

**ERIA Discussion Paper Series****ASEAN Beyond 2015: The Imperatives for  
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**Abstract:** While ASEAN recognises the need to strengthen its institutions, as reflected in its commitment to undertake greater institutionalisation efforts mandated by the ASEAN Charter, the willingness of member states to rely on regional institutions is still circumscribed by strong attachment to the principle of sovereignty and preference for maintaining unity amid regional diversity. In that context, the idea of constructing a supra-national authority –which requires the shifting of the locus of decision-making from national capital to a regional bureaucracy-- has never been an attractive option for any ASEAN member state. The reliance on regional institutions is accepted as long as it would not undermine national sovereignty and endanger regional unity. In this context, ASEAN’s institutionalisation will continue to reflect member states’ dilemma in reconciling the need for strong and effective regional institutions on the one hand and the overriding concerns over maintaining national autonomy and preserving regional diversity on the other. The imperative of deeper regional integration, however, would make it more difficult for ASEAN to escape the need for further institutional changes.

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## **1. Introduction**

The Association of Southeast Asian Nations (ASEAN), despite its origin as a loose and modest inter-governmental regional organisation aimed at preventing inter-state conflicts through economic and socio-cultural cooperation among its members, has now evolved into an association of sovereign states with a more ambitious agenda of regional integration. That plan is reflected in the commitment to initiate “regional community-building” process as the main agenda of regional cooperation. Indeed, when ASEAN took a formal decision to transform itself into an ASEAN Community in October 2003, member states declared, “an ASEAN Community shall be established comprising of three pillars, namely political and security cooperation, economic cooperation, and socio-cultural cooperation.”<sup>1</sup> They also affirmed that the transformation of ASEAN into an ASEAN Community would transform the Association into a people-oriented organisation and ensure “durable peace, stability, and shared prosperity in the region.”<sup>2</sup>

In order to achieve the noble goal of becoming a regional community, ASEAN leaders realised that some institutional changes were required. In 2005, ASEAN leaders agreed on the need for ASEAN to have a charter that would “facilitate community building towards an ASEAN Community and beyond.”<sup>3</sup> In this regards, the adoption of the ASEAN Charter in November 2007 was declared by ASEAN leaders as “a historic milestone for ASEAN, representing our common vision and commitment to the development of an ASEAN Community...”<sup>4</sup> Indeed, as it promises to transform ASEAN into a more rules-based organisation rather than a loosely organised association, the ASEAN Charter serves as an important step towards, and a confirmation of ASEAN’s commitment to, the realisation of the ASEAN Community. It was seen as a manifestation of the collective desire to accelerate the process of regional integration among member states. One important prerequisite for a deeper integration has been the promise to strengthen ASEAN’s own institutions. In this regard, the Charter also serves as the legal basis for further institutionalisation of ASEAN.

The promise to strengthen institutional frameworks of ASEAN, while reflecting member states' awareness of the need for strong institutions in order to achieve the objective of ASEAN Community, can also be seen as a collective response to criticisms and challenges facing ASEAN. Since its establishment in August 1967, criticisms of ASEAN have been primarily directed at deficiencies in the organisational structures and the slow pace of institutionalisation of the Association. Indeed, the inadequacy in ASEAN's institutional frameworks was often seen as the main reason for the lack of progress. Until recently, the slow pace of institutionalisation has often been justified within the context of ASEAN's main objective of preventing inter-state conflicts through cooperation rather than constructing a regional community through regional integration.

As ASEAN Member States (AMS) have now committed themselves to deeper integration process towards an ASEAN Community beyond 2015, the need for greater and deeper institutionalisation has become more urgent. In this context, three main questions deserve further analysis. First, how far would ASEAN member states rely on regional institutions to drive the integration process? Second, to what extent the quality and authority of existing ASEAN institutions is adequate to the task? Third, if not, how much and in which area should ASEAN member states give more authority and capacity to ASEAN institutions?

This paper argues that while ASEAN had in the past undertaken measures to strengthen and expand its institutions, and ASEAN's recent commitment to undertake greater institutionalisation efforts have been manifested in the adoption of the ASEAN Charter, *the willingness of member states to rely on regional institutions is still circumscribed by member states' attachment to the principle of sovereignty and overriding preference for maintaining unity amid regional diversity* (as reflected in persistent inter-state problems and diverging interests). In that context, the idea of constructing a supra-national authority –which requires the shifting of the locus of decision-making from national capital to a regional bureaucracy-- has never been an attractive notion for any ASEAN member state. The reliance on regional institutions is accepted as long as it would not undermine national sovereignty and endanger regional unity. In this context, ASEAN's efforts at institutionalisation will continue to reflect member states' dilemma in reconciling the imperative of strong and effective regional

institutions for regional integration on the one hand and the overriding concerns over maintaining national autonomy and preserving regional diversity on the other.

The discussion is divided into three sections. The first section traces back ASEAN's experience in institutionalisation since its establishment in August 1967. The analysis in this section will provide valuable insights not only on the conditions under which significant phases of institutionalisation had occurred in the past, but also on the limits within which the institutionalisation were carried out. The analysis in this section will provide insight on the extent to which ASEAN member states would rely on regional institutions to drive the integration process. The second section discusses the limits of existing ASEAN's institutional frameworks within the context of the Association's plan to transform itself into an ASEAN Community by 2015. The focus of the analysis will be on the nature and characteristics of ASEAN-generated institutions, the norms on which these institutions operate, and the national and regional contexts that define ASEAN member states' attitude in managing the dilemma of regionalisation and sovereignty/regional diversity. The third section provides some suggestions on what ASEAN could and should do in order to fulfil its own promise to transform itself into a rules-based organisation and accelerate the process of regional integration, without necessarily becoming a supranational institution.

## **2. The Evolution of ASEAN's Institutionalisation: The Primacy of "ASEAN Way" and the Impetus for Change**

### **2.1. The First Three Decades (1967-1997)**

When it was established in August 1967, ASEAN did not set for itself an ambitious task of becoming a regional organisation equipped with complex institutional structures and machinery in order to function effectively and immediately. Nor did it pretend to be an organisation that aspired to accomplish a set of concrete objectives in short or medium terms. It did not even stipulate the need for a multilateral summitry. On the contrary, ASEAN's leaders began their cooperative endeavour with a set of modest objectives. They maintained that the primary objective of ASEAN was "to accelerate the economic growth, social progress and cultural development in the region through

joint endeavours in the spirit of equality and partnership...”<sup>5</sup> It was understood, however, that the conspicuous absence of political-security cooperation in the declared areas of cooperation did not mean the absence of political goal. On the contrary, ASEAN consciously chose the path of socio-economic cooperation to foster regional reconciliation among the founding members.

Indeed, the necessity to foster regional reconciliation constituted one key reason behind the formation of ASEAN. Prior to its establishment, the politico-security situation in Southeast Asia was characterised by various conflicts among its prospective members, with Indonesia-Thailand relations as an exception. Indonesia just ended its policy of *konfrontasi* (confrontation) against Malaysia and Singapore. Malaysia-Philippines bilateral relations were strained by Manila’s claim over Sabah. Thailand was suspicious of Kuala Lumpur’s intention towards the Malay-dominated areas of its Southern provinces. In this context, “the necessity to co-operate...is deemed a function of a ‘hostile’ environment.” (Zakaria Haji Ahmad, 1986). ASEAN’s immediate achievement had been to sustain a condition for peace following the restoration of relations between Indonesia, Malaysia, and the Philippines.

Regional reconciliation through regional cooperation required a set of agreed principles, norms and rules that would guide the conduct of foreign relations among participating countries. First, it was understood from the outset that for such regional project to succeed, intra-mural relations should be predicated upon the requirement to respect national sovereignty and the principle of non-interference in domestic affairs as the primary means of conflict prevention. Through this approach, “each member refrains from criticizing the policies of others in public” and this, in turn, “allows the ASEAN members to subdue any bilateral tensions.” (Katsumata, 2003). Second, regional stability could only be assured if regional countries were able to concentrate on “putting its own house in order” by addressing issues of domestic importance such as economic development, internal stability, and regime security. Third, it was understood also that cooperation should take a non-legal form based on a mechanism of decision-making defined in terms of consultation and consensus. Fourth, differences were to be resolved through informal and collegial manner, not through the application of legal means of conflict resolution.

Through the application of these principles, norms and rules –which later known as the ASEAN Way—the Association represented an experiment at constructing a regional order that allowed member states to focus on, and devote their resources for, the more pressing task of nation-building. This focus on coping with internal challenges also helped mitigating internal sources of regional problems. For example, it is important to note that some of these bilateral conflicts, especially Jakarta’s *konfrontasi* against Malaysia-Singapore, were driven by power struggle and internal instability in Indonesia. Construed in this way, ASEAN was, and for some members still is, a national sovereignty-enhancing form of regional cooperation. Indeed, as stipulated in ASEAN’s founding document, cooperation should be guided by the imperative of preserving national identities of member states.<sup>6</sup>

Throughout its existence, the slow evolution of ASEAN’s institutional structures reflected and had been carried out within the context of member states’ strict adherence to these elements of corporate culture. Institutions put in place were very modest indeed. As a start, ASEAN was not founded by a gathering of heads of governments. It was a gathering of foreign ministers of member countries that played a central role in setting the direction for the grouping. That body, later known as ASEAN Ministerial Meeting (AMM), served as the central institution of the Association. It was responsible for policy formulation, coordination of activities in all intra-ASEAN cooperation, and reviewing of decisions and proposals of the lower-level committees. To support the work of the AMM, the ASEAN Declaration of 1967 also established a Standing Committee charged with the task of carrying out day to day work of the Association, a number of ad-hoc committees and Permanent Committees of specialists and officials on specific subjects, and a National Secretariat in each member state. In November 1971, the AMM created another institution called the Senior Official Meeting (SOM) consisting of senior Foreign Ministry officials, but still outside the formal structure of ASEAN.

The first summit was not convened until 1976 in Bali, Indonesia, when ASEAN leaders recognised the need to strengthen and expand the Association’s machinery in order to meet new challenges. This Summit marked a new page in the history of ASEAN’s institutionalisation. It issued two important documents concerning the strengthening of ASEAN machinery, namely, the Declaration of ASEAN Concord

(DAC) and the Agreement on the Establishment of the ASEAN Secretariat. The DAC stipulated that there would be meeting of heads of government as the supreme organ of ASEAN. The post-Bali period also saw the institutionalisation of the ASEAN Economic Ministers Meeting (AEMM) and Other ASEAN Ministers (OAM), which covers separate meetings of ASEAN Ministers of Labour, Social Welfare, Education, Information, Health, Energy, Science and Technology, and Environment. Although other ASEAN ministers had their own meetings, they were not considered a part of the formal organisation of ASEAN (Chin, 1984). Following the summit, the ASEAN Secretariat headed by its own Secretary-General was also established in June 1976 and located in Jakarta, Indonesia. The ASEAN Concord also acknowledges the need to review “the ASEAN organisational structure with a view to improving its effectiveness.”<sup>7</sup>

These developments, however, did not change the basic feature of ASEAN’s institutional framework that gave the AMM a central role. This means that the AMM remained the highest *de facto* decision-making body in ASEAN. The only significant change in the post-Bali Summit was the gradual transformation of the AEMM to become the highest decision-making body for economic matters. This provision restricted the AMM’s competence to the political, diplomatic, and socio-cultural arena (Alagappa, 1987). It also reflected an underlying shift towards greater emphasis to economic and functional cooperation (Chin, 1984). However, the AMM retained its central role in formulating guidelines and coordinating all ASEAN activities. Indeed, due to this political function, the AMM continued to serve as the primary organ of ASEAN and acted as a *primus inter pares* among all ASEAN’s institutions. It was this feature of ASEAN that led critics to describe the Association as merely “a club of foreign ministers.”

However, subsequent developments in the process of institution-building appeared to have moderated such an impression. The imperative for greater institutionalisation had come from the need to intensify economic cooperation that required non-AMM bodies to function more actively. The drive for greater economic cooperation, which was initially reflected in the adoption of cooperation scheme such as the Preferential Tariff Agreements (PTA) and the agreement on ASEAN Industrial Projects (AIP), appeared to have received more impetus with the involvement of private sector in

pushing the Basic Agreement on ASEAN Industrial Joint Ventures (AIJV) since 1983 (Davidson, 1994). There was also the shift towards sub-regional economic co-operation such as the establishment of the “growth triangle” projects (Singapore-Johor-Riau--SIJORI and Indonesia-Malaysia-Thailand Growth Triangle--IMTGT). Moreover, the AEM, which was previously overshadowed by the AMM, has also begun to play a more active role in formulating new proposals for greater economic cooperation, culminating in the agreement, reached at the Singapore Summit in 1992, to establish an ASEAN Free Trade Area (AFTA). These developments were seen as a “quantum leap in the history of ASEAN economic cooperation.” (Abad, 1986). It also represents an “aberration” from the slow progress of ASEAN economic cooperation over the past twenty-five years since its establishment (Akrasane and Stifel, 1992).

The willingness to deepen economic cooperation coincided with the growing role of ASEAN’s heads of government in shaping the directions of ASEAN. Initially, as mentioned earlier, ASEAN affairs were very much the business of foreign ministers. However, at the third ASEAN Summit in Manila in 1987, ASEAN leaders stressed the importance of functional cooperation and promoted new ideas of economic cooperation through ASEAN’s private sector. In 1992, at the fourth ASEAN Summit in Singapore, the leaders agreed that the meeting of heads of governments should be held every three years with yearly informal meetings in between (since 2001, the Summit became an annual event, and twice annually since 2009). ASEAN also moved to strengthen the role of the ASEAN Secretariat (ASEC). The head of the ASEC, which previously given the status as the Secretary-General of the ASEAN Secretariat, was now changed into the Secretary-General of ASEAN with a ministerial status.

However, it is important to note that the institutionalisation of the Summit and the upgrading of the status of the Secretary General did not signify a fundamental change in the nature of ASEAN as a loose regional association. In fact, it reinforced the nature of ASEAN as an organisation that accords priority to the primacy of national sovereignty. Greater involvement of leaders ensured that ASEAN remained an inter-governmental form of cooperation. Despite the new status given to the Secretary-General, “the scope for independent action on the part of the ASEAN Secretary-general is highly circumscribed.” (Chin, 1994, p.18). Again, the restructuring of the ASEAN Secretariat at this stage remained overshadowed by the primacy of national sovereignty. Greater

efforts at institution-building, driven by greater recognition of new challenges and the expansion of agenda of economic cooperation, was undertaken in a way that reflected ASEAN's predicament: how to strengthen regional institutions without necessarily transforming itself into a supra-national organisation.

Indeed, ASEAN states were not prepared to surrender their national sovereignty to a regional institution of a supranational type. In this regard, it can be argued that ASEAN institutional development has been guided by this major constraint. Reflecting the Association's guiding principle, the slow evolution of ASEAN's institutional structures reinforced the nature of the Association as a loose inter-governmental form of cooperation that gives highest priority to the preservation of national sovereignty; hence its reluctance to move towards regional "integration" which would require member states "to transfer" a degree of national sovereignty to a regional entity. In other words, institutional changes introduced at the 1992 Summit in Singapore, important as they were, still reflected ASEAN's strong preference to preserve national autonomy of member states. It took another decade before ASEAN finally began to introduce more meaningful and far-reaching changes.

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## **2.2. The Impetus for Change: ASEAN Institutionalisation Since the 1997/1998 Financial Crisis**

ASEAN at the end of the 1990s was in a state of despair through tremendous challenges stemming from developments within the region and outside. Regionally, the financial crisis that swept the region by the end of 1997, and the attendant turmoil and dramatic political change in Indonesia, raised doubts about ASEAN's credibility and its ability to cope with the crisis. For ASEAN, the crisis also reminded ASEAN that the region could not rely on extra-regional forces –especially the IMF-- to provide a solution to its own problem (Hernandez, 2002). The inability of ASEAN to respond to the carnage in East Timor, which paved the way for the Australian-led multinational

forces to restore order, served as an uneasy reminder about the limit of ASEAN's ability to address security problems in its own region. The expansion of membership to include all remaining Southeast Asian countries, while being celebrated as the realisation of the dream of one Southeast Asia, posed new challenges for ASEAN, especially in narrowing the development gap between the old and new members. Externally, ASEAN found that the forces of globalisation had eroded its competitiveness in the world market, forcing it to recognise the imperatives of greater economic integration among themselves. At the same time, ASEAN was also losing its competitiveness to China that was rapidly becoming more powerful as an economic power. In short, ASEAN was confronted with a situation where its relevance was at risk and its credibility questioned.

The focus of ASEAN's activities since 1997, therefore, had been on the search for a new direction and new *modus vivendi* in order to stay relevant. It introduced several new initiatives. For example, to give regional cooperation a more focus platform, ASEAN drew the ASEAN Vision 2020 (December 1997), the Hanoi Plan of Action (1998), and ASEAN's leaders' agreement to create an ASEAN Economic Community (November 2002). *Despite these new initiatives, key practices embodied in ASEAN – such as non-legal approach to cooperation, economic-heavy agenda, consensus-based decision-making, the propensity to non-binding agreements, and strict adherence to non-interference— remained in tact.* Important calls for reforms came particularly from Thailand, but largely ignored by other ASEAN members. In the wake of the financial crisis, for example, Thailand called for a change in the way ASEAN had applied the principle of non-interference by proposing “flexible engagement” but only to meet strong resistance from other members except the Philippines. However, change became possible when Indonesia, barely emerged from the devastating effects of economic crisis and domestic political change, came to provide the leadership so desperately needed by ASEAN when Jakarta assumed the rotational chairmanship in 2003.

Indonesia's chairmanship of ASEAN marked the beginning of significant change. Indonesia offered an agenda for change that would transform ASEAN. Beginning with the proposal to transform ASEAN into a security community (ASC), which required ASEAN to introduce the previously taboo issues such as democracy and human rights as part of cooperative agenda, ASEAN at the 9<sup>th</sup> Summit in Bali agreed to embark upon

a project on an ASEAN Community-building. Proposals by Indonesia arguably risked undermining regional unity due to the far-reaching changes it advocated through the idea. For example, Indonesia's proposals on political-security cooperation –such as cooperation on democracy-building, human rights, peace-keeping, and the establishment of a peace and reconciliation council-- would require ASEAN not only to modify the notion of sovereignty and non-interference but also establish new institutional structures to enable the Association better implement its agendas and agreements.

At the end, Indonesia did not succeed in getting the support for all its proposals. The idea of the ASC was accepted, but in a much watered down form.<sup>8</sup> However, Indonesia's drive for reform during its chairmanship did pave the way for greater changes in ASEAN with significant implications for ASEAN's institutionalisation. First, ASEAN finally agreed to establish an ASEAN Community by 2020 based on three pillars: the ASEAN Economic Community (AEC), the ASEAN Security Community (which was later modified into the ASEAN Political-Security Community-APSC), and the ASEAN Socio-Cultural Community (ASCC). Second, the agreement on the ASEAN Community has expanded the objectives of ASEAN from cooperation into integration, from conflict prevention into an institution with capacity to undertake conflict-resolution and post-conflict peace-building. Third, with greater involvement of civil society groups as a prerequisite for the success of the ASCC, the nature of ASEAN as a top-down type of regional organisation, driven exclusively by state's officials, began to change. Fourth, with these new objectives and frameworks of cooperation, *ASEAN soon found itself under increasing pressure to review its existing institutional set-up and recognise the need for change.*

The most important follow-up in this regard has been the adoption of the ASEAN Charter in December 2007. However, as we will see in the following analysis, the entire process of formulating the ASEAN Charter –from the drafting to ratification— clearly demonstrate the limits within which the institutionalisation of ASEAN could be carried out. It once again demonstrates the main argument of this essay: ASEAN's willingness to strengthen its institutional structures is still circumscribed by member states' attachment to the principle of sovereignty and overriding preference for maintaining unity amid regional diversity. It also reflects ASEAN's predicament on

how to strengthen regional institutions without necessarily transforming itself into a supra-national organisation.

### **3. The ASEAN Charter and Challenges to Institutionalisation: Sovereignty, Regional Unity and National Autonomy**

It is true that the ASEAN Charter, which came into force in December 2008, has provided ASEAN with new institutional frameworks. Even tough questions have been raised whether the Charter really offers “transformative value” or it just constitutes a declaration of normative intent, four elements of the Charter are of paramount importance in this regard. First, and foremost, the Charter gives ASEAN a legal personality. Second, the Charter articulates new (and old) objectives of regional cooperation, with the intention to become a regional community based on three pillars as the most important one. Third, it pledges to change the nature of ASEAN as a state-dominated process into a people-oriented organisation. Fourth, it provides the provisions for strengthening ASEAN’s institutional pillars and streamlining its decision-making structures. In short, the ASEAN Charter purportedly represents a highest form of commitment among ASEAN member states to transform the grouping into a rules-based organisation, equipped with better institutional structures that will enable the Association to achieve its objectives and withstand current and future challenges.

Indeed, it is important to recognise that the ASEAN Charter does introduce a number of institutional changes in order to “streamline ASEAN’s cumbersome and uncoordinated organisational structure...”(Koh, *et al.*, 2007). In doing so, the Charter establish a more hierarchical structures, with the ASEAN Summit as the highest policy-making body that meets twice annually. Under the Summit, there are the ASEAN Coordinating Council (comprised of foreign ministers and retained its practical name as the ASEAN Ministerial Meeting-AMM), and three other councils –the ASEAN Political-Security Community Council, the ASEAN Economic Council, and the ASEAN Socio-Cultural Council—and each of this council is responsible for realising one of the pillars of the ASEAN Community. Each ASEAN community council has sectoral ministerial bodies. The Charter gives more tasks and responsibilities to the

ASEAN Secretariat and the ASEAN Secretary-General, especially with the mandate to facilitate and monitor the implementation of ASEAN's commitments and agreements, and doubles the number of deputy secretary-general from two to four. The Charter also establishes a number of new institutions, of which the Committee of Permanent Representatives (CPR), the ASEAN Inter-Governmental Commission on Human Rights (AICHR), and ASEAN National Secretariat(s) are the most important one.

Do these institutional changes make ASEAN function better, more effectively, and differently from how it has functioned over the last 45 years? For one, despite all the rhetoric and promises made by the ASEAN charter and official pronouncements, ASEAN essentially remains an inter-governmental form of regional cooperation. Despite the promise to become a people-oriented organisation, it is largely still a state-driven process, even though non-state actors in some (more democratic) members do exercise a degree of influence over national policies of member states towards ASEAN. It is still a regional organisation where progress (or lack of it) in implementing cooperative agenda is still determined by the political will of member states rather than by an implementing agency of a supra-national body.

These persistent features of ASEAN's practices are reflected in a number of continuing problems facing the Association that the ASEAN Charter either refused to address or failed to clarify. First, ASEAN's decision-making process remains guided by the principle of consensus. Second, the new institutions (organs) introduced by the Charter still lack clarity with regard to their functions and roles, and how they relate to each other. Third, despite the enhanced role of ASEAN Secretariat and the Secretary-General of ASEAN provided for in the ASEAN Charter, the two institutions remain constrained by member states' unwillingness to provide more resources as reflected in the decision to uphold the principle of equal contribution by member states to the Secretariat. Fourth, ASEAN is still characterised by the lack of a mechanism to enforce compliance, the absence of regime sanctions, and the tenacity of consensus-based rather than legalised dispute-settlement mechanism; thus reflecting ASEAN's continued preference for non-binding agreements and informality. In other words, despite the changes introduced by the Charter, ASEAN's institutionalisation remains largely normative rather than transformative. The long-held practices of the ASEAN Way

continue to overshadow ASEAN's noble intention to become a rules-based organisation.

Why have the efforts at greater institutionalisation not significantly changed how ASEAN functions? The ASEAN Charter is a document that attracted a lot of the debate during its formulation and ratification process. In fact, even in its final form after the ratification by all member states in December 2008, the ASEAN Charter remains subject to different interpretations among its proponents and critics. This clearly signifies the ambiguous nature of the ASEAN Charter as a product of negotiation and compromises among ASEAN member states. Indeed, the process of drafting, negotiation, adoption, and ratification of the Charter took place within the constraining effects of three major factors that define and shape ASEAN's approach to intra-mural relations: *the inviolability of state sovereignty (and its attendant aversion to non-interference), the overriding concern over unity due to tremendous regional diversity, and the sanctity of national autonomy.* These three factors will continue to pose difficult challenges to ASEAN's efforts at institution-building.

#### **4. The Need for Further Change: Proposals For Post-2015 ASEAN**

Given these constraints, the existing institutions would not be adequate in achieving ASEAN's goals and objectives, namely (1) to promote regional community-building, with specific objectives of facilitating economic integration, undertaking conflict prevention and conflict resolution, and becoming a people oriented organisation, (2) to sustain ASEAN's centrality in the emerging regional order, and (3) to present a more cohesive voice in a global community of nations. Institutional changes and promises introduced by the ASEAN Charter are still inadequate and, in some cases, might even complicate the process of ASEAN community-building.<sup>9</sup> First, as the EPG has noted, the main problem with ASEAN is not lack of vision, but the lack of responsibility to implement.<sup>10</sup> Indeed, implementation depends on member states, which might be more concerned with its own domestic priorities rather than regional commitments and obligations. Second, ASEAN's agreements are still non-binding in nature, due to the

absence of mechanism to enforce compliance and ASEAN's aversion to sanction-regimes. Breaches of agreements would go unpunished. Third, the problem of implementation is also exacerbated by ASEAN's reluctance to give real power of implementation to a regional body such as the ASEAN Secretariat. The central issue that gives rise to these three problems has been, and still is, ASEAN's refusal to create a space that would reduce national autonomy of member states.

If ASEAN really wants to be able to deliver, then it needs to initiate further institutional changes. Three points, however, need to be kept in mind. First, it is important to recognise that the preservation of national autonomy will continue to be accorded a highest priority in foreign policy of ASEAN member states. Second, the preference for national autonomy, however, is also increasingly complemented with the growing awareness about the importance of respecting and fulfilling regional obligations. Third, ASEAN continues to face a dilemma on how to commit to regional obligations without necessarily sacrificing national autonomy. In other words, *the proposed changes should be framed within the context of member states' dilemma in reconciling the imperative of strong and effective regional institutions for regional integration on the one hand and the overriding concerns over maintaining national autonomy and preserving regional diversity on the other*. Therefore, the following suggestions might help ASEAN transform itself into a rules-based organisation and accelerate the process of regional integration, without necessarily becoming a supranational institution.

First, ASEAN needs to change its decision-making mode and procedures. As a general rule, ASEAN should not discard consensus as the fundamental principle of decision-making, but consensus should not be equated with unanimity. It should introduce voting as a mode of decision-making, especially on non-sensitive issues. At the moment, while consultation (*musyawarah*) is retained as the primary process for decision-making, the Charter stipulates that "where consensus cannot be achieved, the ASEAN Summit may decide how a specific decision can be made." In such an event, it is very likely that ASEAN leaders would also resort to the process of consensus-seeking in order to resolve differences. Consequently, differences and dispute would get swept under the carpet due to the need to find the lowest common denominator for the sake of tenuous regional unity.

Second, ASEAN needs to establish a mechanism to enforce compliance. This will require ASEAN to introduce two processes:

- (a) *Establish an independent Assessment Task Force.* There is a need for outside, independent assessment of ASEAN's progress. The task should be carried out by those within ASEAN or among ASEAN's stakeholders within the region. For example, within ASEAN, the assessment body –the ASEAN Assessment Task Force-- should be comprised of prominent citizens (non-governmental, but appointed by governments) from ASEAN countries. From ASEAN's stakeholders, it can be prominent institutions such as ERIA. ERIA has already done this regarding the implementation of the AEC through its studies on AEC Scorecard. Difficult as it might be, the same should also be done with regards to the other two pillars. In fact, progress in economic cooperation cannot be sustained without a solid political-security foundation that the APSC seeks to create and a sense of One Community that the ASCC attempts to encourage.
- (b) *Adopt regime sanctions.* While this is still a sensitive issue, ASEAN nevertheless needs to admit that rules, commitment and agreements without any punitive actions in case of breaches are meaningless. It should therefore begin to discuss what form of punitive mechanism should be in placed, types of sanctions, and in what areas sanctions should and could be applied.

Third, ASEAN should start having a discussion on how to balance the preference to retain national autonomy on the one hand and the need for greater collective institutional role on the other. While some sorts of supra-national authority in the political-security field is still unlikely, ASEAN member states should be more open to suggestions on measures to give greater role to regional institutions in the areas of economic community and socio-cultural community. One specific area that requires greater clarity and mandate is the monitoring role of the ASEAN Secretariat. While the ASEAN Charter specifically tasks the ASEC with this function, it is still not immediately clear how the ASEC should undertake this role, and what it can and cannot do. Several proposals by the ERIA MTR on institutional issues for AEC building already provide some entry points for further discussions by ASEAN.

Fourth, ASEAN needs to clarify the functions and role of existing ASEAN's organs and institutions and the relationship among them. Despite the intention to streamline the organisational structures, it is still not immediately clear what are the role and functions of those structures (organs), and how they should relate to each other. For

example, can we say that the ASEAN Coordinating Council (ACC) comprised of foreign ministers, is higher than the other two councils? To whom the ASG is answerable in undertaking his or her day-to-day functions? Does the ASG have to report to the CPR, as in the current practice, or to the ACC? Or, as the ASG is given the ministerial status, should he or she report to the head of state/government occupying the position as the ASEAN Chair? These are some of the issues that ASEAN needs to clarify. The on-going discussion among member states on a set of rules and procedures for the ACC and the three councils might resolve some of these problems, but the need for clarity goes beyond the ASEAN councils. It should also include other ASEAN's organs such as the CPR whose rules and procedures are clearly in need of revision and refinement.

Fifth, ASEAN should change the formula for members' financial contribution to the ASEAN Secretariat. Due to the empowerment of the ASEAN Secretary-General and enlargement of the ASEAN Secretariat, a much larger budget is a necessity. An equal contribution determined by a member state capable of contributing the lowest sum is no longer adequate. In other words, despite the willingness to provide stronger mandate and more workload to the Secretariat, ASEAN governments are still reluctant to commit more funds to facilitate those new mandates and workloads of the Secretariat. More works and fewer resources only demonstrate the lack of political will to strengthen ASEAN's institutions.

Sixth, ASEAN should empower the ASEC to become a real central mechanism and possess a truly regional perspective that helps the realisation of ASEAN's collective objectives. This can be done if ASEC is not subject to, and does not become, the victim of competing national priorities of its member states. It should, for example, (a) abolish the rotational basis for the ASG, (b) introduce open recruitment on the basis of merit for all the DSGs, (c) improve the structure of incentive for staff, (d) give ASEAC more implementing power, across the three pillars of the ASEAN Community, and (e) give more clarity on the role and function of the CPR in relations to ASEC, in order to avoid the overlapping role and function between the CPR and ASEC and ASG.

Seventh, ASEAN needs to introduce, clarify and institutionalise the mechanism for engagement with CSOs. ASEAN has pledged that it would transform itself to become a people-oriented organisation. Yet, this objective cannot be fulfilled unless ASEAN

interacts in an institutionalised way with civil society organisations –ASEAN’s main constituencies-- in all ten members. Unfortunately, ASEAN does not have a mechanism through which it could engage the CSOs. Therefore, leaders need to agree on a clear mechanism by which greater and institutionalised participation by the people can be ensured, and the people –through various CSOs-- can be granted regular access to ASEAN processes in general and to the leaders in particular.

Eight, ASEAN has to improve and strengthen the dispute-settlement mechanism. Dispute might come from three types of problems: traditional inter-state conflict, differences in interpretation of the provisions contained in the ASEAN Charter, and differences regarding whether or not a member state has implemented an agreement. ASEAN should start discussing how they would resolve the three types of disputes whenever they arise. The existing ASEAN’s formulation on dispute settlement continues to rely on the “wisdom” of the leaders. The Charter declares “when a dispute remains unresolved, after the application of the preceding provisions of this Chapter, this dispute shall be referred to the ASEAN Summit, for its decision.”<sup>11</sup> Here, the Summit needs to have clear rules and procedures on how such a dispute should be resolved and by what mechanism. Again, as demonstrated in the Cambodia episode in July 2012 during the disagreement on the South China Sea, reliance solely on consensus defined as unanimity is no longer adequate.

All the above proposals point to the imperative for ASEAN to take two major initiatives. First, it should start with the review of the ASEAN Charter. In doing so, it should (a) undertake a stock-taking exercise and comprehensive assessment on how ASEAN’s institutions have functioned since the adoption of the ASEAN Charter, and (b) revisit the EPG recommendations and study them again. The EPG report provides many valuable suggestions for ASEAN if it is really serious to strengthen itself. Second, it should take the report submitted by ASG Surin Pitsuwan in 2012 seriously and act on it. The Report provides valuable insights on the challenges, at practical and structural level, facing the ASEAN Secretariat in playing its role as the central regional body. Regional integration could be achieved faster with a regional body with a regional perspective. ASEAN Secretariat should be transformed to become such a body.

## 5. Conclusion

ASEAN had been at the crossroads since 1998 when, in 2003, it decided to choose the path towards greater regional integration by becoming an ASEAN Community based on three pillars. Ten years later, it seems that ASEAN found itself at another crossroads. This time, unlike in 1998 and 2003 when the decisions to reform reflected ASEAN's awareness of its own intra-mural problems, the impetus for change would come more from extra-regional circumstances. ASEAN cannot stand at the crossroad for too long if it does not want to be rolled over by the passing giant forces --China, US, Japan, and India-- locked in a complex set of competitive and cooperative relationship. The changing economic and political-security environment in East Asia, and the resulting challenges for ASEAN, heightens the need for ASEAN to integrate deeper and function effectively. That would require ASEAN to introduce further institutional changes.

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## ENDNOTES

<sup>1</sup> The Declaration of ASEAN Concord II, Bali, 7 October 2003.

<sup>2</sup> Ibid.

<sup>3</sup> Kuala Lumpur Declaration on the Establishment of the ASEAN Charter, Kuala Lumpur, 12 December 2005.

<sup>4</sup> Chairman's Statement of the 13<sup>th</sup> ASEAN Summit, "One ASEAN at the Heart of Dynamic Asia", Singapore, 20 November 2007.

<sup>5</sup> The ASEAN Declaration (Bangkok Declaration), Bangkok, 8 August 1967.

<sup>6</sup> The ASEAN Declaration (Bangkok Declaration), 8 August 1967.

<sup>7</sup> See, The Declaration of ASEAN Concord, Bali 24 February 1976, in *ASEAN Document Series 1967-1986* (Jakarta: ASEAN Secretariat, 1986).

<sup>8</sup> For a discussion on this issue, see Sukma (2009a).

<sup>9</sup> For an argument on this point, see Sukma, R. (2009b), and Sukma (2008).

<sup>10</sup> ASEAN, Report of the EPG on the ASEAN Charter, December 2006, p. 21. Available at <http://www.aseansec.org/19247.pdf>

<sup>11</sup> The ASEAN Charter, article 26, available at <http://www.aseansec.org/21069.pdf>

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