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## THE "ASEAN WAY" Its Nature and Origins

In the early days of August 1967, five men, ministers representing the governments of five Southeast Asian countries, gathered in the beach resort of Bangsaen, less than a hundred kilometres southeast of Bangkok, to play golf and tell stories and jokes. They also went about the serious business of founding a new association for Southeast Asia and arguing over the contents of the declaration that would bring it about.

One of them was Adam Malik, "Presidium Minister for Political Affairs" and Foreign Minister of the New Order in Indonesia under General Soeharto. Soeharto had taken over the presidency from President Sukarno in March 1967. Sukarno had been eased out of actual power the year before, following the coup attempt of September 1965 and the massive bloodbath that ensued. The Sumatran firebrand of the Indonesian revolution, Adam Malik was, with Soeharto and Sultan Hamengku Buwono IX of Yogyakarta, one of the triumvirate at the head of the New Order, and would be the President, in 1971-72, of the United Nations General Assembly.

There was Tun Abdul Razak, then Deputy Prime Minister, Minister for Defence and Minister for National Development, second-in-command to Tunku Abdul Rahman, the father of Malaysia. He was, two years later, to be entrusted with the operation of emergency rule that would be imposed on the country after the race riots of May 1969. In that capacity and, eventually, as the Tunku's successor as Prime Minister, he led the work of laying the foundations for ensuring that such inter-ethnic conflicts would not happen again.

Narciso Ramos, the Secretary of Foreign Affairs of the Philippines, had been a journalist, an anti-Japanese guerrilla fighter, legislator and diplomat (Minister-Counsellor in Washington, D.C., and Ambassador in Buenos Aires,

New Delhi and Taipei). He was the father of Fidel Ramos, then an officer in the Philippine Civic Action Group in Vietnam and, much later, President of the Philippines.

S. Rajaratnam was one of the group of statesmen, led by Lee Kuan Yew, who founded modern Singapore. Born in his parents' native country, then called Ceylon, Rajaratnam grew up in Malaya, went to school in Malaya and Singapore, and studied law at King's College in England. After some years as a fiery editorial writer in several Singapore newspapers, he entered politics, becoming Minister for Culture. He was the first Foreign Minister of independent Singapore, serving as such until 1980, when he was elevated to Deputy Prime Minister.

The fifth was the host, Thanat Khoman, Thailand's long-serving Foreign Minister, diplomat *par excellence*, mentor of a whole generation of Thai diplomats, tireless worker for reconciliation in Southeast Asia, and resolute promoter of Thailand's security and other interests.

On the golf course in Bangsaen and tie-less on easy chairs, the five men engaged in the convivial banter, the jocular repartee and the warm give-and-take that have characterized multilateral diplomacy in Southeast Asia ever since. As Thanat Khoman described it almost 37 years later, they played golf in the morning, had meetings in the afternoon and gathered for informal dinner in the evening.<sup>1</sup> The discussions continued in Thanat's Bangkok residence, where he still lives, now in his nineties. The relaxed atmosphere prevailed even in the storied and elegant setting of Bangkok's Saranrom Palace, until a hushed solemnity descended on the small gathering of diplomats and functionaries, as the five ministers, now in business suits, signed the two-page declaration that is the founding document of the Association of Southeast Asian Nations. It was 8 August 1967.

The warm and congenial interaction among the five men, who had become friends despite their highly disparate personalities, contrasted sharply with — indeed, masked — the tensions that had marked and continued to loom over the relations between their countries. Indonesia had just ended its *konfrontasi* with Malaysia and Singapore over the formation of Malaysia in 1963. Malaysia and Singapore had recently — in 1965 — undergone a bitter separation. The Philippines continued to lay claim to the territory of North Borneo, which, as Sabah, had been incorporated into Malaysia as a component state. Thailand was not involved in any of these disputes, and thus was able to play the role of conciliator. But Thailand felt vulnerable to other threats — the conflicts in neighbouring Vietnam, Laos and Cambodia and a communist insurgency within — threats also felt by all the other countries represented in Bangkok. At the same time,

China posed a broader strategic threat, with the convulsions of the Great Proletarian Cultural Revolution, the Chinese propaganda organs' strident denunciations of the non-communist Southeast Asian regimes, and China's at least verbal support for the communist insurgencies.

The document signed by the ministers of what is sometimes referred to as "maritime Southeast Asia", plus Thailand, was extremely simple.<sup>2</sup> Made up of only two pages, it envisioned joint endeavours "to accelerate economic growth, social progress and cultural development"; "regional peace and stability through abiding respect for justice and the rule of law"; "collaboration and mutual assistance ... in the economic, social cultural, technical, scientific and administrative fields ... and in "educational, professional, technical and administrative" training and research; some broadly stated forms of economic cooperation; and the promotion of Southeast Asian studies.

To carry this out, the ASEAN Declaration (Bangkok Declaration) sketched out a rudimentary mechanism. The Foreign Ministers were to meet at least once a year, and a Standing Committee to manage the affairs of the association was to be made up of the Foreign Minister of the country hosting the meeting in a particular year as chairman and the ambassadors of the other ASEAN members to that country. Committees of "specialists and officials on specific subjects" were also envisioned. That was it.

The Bangkok Declaration, which is all that ASEAN has by way of a charter, did not have the usual legal formulations — effectivity clauses, ratification requirements, watertight stipulations, provisions for amendments, and so on. It did not set up compliance bodies, any other kind of supranational authority or a dispute-settlement mechanism. For the founding states, the Declaration was essentially an expression of their determination not to allow their disputes to develop into conflict and their resolve to work together for common purposes, purposes that at the time were only vaguely discerned and projected. It also embodied their intention to avoid getting dragged into the quarrels of the great powers then jockeying for position in Southeast Asia, and thus seek to take the regional destiny into their collective hands.

Perhaps because two predecessor-associations — the Association of Southeast Asia, or ASA, and MAPHILINDO — had not had much impact, the media took little notice of the Bangkok event. Perhaps, the media did not expect — and even the founding ministers were not so sure — that the ASEAN Declaration would create a regional organization that was to endure for thirty-eight years, is still going, now embraces all ten countries of Southeast Asia (not counting the new nation of Timor-Leste), and is looked upon, justifiably or not, as some kind of model for the developing world.

Before its 2004 demise as a weekly news magazine, the *Far Eastern Economic Review* was the closest thing that East Asia had to a regional journal of record. The *Review* apparently saw no need to send a correspondent to cover the event. It merely took note of ASEAN's founding in its *Far Eastern Roundup*, a "Weekly Summary of Events in South & East Asia" for 5–11 August 1967, under "Thailand".<sup>3</sup> The same issue, however, had an editorial welcoming, rather perfunctorily, the new association, saying:

Although the *Review* has editorially lamented the proliferation of economic international organizations in the region, the recent establishment of yet another, the Association of Southeast Asian Nations (ASEAN), must be welcomed. The achievement of the five Foreign Ministers of the key countries involved — Indonesia, Malaysia, the Philippines, Singapore and Thailand — marks not only a joint realization of the need for co-operation in attaining economic and social goals but (as Singapore's representative has noted) a willingness to abandon some of their more extreme nationalistic stances. ...

The crucial question is of course whether an agreement in principle to co-operate at an economic level can be translated into an agreement in practice — and here the developing countries have shown depressingly little willingness to subordinate immediate national advantage to long-term economic gains. Nevertheless, another declaration of good intent has been made, and another step in the right direction has been taken.<sup>4</sup>

Interestingly, in the next issue of the *Review*, one of its regular commentators at the time, Harvey Stockwin, perspicaciously — and prophetically — observed that "we must not forget that the Bangkok meeting was not produced by direct economic pressures, and therefore could not be expected to produce hard economic results".<sup>5</sup> This was to be true for at least the next twenty-five years.

On the other side of the world, the *New York Times*, too, did not consider the event important enough to cover, but in an editorial the next day, observed that it "fits into a healthy trend in the South Pacific", that is, countries formerly at odds with one another were now intending to cooperate. The editorial declared, "ASEAN holds special promise because it brings Indonesia back into the fold."<sup>6</sup>

### SOUTHEAST ASIA IS NOT WESTERN EUROPE

Why did ASEAN take the route that it did, the route of informality, of eschewing legal formulations and legally binding commitments, of avoiding elaborate regional, supranational institutions? After all, Europe, pressed by

similar, if much stronger, imperatives of avoiding war and cooperating for the common good, took a very different road. The European enterprise started with a supranational authority, the European Coal and Steel Community, and over the years set up increasingly elaborate and powerful supranational institutions through formal and binding treaties — the European Economic Community, which went into operation in 1958 and merged with the coal and steel and atomic energy communities in 1967 (the year of ASEAN's founding) to form the European Communities; then a Customs Union in 1968; the Single Market in 1992 (the year of the ASEAN Free Trade Area agreement); the decision to have a common foreign and security policy; and the European Union in 1993. Today twelve members of the European Union have a common currency in the euro. The European Central Bank, together with the national central banks of the "euro zone", implements monetary policy for the area. A constitution for the EU has been drafted, although it has floundered on rejections by the French and Dutch electorates. In terms of institutions, apart from the usual inter-governmental bodies, the Union has an elected European Parliament, the power of which, although limited, is increasing; a Court of Justice; and a massive European Commission that employs more than 22,000 persons, including 4,000 interpreters and translators, maintains resident diplomatic missions in many countries, dispenses foreign aid, and negotiates trade agreements with other states. All these are governed by binding treaties and directives that are legally enforced (and funded by an annual budget of over 100 billion euro).<sup>7</sup>

The different approaches of ASEAN and the EU, against which ASEAN is often measured, were dictated by the differences in the nature of the two regions, in the circumstances at the time of the founding of their respective associations, and in the relationships among the founding states.

Europe had just gone through a cataclysmic war, and the issues that set off that conflict had been swept aside by the very upheaval that the region underwent. At the very least, they were overshadowed by the threat from the Soviet Union to the east and the need for Western Europe to anchor itself on an alliance with the United States to the west. The requirements of American support for Western Europe's security and recovery, the need to stand together in the face of the Soviet threat, and the necessity of locking in the western half of a divided Germany to the rest of Western Europe impelled Europe's political and economic integration. Indeed, the need to ensure that the basic tools of war were harnessed only for peaceful purposes required their management by common, supranational bodies — the European Coal and Steel Community, agreed upon in 1951, and, later, in 1957, the European Atomic Energy Community (EURATOM).

On the other hand, the newly independent states of Southeast Asia had not warred against one another, having been under foreign domination for decades or centuries. The many wars between the mainland kingdoms had taken place in pre-colonial times. The disputes that marked the Southeast Asians' relationships as modern independent nations were largely outgrowths of their colonial legacies and the circumstances of their formation as states. Whereas inter-state issues among the Europeans had been largely settled, those among the Southeast Asians were just beginning to rankle.

Western Europe was propelled on the road to regional unity by the determination of its statesmen and peoples to prevent catastrophic wars from devastating the continent again, wars that had ravaged Europe for centuries, but most especially in the twentieth century. (Indeed, as Karoline Postel-Vinay, research director at the Centre for International Studies and Research, National Foundation for Political Science in Paris, has pointed out, the European experience is an example of how past conflict spurs regionalism rather than hinders it.)<sup>8</sup> Those wars were waged by dynasties, later by nation-states, and most recently by regimes driven by millenarian ideologies; but the people of Europe, relatively speaking, remained basically united by a common civilization, culture and religion, religious differences having long before receded as a cause of war. A new Germany and a new Italy emerged from the war and the subsequent occupation in the same political mould as the states that they had warred on. The outcomes of World War II were clear-cut, the issues largely settled and the solutions accepted by all.

On the other hand, the mutual suspicions, tensions and conflicts between the new nations of Southeast Asia — at least the "maritime" parts of it — Indonesia, Malaysia, the Philippines and Singapore — involved the most sensitive and inalienable of human attributes, i.e., race, ethnicity and religion. Dynasties can be overthrown. Ideologies can be abandoned; how quickly, recent history has shown. International relationships shift in accordance with national interests and perceptions of those interests. One cannot change one's race or ethnic character. Religion is an intimate part of one's identity and is only very rarely abjured or replaced.

### DIVERSITY AND FRAGILE RELATIONS

The colonial regimes, for the most part, determined the shape of what are today's Southeast Asian nations. Nation-states are supposed to subsume and transcend racial, ethnic and religious groups within their boundaries. But the new nations of Southeast Asia could not do this overnight; even much older nations, in Europe and elsewhere, have difficulty with it. The very newness

of Southeast Asia's national experience and the fact that ethno-religious groups straddled national boundaries made the enterprise of nation-building extremely difficult.

Race, ethnicity and religion, as well as territorial disputes, were vital factors in the formation of most of the nations of maritime Southeast Asia and in the relationships among them as they emerged into independent nationhood. Certainly, racial, ethnic and religious proportions and balance were prime considerations in the formation of Malaysia and in Singapore's turbulent role in it — the city-state's membership in and separation from Malaysia. The creation of Malaysia, in turn, triggered Indonesia's *konfrontasi* against the new federation, Jakarta professing to see in the Malaysia project a plot by the West to weaken and even break up the new republic, as the Western powers tried to do at the time of decolonization through to the 1950s. Sabah's inclusion in Malaysia set off a row with the Philippines, which had (and still has, albeit in a dormant state) a claim of sovereignty to the territory. The communist insurgencies in Malaysia and Thailand had a heavy racial content. The Communist Party of Malaya was mostly Chinese in membership. The communist insurgency in northeastern Thailand was heavily ethnic Chinese in participation. The place of ethnic Chinese in Indonesian society has often been a sensitive issue in that country.

Although the change of regime in Indonesia in 1965 paved the way for the end of *konfrontasi*, the mutual suspicions engendered by it carried the potential for renewed conflict with Indonesia's neighbours. In fact, at the time of ASEAN's founding, Indonesia had yet to resume formal diplomatic relations with Malaysia or Singapore, and in a little more than a year Malaysia and the Philippines were to break diplomatic relations yet again. The unresolved issues left over from colonial times and arising from the tangled relations between Malaysia and Singapore are a source of occasional friction to this day. The Philippines' claim to Sabah was intertwined with the problems in the southern Philippines.

In a piece on ASEAN published in the July 2004 issue of the *Asia Europe Journal*, I pointed out:

Southeast Asians had been interacting with one another through trade, religion, cultural exchanges and human contact long before the West came to colonize them; but they had no experience of inter-state cooperation as modern nation-states. Partly because of the differences in their colonial legacies, partly because of the discrepancies in their perceived interests as new nations, and partly because of their recent history of conflict and continuing potential for conflict, the relations among the Southeast Asian states, even with Indochina excluded, were fragile and delicate at best. The

considerable diversity among them exacerbated the fragility of their relations — the diversity of their historical experiences, cultures, religions and strategic outlooks.<sup>9</sup>

Southeast Asia was, and is, indeed, extremely diverse, much more than is Europe — diverse in race and ethnicity, diverse in the role of religion in political as well as social life, diverse in legal and political systems and modes of governance, diverse in levels of economic development and in approaches to development, diverse in values as well as in historical experience, culture, the practice of religion, and strategic outlook. Moreover, Southeast Asia's peoples hardly knew one another, having been cut off and kept isolated from one another by the colonial powers. On the other hand, Europe's nations and peoples had been interacting with one another through the rise and fall of dynasties and empires and the uninterrupted conduct of intensive trade. More immediately relevant, whereas the present-day countries of Western Europe all saw the Soviet Union as the principal threat and the alliance with the United States as the anchor of their security, the foreign-policy orientations of the five founding states of ASEAN varied widely, particularly with respect to U.S. actions in Indochina, the role of military alliances, and the sources of external threat to their sovereignty.

In fact, despite the relaxed and convivial, even jocular, atmosphere of the Bangsaen and Bangkok talks, the negotiations on the Bangkok Declaration were arduous, according to some recollections of the event. Apparently the most contentious was the statement in the preamble "affirming that all foreign bases are temporary and remain only with the expressed concurrence of the countries concerned and are not intended to be used directly or indirectly to subvert the national independence and freedom of States in the area or prejudice the orderly processes of their national development". As might be expected, it was Indonesia that insisted on a reference to foreign military bases in ASEAN's founding document. Despite the turnaround in much of Indonesia's foreign policy following the change of regime from the Sukarno era to Soeharto's New Order, Indonesians remained extremely sensitive to the presence of such bases in their neighbourhood. After all, Indonesia had evidence of American support for the Outer Islands separatist rebellions in 1958, support launched most prominently from U.S. bases in the Philippines. Indonesia's objections to the formation of Malaysia in 1963 arose at least partly from its fear of having British forces lingering at its doorstep. The attempt by the Dutch, first, to re-occupy Indonesia at the end of World War II and, then, to promote its division, remained fresh in the Indonesian memory. According to the Indonesian scholar Dewi Fortuna Anwar, Jakarta

felt compelled to have these concerns reflected in the ASEAN Declaration in order to reassure Indonesians that the new government had not abandoned its "free and active" foreign policy and departed from Indonesia's cherished attachment to non-alignment.<sup>10</sup> The Philippines, with its massive American military bases, and Singapore, with British forces on its soil, were uncomfortable with a bald reference to the "temporary" nature of foreign military bases. The joint statement issued by Presidents Sukarno and Macapagal and Prime Minister Tunku Abdul Rahman in Manila on 5 August 1963, on the occasion of the launching of MAPHILINDO, had this to say:

The three Heads of Government further agreed that foreign bases — temporary in nature — should not be allowed to be used directly or indirectly to subvert the national independence of any of the three countries. In accordance with the principles enunciated in the Bandung Declaration, the three countries will abstain from the use of arrangements of collective defence to serve the particular interests of any of the big powers.

The original draft of the corresponding paragraph of the ASEAN Declaration of August 1967 was almost identical to this. The qualification that the bases were present with the "expressed concurrence" of the host countries and the dropping of the reference to collective defence arrangements serving big-power interests appeared to be an acceptable compromise. Although Thanat Khoman and some other participants do not recall much controversy over this issue, the fact that the ministers themselves had to spend three days working out the declaration indicated major disagreements that had to be resolved.

It was evidently with this in mind that Secretary Ramos declared in his statement at ASEAN's inaugural meeting:

The Declaration we have just signed was not easy to come by; it is the result of a long and tedious negotiation which truly taxed the good will, the imagination, the patience and the understanding of the five participating ministers. That the Association of South East Asian Nations has become a reality despite all these difficulties only attests to the fact that ASEAN's foundations have been well and solidly laid.<sup>11</sup>

With the American military no longer in bases in the Philippines, the British having withdrawn their forces "East of Suez", the U.S. no longer so active militarily in the area, the Cold War over, and the configuration of power in East Asia having been transformed, the question of the bases has lost much of its relevance since ASEAN's founding. But at that time, it was a delicate question, highlighting the differences in strategic outlook among ASEAN's

founding members and exacerbating the fragility of the relations among them. The Philippines had a formal mutual defence treaty with the United States and hosted the Americans' largest overseas military bases. Thailand based its alliance with the U.S. on the Pacific Pact and allowed U.S. forces to launch offensive military operations in Vietnam from bases in Thailand. Singapore was explicit in its support of the U.S. military presence in East Asia. Malaysia was non-aligned, as was Singapore, but was to be flexible enough to enter, with Singapore, the United Kingdom, Australia and New Zealand, into the Five-Power Defence Arrangement. Indonesia remained resolutely non-aligned, although, in the New Order, not stridently anti-West.

As an ultimate objective, however, all five were united by a common vision. With the United States thrashing around in Vietnam, the spasms of the Great Proletarian Cultural Revolution in China shaking the region, and the Soviet Union seeking to extend its influence, it was the vision of a region free from involvement in the quarrels of the strong — at least as a long-term aspiration.

In an interview with a group of Americans on the day that ASEAN was founded, Thanat Khoman explained the rationale for the new association:

We want to be free, we do not want to be under the influence of anyone, large or small. We do not want to depend on the outside world, we want to depend on each and everyone of us. In other words, we try to create conditions of mutual help, to ensure our future destiny, we tried to work out our problems among ourselves. We do not want to be dictated (to) from Europe, or from America, or from Moscow, or from Peking, or from anywhere else.<sup>12</sup>

At the ASEAN Ministerial Meeting in 1971, the Philippines' Secretary of Foreign Affairs, Carlos P. Romulo, allowed himself to indulge in some historical speculation:

In all probability the story of the South East Asia region would not be as it is now if in the sixteenth and nineteenth centuries when foreign powers penetrated into this region we already had a system of consultation — an Asia Forum — and the Philippines would certainly have a different history if the Philippines at the time of their national revolution had been able to ask assistance from a regional organization like the present ASEAN, so that we would not have felt so lonely and solitary as was the case.<sup>13</sup>

This is not an attempt to recount Southeast Asia's or ASEAN's history. It is merely an effort to explain how the diversity within and among the nations of maritime Southeast Asia (plus Thailand), their long isolation from one another, the circumstances of their formation, and the relations among

them at the time of ASEAN's creation shaped the characteristics of the association and set what has come to be known as the "ASEAN way".

### INFORMALITY AND LOOSE ARRANGEMENTS

What are ASEAN's characteristics, and what is the "ASEAN Way"?

The first characteristic was evident in the circumstances of ASEAN's founding and remains largely true to this day. It is the ASEAN preference, in advancing its causes, for informality and loose arrangements rather than treaties and formal agreements, its dependence on personal relations among leaders, ministers and officials and on peer influence (I hesitate to call it "peer pressure", as pressure is hardly ever exerted in ASEAN) rather than on institutions, and its reliance on consensus and on common interests rather than on binding commitments.

As I recalled earlier, the Bangkok Declaration, ASEAN's founding document, was a simple declaration of intent. It was not couched in legal terms, set up no regional institutions, and was not binding in a legal sense. In contrast, the Organization of American States and the African Union, like the European Union, are much more structured, with a Charter in the case of the OAS and a Constitutive Act in the case of the AU and clear and elaborate rules of procedure in both cases.

My piece in the *Asia Europe Journal* explains, "The delicate nature of the relations among the founding states of ASEAN dictated that the new association proceed very carefully, avoiding occasions for disputation and controversy — including the inherently contentious negotiation — and enforcement — of legally binding agreements."<sup>14</sup>

It was not until 1976 that ASEAN concluded its first formal agreement, when the five ASEAN leaders signed the Treaty of Amity and Cooperation in Southeast Asia.<sup>15</sup> The treaty committed the ASEAN nations to the usual norms of behaviour in the relations among states — national sovereignty and territorial integrity, non-interference in internal affairs, rejection of the use or threat of force, and the peaceful settlement of disputes. It called for economic and other forms of cooperation in rather general terms. The document also provides for a "High Council" of ministers (presumably, foreign ministers) that is to "take cognizance of the existence of disputes or situations likely to disturb regional peace and harmony" and, in case the parties to a dispute fail to settle it through negotiation, make recommendations on "appropriate means of settlement". The High Council may also constitute itself into a committee that is to help the parties arrive at a settlement. In every case, resort to the High Council or any action by it

in respect of a dispute needs the consent of the parties to the dispute. Signing on to the treaty has been a requirement for the admission of new members in ASEAN. An amendment in 1987 made it possible for non-regional states to accede to what is known as the TAC, but with no right to participate in the High Council unless the non-regional state concerned is party to a dispute before the Council. Papua New Guinea signed on to the treaty in 1989. China and India acceded to it in October 2003, Japan and Pakistan in July 2004, and South Korea and Russia in November 2004. Mongolia and New Zealand signed the document in July 2005. Australia did so in December 2005.

It is ASEAN's supreme achievement that its members have generally observed the norms for inter-state conduct laid down in the treaty, thus avoiding conflict between them. However, no dispute between ASEAN states has ever been referred to the High Council. It was only in 2001, 25 years after the treaty was signed, that the ASEAN Foreign Ministers finally adopted the rules of procedure of the High Council. It was as if ASEAN had had little expectation that any member-state would invoke the treaty's mechanism anytime soon. To me, this is another manifestation of ASEAN's reluctance to invest the association with anything that may resemble supranational authority or involve it in bilateral disputes. Indeed, some have looked at this as an indication of the efficacy of the "ASEAN Way". Amitav Acharya, Deputy Director and Head of Research at the Institute of Defence and Strategic Studies in Singapore, has pointed out:

Although this mechanism (the High Council) has never been invoked, this very fact has been cited by ASEAN leaders as indicating an enduring commitment to the non-use of force in intra-regional relations as well as a sign of the grouping's success in intra-mural conflict avoidance and management.<sup>16</sup>

In fact, in the early 1990s Indonesia tried to bring a territorial dispute to the High Council. Indonesia and Malaysia had been arguing since the 1980s over the question of sovereignty over two islets off the east coast of Borneo. Sipadan and Ligitan were under Malaysia's control but claimed by Indonesia. Hasjim Djalal, a former Indonesian ambassador, former director for research and development at the Department of Foreign Affairs, and leading expert on maritime issues, told me that, in talks over 1994 and 1995, Indonesia had suggested referring the dispute to the High Council of the Treaty of Amity and Cooperation. He recalled that the "interlocutors" then were Moerdiono, State Secretary of President Soeharto, and Anwar Ibrahim, then Deputy Prime Minister of Malaysia.<sup>17</sup> Malaysia refused, fearing, senior-level Indonesians involved in the negotiations have said, that the other ASEAN

members would be partial towards Indonesia. After all, Malaysia had territorial disputes with all of its immediate neighbours. Kuala Lumpur proposed that the case be brought to the International Court of Justice in The Hague instead, where Indonesia was likely to lose. Recalling this development, Ali Alatas, long-time Indonesian Foreign Minister, told me that, to the dismay of his officials and against their advice, President Soeharto himself eventually decided to agree, on the ground that he did not want to burden "later generations" with this and similar problems.<sup>18</sup> The two countries reached formal agreement on submission to the ICJ in May 1997, the agreement coming into force a year later. The case was submitted to the World Court in November 1998, and in December 2002 the Court ruled in Malaysia's favor.<sup>19</sup> The maritime boundary, however, has not been delimited in accordance with the decision, a circumstance that led to a brief episode of naval sabre-rattling between the two countries in 2005.

Similarly, Malaysia has claimed sovereignty over three maritime features controlled by Singapore. These are Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge, collectively referred to as Pedra Branca in Portuguese and Pulau Batu Puteh in Malay, meaning White Rock. In February 2003, the two ASEAN members agreed to submit the case to the International Court of Justice, which they did in July. Proceedings are continuing.<sup>20</sup> In another case, also in 2003, after Malaysia raised concerns over the environmental impact of Singapore's reclamation activities in the Straits of Johor, the two sides took the matter to the International Tribunal for the Law of the Sea in Hamburg, which issued a ruling that allowed both sides to claim victory. The tribunal did not prohibit Singapore from continuing its reclamation but stressed that it was not to be done in a way "that might cause irreparable prejudice to the rights of Malaysia or serious harm to the marine environment". It also directed Singapore and Malaysia to form an independent group of experts to study the impact of Singapore's land reclamation and propose measures to deal with any adverse effects.<sup>21</sup> In November 2003, Malaysian and Singapore negotiators started discussing the implementation of the Court's directive, and in April 2005 the two parties reached a "full and definitive settlement of the dispute". Under the settlement, Singapore could continue the reclamation works in accordance with the ruling of the International Tribunal on the Law of the Sea but modify the design of part of the shoreline. Singapore gave assurances on "the smooth and safe passage of ships" through the affected areas and agreed to pay compensation amounting to RM374,400, or US\$100,000 for Malaysian fishermen's "losses" and the cost of "scour protection" for one Malaysian jetty in the amount of S\$300,000, or US\$188,000. In this light, the two parties agreed to terminate

the case and to "jointly request" the arbitral tribunal constituted in October 2003 to adopt the terms of the settlement agreement.<sup>22</sup>

The irony here is that, apart from Indonesia's failed attempt in the Sipadan-Ligitan case, ASEAN members have so far declined to use what is essentially a political body — the High Council — that would intervene in their disputes, but do so in the "ASEAN Way" — by recommendation, persuasion and friendly advice. And yet, when they are ready and determined to seek a definitive resolution of a dispute, they have gone to global judicial institutions whose decisions are legally binding. Or else, they have tried to do so through bilateral negotiations.

It is interesting to note the spin that Indonesia's Foreign Minister gave to Indonesia and Malaysia's recourse to the ICJ for the settlement of their dispute over Sipadan and Ligitan. In introducing his presentation of the Indonesian case, Minister Hassan Wirajuda told the Court:

As you are aware, this is the first dispute that has been referred by Special Agreement to the Court by two ASEAN countries. This is a very significant development, Mr. President. The Court will probably be aware that, since the establishment of the Association of Southeast Asian Nations (ASEAN) in 1967, south-east Asian countries have preferred to settle their disputes *en famille*. That method has advantages: these countries were able to solve many, and in some cases even to shelve, disputes amongst them.

However, it is encouraging that two ASEAN countries have shown their confidence in the Court as a fair and impartial arbiter of disputes as well. This reflects a growing maturity in the relations among countries in the region and in their efforts to promote a regional order, peace and stability through abiding respect for justice and the rule of law as stipulated in the ASEAN Declaration of 1967.<sup>23</sup>

Significantly, the minister added, "We hope, and indeed believe, that this step taken by our two countries will provide a precedent that will be followed in the peaceful resolution of similar territorial disputes in the region."<sup>24</sup>

In fact, bilateral disputes between ASEAN members have never been threshed out *en famille*, but, rather, either by bilateral negotiations or, now, by recourse to outside judicial bodies. On 29 January 2003, Cambodian mobs sacked the Thai Embassy and Thai business establishments in Phnom Penh in apparent outrage over the alleged remarks of Thai television actress Suvanant Kongying claiming ownership of Angkor Wat for Thailand, remarks that she subsequently denied making. As relations between the two ASEAN members progressively deteriorated, the ASEAN Secretary-General, Ong Keng Yong, reportedly suggested ASEAN help in cooling things. Cambodia basically

told ASEAN to keep out of the quarrel. Phnom Penh eventually apologized to Thailand and agreed to pay compensation.

In the realm of trade, it is interesting to recall that the very first case brought to the World Trade Organization's Dispute Settlement Body involved two ASEAN countries — Singapore's complaint against Malaysia's "prohibition of imports of polyethylene and polypropylene" in 1995.<sup>25</sup> This took place a year before ASEAN agreed on its own dispute-settlement mechanism, although the relevance of this circumstance is doubtful, since, even if the ASEAN mechanism had existed at the time, the two disputants might have ignored it anyway.

Perhaps drawing on his familiarity with European and Latin American systems, the late Raul Manglapus, then Secretary of Foreign Affairs of the Philippines, on 24 July 1990 proposed to the ASEAN Ministerial Meeting in Jakarta the conclusion of an "ASEAN Treaty on Economic Cooperation" that would legally bind the member-states to their commitments on regional economic cooperation. Apparently caught by surprise, the Foreign Ministers, in their joint communiqué, "directed their senior officials, in coordination with senior economic officials and the Directors-General of the ASEAN National Secretariats to consider the setting up of a committee to study the need for a treaty or other framework for ASEAN economic cooperation for submission to the AEM for its consideration".<sup>26</sup> Note the veritable obstacle course: "*consider ... a committee to study the need for a treaty or other framework for ASEAN economic cooperation for*" the "*consideration*" of the ASEAN Economic Ministers (emphases mine). Such a pile of cautious conditions could have killed the proposal right there. However, the ASEAN Standing Committee, meeting in Kuala Lumpur in September 1990, requested the Philippines to prepare a concept paper on its proposal and within a month submit it to ASC, which would in turn give it to the Senior Economic Officials.

A draft of the concept paper that I have seen noted the "slow progress in liberalization of intra-ASEAN trade as evidenced by the non-implementation of the Agreement on the Standstill and Roll-back of Non-Tariff Barriers and by the non-adherence to agreed time frames of implementation of commitments under the Preferential Trading Arrangements" and the "lack of significant progress in attempts at greater harmonization of national policies and plans". It cited a similar sluggishness in carrying out the ASEAN Industrial Projects and ASEAN Industrial Joint Ventures schemes. As conceived in the draft, the proposal would create a "cohesive and juridical regional group similar to the European Community", with "supranational



institutions similar to the EC Commission and Council", leading to "the adoption of a higher form of regional economic cooperation".<sup>27</sup>

I have been unable to track down the final text of the concept paper, but the joint communiqué of the 1991 ASEAN Ministerial Meeting did note that the Standing Committee, the Senior Officials, the Senior Economic Officials and the Secretary-General had "considered" the proposed economic treaty. The next paragraph stated:

The Foreign Ministers welcome as a matter for serious consideration the initiative of His Excellency the Prime Minister of Thailand, which was supported by the Honourable Prime Minister of Malaysia, that ASEAN moves towards a Free Trade Area by the turn of the century and agreed that the Senior Officials of ASEAN undertake further study and discussion for submission to the forthcoming ASEAN Summit.<sup>28</sup>

Meanwhile, ASEAN had commissioned, with the support of the United Nations Development Programme, a study on "ASEAN Economic Cooperation for the 1990s". This led directly to the Agreement on the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area (AFTA), signed at the ASEAN Summit in Singapore in January 1992.<sup>29</sup> While less comprehensive than the treaty envisioned in the Philippine proposal, the AFTA agreement was perhaps both more practical, being narrower in scope, and more far-reaching, not merely making current commitments legally binding but venturing into new territory, going for across-the-board liberalization of regional trade in goods.

To ASEAN's credit, and with prodding from the ASEAN Secretariat and gentle nudges from one another, ASEAN members have, at least as far as tariff-cutting is concerned, fulfilled their commitments under the agreement by enacting the requisite annual national legislation. Despite the legislation, however, some ASEAN members have complained about the devious ways in which customs authorities in other ASEAN countries have continued to deny AFTA treatment to intra-ASEAN trade. Moreover, little progress is being made in carrying out the commitment under the AFTA agreement to remove non-tariff barriers. (This will be discussed further in Chapter 5.)

Legally binding, too, is the treaty on the Southeast Asia Nuclear Weapons-Free Zone, referred to as SEANWFZ (pronounced shaun fizz), which the Southeast Asian leaders signed on the occasion of the 1995 ASEAN Summit.<sup>30</sup> A commission made up of the signatories' Foreign Ministers is designated to oversee the implementation of and ensure compliance with the treaty. This treaty is interesting in that it departs in two ways from the ASEAN practice of making decisions by consensus. First, the treaty required only seven

ratifications for it to enter into force. Thus, for some months, the Philippines, the last of the signatories to ratify the document, sat in on meetings of the SEANWFZ commission only as an observer. The significance of this was merely symbolic, however, since the commission had not, has not, and probably never will, come to the point of making decisions on more than procedural matters. Secondly, the treaty provides for voting by the commission (with a two-thirds majority required) in case consensus cannot be reached, something unheard of in ASEAN bodies until then. It is unlikely, however, that any issue will be brought to such a vote anytime soon.

Another significant binding agreement came in 2002, the ASEAN Agreement on Transboundary Haze Pollution.<sup>31</sup> Apart from the importance and urgency of its subject, it is noteworthy for several reasons. First, it commits member-states to undertake national action to prevent acts in their territories that threaten other member-countries with haze pollution. Secondly, like the SEANWFZ treaty, it needed less than ten ratifications for it to enter into force; six ratifications were enough. I remember the time in 2001, when a ministers-only session of the ASEAN environment ministers was discussing, with some tension, the draft of the proposed haze agreement. The ministers were worried that requiring all ten ASEAN members to ratify the treaty would take too long. After all, the most serious haze-pollution episode had taken place in 1997–98 and could happen again at any time. I then brought up the precedent that the SEANWFZ treaty had set, that of requiring less than ten ratifications. If the environment ministers had insisted on total consensus, ASEAN would today still not have a binding agreement that addresses probably the severest transnational environmental threat ever to face the region. Some people who follow ASEAN affairs point out that the utility of the agreement is vitiated by the fact that Indonesia is not among the seven signatories that have ratified it when the agreement entered into force<sup>32</sup> and is, therefore, not legally and technically bound by it. Yet, Indonesia is the one country that has to comply with its provisions if the agreement is to be effective at all.<sup>33</sup>

ASEAN has other arrangements that are technically binding, like the ASEAN Tourism Agreement of 2002 and a variety of framework agreements; but most of them need implementing agreements to carry out, and few have been concluded or even negotiated.

Thus, ASEAN has had a number of binding agreements, but these are few and far between. Except for the tariff-reduction provisions of the AFTA treaty and some elements of agreements pertaining to customs and product standards, they either have not been carried out, like the ASEAN Tourism Agreement, the ASEAN Framework Agreement on Services, the ASEAN

Framework Agreement on the Facilitation of Goods in Transit, and the ASEAN Investment Area agreement, or have not been invoked, like the High Council of the Treaty of Amity and Cooperation and the dispute-settlement mechanism for the economic agreements.

ASEAN has no formal charter. As pointed out earlier, the association's founding document is merely a two-page declaration. ASEAN Secretary-General Ong Keng Yong has lamented that, because of this, member-states cannot extend tax privileges to private donations to ASEAN or its Secretariat; ASEAN and the Secretariat, therefore, have not been able to resort to private funding to augment the association's finances.<sup>34</sup> In 1974, the Philippines proposed a "charter" for ASEAN, which the ministers promptly consigned to the ASEAN Standing Committee. Thirty years later, at the June 2004 ASEAN Ministerial Meeting, work on an ASEAN charter moved forward, with the Foreign Ministers calling for the "development of an ASEAN Charter".<sup>35</sup> The next year, the ministers approved the draft of a declaration, which the ASEAN leaders issued at the December 2005 ASEAN Summit.<sup>36</sup> The declaration sketched out some elements for the charter and created an Eminent Persons Group that is to draw up recommendations for "the directions and nature of the ASEAN Charter".<sup>37</sup> The leaders would then "consider their recommendations at our subsequent meetings". As discussed in Chapter 8, the charter could be an opportunity to expand ASEAN's formal rules and strengthen its institutions, as well as set its future direction and, as indicated in the leaders' Kuala Lumpur declaration, even define the principles for which it stands.

#### **"A PACE COMFORTABLE TO ALL"**

The relative rarity of legally binding agreements in ASEAN is a product of the member-states' preference for caution and gradualism in developing regional institutions. "At a pace comfortable to all" is a favourite phrase in ASEAN documents, which means advancing as fast, or as slowly, as the most reluctant or least confident member allows. It was nine years after its founding that ASEAN held its first summit meeting, when in February 1976 President Soeharto hosted the four other ASEAN leaders in Bali — Hussein Onn of Malaysia, Ferdinand Marcos of the Philippines, Lee Kuan Yew of Singapore, and Kukrit Pramoj of Thailand. Another summit took place in Kuala Lumpur in 1977 for the ostensible purpose of commemorating the tenth anniversary of ASEAN's founding. No summit meeting was convened until 1987; some say it was partly the member-states' reluctance to send their leaders to the country whose turn it was to host the next summit according to the

alphabetical order. The third summit took place only after Ferdinand Marcos had been deposed and Corazon Aquino had taken over the Philippine presidency. At the Manila meeting, the ASEAN leaders agreed to convene "every three to five years, if necessary". In fact, the next summit took place in Singapore five years later, when the leaders decided to "meet formally every three years with informal meetings in between". Thus, they met again, in Bangkok, in 1995 and, informally, in Jakarta in 1996 and Kuala Lumpur in 1997. They convened "formally" in Hanoi in 1998 and "informally" in Manila in 1999 and Singapore in 2000. Finally, ASEAN realized that the distinction between "formal" and "informal" summits had become blurred, caused unending confusion, and no longer made any sense. Thus, starting with the 2001 Bandar Seri Begawan meeting, designated as the Seventh ASEAN Summit, there would no longer be such distinctions.

The point of narrating the sequence of ASEAN summit meetings is to illustrate the slow pace of ASEAN's institutional development. After all, in the history of regional associations, it is summit meetings that have usually driven the process of regionalism. ASEAN did not meet at the summit until nine years after its founding. Ten years intervened between the second and the third summits. Another five years were to pass before the fourth summit was convened. It was not until three years after that that the ASEAN leaders began to meet regularly every year. Thanks to the activism of Singapore and Thailand, the ASEAN leaders have, in addition, been gathering in special meetings to address certain urgent issues — East Timor in 1999, SARS in 2003 and the Indian Ocean tsunamis in 2005 — as well as summits with the UN Secretary-General in 2000 and 2005.

This leisurely pace is a manifestation of ASEAN's cautious and deliberate — and slow — approach to building regional institutions and to regionalism in general. Another is the fact that ASEAN did not have a central secretariat until nine years after its founding, when the ASEAN leaders, at their very first summit, the same summit where they signed ASEAN's first formal agreement, created the ASEAN Secretariat and laid down its structure and mandate. However, this does not mean that ASEAN's leaders did not envision a central secretariat early in the association's existence. Tunku Abdul Rahman, Malaysia's first Prime Minister, said in opening the third ASEAN Ministerial Meeting in the Cameron Highlands in December 1969, "It is also my hope and my dream that one day we might put ASEAN on a practical and organized basis by establishing a permanent Secretariat."

As a junior officer on the Thai delegation at Bangsaen and Bangkok, Pracha Guna-Kasem was present at ASEAN's birth. He was to move on to be Thailand's Permanent Representative to the United Nations, Ambassador

to France, Permanent Secretary of the Ministry of Foreign Affairs and other diplomatic positions, and, having tried his hand in politics as a member of parliament for a Bangkok district, is now adviser to the governing Thai Rak Thai party. He says that it may have been helpful if a central secretariat had been set up from the start, even if a very small one to begin with. However, he acknowledges that trying to create a secretariat at ASEAN's delicate beginning might have set off a ruinous competition over its location.<sup>38</sup> Whatever the considerations, and whatever the leaders' dreams, the fact is that ASEAN did not have a central secretariat in its first nine years and strengthened it only after another sixteen.

It was only in 1973 that ASEAN began seriously considering such a central secretariat. At the 1973 ASEAN Ministerial Meeting, Malaysia's Deputy Prime Minister Tun Dr Ismail bin Datuk Abdul Rahman declared:

ASEAN today is a mature and stable organization devoting its energies to a multitude of cooperative projects. The volume of activity has grown and will continue to grow with the admission of the northern States of Southeast Asia. This calls for a revision of our approach towards the question of establishing a permanent Central Secretariat. ... My delegation feels that the time is ripe for us to give serious consideration to the establishment of a permanent Central Secretariat for ASEAN so that our organization may conduct its cooperation more systematically.<sup>39</sup>

The joint communiqué of that meeting announced the decision of the ministers to establish a secretariat and appoint the heads of the ASEAN National Secretariats to study the matter and submit their recommendations to the ministers. The communiqué also noted Indonesia's offer to host the proposed secretariat "provided there was no such offer from other ASEAN member countries".<sup>40</sup> Apparently, the Philippines had made such an offer, as the joint communiqué of the 1974 ASEAN Ministerial Meeting had recorded the Philippines' withdrawal of its bid in favour of Indonesia and the ministers' decision to locate the secretariat in Jakarta.<sup>41</sup>

As created in 1976, the Secretariat was a body extremely modest in nature, size and function. According to the Agreement on the Establishment of the ASEAN Secretariat, signed at the first ASEAN summit in Bali in February 1976,<sup>42</sup> the "Secretary-General of the ASEAN Secretariat" (not of ASEAN) was to be nominated by member-states in alphabetical order for a term of two years (lengthened to three years in 1985). He was to serve mainly as "the channel for formal communications" between ASEAN bodies and between ASEAN and other organizations and governments — like a post office — and otherwise do what he was told. The agreement prescribed seven officers

for the Secretariat and their respective areas of responsibility, each to be nominated by a member-state on rotation for three-year terms. An amendment in 1983 allowed for the addition of an unspecified number of officers.<sup>43</sup> In 1989, the position of Deputy Secretary-General was created, appointment to which was by government nomination in alphabetical rotation, and the functions of the three bureau directors were specified — one each to take care of economic, science and technology, and social and cultural matters.<sup>44</sup>

The Secretariat was expanded and strengthened to more or less its present form only in 1992, or 16 years after its creation, mainly to be able to manage the implementation of AFTA. Following the decision laid down in the Singapore Declaration,<sup>45</sup> which the ASEAN leaders issued in January 1992, the head of the Secretariat is now called the Secretary-General of ASEAN rather than the Secretary-General of the ASEAN Secretariat. He (so far it has always been a he) is nominated by the ASEAN Ministerial Meeting, formally appointed by the heads of government and "accorded ministerial status". On paper, he is supposed to be recruited openly, on the basis of merit, but in practice the post has, so far, been filled on the basis of alphabetical rotation among the member-countries. This is entirely consistent with ASEAN's determination to avoid even the possibility of contention. The Secretary-General was given an "enlarged mandate to initiate, advise, coordinate and implement ASEAN activities". This laid the basis for greater activism on the part of the Secretariat and the Secretary-General, which, however, has remained subject to case-by-case limits imposed partly by the member-states and partly by bureaucratic inertia. The leaders agreed to transform the international professional staff from persons nominated by their governments — and thus beholden to them — to officials "openly" recruited on merit and thus expected to be objective and loyal only to the organization. In my time as Secretary-General, we found it difficult to recruit qualified professional staff from several countries. Bruneians did not care to work outside their country. Singaporeans, like the Bruneians, generally did not find the salary scales at the Secretariat attractive, at least until the economic downturn in their country towards the end of the 1990s. There was an informal understanding that the governments of the four newer members could nominate two officers each to the Secretariat, at least for an initial term of three years, in order to ensure those countries' representation, presumably while they developed the capacity of their people to compete openly for Secretariat positions. However, partly because of continuing limitations on their human resources and partly because of their political systems, the practice of the governments of the newer members nominating their officials has

persisted, with the partial exception of Vietnam. Needless to say, while politically convenient, this is a most unsatisfactory arrangement from the point of view of developing an independent, competent and professional secretariat.

Meeting in Manila five months after the Singapore summit, the ASEAN Foreign Ministers adopted a protocol formalizing the leaders' decisions on the re-structuring of the Secretariat, lengthening the Secretary-General's tenure to five years, and expanding the size of the professional staff at each level.<sup>46</sup> Interestingly, the protocol provides, "The Deputy Secretary-General shall be appointed by the Secretary-General, following open recruitment and selection by a panel, comprising of representatives of the Contracting Parties, under the Chairmanship of the Secretary-General."

Five years later, however, at a special meeting of Foreign Ministers in Kuala Lumpur on 31 May 1997, the member-states decided to add a second Deputy Secretary-General to the Secretariat roster, despite the misgivings of several of them. In so doing, ASEAN reverted to the old, overly politicized system of having the member-states nominate the Deputy Secretaries-General by alphabetical rotation. (A country one of whose nationals happens to be the Secretary-General has to defer its turn for a deputy position.)<sup>47</sup> Later, during a review of the "role and functions of the ASEAN Secretariat" that the ASEAN Standing Committee undertook in 1999 with the help of PriceWaterhouseCoopers, I sought to have the Deputy Secretaries-General selected by open recruitment and on merit, as the position was envisioned in 1992. One politically appointed official, the Secretary-General, was enough for such a small secretariat, I argued. The newer members resisted this proposal, evidently convinced that the present system was, until far into the future, their only chance of getting their people appointed to high-level positions in the Secretariat. In his farewell statement in 2002, Suthad Setboonsarng, outgoing Deputy Secretary-General, appealed to the ASEAN Economic Ministers to "professionalize the ASEAN Secretariat", meaning his position. However, it was not, and is not, for the Economic Ministers to decide these things but the Foreign Ministers.

(Meanwhile, the composition of the ASEAN Standing Committee, the body that oversees the administration of the association, its "functional cooperation" activities and external relations, had been changed by the 1992 Singapore summit. The Standing Committee no longer consists of the ambassadors to the host-country of the next ASEAN ministerial meeting but the directors-general of the ASEAN National Secretariats and the ASEAN Secretary-General, with the Foreign Minister of the host-country as nominal chairman.)

This narration of the evolution of the ASEAN Secretariat shows ASEAN's willingness to change, particularly in institutional terms, but in slow and gradual steps.

### INSTITUTIONS FOLLOWING SUBSTANCE

Something significant is to be noted here. There have been periodic attempts over the years to build new ASEAN institutions and processes or to change existing ones. In 1982–83, a task force recommended the consolidation of ASEAN ministerial bodies, the replacement of the ASEAN Standing Committee with a Jakarta-based Committee of Permanent Representatives, and the establishment of an Advisory Committee on Policy Studies. In 1991–92, a five-man panel headed by Tan Sri Ghazali Shafie, former Foreign Minister of Malaysia, sought to organize ASEAN's heads of government into the Supreme Council of ASEAN. It repeated the recommendation for a Committee of Permanent Representatives, this time to be headed by the ASEAN Secretary-General and not necessarily to be based in Jakarta. In 1998, an Eminent Persons Group proposed that the heads of government take hands-on charge of ASEAN operations and stressed the importance of involving civil society and the business sector in ASEAN's work. In 1999, PriceWaterhouseCoopers drew up a set of elaborate recommendations to make the ASEAN Secretariat more effective.

All of these studies and recommendations made eminent sense and could be considered necessary from a logical point of view. They were all meant to strengthen and facilitate ASEAN cooperation and integration. The problem was that few of the proposals were eventually adopted. This was because the process had it all backwards. At least in ASEAN, institutions are built in order to support measures previously agreed upon for the attainment of common objectives. Usually, but not always, their creation does not lead to the adoption of such measures. In the history of ASEAN institutions, there have been a few landmarks. Most of them were the results of decisions, previously agreed upon, to take steps towards greater cooperation and deeper integration, often in response to changing strategic and economic conditions. Creating or changing institutions did not lead to such measures; it was the other way around, although the institutions may have subsequently influenced ASEAN's future course.

ASEAN's leaders met for the first time in 1976 in order to strengthen political solidarity and consolidate and advance economic cooperation, and for this purpose created the ASEAN Secretariat. In 1992, they decided to set

up the ASEAN Free Trade Area; to administer it, they enlarged and strengthened the Secretariat. The end of the Cold War and the ensuing fluidity in the configuration of power in East Asia led to the creation of the ASEAN Regional Forum. It was in response to the shifts in regional economic power, in the global strategic situation, and in inter-state relations in East Asia that ASEAN initiated the ASEAN+3 process, to which the 1997–98 financial crisis gave further momentum. It was also the financial crisis that gave life to ASEAN and ASEAN+3 forums of Finance Ministers and central banks and impelled ASEAN and East Asian cooperation in finance. The High-Level Task Force on ASEAN Economic Integration in 2003 made some significant recommendations of an institutional nature, including the setting up of compliance bodies and a more independent dispute-settlement mechanism, but these were supporting components for the ASEAN Economic Community that was being envisioned. This followed the ASEAN Competitiveness Study by McKinsey & Co., which had called for the considerable strengthening of regional institutions in order better to support the deeper integration that it urged. Nevertheless, new institutions can lead to further developments in ASEAN's character and direction. It is to be assumed that the Eminent Persons Group on the ASEAN Charter, the officials who will draft it and, eventually, the ASEAN leaders will take these dynamics into account.

### VULNERABILITY AND MUTUAL SUSPICIONS

In a conference in Paris, Delfin Colomé, a Spanish diplomat who was at the time Executive Director of the Asia-Europe Foundation, remarked that ASEAN's highly personal leadership had damaged its capacity for institution building.<sup>48</sup> That may be true; but it is also true that ASEAN's cautious approach to regional institution building and hence its reliance on personal relationships have arisen from the member-states' sense of fragility and weakness and from lingering suspicions of one another. Member-states invoke national sovereignty almost by reflex when they resist substantive measures or institutions in support of greater regional integration. The question of sovereignty, however, is, to me, a false issue. After all, any decision to adopt such measures or accede to such institutions is a voluntary sovereign act. Rather, I believe, resistance to more rapid and deeper integration and institutionalization has stemmed from a feeling of vulnerability to outside intervention and to possible external pressure to do things that may turn out to be contrary to the perceived interests of the state or its leaders. These are

intervention and pressure that may come from fellow-members or from outside powers.

This sense of fragility, weakness and vulnerability has been particularly palpable in the period immediately following the birth of the nation or the installation of a new regime up to the early years of ASEAN membership. Singapore is an affluent but small city-state, a largely Chinese island in a sea of Malays, whose destiny is inextricably intertwined with that of Malaysia but which could not remain part of it. Malaysia was cobbled together from multi-ethnic, multi-racial components and from two territorial wings separated by the South China Sea, its creation initially opposed by two of its immediate neighbours, its relations with Singapore complicated by many complex factors. Indonesia emerged into independent nationhood dedicated to consolidating its "unity in diversity". By far the largest of the Southeast Asian states, Indonesia felt, particularly in its early years, vulnerable to centrifugal pressures, with the Dutch seeking first to reoccupy their former possession and then to foster its disunity. Covert support for separatism later came from the United States. Indonesia subsequently suffered the separation of East Timor and has been bothered by secessionist movements of varying strengths particularly in Aceh and Papua. The Philippines was closely involved militarily with the United States and, on that account, held in suspicion by Indonesia. For its part, the Philippines cast a wary eye on the growing influence of Indonesia's massive communist party. Brunei Darussalam, tiny in area and population, its territory split by a sliver of Malaysian soil, and immensely wealthy from oil and gas exports, had every reason to feel vulnerable.

Thanks partly to their rapid growth, partly to political change within them, partly to shifts in the global and regional strategic environment, and partly to their membership in ASEAN, the first six ASEAN members — Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand — have gained in self-confidence and in trust in one another — as well as consolidated their sovereignty and nationhood — although not sufficiently as to entrust their interests to regional institutions at more than a snail's pace. However, the four new members — Cambodia, Laos, Myanmar and Vietnam — now seem to be where the older six were in ASEAN's early years. In the years and decades before it joined ASEAN, Vietnam had been under occupation by or in conflict with far stronger powers — the French, the Japanese, the Americans, and, in different periods, the Chinese. ASEAN itself had opposed Vietnam's incursion into Cambodia in the 1980s, a step that Vietnam had presented as an act of self-defence. Cambodia and Laos

had felt themselves squeezed between their stronger neighbours, Thailand and Vietnam. From the beginning, Myanmar had had trouble keeping the country together, with its hundred "nationalities" and ethnic groups; added to this in recent years have been pressures from the West and others in the international community, and even from within ASEAN itself, on the ruling military to relax, if not remove, its grip on power. All the newer members, as well as five of the six older members, had been, shortly before their ASEAN membership, under colonialism, the extreme form of interference in nations' domestic affairs.

All this probably explains the sensitivity not just of the newer members of ASEAN, but the older members as well, to the possibility of outside interference in their internal affairs to the detriment of the regime, if not of the country as a whole. The issue of non-intervention or non-interference, so often raised against ASEAN, is discussed in Chapter 3. The prospect of anything approaching supranational institutions is largely related to ASEAN members' sensitivity to this issue.

### WHO IS ASEAN'S LEADER?<sup>49</sup>

This sensitivity to a possible erosion of the individual member-states' freedom of action, in turn, illuminates ASEAN's careful avoidance of real or apparent domination by any one member or group of members. This is related to the question of leadership in ASEAN. The question can be broken down into several: Has ASEAN had a leader? Who was it? Does it have one now? Who is it? Or is ASEAN leaderless? Has it always been? Is the question of leadership important? If so, how? How much of an impact does leadership — or the lack of it — have on the nature of ASEAN's objectives and on the direction and pace of ASEAN's progress towards them?

Since ASEAN's founding, and for thirty years thereafter, many commentators considered Indonesia as ASEAN's leader. In reaction to the change of regime in Indonesia in 1998, it was said that the removal of President Soeharto had deprived ASEAN of leadership. When Malaysia's Prime Minister, Dr Mahathir Mohamad, stepped down in October 2003, it was observed that "one of ASEAN's leaders" had departed. Now, it is said that ASEAN is leaderless.

In *The New Shorter Oxford English Dictionary*, 1993 edition, I looked up the definitions of leadership that seem most applicable in the ASEAN context. Here they are:

Lead, transitive verb: Cause to go along with oneself; guide by persuasion as contrasted with commands or threats; guide with reference to action or

opinion; bring by persuasion or counsel to or into a condition; bring by argument etc. to a conclusion; induce to do.

Leader: A person who guides others in action or opinion; a person who takes the lead in a business, enterprise or movement; a person of eminent position or influence.

Let us see how these definitions help in identifying who or which country has been the leader in ASEAN. Let us go back to the beginning. ASEAN was conceived on an occasion when Thanat Khoman, the Foreign Minister of Thailand, was trying to broker reconciliation among Indonesia, Malaysia and the Philippines in April and May 1966. ASEAN's founding document, the Bangkok Declaration of 8 August 1967, was drafted largely by Thai diplomats. In this sense, Thailand was the leader in ASEAN's founding.

However, Indonesia could be said to be ASEAN's leader, too. It was Adam Malik and other Indonesian diplomats who were asked to draw up the concept paper for the new association. It was they who went around Southeast Asian capitals — Bangkok, Yangon, Phnom Penh and Manila — selling the idea of ASEAN. Adam Malik gave ASEAN its name. The other countries looked to Indonesia for leadership. It was not only the largest and most populous country in the region but had also been the most active in international affairs — convenor of the Asia-Africa summit in Bandung in 1955, a leader and founder of the Non-Aligned Movement, often speaking on behalf of the non-aligned and the developing countries on global issues, including high-profile disarmament questions. Indonesia's stature was such that it could not have just joined the Association of Southeast Asia, or ASA, which had been set up by Malaysia, the Philippines and Thailand in 1961; it had to be a founding member of a new organization. (It is interesting to recall that on 31 July 1967, just a week before ASEAN's founding, the sixth anniversary of ASA was reported as being ceremonially observed in Manila.<sup>50</sup> By 28–29 August, the foreign ministers of Malaysia, the Philippines and Thailand were meeting in Kuala Lumpur and agreeing to dissolve ASA and to turn over its projects to the three-week-old ASEAN.<sup>51</sup>)

The leadership of Indonesia was evident in more subtle ways. It was, above all, President Soeharto's policies that enabled Indonesia to take this role. ASEAN would not have been formed with Indonesia in it had Soeharto not decided to end the Sukarno regime's confrontational stance in foreign affairs and instead seek good relations with the rest of the world, including the West, and particularly with its neighbours. Indonesia's transformation — domestically and in its foreign policy — made ASEAN possible. Later, ASEAN's efforts at economic cooperation and integration would not have gotten off the ground if Indonesia had not made its economy more open.

In fact, despite being the least industrialized among the ASEAN members at that time, Indonesia led the way in enlarging the margins of preference and broadening the coverage of the ASEAN Preferential Trading Arrangements in the early 1980s.

An important factor in ASEAN's success was another Soeharto decision, the decision not to throw Indonesia's weight around, not to be seen as seeking to dominate the region. Indonesia was able to exercise its leadership by not seeming to do so. Nana Sutresna, former Director-General for Political Affairs of the Department of Foreign Affairs of Indonesia, former Permanent Representative to the UN, then adviser to President Megawati Soekarnoputri, recalled how President Soeharto refused to be named as the "Father of ASEAN", which one of the member-states had proposed.<sup>52</sup>

On the other hand, Indonesia had to give way to Thailand and Singapore when ASEAN opposed the Vietnamese incursion into and military presence in Cambodia in the late 1970s and the 1980s. Indonesia had tried to moderate ASEAN's opposition both because of its sympathy for Vietnam's resistance to U.S. military intervention and because Indonesia considered China to be a bigger threat than Vietnam. In this case, Thailand, as "frontline state", with strong backing from Singapore, was clearly the leader of ASEAN.

However, Indonesia took the leadership in ASEAN's effort to seek a settlement of the Cambodian problem. It convened the "cocktail parties" among the four Cambodian factions. It hosted the Jakarta Informal Meetings. It co-chaired, with France, the Paris conferences that led to a settlement. ASEAN entrusted Indonesia with leadership in this case precisely because of its strong links with Vietnam. On the other hand, Indonesia was able to exercise this leadership because it had gone along with the others in diplomatically standing up to the Vietnamese in the name of ASEAN solidarity.

Another instance of Indonesia's leadership was the decision to push through with the third ASEAN Summit in Manila. A few months before the summit, a series of attempted coups d'état against the Aquino administration had made ASEAN governments nervous about sending their leaders to supposedly unsafe Manila. It was Soeharto's decisive position in favour of going ahead with the summit that swung ASEAN around. A more negative instance of Indonesian leadership was President Soeharto saying no to Prime Minister Mahathir's 1990 proposal for an East Asian Economic Group. Whatever Soeharto's reasons for doing so, failing to consult him beforehand certainly did not help.

Malaysia, too, has had moments of leadership. The declaration on the Zone of Peace, Freedom and Neutrality was adopted upon Malaysia's initiative

and under its chairmanship of an ASEAN Foreign Ministers' meeting in 1971. The term ASEAN Vision 2020, adopted at the ASEAN Summit in Kuala Lumpur in 1997, is an echo of Malaysia's Wawasan 2020. The EAEC proposal, later softened to EAEC (East Asian Economic Caucus), has metamorphosed into "ASEAN+3", now a going concern, with annual summits since the 1997 summit meeting (which Malaysia chaired and hosted) and a growing number of ASEAN+3 ministerial and sub-ministerial forums. It was also in 1997 that Malaysia pushed for the admission of Cambodia, Laos and Myanmar to complete Southeast Asian membership in ASEAN. Upon Malaysia's suggestion, the 2001 ASEAN Summit devoted a session to the problem of HIV/AIDS in Southeast Asia.

Among the newer members, Cambodia took the lead in pushing the landmark ASEAN Tourism Agreement during its hosting of the 2002 summit. Prime Minister Hun Sen has also been at the forefront in the calls for greater coherence among the numerous programmes for the development of the Mekong Basin.

On the economic front, it was Thai Prime Minister Anand Panyarachun, who, in 1991, formally proposed, with the encouragement and support of Singapore's Goh Chok Tong and Malaysia's Mahathir Mohamad, that ASEAN enter into a free trade area, thus initiating the current stage of regional economic integration. With economic integration rising in the ASEAN agenda, particularly after the fourth summit in Singapore in 1992, Singapore seems to have steadily taken leadership in the association. Since then, almost all major initiatives in ASEAN have come from Singapore. It initiated the Asia-Europe Meeting, the Forum for East Asia-Latin America Cooperation and the ASEAN-India Summit. It took the ASEAN lead in moving for a free trade area between AFTA and the Closer Economic Relations of Australia and New Zealand, a project that was watered down to a "Closer Economic Partnership" but has now been revived in the form of an ASEAN-Australia and New Zealand free trade area. Singapore spearheaded the positive ASEAN response to the proposal for a free trade area between ASEAN and China. It introduced the concept of e-ASEAN, an initiative for using information and communications technology as both an object and an instrument of ASEAN's integration and for narrowing the digital divide between and within ASEAN countries. It was Singapore that gave the name Initiative for ASEAN Integration to the association's programme of assisting the newer members to close the development gap between them and the older members. Singapore drove the ASEAN decision to commission a study of ASEAN's competitiveness in the face of the growing competition from China and India and from other regional groups. It proposed the ASEAN Economic



Community as the envisioned next stage of regional economic integration. And it was Singapore that called for quick summit meetings among ASEAN leaders and with China's Premier to deal with the SARS outbreak in East Asia, a successful collective response to a regional emergency. Again, when the 26 December 2004 tsunamis wrought death and destruction in parts of Southeast and South Asia, it was the new Singapore Prime Minister, Lee Hsien Loong, who initiated a summit meeting that was billed as the "Special ASEAN Leaders' Meeting on Aftermath of Earthquake and Tsunami" but involved heads of government or ministers not only of the ASEAN countries but of most of its Dialogue Partners, other donor countries, and other victim countries as well.

Singapore's then Foreign Minister and now Deputy Prime Minister, Professor S. Jayakumar, explained to me that his country placed such high importance on ASEAN because, on account of its small size, anything that happened in the region affected Singapore and perceptions of Singapore, a condition that was less true of the larger ASEAN members. This is why, he said, before every ASEAN Summit, the Prime Minister would brainstorm with officials, primarily from the ministries of foreign affairs and trade and industry, on ways to make the summit a success and further advance the association's interests.<sup>53</sup>

As it hosted the 2003 summit, Indonesia again seized the initiative, with its idea of an ASEAN Security Community, partly in an attempt to balance off the Singapore-initiated ASEAN Economic Community. Subsequently, Indonesia led the drafting of the Plan of Action for the ASEAN Security Community, which the Foreign Ministers endorsed at their regular meeting in Jakarta in June 2004 and the leaders adopted at their summit in Vientiane in November. I understand that Indonesia was quite bold in some of its original proposals both for the elements of the ASEAN Security Community and for its Plan of Action. The Plan of Action approved at the summit is a bit disappointing, but Indonesia should get some credit for taking the leadership in this matter. This is discussed further in Chapter 7.

However, these days, the real test of leadership seems to lie in the move towards regional economic integration. Singapore has been at the forefront of this move — with ideas, drive, determination and interest. But it is deliberately taking a low profile lest its leadership be seen as blatantly self-serving. Thailand, too, regards regional integration to be in its interest. But its search for economic linkages nowadays seems to bypass ASEAN and reach out elsewhere — the Bangladesh-India-Myanmar-Sri Lanka-Thailand Economic Cooperation project, the Asian Cooperation Dialogue, the Ayeyawady-Chao Phraya-Mekong Economic Cooperation Strategy, the Asian

Bond Market initiative — all of them spearheaded by Thailand, all of them outside ASEAN and, indeed, with hardly any reference to it. Moreover, it is hard for Bangkok to exercise overt leadership in ASEAN in the face of the ambivalence of its immediate neighbours towards Thailand's role.

Indonesia seems to be best positioned to take the leadership in the drive toward ASEAN economic integration — not because it is ASEAN's "natural leader". Rather, it is because Indonesia's leadership cannot be said to be self-serving. It has its vast market to offer and open up. However, Indonesia does not seem to be confident of its ability to be competitive even within ASEAN — whether for investments or for markets. Particularly after Soeharto, Indonesia has seemed to be hesitant about regional economic integration. In his time, Soeharto sometimes transcended short-term interests, even going against the counsel of his advisers, for the sake of longer-term and larger purposes — for example, the improvement of the Preferential Trading Arrangements, the third ASEAN Summit in Manila, the Sipadan-Ligitan case, and the long deferment of the normalization of Indonesia's diplomatic relations with China.<sup>54</sup> Today, it depends on President Susilo Bambang Yudhoyono whether Indonesia can lead ASEAN on the road to regional economic integration, this time within the more constraining conditions of democracy and despite enormous domestic economic difficulties. This is important, not least because, on account of its size and prominence, Indonesia's stance on the regional economy heavily influences investor perceptions of the region as a whole.

So far, apart from Singapore, which is, however, understandably diffident, no leader has been pushing Southeast Asian economic integration. Because of the slow progress towards integration, ASEAN has agreed, with increasing determination, to move ahead on an "ASEAN Minus X" basis. The "ASEAN Minus X" formula is based on the principle laid down in the Framework Agreement on Enhancing ASEAN Economic Cooperation, which the ASEAN leaders signed in Singapore on 28 January 1992:

All Member States shall participate in intra ASEAN economic arrangements. However, in the implementation of these economic arrangements, two or more Member States may proceed first if other Member States are not ready to implement these arrangements.<sup>55</sup>

Outside the economic realm, two important ASEAN agreements follow this principle, as observed above. These are the treaty on the Southeast Asian Nuclear Weapons-Free Zone, which required only seven ratifications for it to take effect, and the Agreement on Transboundary Haze Pollution, which needed only six ratifications to enter into force. While the ASEAN Tourism



Agreement requires ratification by all member-states, the implementing agreements may be concluded by only two or more — and not necessarily all ten — of them. In the same spirit, the ASEAN-Korea Framework Agreement on Comprehensive Economic Cooperation, signed in December 2005, goes into effect upon ratification by Seoul and by only one ASEAN party.

ASEAN is increasingly inclined to resort to the ASEAN Minus X device, so that progress, particularly towards regional economic integration, is no longer held to the pace of the slowest member. If ASEAN applies it in a substantive and extensive way, particularly in integrating markets for some or all of the eleven priority sectors that the ASEAN leaders at their 2003 summit singled out for integration, leadership of ASEAN will, *de facto*, be assumed by the countries at the vanguard of integration. These will probably be any combination of Singapore, Brunei Darussalam, Thailand, Malaysia and Cambodia, if not all of them. They are the ASEAN members most committed to economic integration or at least have little problem with it.

In sum, leadership in ASEAN has alternated, depending on the sector. On the whole, Indonesia seems to take the political leadership — less so these days, although the 2003 Bali Summit saw an attempt by Indonesia to assume it again. Singapore has of late taken the lead in economic integration, albeit in a restrained way. We have yet to see the ASEAN equivalent of the Franco-German leadership of European integration in its early days, or of a Jean Monnet or a Robert Schumann driven by a regional vision and driving its realization. Perhaps, this is not in the ASEAN style; but then the lack of clear and vigorous leadership, whether by member-countries or by individual statesmen, could perpetuate the slow pace of ASEAN's development.

### A QUESTION OF EQUALITY

As we have seen, the delicate nature of the ASEAN countries' relations with one another has resulted in a conscious avoidance of the exertion of overt or forceful leadership on behalf of more rapid progress in economic integration and institution-building. Another consequence is the scrupulous observance of the sovereign equality of the member-states. The emphasis on equality is made in spite of the previously noted diversity among the ASEAN countries, including the wide gaps in their levels of development. Looked at another way, sovereign equality has been stressed and insisted upon precisely *because* of this diversity. The members that feel vulnerable in one sense or another seek refuge in statutory equality within the association in order to avoid being dominated by those that are perceived to be stronger.

One result of this preoccupation with equality has been a little-known ASEAN phenomenon: that of member-states contributing exactly the same amounts to the ASEAN Fund and to ASEAN's operational budget, whether Indonesia or Laos, whether Singapore and Brunei Darussalam or Cambodia and Myanmar. This is certainly not the case in the European Union, the Organization of American States, the African Union, the South Asia Association for Regional Cooperation, the Andean Community, the Pacific Islands Forum, or most other regional associations.

In December 1969, the third ASEAN Ministerial Meeting in the Cameron Highlands in Malaysia established an ASEAN Fund to finance projects of a "strategic" nature that the association might agree upon. Each ASEAN country would contribute US\$1 million to the fund.<sup>56</sup> Thirty-six years later, with ten members, the national contributions remain at US\$1 million each; in the light of the system of equal financial responsibility, any increase is evidently held back by the willingness — or unwillingness — of the least able to contribute. In July 2005, the ASEAN Fund was converted into the ASEAN Development Fund, with expanded terms of reference that would allow its use for counterpart financing for projects undertaken with funding sources outside ASEAN.

Contributions to the ASEAN Science Fund, which finances science and technology projects, are also equal for all members, but the newer members are on a supposedly easier instalment plan. In August 2004, the ASEAN Telecommunications and IT Ministers decided to set up a US\$5-million ASEAN ICT Fund, again with member-states pitching in with equal contributions. ASEAN members contribute equal shares also to the ASEAN Centre for Energy. The November 2004 ASEAN Protocol on Enhanced Dispute Settlement Mechanism set up an ASEAN DSM Fund, "a revolving fund, separate from ASEAN Secretariat's regular budget". Like the other funds, the initial contributions to it are to be equal for all ASEAN members. However, parties to a dispute, including third parties, are to replenish any "drawdown" from the fund, presumably for expenses incurred for the panel and the Appellate Body in connection with the dispute.

In the case of the ASEAN Secretariat's operational budget, the rapidly growing range of cooperative activities and sectoral forums and, now, the recommended compliance and dispute-settlement bodies for ASEAN economic agreements have demanded a corresponding expansion of the Secretariat. Yet, such an expansion is restricted by the available funding, which, in turn, is limited by the ability of the poorest members to contribute. Occasionally, there have been polite suggestions from the newer members for a change in the financial arrangements, from one of equal contributions to

some kind of scale of assessments based on ability to pay, as measured by an agreed set of criteria, similar to the practice in other regional associations. Invariably, however, such suggestions have been met with counter-proposals for weighted voting based on the level of contributions. It is of some interest that, at the ASEAN Ministerial Meeting in 1976, Singapore's Foreign Minister, S. Rajaratnam, proposed that from the second year of the ASEAN Secretariat's operations contributions to its recurrent expenditures be based on "the Asian Development Bank formula".

Some schemes have been informally put forward to augment financing for ASEAN while skirting the conundrum of equal contributions — a tax on commercial transactions under AFTA, a levy on international airfares into, out of and/or within ASEAN. However, such schemes do not seem to have been taken seriously. Nevertheless, there have been instances of graduated contributions. One of them was the funding of the ASEAN Competitiveness Study, commissioned by the ASEAN Economic Ministers soon after the turn of the century, to which member-states made voluntary contributions of different amounts. However, this was a rare exception.

### THE WAY OF CONSENSUS

Another characteristic of the "ASEAN Way" is the consensus method of decision-making. Many commentators have blamed this insistence on consensus for the failure of ASEAN to arrive at quick decisions or to do what they, the commentators, think ASEAN ought to do.

Let us take a look at what consensus means in the ASEAN context. On the basis of what I have seen, consensus in ASEAN does not necessarily require unanimity, although many ASEAN decisions are arrived at on the strength of genuine unanimity. Consensus on a proposal is reached when enough members support it — six, seven, eight or nine, no document specifies how many — even when one or more have misgivings about it, but do not feel strongly enough about the issue to block action on it. Not all need to agree explicitly. A consensus is blocked only when one or more members perceive the proposal to be sufficiently injurious to their national interests for them to oppose it outright.

Actually, other inter-governmental organizations operate in this way in practice, including the UN General Assembly and other UN bodies. However, the charters of many such international organizations provide for clear voting procedures in case consensus fails. According to the UN Charter, the UN General Assembly decides by simple-majority vote, except for certain, specified "important questions", which require a two-thirds majority. The Council of the European Union decides by simple majority on procedural issues and by weighted voting on the basis of population size

on questions pertaining to the internal market, economic affairs and trade. Unanimity, not just consensus, is required for matters related to foreign policy, defence, judicial and police cooperation, and taxation. The Charter of the OAS requires a simple majority for most decisions, but a two-thirds majority for the admission and suspension of members. According to the Constitutive Act of the African Union, the Assembly (of heads of state or government) or the Executive Council (of foreign ministers) needs a "consensus" or a two-thirds majority (if voting is resorted to) for non-procedural decisions. ASEAN, on the other hand, has no provisions for voting except in the previously cited case of the SEANWFZ Commission, which has, in fact, not resorted to a vote. ASEAN flirted with the notion of majority voting in the 1996 Protocol on Dispute Settlement Mechanism for ASEAN economic agreements. However, before it could be tested, it was superseded by another protocol in 2004, which reverted to decision by consensus.

When commentators criticize ASEAN's decision-making by consensus, what they are really saying is that the organization should resort to voting. Especially for sensitive political issues, the question is: would voting really be a more effective way than consultation, persuasion and consensus? In an association of only ten members, would imposing the will of six or seven members on the other four or three really bear more fruitful results?

### FRUITS OF THE ASEAN WAY

We have seen the elements of the so-called "ASEAN Way". The preference for informality and loose arrangements over legal instruments and binding agreements. The greater reliance on personal relations than on institutions. The measured pace of institution-building. The invocation of national sovereignty as a way to ward off anticipated pressures restricting freedom of action and choice. The avoidance of the exercise of overt leadership. The emphasis on the sovereign equality of members. Decision-making by consensus. We have also seen how historical forces, national circumstances and inter-state relationships together shaped ASEAN as an association and set the "ASEAN Way".

This is neither to apologize for nor to criticize the "ASEAN Way". It is simply to try to explain how and why ASEAN developed certain of its characteristics and ways of doing things. For almost forty years, these traits and ways have served ASEAN well. It is generally agreed that ASEAN has been a force for peace and stability in East Asia. The categorical adoption of the non-use of force and other norms of inter-state relations, the avoidance, at the same time, of legally binding agreements (unless absolutely

necessary) and of divisive ways of decision-making, a developing sense of regional solidarity (at least among the leadership classes), the network of personal relationships among decision-makers across the region, the expanding fabric of cooperation (even if many specific activities have not produced concrete, significant results), and the mutual confidence thus promoted — these have helped to make a “security community” out of Southeast Asia, a security community in the sense in which Amitav Acharya lucidly applies the concept to ASEAN.<sup>57</sup> This has, in turn, prevented disputes between ASEAN members from developing into inter-state conflicts; it has often been observed that no two ASEAN members have ever gone to war with each other despite the many disagreements left over from history or arising from conflicting interests. (This fact, however, can also be attributed to the contemporary trend that has made inter-state warfare less and less viable or desirable as an option for nations.)

Through ASEAN, Southeast Asian countries have attained a degree of solidarity that was impossible to imagine at the time of ASEAN's founding and during its early years and in the period when Southeast Asia was divided between those within the association and those outside it. This solidarity has magnified ASEAN's influence in the world to an extent that would not be possible for each individual member acting alone. ASEAN's influence was at its most prominent in the group's handling of the Vietnamese incursion into and presence in Cambodia in the 1980s. Despite the genocidal nature of the regime that the Vietnamese had driven out of Phnom Penh and the misgivings of some ASEAN members, ASEAN led the international effort to keep Cambodia's UN seat for the coalition opposed to the Vietnamese-installed regime and prevented that regime from gaining international support until the Paris conferences, in which ASEAN had a leadership role, worked out an acceptable settlement. Thanat Khoman has claimed with pride that ASEAN managed to get the Vietnamese out of Cambodia “without firing a shot”.<sup>58</sup> To be sure, the Khmers Rouges received arms and other material support from China and other countries, including probably some in ASEAN. I am told that Thailand sent two young military officers to China to coordinate military assistance to the Khmers Rouges. However, ASEAN itself undertook no military action but used diplomatic skills and its solidarity and prestige — with the indispensable support, of course, of the permanent members of the UN Security Council — to bring about a settlement from which emerged an independent Cambodia.

ASEAN solidarity and persistence transformed the situation in the South China Sea from one of tension and occasional confrontation to, at least so

far, a quiescent *status quo*. Although Brunei Darussalam, Malaysia, the Philippines and Vietnam have conflicting claims to parts of the South China Sea, they and the rest of ASEAN maintained a united front to get China to deal with them as an association with respect to this issue, a no small factor in calming the situation.

It was ASEAN's leadership that made possible the establishment of the ASEAN Regional Forum, the only venue for dialogue and consultation on political and security issues in East Asia. Similarly, the ASEAN+3 process has provided an additional and convenient forum for China, Japan and the Republic of Korea to deal not only with ASEAN but also with one another, a development of some significance for the strategic situation in East Asia as well as for the regional economy.

Slowly, in the “ASEAN Way”, various “framework agreements” — on services, investments, goods-in-transit, customs coordination, product standards, mutual recognition arrangements, information and communications technology, tourism, and so on — have been put in place, laying the foundations for the integration of the regional economy. And ASEAN, by working together, often with others, has managed to deal with common problems — the SARS outbreak among others.

ASEAN has addressed even those problems and projects that, strictly speaking, directly involve only a few member-countries, like the haze pollution, crimes and other problems of a maritime nature, terrorism, the ASEAN highway and rail link, and measures to facilitate trade across land borders. Even in these cases, ASEAN has played a useful role by placing the political weight of the entire group behind programmes to deal with them and including them in ASEAN's joint projects with other countries and agencies. ASEAN has served as a venue for discussion, contact and networking for undertaking these sub-regional endeavours.

### TIME FOR CHANGE?

These are no mean achievements. But ASEAN is almost forty years old, and both the region and the world have undergone immense change. The “ASEAN Way” has to change with them, not all of it, or even most of it, as some theoreticians would like to see — for, as pointed out above, the “ASEAN Way” has served ASEAN well in the past — but in ways that respond to the needs of ASEAN's people today.

In Chapter 8, I indicate the directions that those changes might realistically take.

## Notes

1. Interview with Thanat Khoman, Bangkok, 1 June 2004.
2. See Appendix A.
3. *Far Eastern Economic Review*, 17 August 1967, p. 312.
4. *Ibid.*, p. 311.
5. *Far Eastern Economic Review*, 24 August 1967, p. 380.
6. *New York Times*, 9 August 1967.
7. A convenient summary of the development of European integration is provided by *The Process of European Integration and the Draft European Constitution*, a presentation before the Research Commission on the Constitution of the House of Representatives of Japan by Ambassador Bernhard Zepter, Head of Delegation of the European Commission in Japan, Tokyo, 4 March 2004.
8. Intervention at the conference on East Asia and Europe: Experimenting with Region-Building, sponsored by Centre Asie of the Institut Français des Relations Internationales, the Asia-Europe Foundation and De La Salle University of the Philippines, with support from the French Ministry of Foreign Affairs, Paris, 1–3 October 2003.
9. Rodolfo C. Severino. "Will There be a New ASEAN in the 21st Century?", *Asia Europe Journal* 2, no. 2 (July 2004): 180.
10. The Bandung Declaration was issued by the Afro-Asian Conference in Bandung, Indonesia, in April 1955, which laid the foundation for the Non-Aligned Movement.
11. Verbatim Record of the Inaugural Meeting of ASEAN, Ministry of Foreign Affairs, Bangkok, 8 August 1967 (ASEAN/DOC/3).
12. *Collected Interviews of Foreign Minister Thanat Khoman* (Bangkok: Department of Information, Ministry of Foreign Affairs, 1967), p. 50.
13. Quoted in Adam Malik. *In the Service of the Republic* (Singapore: PT Gunung Agung, 1980), p. 274.
14. Severino, *op. cit.*, p. 180.
15. See Appendix B.
16. Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order* (London and New York: Routledge, 2001), p. 51.
17. Interview with Hasjim Djalal, Jakarta, 21 November 2003.
18. Interview with Ali Alatas, Jakarta, 21 November 2003.
19. International Court of Justice: Judgment in the Case Concerning Sovereignty Over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), The Hague, 17 December 2002.
20. <http://www.icj-cij.org/icjwww/idocket/imasi/imasiframe.htm>.
21. [http://www.itlos.org/start2\\_en.html](http://www.itlos.org/start2_en.html).
22. *Settlement Agreement: Case Concerning Land Reclamation by Singapore in and*

- Around the Straits of Johor (Malaysia v Singapore)* ([http://www.mfa.gov.sg/internet/press/land/Settlement\\_Agreement.pdf](http://www.mfa.gov.sg/internet/press/land/Settlement_Agreement.pdf)).
23. International Court of Justice: Verbatim Record of the Public Sitting in the Case Concerning Sovereignty Over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), The Hague, 3 June 2002, p. 14.
  24. *Ibid.*
  25. [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_status\\_e.htm#1995](http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm#1995).
  26. <http://www.aseansec.org/3669.htm>.
  27. I am grateful to Sonia C. Brady, Undersecretary for Foreign Affairs of the Philippines, for bringing the draft to my attention, June 2004.
  28. <http://www.aseansec.org/3668.htm>, paras. 53–54.
  29. See Appendix C.
  30. <http://www.aseansec.org/3636.htm>.
  31. [http://www.aseansec.org/agr\\_haze.pdf](http://www.aseansec.org/agr_haze.pdf).
  32. The agreement entered into force in November 2003, having been ratified by Brunei Darussalam, Malaysia, Myanmar, Singapore, Thailand, and Vietnam. Laos has ratified the agreement since then.
  33. See Chapter 3.
  34. Keynote address at the ASEAN Community Roundtable, Institute of Southeast Asian Studies, Singapore, 4 June 2004.
  35. Joint Communiqué of the 37th ASEAN Ministerial Meeting, Jakarta, 29–30 June 2004 (<http://www.aseansec.org/16192.htm>), para. 6.
  36. <http://www.aseansec.org/18030.htm>.
  37. The eminent persons are Pehin Dato Lim Jock Seng, Minister for Foreign Affairs and Trade II of Brunei Darussalam; Aun Porn Moniroth, Advisor to the Prime Minister and Chairman of the Supreme National Economic Council of Cambodia; Ali Alatas, former Minister for Foreign Affairs of Indonesia; Khamphan Simmalavong, former Deputy Minister of Laos; Tan Sri Musa Hitam (Chairman), former Deputy Prime Minister of Malaysia; Than Nyun, Chairman of the Civil Service Selection and Training Board of Myanmar; Fidel V. Ramos, former President of the Philippines; S. Jayakumar, Deputy Prime Minister, Coordinating Minister for National Security and Minister for Law of Singapore; Kasemsamosorn Kasemsri, former Deputy Prime Minister and Minister for Foreign Affairs of Thailand; and Nguyen Manh Cam, former Deputy Prime Minister and Minister for Foreign Affairs of Vietnam.
  38. Interview with Pracha Guna-Kasem, Bangkok, 2 June 2004.
  39. Opening statement at the 6th ASEAN Ministerial Meeting, Pattaya, Thailand, 16 April 1973.
  40. <http://www.aseansec.org/3686.htm>, para. 8.
  41. <http://www.aseansec.org/3685.htm>, para. 8.
  42. <http://www.aseansec.org/1265.htm>.
  43. Protocol Amending the Agreement on the Establishment of the ASEAN

- Secretariat (Economic Officers), Bangkok, 27 January 1983 (<http://www.aseansec.org/1266.htm>).
44. Protocol Amending the Agreement on the Establishment of the ASEAN Secretariat, Bandar Seri Begawan, 4 July 1989 (<http://www.aseansec.org/847.htm>).
  45. <http://www.aseansec.org/5120.htm>.
  46. Protocol Amending the Agreement on the Establishment of the ASEAN Secretariat, Manila, 22 July 1992 (<http://www.aseansec.org/1198.htm>).
  47. Protocol Amending the Agreement on the Establishment of the ASEAN Secretariat, Subang Jaya, Malaysia, 23 July 1997 (<http://www.aseansec.org/1878.htm>).
  48. Intervention at the conference on East Asia and Europe: Experimenting with Region-Building, sponsored by Centre Asie of the Institut Français des Relations Internationales, the Asia-Europe Foundation and De La Salle University of the Philippines, with support from the French Ministry of Foreign Affairs, Paris, 1–3 October 2003.
  49. Much of this section is excerpted and adapted from a talk given by the author at the Institute of Defence and Strategic Studies, Singapore, 6 February 2004.
  50. *New York Times*, 1 August 1967.
  51. *New York Times*, 30 August 1967.
  52. Interview with Nana Sutresna, Jakarta, 21 November 2003.
  53. Interview with Professor S. Jayakumar, Singapore, 19 August 2003.
  54. I am indebted to Leo Suryadinata of the Institute of Southeast Asian Studies in Singapore for his insight on the last point.
  55. <http://www.aseansec.org/5125.htm>, Art. I, para. 3.
  56. <http://www.aseansec.org/1213.htm>.
  57. Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order* (London and New York: Routledge, 2001).
  58. Interview with Thanat Khoman, Bangkok, 1 June 2004.

## 2

## WHO BELONGS IN ASEAN? The Question of Membership

The 1967 ASEAN Declaration states that “the Association is open for participation to all States in the South-East Asian Region subscribing to the aforementioned aims, principles and purposes”. While the declaration does not say that ASEAN *must* include all of Southeast Asia but is merely *open* to all states in it, this statement has been taken, as we shall see, as the founding members’ “vision” for the ultimate composition of the association.

This raises the question: what precisely is Southeast Asia? Which countries does the “South-East Asian Region” encompass? Several academics have traced the definition of Southeast Asia to Western scholarly works and to the application of military strategy — for example, the creation of Lord Mountbatten’s Southeast Asia Command during World War II (headquartered in Colombo) — and to the interaction between them, particularly in relation to the United States’ war in Vietnam. Philip Charrier, an assistant professor of history at the University of Regina in Canada, has written a comprehensive and insightful review of the evolution of the concept of Southeast Asia.<sup>1</sup>

One way of defining Southeast Asia, as the concept has evolved, is in terms of what it is not. It does not include China, Japan and Korea. Not Australia and New Zealand. Not India, or Bangladesh, which, until 1971, was part of Pakistan. Thus, one can conceive of Southeast Asia as being the area bounded by China (including Hong Kong and Taiwan), Japan and Korea in the north, Australia in the south, and Bangladesh and India in the west. In the east, while there were questions in the past about where Papua New Guinea belongs, both ASEAN and PNG have settled those questions by taking the official position that PNG is a “non-regional state” for purposes of the Treaty of Amity and Cooperation in Southeast Asia. As for Palau, also