAN in view of the fact that the implementation of the agreement has been slow. Serious attention must therefore be given to the need to develop mechanisms and to create necessary institutions that can help realise the vision.

As the AEC is seen as a logical extension of the ASEAN Free Trade Area (AFTA), it can be defined as an “FTA plus” arrangement that includes some elements of a common market. A full common market applies common economic, monetary and commercial policies to allow the free movements of products (goods and services) and factors of production (capital and labour). Full mobility of labour involves the right to reside and accept employment in all member countries as well as mutual

recognition of professional and technical qualification. Full capital mobility requires lack of exchange controls and full rights of establishment for firms in all countries. Since the AEC still withholds the free movement of factors of production, it can be defined as a “Common Market minus” arrangement.

The AEC beyond 2020 should move towards a full Common Market. It is not immediately clear whether political conditions will be there for ASEAN to go beyond becoming a Common Market and to aim at an Economic and Monetary Union within the next 20 years or so. It is also not immediately obvious whether this is desirable. For now, the agreement is to achieve the AEC as defined in the vision as the end goal of ASEAN economic integration.¹⁶

Strategy to Realising the AEC

The ASEAN Economic Ministers have established a High-Level Task Force (HLTF) to work out a set of recommendations on how to deepen regional economic integration. The HLTF proposed the following:

- Fast-track integration of eleven priority sectors.¹⁷
- 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).
- Harmonisation of standards and technical regulations.

The HLTF has proposed additional measures including those to improve the Rules of Origin (ROO) and to deal with non-tariff measures (NTMs), and most importantly the creation of a more effective Dispute Settlement Mechanism (DSM) with powers to make legally binding decisions in resolving trade disputes among member states. Dispute settlements in ASEAN will no longer be a political process but instead become a legal process.

It is critical that the binding nature of DSM resolutions be confirmed in the ASEAN Charter. This is a key element to realising the AEC.

Increasingly, the implementation of many other areas of cooperation towards deeper economic integration must be freed from being a political process under the control and management of senior (economic) officials and must be left to professionals. These professionals, working within Regional Units, must be given mandate to manage the implementation of regional programs or to monitor progress in the implementation of programs undertaken nationally. These professionals are ASEAN nationals who are formally independent of governments. Essentially, Regional Units should be given charge of areas where common policy approaches have been adopted (by ASEAN governments). Regional Units can be housed in or function within the activities of a strengthened ASEAN Secretariat.

A Case Study

To support the proposal for the need to introduce Regional Units, the case of the fast-track implementation of the priority

sectors will be examined. Under the Framework Agreement, ASEAN Sectoral Integration Protocols (ASIP) are formulated for each priority sector. Furthermore, so-called “Roadmaps for the Integration of the Priority Sectors” are prepared under the coordination of a specific member economy.¹⁸

The process involves Consultation meetings on the Priority Sectors (COPS) that include officials from different sectoral bodies in ASEAN, regional industry clubs and private sector. The latest meeting of COPS in June 2006 identified several horizontal measures (applied to all priority sectors) and sector specific measures that should be implemented.

Indeed, implementation has been very slow, perhaps rather chaotic. COPS identified the problem as a lack of 3 “Cs”, namely clarity, commitments, and coordination. This likely resulted from the process that is control and managed by senior (economic) officials. The lack of clarity is because of the dearth of intellectual (analytical) input; the lack of commitments is because Ministers sign off agreements without deliberating them thoroughly; and the lack of coordination is an overall problem faced by ASEAN in implementing its many initiatives. This cannot readily be resolved in the absence of regional mechanisms. Therefore, there is the need for establishing Regional Units.

Conclusion

To sum up, it should be noted that in addition to lack of regional mechanisms (or institutions), the slow progress in the implementation is caused by the introduction of often irrational Negative

Lists (of sectors to be excluded from the integration project), the adoption of a “positive list” approach in services sector liberalisation, and insufficient understanding of the key role that liberalisation of investment can play in regional economic integration, especially in promoting increased participation by the less developed members of ASEAN. These are essentially problems of political will and commitments by ASEAN governments.

As integration deepens, so-called “behind-the-border measures” are key to improving investment and competitiveness. ASEAN governments must have the political will to cooperate on these behind-the-border measures which involve harmonisation or elimination of national regulations and legislations.

The ASEAN Charter, if it is to contribute to promoting the AEC, must help encourage ASEAN governments to move in these directions.

Recommendations

1. The vision for an AEC should be broadened to entail the establishment of a full Common Market by 2020 or beyond as the end goal of ASEAN economic integration.
2. In the process, ASEAN should develop mechanisms that will ensure that the less developed members will not be left further behind.¹⁹ The principle of ASEAN minus X will help promote deeper and faster integration but it should be implemented with great restraint.
3. Deeper integration could bring about more disputes amongst member countries. Mechanisms to settle disputes must be legal (and not political) in nature and must be binding. Such a Dispute Settlement Mechanism (DSM) is being developed by ASEAN. The ASEAN Charter should strengthen this resolve.
4. Implementation of programs should no longer be managed by meetings of senior officials. Instead, ASEAN needs to establish Regional Units, staffed by professionals, which will be given the mandate to manage the implementation of regional programs (such as IAI – Initiative for ASEAN Integration -- projects) and to monitor progress in the implementation of programs undertaken nationally. Regional Units can be housed in or function within the activities of a strengthened ASEAN Secretariat.
5. Removing barriers to investment is as important as removing barriers to trade especially to the efforts by the less developed members of ASEAN to catch up. The concept of an AIA (ASEAN Investment Area), which involves investment liberalisation amongst ASEAN members first, must be totally overhauled as it makes no sense.
6. Further deepening of integration will necessitate ASEAN governments to give greater attention to promoting cooperation in an array of so-called “behind-the-border” issues, involving politically more sensitive issues of harmonisation of domestic regulations. The ASEAN Charter, if it is to contribute to promoting the AEC, must help encourage ASEAN governments to move in this direction.

ANNEX 4

**ON MECHANISMS IN ASEAN TO
REDUCE GAPS AMONG
MEMBERS**

**ASEAN ISIS Memorandum
No.3/2006**

August 2006

Introduction

ASEAN Leaders agreed at the 2004 Vientiane Summit to pursue comprehensive integration of ASEAN into an ASEAN Community by 2020. At the ASEAN Economic Ministers Meeting in Kuala Lumpur on 24 August 2006, it was agreed to accelerate the objective of ASEAN Economic Community by 2015. The ASEAN Economic Community is the realisation of the end-goal of economic integration as outlined in the ASEAN Vision 2020, to create a stable, prosperous and highly competitive ASEAN economic region in which there is a free flow of goods, services and investment as well as a freer flow of capital, equitable economic development and reduced poverty and socio-economic disparities by 2020. Reducing development gaps among ASEAN members are firmly manifested and embedded in Hanoi Plan of Actions, the Bali Concord II and Vientiane Actions Programme.

Conceptually, economic integration objective requires the reduction of development gap as manifested by large disparities in per capita GDP, poverty incidence and other dimension of human development among ASEAN members. The ASEAN Economic Ministers have established a High-Level Task Force to work out a set of recommendations on how to deepen regional economic integration. The focus of wider and deeper economic integration in ASEAN Economic Community is based on ASEAN Free Trade Area (AFTA), ASEAN Framework Agreement on Services (AFAS) and ASEAN Investment Area (AIA). These three pillars are important and necessary for the realisation of ASEAN Economic Community but they are not sufficient to

reduce development gap among members.

For the less-developed members, trade and investment liberalisation do not necessarily provide equal economic benefits as compared to more developed members. What ASEAN-4 of Cambodia, Laos, Myanmar and Vietnam (CLMV) critically need at this stage is a development agenda that reinforce trade and investment liberalisation and domestic restructuring.

Strategy to Reducing Development Gap

Invariably, CLMV economies are in the transition stage in which market forces are not fully operating because of the absence of adequate market players, rules and regulations, institutions and capacity to implement responsive and correct macroeconomic policies. These countries critically need adequate development assistance in the form of technical and financial assistance to develop their institutional and human resource infrastructures.

Any regional integration requires the provision of regional public goods provided by more developed and stronger economies. A case in point is the role of Germany and France in providing regional public goods in the formative years of European Economic Community (EEC). These public goods can be in the form of technical assistance, grants-in-aid, concessionary loans (ODAs), preferential market access without reciprocity and other privileges. The provision of these regional public goods is often referred to as “enabling clause” with the objective to establish human and institutional capacity

for the less developed members. Over a period of time, a level playing field may emerge that would contribute to the realisation of more prosperous, competitive and equitable ASEAN economies as envisioned in the ASEAN Vision 2020. The key in the provision of regional public goods however is to ensure that they benefit all ASEAN member states and are seen to help 'level up' the region as a whole.

It should therefore be the collective responsibility of more developed ASEAN member states to provide adequate public goods for the region and all ASEAN member states. Such a strategic approach would go a long way in establishing a sense of shared prosperity and in strengthening community value and regional identity as embedded in the ASEAN Social and Cultural Community.

In this context, ASEAN-6, on bilateral bases, have collectively contributed about USD\$159.4 million to the CLMV countries to implement various projects, and a total of 55.5 per cent of the total funding required in the Integrated ASEAN Initiative (IAI). However, more resources are clearly need to be provided in the areas of infrastructure, human resource development, information, communication technology and customs capacity improvement for ASEAN and especially the less developed CLMV countries.

In addition, the ASEAN Development Fund (ADF) is up and running with contributions from Australia and India, and to a larger extent from Japan through its Japan-ASEAN Integration Fund (JAIF) to provide funds for the implementation of Vientiane Actions Programmes. The size, ownership and coordination of the ADF however can and should be improved.

Towards this objective to reduce development gap, there are existing regional and bilateral mechanisms to implement development assistance to CLMV countries. Greater Mekong Sub-regional (GMS) Initiatives provide a comprehensive framework of development programmes. Through the ASEAN-Mekong Basin Development Cooperation, it encompasses ASEAN Highway Network, the ASEAN East-West corridor across Vietnam, Laos, Cambodia, Thailand and Myanmar, Singapore-Kunming Rail Link, and ASEAN energy networks. Priority areas are infrastructures, human resource development (civil service, customs and education) an ICT (e-ASEAN Framework Agreement) and Asian IT Belt Initiative. In this respect, Japan has committed to providing more than USD\$3 billion assistance to ASEAN for human resource development and exchange programmes for the development of the Mekong sub-region.

What is urgently needed is a sense of priority and political commitment to implement those agreed initiatives and programmes based on existing mechanisms. With greater assistance in providing regional public goods, the GMS assistance accompanied with timely and correct domestic reforms would help end the reality and perception of a 'two tier' ASEAN and enhance both integration and competitiveness.

Conclusion

Reducing development gap is an important and integrated measure which will establish ASEAN as a credible and dynamic regional organisation aimed for economic integration and ASEAN Community by

2020. Economic integration goes parallel with economic competitiveness. To meet economic challenges with the rising of China and of India, ASEAN has to establish a single market and production base of 550 millions people. Without adequate and consistent development assistance to less-developed economies of CLMV, trade and investment liberalisation and domestic reform measures would not be sufficient to engender a sustained overall development in CLMV. To enable these countries to participate and contribute fully to regional integration, development agenda is more important than liberalisation in trade and investment at this stage of their development.

The framework for reducing development gap is already in place. ASEAN needs policy focus, coordination and political commitment among more developed members and their external partners, particularly within the ASEAN-Plus-Three (APT) framework to provide regional public goods (external economies) for less-developed ASEAN members.

3. To undertake policy reforms to attract and facilitate FDI in CLMV, with a study to recommend reforms and workshops to formulate an implementation strategy;
4. To support infrastructure joint development in CLMV to further economic integration in ASEAN;
5. To emphasise intra-ASEAN assistance for education and technical training for youth;
6. To strengthening coordinating mechanisms within the existing sub-regional arrangements in ASEAN.

Recommendations

1. To accelerate economic integration measures as embodied in the Bali Concord II to increase ASEAN economic competitiveness as an important mechanism to reduce development gap;
2. To initiate and set up multilateral stakeholder fund for donors both within and beyond ASEAN, and a commit to increase and coordinate intra-ASEAN Official Development Assistance (ODA) in furtherance of economic integration;

Endnotes

- 1 Originally presented at the 8th Europe-East Asia Think Tank Dialogue “Strengthening Regional and Inter-Regional Cooperation in Responding to Rising Extremism and Resurging Nationalism” co-organized by the Konrad Adenauer Stiftung, Institute for Strategic and Development Studies, and the European Institute of Asian Studies, Berlin, 29 October-3 November 2006. Revised on 10 September 2007 for *Panorama*.
- 2 The original members of ASEAN, sometimes referred to as ASEAN 5 are Indonesia, Malaysia, the Philippines, Singapore, and Thailand. Brunei joined in 1984, Vietnam in 1995, Laos and Myanmar in 1997, and Cambodia in 1999.
- 3 This is an insight from the writings of Hadi Soesastro, CSIS Jakarta too numerous to detail here.
- 4 ASEAN Vision 2020, Kuala Lumpur, 15 December 1997.
- 5 “A Track Two Report to ASEAN Policy Makers (2003) Towards an ASEAN Economic Community”, Jakarta, March 2003, Appendix 6 in Hadi Soesastro, Clara Joewono and Carolina G. Hernandez, editors, *Twenty Two Years of ASEAN ISIS: Origin, Evolution and Challenges of Track Two Diplomacy* (ASEAN ISIS by CSIS: Jakarta, 2006), pp. 193-199.
- 6 For a comprehensive record and discussion of this track two group, see Soesastro, Joewono, and Hernandez, editors, *Twenty Two Years of ASEAN ISIS* already cited above.
- 7 ASEAN Secretariat, *Declaration of ASEAN Concord II (Bali Concord II) – ASEAN Knowledge Kit*, Jakarta, June 2005, p. 42.
- 8 See Rizal Sukma, “ASEAN ISIS and Political-Security Cooperation in Asia-Pacific”, especially pp. 93-94 in Soesastro, Joewono, and Hernandez, editors, *Twenty Two Years of ASEAN ISIS*.
- 9 Unfortunately, this was not adopted in the EPG Report which retained the present scheme of equal contribution to ASEAN of member states.
- 10 The author has made this proposal in her presentation “ASEAN at 40: Resilience in Search of Relevance?” at an *International Conference on ASEAN at 40: From Cradle to Charter* organized by the Institute of Security and International Studies in cooperation with the Konrad Adenauer Stiftung, Japan Foundation, and the Japan Overseas Development Council, The Four Seasons, Bangkok, Thailand, 28 August 2007.
- 11 This principle is already being practiced by ASEAN Member States in forums such as retreats. It enables ASEAN Member States to consult each other and to cooperate on domestic matters without adversely impinging upon the principle of non-interference.

Institution Building through an ASEAN Charter

- 12 This principle recognises that existing military alliances and arrangements cannot be easily dismantled. However, it constrains Member States from further enhancing existing alliances or establishing new ones because these do not serve the mutual interest of the ASEAN Community.
- 13 A schematic representation of the principal organs as recommended in this paper is set out in Appendix 1 to this paper.
- 14 An overview of consultative processes as recommended in this paper is set out in Appendix 2 to this paper.
- 15 The recommended bands and a summary of the bases for the recommendations are set out in Appendix 3 to this paper.
- 16 This was proposed by the ASEAN High-Level Task Force (HLTF) and endorsed by the ASEAN Economic Ministers.
- 17 The eleven priority sectors are: Agro-based products, Air travel, Automotive, E-ASEAN, Electronics, Fisheries, Healthcare, Rubber-based products, Textiles and apparels, Tourism, Wood-based products. A 12th priority sector, Logistics, was added in 2006.
- 18 Indonesia for wood-based products and automotives; Malaysia for rubber-based products, textiles and apparels; Myanmar for agro-based products and fisheries; Philippines for electronics; Singapore for e-ASEAN and healthcare; and Thailand for air travel and tourism.
- 19 A separate ASEAN ISIS Memorandum deals with the issue of narrowing the development gaps within ASEAN.