

ASEAN PARTNERSHIP AND COOPERATION WITH NON-ASEAN PARTNERS*

ASEAN, an organisation for regional cooperation, will be celebrating its twenty-fifth anniversary in 1992. This is a propitious moment to reflect on the direction and pace of ASEAN progress and achievements during the past quarter of a century. Writing from the perspective of one who has been closely connected with ASEAN since its inception in 1967, the writer seeks to examine the history of ASEAN, its record of achievements and its bilateral relations with some countries.

I. PROLEGONENA

A. *Emergence of Pacific Rim Partnership*

FOR centuries, before the dawn of modern international law, transfrontier trade in the eyes of the European world was concentrated around the European Mediterranean Basin where transboundary transactions abounded. The laws and customs of external trade had developed a system of *jus commune*¹ which has been observed and adhered to in practice by traders and merchants across and adjacent the Mediterranean coasts. A kind of maritime usage grew into what was codified as *consolato del mare*² or a code of conduct for maritime commerce and the carrying trade. A rudimentary form of *lex mercatoria*³ or "law merchant" appeared to have been in operation among the Hanseatic city states and the Italian city republics bordering the Mediterranean, Venice, Naples, Florence and Genoa. A network of commercial and diplomatic relations was established in the early fifteenth century over 150 trading cities and centres in Europe.

* This article is an expanded and updated version of a paper presented by the writer as Panelist in the 1991 Fulbright Scholars Symposium on "Challenges for the World Legal Order: The final Decade of the Twentieth Century", Panel III: Pacific Rim Partnership, an Enticing Invitation to Trade and Investment, entitled "ASEAN Partnership in Operation and Cooperation with other Pacific Rim Partners", held on 10 April, 1991, Golden Gate University School of Law, San Francisco, U.S.A.

¹ "*Jus commune*" or law common to transboundary trade was developed from the eighth century onwards to regulate international trade.

² *Consolato del mare* was a private collection of rules and customs of maritime law published in the 15 century in Barcelona. An earlier collection of the Rhodian maritime law was compiled between the seventh and ninth centuries.

³ For "*lex mercatoria*", see, e.g., "*La lex mercatoria dans les contrats et l'arbitrage internationaux : realite et perspectives*" (1979) 3 Journal Clunet, p. 106.

Since the Treaty of Westphalia in 1648, the trade centre of the world has moved from the Mediterranean to the Atlantic. Today, in the closing decade of the twentieth century, the world's trade centre is moving away from the Atlantic to the Pacific. From the old established cities in the Atlantic, Paris, London, Amsterdam, Antwerp, New York and Boston, the focal point of international trading activities has shifted or is shifting to the cities of the Pacific Rim, Los Angeles, San Francisco, Seattle, Vancouver, Sydney, Tokyo, Seoul, Taipei, Hong Kong, Singapore, Bangkok, Manila, Jakarta and Kuala Lumpur.

At the turn of the nineteenth century, a U.S. Secretary of State⁴ said: "The Mediterranean is the ocean of the past, the Atlantic the ocean of the present, the Pacific the ocean of the future." These predictions have been confirmed by the current unprecedented growth and the rise of the Pacific Rim. Today, the Mediterranean is the sea of historic significance. The Atlantic is the place of current commercial competition, of conflict of political interests and rivalry, of disintegrating military alliances and of traumatic transformation to achieve unification and harmonization. The Pacific Rim is the rising unspoiled *terra nova* on which to receive and sustain the massive economic shift progressively taking place from the aging Atlantic Rim, especially the East and Northeast Atlantic cities. This ongoing shift from the Atlantic to the Pacific is propelled by the dynamic force of sheer economics. It is also accompanied by a cultural shift as the Pacific Rim countries have proved more versatile, speaking more than a thousand languages and practising the most varied religious and cultural traditions in the world. This is being further reinforced by increasing emphasis on education and scientific research as a key to the improvement of manpower. It has been suggested that the Pacific Rim cities on the continent of North America like San Francisco and Portland, Oregon, should capitalise on the current shift into the century of the Pacific.⁵ This is one of the challenges to be addressed before the close of the twentieth century.

The attraction of the Pacific Rim in regard to tourism, trade and investment is enhanced by the comforting assurance that the shift from the Atlantic to the Pacific does not necessarily entail any decline on the part of the West relative to the East. But even such a dichotomy of East and West is history today as it is devoid of tangible foundation. The contrast is unreal. Thus, San Francisco is on the west coast of the United States but it is equally a city on the eastern seaboard of the Pacific Rim. What is west from the standpoint of Mexico, Canada or the United States is clearly east, northeast or near east in the objective perspective of the Pacific Rim.

⁴ The Honourable John Hay was U.S. Secretary of State when he made the prophecy. The expression "ocean" when applied to the Mediterranean was used metaphorically.

⁵ See, e.g., Naisbitt and Aburdene; *Mega-Trends 2000* (1990), pp. 158-193.

Apart from the sporadic existence of highly developed economies dotting the Pacific Rim in all directions, the United States Canada, the U.S.S.R, Japan, Australia and New Zealand, there have now emerged from the Pacific Ocean no fewer than four giants or tigers or dragons, if such an expression is to be preferred, *viz.*, Singapore, Taiwan (ROC), Hong Kong and Korea (ROK). These tigers have been named newly industrialised countries, or NICs.⁶ The next group of NICs may include Thailand, Malaysia, the Philippines and Indonesia, all being founding members of ASEAN. It should be added that the sixth Asean member, Brunei Darussalam, has the highest GNP per capita⁷ in the whole world, exceeding that of Kuwait.

What appears startling is the continuing growth at an unprecedented pace of the magnitude in the growth of tourism, trade and investment among the countries of the Pacific Rim. A new partnership in tourism, trade and investment has apparently emerged among the fastest growing economies of the Asia Pacific region. According to the latest forecast of the Pacific Economic Cooperation Conference prepared by the United States National Committee for Pacific Economic Cooperation,⁸ the slow growth of 5.0 percent has ended in 1990 and the economic growth rate will rise again in 1991. The fastest growing economies in the Pacific are now to be found in ASEAN, whose growth leader happens to be Thailand, followed closely by Singapore and Malaysia. All ASEAN countries with the exception of Brunei expect faster growth than the average for the region as a whole, although somewhat less than their own 1988-89 performance. The fastest growing countries may still be expanding more than their long term potential. Taiwan and Korea are also expected to grow faster than average although less than their recent spectacular performance. From 1992 Taiwan will reduce her overseas investment but will reinvest in her own national infrastructure to the tune of US\$330 billion during the ensuing three years.

Pacific growth in tourism, trade and investment is clearly discernible in the United States trade patterns. Today, the United States exports more to Korea than to France and more to Taiwan than to Italy and Sweden combined. Since 1983, the U.S.-Pacific trade has surpassed its Atlantic trade. While in the 1960s the United States trade with Asia was only half its trade with Western Europe, in 1983 the United States trade with Asia was 50 per cent higher than with Europe, reaching well over US\$300 billion in 1988, not counting reciprocal investments

⁶ It should be observed that in the European context the same acronym NIC means Newly Integrated Countries, *ie.*, integrated into the European Community. These include the three latest members of the EEC: Greece, Spain and Portugal. Not unlike the Pacific Rim tigers, the extension is likely to grow in Europe.

⁷ GNP of Brunei is more than US\$26,000. This is twice that of Japan, but may be slightly lower than that of Nauru, a Pacific island or the Falkland Islands.

⁸ *Pacific Economic Outlook 1990-1991*, prepared by U.S. National Committee for Pacific Economic Cooperation Coordinator Lawrence B. Krause, Professor, Graduate School of International Relations and Pacific Studies, University of California, San Diego, U.S.A.

and tourism. Today, the United States trade with Asian Pacific has nearly doubled its trade with European Atlantic.

Pacific Rim partnership in trade, investment and tourism appears to be achieving the fastest growing rate of expansion. Astriding the Atlantic and the Pacific, American and Canadian businessmen are expected to be pragmatic and flexible enough to capitalise on the strategic position of the United States and Canada. For these reasons, global attention is now being turned to the phenomenal increase and expansion of trade, investment and tourism among the partners in the Pacific Basin. It is not the purpose of this study to identify the major causes of such growth; although one would suspect that the bases of growth may be found in the practical commercial dexterity, resourcefulness and resilience of the Asian Pacific traders. Let us observe at closer range the concept of ASEAN partnership at work and then examine the growing cooperation between ASEAN and its trading partners in the Pacific Rim and yonder.

II. ASEAN PARTNERSHIP IN ACTION

The impressive record of ASEAN having some of the fastest growing economies among the countries in the Pacific Rim, calls for an examination of ASEAN. A review of the Association's history and work is necessary in order to understand its success at regional cooperation.

A. *Advent of ASEAN*

Asean as an association for economic cooperation among the countries of the Southeast Asia was founded on 8 August 1967. The founding members of ASEAN were Thailand, Malaysia, Singapore, Indonesia and the Philippines. The sixth member, Brunei Darussalam became a member of ASEAN in 1984.

1. *Economic background*

Further facts and statistics are readily available which tend to confirm the economic strength and potential of ASEAN. By way of comparative analysis, for instance, Asean in 1991 has a population of well over 300 million, comparable to the enlarged European Economic Communities with unified Germany. As a market, in terms of the size measured by the numerical strength of consumers, ASEAN and EEC belong to the same classification. Singapore and Brunei compares with Luxemburg; the smallest member of the EEC in terms of territory and population, but with the highest GNP and most advanced industrial development. Thailand, and the Philippines, each with a population close to sixty million are comparable to Germany, France and Italy in size and population. Indonesia with a population of more than 170 million has no counterpart unless we place the United Kingdom

together with southern European members of the EEC, Italy, Greece, Spain and Portugal. Malaysia is approximately the size of the Netherlands in terms of population and the size of England in terms of land area. Such comparisons are only feasible as academic exercise, and at best an indication of the similarities between ASEAN and the EEC.

Other striking features in relation to intra-ASEAN trade are the over abundance of identical products rather than the complementary nature of the export products. The fact remains that three or four members of ASEAN produce as much as 70 to 80 per cent of world production of certain primary commodities. These include tin (Malaysia, Thailand and Indonesia), natural rubber (Malaysia, Indonesia and Thailand). Coconut oil, palm oil, tapioca or manioc are common export items for ASEAN countries. Energy resources such as gas and petroleum products are exported from Indonesia, Malaysia and the Philippines. Singapore has become a major oil refinery and export centre in the world. Rice is exported mainly by Thailand and marginally also by the Philippines. Reciprocal trade exists on sea-food products, foodstuff and textile including silk, batik and handicraft.

In the industrial sectors of late, automobiles, electronics, television sets, video cassette recorders and computers for instance, have begun to constitute significant export items from Singapore, Thailand and Malaysia.

In consequence of the similarity of export products, there is not much incentive to induce *intra-regional* trade among the ASEAN countries. Regional cooperation will have to be based on other economic considerations. The objectives of ASEAN from the beginning had been economic and should continue to remain so in the foreseeable future.

What has bound up the destinies of ASEAN closely together may not, initially, be as much economic as social, cultural and political or, indeed, security reasons. Southeast Asian nations must learn individually, as well as collectively, to survive as independent sovereign nations.

2. Political motivation

Economic considerations may have provided the initial reasons for ASEAN members to pool their resources together. However it is submitted that to a greater degree it is the necessity to survive as free and independent sovereign nations that has brought members of ASEAN together. There can be no divorce between political stability and economic growth and development. ASEAN leaders were well aware that their combined economic strength could be marshalled to reinforce their collective political will. Before the establishment of ASEAN, member countries had examined their previous experience with the existing regional organisations for cooperation in trade and development. A quick glance of these forerunners might be in order.

(1) *The Asian-African Conference*

The first question to be addressed relates to the national policies of each ASEAN nation which shared some common ideals or principles. There might be a chance of some unity of approach. The Joint Communiqué of the First Asian African Conference in Bandung, Indonesia in 1955, did offer an attractive indication. At least three of the ASEAN countries were participants at the Bandung conference, *viz.*, Indonesia, Thailand and the Philippines. Malaysia and Singapore were still in the process of being born. The principles of friendly relations, good neighbourliness and economic cooperation were declared to be the chosen path of the newly independent Asian-African nations; where freedom, independence, decolonization process as well as the rule of law remained on the top of the list of priorities. Bandung was by no means the meeting place of only the newly independent countries of Asia and Africa. The other Asian nations, Thailand, China and Japan, were active participants, although at that time the last two played no part in the United Nations.

(2) *ESCAP*

Mutual cooperation would appear to be a normal instinct among the nascent nations of Asia and Africa. But instinct alone did not lead to concrete results as both Asia and Africa were much divided by reason of differences in religion and cultural traditions. Efforts to create a regional organisation for Asia have not met with great success. This may be due to the extreme vastness of the area, its diversity and lack of driving forces in support of forming a regional organisation for economic cooperation. The Regional Economic Commission of the United Nations (ECAFE now ESCAP) served as a task force to foster cooperation within the greater Asian Pacific region. Ministerial conferences were held and the Council of Ministers for Asian Economic Cooperation was set up to map out strategies for economic development and cooperation. The Regional Commission of the United Nations produced useful and concrete results in certain areas such as the establishment of the Asian Development Bank and the Committee for Coordination and Investigations of the Lower Mekong Basin (comprising Thailand, Laos, Kampuchea and Vietnam). The Council of Ministers also considered a programme of trade cooperation in Asia and the Pacific, a programme for regional monetary cooperation and other supporting trade development and commercial infrastructures.

(3) *ASPAC*

Other regional economic cooperation initiatives had been taken by the regional countries in the Pacific Rim. The Asian Pacific Council (ASPAC) was created in 1966 following the Summit in Seoul, con-

sisting of some ten countries of the Asian and Oceanic Pacific, viz., Korea, Japan, the Philippines, the Republic of China, Thailand, Laos, South Vietnam, Malaysia, Australia and New Zealand. Seemingly, from out of nowhere, the wind of political change swept across the South China Sea with the change of Chinese representation at the United Nations when the Peoples' Republic of China was admitted in 1971 in place of the Republic of China, and with the fall of Saigon to the North Vietnamese in 1975. Partly in consequence, ASPAC played down its profile and slowly dismantled the regional centres it had carefully planned for each country. For instance, Thailand had set up Economic Cooperation Centre, the Republic of China had a fertilizer centre, and Korea had a social and cultural centre. With the exception of the social and cultural centre in Seoul which managed to retain its *raison d'être*, other offsprings of ASPAC appear to have fallen into *desuetude ratione cessante*. Nevertheless, while it lasted, each of the centres created under the auspices of ASPAC did endure for the benefit of the host country as well as all other ASPAC members.

(4) *MCEDSEA*

Another regional conference worth mentioning is the Ministerial Conference for the Economic Development of South-East Asia (MCEDSEA) which became functional in 1966. It consists of economic assistance and technical cooperation projects between Japan as a donor country and nine or ten Southeast Asian nations as recipients of Japanese aid. Japan is now flanked by Australia and New Zealand, and occasionally the recipient countries also count Burma (now Myanmar) among its participants. Notable examples of projects under MCEDSEA include the Southeast Asia Fisheries Centre with the Training Section in Thailand and the Research Section in Singapore.

(5) *ASA*

Although cooperation is a natural and instinctive inclination of human behaviour, the exchanges among the states within the Asia Pacific Community (ASA) was not possible until after the Bandung Conference. Once given the opportunity it would not be unnatural for neighbouring states to foster closer cooperation in economic as well as in other fields. While regional cooperation within Europe was free and unencumbered, Asia had for centuries been a continent of war-torn pieces of territorial possessions, a hunting ground for outside powers without being altogether free from *intra-regional* struggles. The earliest form of cooperation and association in the region was bilateral between two like-minded neighbours.

Such were the cases between Thailand and the Federation of Malaya, between Burma and Thailand and between Pakistan and Indonesia. It was not until 1961 that a sub-regional grouping could be formed from

a series of closely knit bilateral cooperation. The formation of ASA, the Association of Southeast Asian States was the first regional cooperation of like minded nations in the economic, social and cultural fields. Malaysia, the Philippines and Thailand were founding members of ASA, which was the predecessor of ASEAN, a larger association with which it was finally merged. A number of existing ASA projects have become ASEAN projects. ASA never died. It has grown into ASEAN.

3. *Labour Pains Preceding the Birth of ASEAN*

The two years following the celebration in 1965 of the Tenth Anniversary of the Bandung Conference were trying times not only for the unsuccessful attempts by Algeria to convene the Second Summit of Asian African Conference in Algiers, but, more particularly, for the states that were to become members of ASEAN. Indonesia, under President Sukarno and Vice President Subandrio, was outwardly very powerful, especially within the non-aligned group and was flirting with socialist countries. The Partij Kommunist Indonesia then was the largest communist party in the world outside of the U.S.S.R. An Axis was formed which linked Pyongyang (North Korea), Beijing (China), Hanoi (North Vietnam), Phnom Penh (Cambodia) and Djakarta (Indonesia). There were troubled waters everywhere from Hanoi, Vientiane, Phnom Penh to Djakarta.

During this period, the United Kingdom for reasons of her own decided to create a greater Malaysia by including Sarawak and Sabah in the Federation of Malaya. In consequence Malaysia was born. The United Nations not only recognized Malaysia as successor state to the Federation of Malaya but also elected Malaysia as a member of the Security Council. Sukarno was not pleased with the creation of Malaysia. Subandrio adopted the policy of *Confrontasie* or Confrontation against Malaysia. Before the latter took its seat in the Security Council, Indonesia withdrew its membership from the United Nations altogether and intensified her *Confrontasie* policy, opposing Malaysia's admission to the Asian African Conference in Algeria. Paratroopers were dropped inside Malaysian border in Sarawak and in Malacca and subversive activities were conducted in Singapore.

The Philippines also protested against the addition of Sabah to Malaysia as it had a long-standing claim to Sabah which was traceable back to the Sultanate of **Sulu**. The discord between the Philippines and Malaysia disrupted the progress of ASA which during this critical period continued to subsist in a state of suspended animation. The Philippines, supported by Japan, offered to resolve the problem through the creation of another association called **MALPHILINDO**, consisting of Malaysia, the Philippines and Indonesia. The proposal never got off the ground since it was tainted with religious overtones.

Meanwhile, Thailand was requested to look after the interests of Malaysia in Indonesia and the Philippines and vice-versa.

A lucky break occurred when Colonel Untung staged an unsuccessful *coup d'etat*. Most Indonesian generals in active service were captured, tortured, assassinated and mutilated. The few that escaped capture formed a new government under General Suharto. From that time on, which is known as "the Gestapo", the tide turned in favour of regional co-operation. This signals an end to the policy of confrontation. Thailand through her foreign minister, Dr. Thanat Khoman, was instrumental in restoring diplomatic relations among the nations of the region. This in due course inspired regional confidence among all leaders concerned.

Normalization of relations meant revitalization if not indeed resuscitation of ASA which resumed the activities it had suspended with the creation of Malaysia. Indonesia was invited to attend the Third ASPAC Ministerial Meeting in Kawana Japan,⁹ and sent an ambassador as its observer. Singapore seceded from Malaysia and remained as an informal member of ASA.

Thailand took the opportunity to propose a new regional organization for economic cooperation which would include the ASA countries and Indonesia. Singapore was involved in the negotiations. The draft proposal was first discussed between Thailand and other ASA members, including Indonesia. It did not seem right not to ask Indonesia, the largest country in Southeast Asia to be a member of ASA. Rather than enlarging ASA to include Indonesia, the founding members decided to merge ASA with a new organisation called ASEAN.

B. *Aims and Purposes of ASEAN*

Thailand sought to nurture the fledgling ASEAN with utmost care. The draft constituent instrument of ASEAN was discussed at Laem Taen, Bangsaen. The final press communique was released in Bangkok following the meeting of ASEAN ministers who signed the Bangkok (ASEAN) Declaration on 8 August, 1967. This declaration led to the birth of ASEAN.

The reasons which inspired the member states to create ASEAN are contained in the preambles of the Bangkok Declaration. These include:

The need to strengthen further the existing bonds of regional solidarity and cooperation and the existence of mutual interests and common problems;

The desire to establish a firm foundation for common action to promote regional cooperation in Southeast Asia in the spirit of equality and partnership and thereby contribute towards peace, progress and prosperity in the region;

⁹ General Roekmito was then Indonesian ambassador to Japan.

The awareness that the cherished ideals of peace, freedom, social justice and economic well-being are best attained by fostering good understanding, good neighbourliness and meaningful cooperation among the countries of the region already bound together by ties of history and culture:

The primary responsibility shared by the countries of Southeast Asia for strengthening the economic and social stability of the region and ensuring their peaceful and progressive national development;

The determination of the countries of the region to ensure their stability and security from external interference in any form or manifestation in order to preserve their national identities in accordance with the ideals and aspirations of their peoples;

The affirmation 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.

The aims and purposes of the association are:

1. To accelerate the economic growth, social progress and cultural development in the region through joint endeavours in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian nations;
2. To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter;
3. To promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific and administrative spheres;
4. To provide assistance to each other in the form of training and research facilities in the educational, professional, technical and administrative spheres;
5. To collaborate more effectively for the greater utilization of their agriculture and industries, the expansion of their trade, including the study of the problems of the international commodity trade, the improvement of their transportation and communication facilities and the raising of the living standards of their peoples;

6. To promote Southeast Asian studies;
7. To maintain close and beneficial cooperation with existing international and regional organisations with similar aims and purposes and explore all avenues of even closer cooperation among themselves.

These aims and purposes have been vigorously pursued by ASEAN from the day it was born. The emphasis is understandably placed on equal partnership which underlies all ASEAN undertakings and activities to date.

III. ASEAN ACTIVITIES

There are several ways of classifying activities of a regional organization for economic cooperation such as ASEAN. ASEAN activities cover at least two principal areas: First, **intra-ASEAN** activities pertaining mainly if not **exclusively** to mutual cooperation within the ASEAN community, be it trade, investment or tourism which is intra-regional; and second, ASEAN relations of active cooperation with the outside world, or with non-ASEAN countries, which in turn could be further subdivided into relations with immediate neighbours, with Pacific Rim partners and with other nations from outer regions of the world such as West and Central Asia, Africa, Latin America and Europe.

A. *Intra-ASEAN Cooperation*

The very purpose of ASEAN from its inception must have been twofold; first, to strengthen intra-ASEAN security and stability through all imaginable measures of cooperation including economic, social, cultural, technical and even political and military; and secondly, to enhance ASEAN status and collective bargaining powers in its external relations. We shall first examine ASEAN activities in regard to intra-ASEAN cooperation and subsequently study ASEAN activities in its external relations.

It may be beyond the scope of this study of ASEAN activities to attempt even a simple outline of the organisational aspects of the association. This truly deserves a separate treatment showing a gradual progress from a modest start with multiple national secretariats to the establishment of a common general secretariat with a regular annual budget and international staff. Suffice it to state that the association has been growing from strength to strength with regard to its internal organisation and staffing pattern and the funds provided by member states. ASEAN meets at various levels: the Summit, the Annual Ministerial Meetings, the Economic Ministers' Meetings, the Meetings of other Ministers, of Senior Officials, of the Standing Committee and the meeting of the various permanent and *ad hoc* committees. The

private sectors also organise their ASEAN meetings, such as the ASEAN Chambers of Commerce and Industry which met even before the launching of ASEAN. A special coordinating committee was also established to streamline pending projects and minimise overlapping activities of various committees and bodies.

At various levels of official and private sector meetings, the association has undertaken a number of projects. ASEAN has responded to the need to concentrate on the development of certain areas requiring special attention. Thus, at the outset, ASEAN inherited all of ASA programmes and pending projects and added a considerable number to the list of possible areas of cooperation among its members. An ASEAN study was conducted with the assistance of a team of technical experts from the United Nations. A report was submitted a few years later which helped member states in deciding the future directions of ASEAN cooperation.

ASEAN activities covered a great many areas of experimentation which, subsequently, either flourished or faded into oblivion. In all the fields listed in its objectives, ASEAN has ventured with greater or lesser degrees of success. Specifically, ASEAN has reached several important agreements and concluded significant and far reaching treaties. The treaties include the Treaty of Amity and Cooperation in Southeast Asia of 24 February, 1976; the protocol amending the treaty following the Manila Declaration on 15 December, 1987; the Kuala Lumpur Declaration of 27 November, 1971 on the Zone of Peace, Freedom and Neutrality; the Declaration of ASEAN Concord following the Bali Summit of 24 June, 1976; the Agreement for the Establishment of a Fund for ASEAN of 17 December, 1969 and the Agreement for the Establishment of the ASEAN Secretariat of 24 February, 1975. In the substantive areas of economic cooperation, special attention may be paid to the Agreement on ASEAN Preferential Trading Arrangements of 16 February, 1977 which has since been in force with an increasing measure of success and the Basic Agreement on ASEAN Industrial Projects of 6 March, 1980 to cooperate in establishing large scale ASEAN industrial projects, particularly to meet regional requirements for essential products, utilizing available resources in the region and contributing to the increase in food production. This last agreement was followed by the Basic Agreement on ASEAN Industrial Complementation of 18 June, 1981.

From its inception, ASEAN leaders never had any illusion that ASEAN would become a common market. The leaders accepted the diversities of the different economic structures and national legal frameworks. Even a more modest goal of a free trade area appeared to be out of reach because of existing divergencies in the fiscal structures and policies. But that should not deter ASEAN from continuing to cooperate. The programme closest to the establishment of a free trade area must begin with the adoption of some preferential trading arrangements which ASEAN in fact launched to facilitate cooperation and to encourage intra-ASEAN trade by creating complementing areas where none had existed in the past.

Intra-ASEAN activities may be grouped under a variety of headings, notable among which include cooperation, coordination and harmonization in the fields that appear of practical importance to the peoples and governments of ASEAN.

1. *Economic cooperation*

This is contained in the aims and purposes of the ASEAN Declaration. As such, economic cooperation requires primary attention. It may take almost any form, but ASEAN has had to select one that is practical and mutually beneficial in results, consistent with the underlying concept of "equal partnership".

If integration appears impractical and far-fetched, a lesser form has to be considered. A customs union is apparently not practical enough while the concept of gradual development of a free trade area appears to be a remote possibility. ASEAN leaders have always been pragmatic in their approach to economic cooperation. Every conceivable measure has been thoroughly examined and the common economic policies appear to have included the promotion of intra-ASEAN trade, joint ventures in industrial investment, development and tourism.

(1) *Promotion of intra-ASEAN trade.*

This policy is basically sound provided there are sufficient incentives for increasing exchanges of commodities among the ASEAN countries. There should be complementary products. In agriculture this appears difficult to structure. In the newly created industries, coordination and **harmonisation** could create a more united ASEAN market with evenly distributed suppliers from various parts of the region. In the context of intra-ASEAN trade, some improvements are visible after the latest across-the-board reduction of tariffs. This reduction, in the form of ASEAN Preferential Trading Arrangements,¹⁰ is designed to encourage trading within the region. The success, if any, in this endeavour might be regarded as minimal in contrast to the growth of **intra-community** trade within the European Economic Community. ASEAN has agreed on a common set of "Rules of Origin". In consequence, no one can accuse ASEAN planners of not trying to increase intra-ASEAN trade. The truth of the matter is that the economies of the region do not encourage such a move. Certain preferences are available among ASEAN enterprises for government procurement and government contracts. This edge may prove decisive in international bidding.

¹⁰ This is an area that requires a separate study. An enquiry may begin with the practice within ASEAN since its adoption of the Agreement on ASEAN Preferential Trading Arrangements of 16 February, 1977. See, *Multilateral Treaties between Asean Countries*, *Asean Law Series*, (hereafter referred to as "Asean Law Series"), pp. 113-119, pp. 120-123, Annex I: Rules of Origin for the Asean Preferential Trading Arrangements.

(2) *Promotion of intra-ASEAN investments*

This is another policy which has received the attention it deserves. It requires the cooperation of ASEAN governments as well as that of the private sectors within the region. Joint ventures have taken place in various industrial investments and developments. There appears to have been a freer flow of goods, services and capitals within ASEAN. Greater freedom of movement of goods, services and capital has been the result of various agreements concluded by ASEAN countries. Relaxation of immigration regulations, exemptions from certain visa requirements, exemptions from fiscal restrictions and partial exemptions from duties and other forms of taxation have encouraged the movement of skilled and unskilled labour forces from one ASEAN country to another, and the movement of services and capital, including banking facilities, between ASEAN nations.

(3) *Promotion of intra-ASEAN tourism*

This is partly economic cooperation and partly cultural exchanges. For various reasons, movements of people, not only investors and traders but also visitors and tourists, have been encouraged across ASEAN national frontiers. Facilities have been established at border posts to allow crossing with only border passes, while travel by air hardly requires advanced visas for ASEAN nationals. Although this is no where close to the facilities afforded by a member of the European Community to other nationals of the Community, the facilities granted have eased if not accelerated the movement of tourists within the ASEAN region.

In some ways, not unlike the facilities available within the European Community, ASEAN has rotated their "Visit ASEAN Year" highlighting places of interest in each of the ASEAN nations. At the same time, various package tours have been made available to enable tourists, both from within ASEAN and outside ASEAN, to have more freedom of travel within ASEAN at no extra cost. To celebrate the twenty-fifth anniversary of the association, 1992 has been declared "Visit ASEAN Year".

2. *Cooperation in infrastructural development planning*

ASEAN activities classified as cooperation in infrastructural development planning cover very wide areas of facilitating intra-ASEAN transportation and communication. This is not at all surprising since ASEAN member states have been drifting apart prior to the Bandung conference. With renewed interest in regional cooperation, the way is open for restructuring of means of mutual contacts and continuance of direct and uninterrupted communications.

(1) *Promotion of telecommunication*

Every possible means of intra-ASEAN telecommunication has been considered and structured to permit direct communication links. For instance, submarine cables have been laid to connect all the member states. Satellite communications have also been established since ASEAN ground stations lie within direct reach of satellites in geostationary" orbit. A fair number of ground stations have been established within ASEAN. As a result, many ASEAN countries share the services of Indonesia's PALAPA communication satellite for their respective internal communication needs.¹² Television broadcasts can also be relayed through satellite communication channels. Remote sensing is another possible use of satellites to survey and manage natural resources on earth.

(2) *Promotion of safety and security at sea*

Most ASEAN states have rather extended coastlines. To ensure the safety and security at sea, several agreements have been adopted.¹³ The benefits of the agreements are not limited to ASEAN vessels. In general, the duties and obligations have been undertaken by ASEAN state members to provide such measures of assistance as may be necessitated by the circumstances to ships in distress in their territories and neighbouring seas as they may find practicable. In this connection, Search and Rescue (SAR) requires the identification and designation of Rescue Coordination Centre (RCC) and Local Rescue Coordination Centre (LRCC) in all ASEAN member countries.

Since the oil spill incident of the vessel "Showa Maru" in the seventies, Malaysia, Singapore and Indonesia have established a traffic separation scheme to ensure the safety of navigation through the Malacca Straits. This agreement potentially raised the prospect of outside resistance on the grounds of freedom of navigation in international waters. This prospect was preempted by the straits states' submission of their traffic separation scheme to the Inter-maritime Consultative Organisation in London for approval. Thus, ASEAN nations in practice as well as in law may now exercise effective and undisputed control over

¹¹ A geostationary orbit is a narrow orbital ring around the earth approximately 22,300 miles (35,800 km.) above the equator. Satellites in these orbits rotate in the same directional movement and at the same speed as the earth rotation, thereby maintaining their locations in space at approximately the same spots.

¹² See, in particular, Abdurasyid, "Developing Countries and Use of the Geostationary Orbit", in *Proceedings of the Thirteenth Colloquium on the Law of Outer Space* (1987), pp. 375, 379-80.

¹³ See, in particular, the Agreement for the Facilitation of Search for Ships in Distress and Rescue of Survivors of Ship Accidents, 15 May, 1975. See also chapter V; "Safety of Life at Sea", annex to the International Convention for the Safety of Life at Sea, in *Asean Law Series, op. cit.*, pp. 97-101. See the excellent book by Koh, *Straits in International Navigation: Contemporary Issues* (1982).

vessels passing through the Straits of Malacca. This coordination of maritime navigation is primarily an ASEAN affair. However, it has strategic implications for ASEAN as a whole.

It should be added that while merchant shipping is a relatively new industry in Thailand, Malaysia and Indonesia, it has long played an important role in the external trade of Singapore and the Philippines. Despite the relative differences in the development of merchant shipping, ASEAN has not spared any effort to cooperate in the field of intra-regional shipping.¹⁴

(c) *Promotion of safety and security in air traffic*

Although relatively newcomers to the business of carrying trade by air, ASEAN countries have become regional and even global national carriers. Without exception, every member state has its own airlines, international and domestic. Most ASEAN airlines have started with some external technical cooperation, but are now completely independent of outside assistance and are operational on their own strength. Cooperation has begun on pooling of services, traffic-sharing, and mutual promotion among ASEAN airlines. A multilateral agreement was concluded granting commercial rights of non-scheduled air services among the ASEAN nations in 1971.¹⁵ These rights are initially limited to third and fourth freedom traffic.¹⁶

An agreement similar to the one on maritime navigation was concluded by ASEAN states as early as 14 April, 1972 in Singapore to facilitate the search for aircraft in distress and the rescue of survivors of aircraft accidents.¹⁷

The ASEAN Committee on Transportation and Communications has adopted various ASEAN projects. Among the activities of ASEAN, the "AIREP" (Air Reports) Programme should be mentioned. This programme includes publications on ASEAN climatic data and have been compiled on a routine basis by the meteorological services of individual ASEAN countries. These projects entail elaborate efforts of data processing, analysis and the production of uniform presentation using the latest scientific techniques. Greater skills have thus been developed in the collation and treatment of climatological information

¹⁴ Thus, an integrated work programme on shipping was drawn up for the period 1982-1986 to coordinate the implementation of ASEAN common policy in shipping as enunciated in the Resolution on Shipping to attain greater efficiency and economy in the carriage of ASEAN trade by promoting and strengthening self-reliance and cooperation in shipping.

¹⁵ See the Multilateral Agreement on Commercial Rights of Non-Scheduled Air Services Among the Association of Southeast Asian Nations, 13 March, 1971, in Asean Law Series, *op. cit.*, pp. 86-90, with the annex, in which several airports have been designated for the purpose.

¹⁶ See *ibid.*, Article 2 (1), at p. 87.

¹⁷ See the Agreement on the Facilitation of Search of Aircraft in Distress and Rescue of Survivors of Aircraft Accidents, 14 April, 1971, Asean Law Series, pp. 92-96.

and air reports in each ASEAN country.¹⁸ The ASEAN International Airport Association was established in 1982 to develop regional cooperation among ASEAN international airports on airport development, operation and management. Centres of Excellence for Meteorological Training and for Aviation Security Training were set up in the Philippines and Malaysia respectively.¹⁹

3. *Intensification of cultural exchanges and development*

Although each of the member state of ASEAN is a plural society, the variations in the composition of the population appear to follow a similar pattern, with several common languages and basic religions that are commonly practised in all the countries of the region. Linguistically, Malay is principally used in at least three or four out of the six ASEAN states and is also the language of a minority group in the other two countries. Islam is prevalent among the Malay-speaking population of ASEAN although Buddhism is practised in Thailand and among the Chinese in Singapore. There are Buddhist temples in Malaysia as well as in Java. Catholicism is predominant in the Philippines but widely practised in other ASEAN countries where other Christian sects are also known. Against the broadly similar diversities in each country, each ASEAN member has been able to establish its own common identity. Although English is only one of the official languages of the Philippines, Malaysia and Singapore, the ASEAN States have resorted to English as the official language among themselves. It has become apparent that out of the apparent differences in national history, countries retain their common cultural heritage from ancient times before their contact with the Western world.

(1) *Cooperation in social development*

ASEAN is committed to intensifying active cooperation in the field of social development with emphasis on the well being of the low income group and of the rural population, through the expansion of opportunities for productive employment with fair remuneration. ASEAN is involved in all sectors and levels of the ASEAN communities, particularly the women and youth, in development efforts. Existing intra-ASEAN cooperation has been further intensified and expanded in meeting the challenges of population growth and where possible in the formulation of new strategies in collaboration with appropriate international agencies. Cooperation in the social field is further intensified in regard to the

¹⁸ See the statement by the Chairman of the Standing Committee, 15th ASEAN Ministerial Meeting, Singapore, held from 14-18 June, 1982, pp. 36-37.

¹⁹ See the Report of the Committee on Transport and Communications, Annual Report of the ASEAN Standing Committee, 1981-82, published by the ASEAN Secretariat, pp. 34-45.

prevention and eradication of the abuse of narcotics and the illegal trafficking of drugs.²⁰

(b) *Cooperation in Cultural and Mass Media Activities*

The study of ASEAN as well as its member states and their national languages has been introduced as part of the curricula of schools and other institutions of learning in the member states. ASEAN countries have firmly supported the exchange of ASEAN scholars, writers, artists and teachers to enable them to play an active role in fostering a sense of regional identity and fellowship. Not only has national and regional resilience been encouraged within ASEAN, the region has now developed a collective will, an ASEAN consciousness. Southeast Asian studies have been promoted through closer collaboration among national institutes. Several cultural projects are pursued on a continuing basis under the auspices of the ASEAN Committee on Culture and Information.²¹ For this purpose, an ASEAN cultural fund has been established since 1978.²²

Pursuant to an earlier agreement for the promotion of cooperation in mass media and cultural activities in 1969,²³ ASEAN countries have been promoting mass media activities by broadcasting regular programmes to reflect the aims, purposes and activities of ASEAN through the radio and television services of each member country, by organizing film festivals, exchange of film artists and undertaking of joint film productions, and by organising seminars, symposia and other activities on mass media.

4. *Cooperation on food, agriculture and forestry*

(1) *Common agricultural policies*

ASEAN as a regional organisation has been concerned with the adequacy of food supply within the region. Member states cooperate closely to ensure self sufficiency in basic food commodities. Common agricultural policies were developed in a manner not unlike the European Economic Community in its initial stages. There has been extensive pooling of research and technology.

²⁰ As evidenced in the Declaration of ASEAN Concord on February 24, 1976, in Asean Law Series, *op. cit.*, pp. 24-29.

²¹ See the Declaration of ASEAN Concord, *ibid.*, p. 27. Performance, exhibition and related cultural activities include ASEAN performing arts and music, ASEAN paintings and photograph exhibition, ASEAN travelling exhibition of paintings and photographs in ASEAN countries, exhibition of photographs on ASEAN cultural heritage, radio and TV exchange programmes, performance of ASEAN artists, ASEAN song festival, ASEAN film festival, ASEAN film weeks, production and distribution of ASEAN prints and audio visual materials, ASEAN traditional games and sports.

²² *Ibid.*, pp. 124-129.

²³ *Ibid.*, pp. 82-85.

(2) *ASEAN Food Security Project (AFSP)*

This has been one of the most important and successful projects adopted by ASEAN since 1981. The Board has implemented a good information and early warning system. The Emergency Rice Reserve, in line with FAO food reserve programme, has been set at 50,000 tons with contribution from each member country. The ASEAN Agricultural Development Planning Centre (ADPC) keeps under review the size of the emergency rice reserve as well as possible inclusion of other basic food commodities.²⁴

(3) *Production and supply of fertilizers, pesticides and other agricultural aids*

ASEAN Agricultural and Forestry Ministers met, as directed by the Committee on Food, Agriculture and Forestry, and assigned the Co-ordinating Group on Crops to undertake the study on the supply and demand of non-urea fertilizer in ASEAN. A pre-feasibility study was prepared with the help of the United States Trade and Development Programme.²⁵

(4) *ASEAN quarantine ring*

ASEAN Plant Quarantine Centre and Training Institute (PLANTI) provides the coordinating mechanism for improving all plant quarantine activities through training, research and information exchange. The proposed ASEAN Common Regional Animal Quarantine Centre (ACRAQC) was replaced by the strengthening of ASEAN national quarantine stations as follows:

Indonesia	Kepala Jernih
Malaysia	Kuantan
Philippines	Alabang
Singapore	Jurong
Thailand	Bangkok ²⁶

(5) *Food handling*

The ASEAN Food Handling Bureau serves as the main communication link between the Sub-committee on Food Handling and its various working groups on grains, livestock, fish and horticulture. This covers

²⁴ See, e.g., ASEAN Agreement on Food Security Reserve, 4 October, 1979, in Asean Law Series, *op. cit.*, pp. 138-145.

²⁵ Agreements No. 12 (Indonesia) and No. 13 (Malaysia), in Asean Law Series, *op. cit.*, pp. 164-169 and pp. 170-175.

²⁶ ASEAN Declaration to Eradicate Foot and Mouth Diseases, in Asean Law Series, *op. cit.*, pp. 54-56, and ASEAN Declaration on Specific Animal Diseases Free Zone, pp. 57-59.

the different aspects of processing, packaging, transportation and quality control of grains, vegetables, fruit, horticultural produce, livestock and fish as well as manpower development and abattoir designing. This is also aimed at cutting cost, harvest spoilage and wastage in the ASEAN region.

(6) *Cooperation in forestry*

The Jakarta Consensus on ASEAN Tropical Forestry sets out a comprehensive programme of cooperation that covers the adoption of a common forestry policy, the promotion of technical cooperation, the establishment of a suitable institution, cooperation in the timber trade, and an ASEAN common stand on international issues. Four *ad hoc* expert groups were set up. Forestry resources conservation and management was assigned to Malaysia; timber production and processing, to the Philippines; timber marketing and trade to Thailand; and forest environment and wildlife to Indonesia.²⁷

(7) *New proposals*

Several projects have been in the pipeline for possible third country funding. These include the ASEAN Agricultural Project Formulation, ASEAN Fish Quarantine Project and ASEAN Food Handling Programmes.

5. *Cooperation in industrial projects, minerals and energy*

(1) *ASEAN Industrial Projects (AIP)*

Significant ASEAN industrial projects have been planned and undertaken, including the ASEAN Urea Project (Indonesia), ASEAN Urea Project (Malaysia), ASEAN Copper Fabrication Project (Philippines), ASEAN Rock Salt-Soda Ash Project (Thailand). These AIPs have been allocated to host country proponents with each of the other ASEAN member countries having an option to own a minimum of 10 per cent of equity. A substantial margin of preferences have been extended to products of the first five AIPs for the first five years from the date of commercial operation. The Indonesian project was the first to be operational. Others will follow suit.

(2) *ASEAN Industrial Complementation (AIC)*

The Basic Agreement was concluded in 1981 when the first package of existing automotive components under the AIC scheme was

²⁷ See the Manila Declaration on the ASEAN Environment, in Asean Law Series, *op. cit.*, pp. 50-53.

formally implemented.²⁸ Bilateral negotiations on non-tariff preferences were initiated even before the Basic Agreement came into force. For the Second Package of new automotive components, the following distribution was adopted.

Indonesia	steering systems
Malaysia	headlights for motor vehicles
Philippines	heavy duty rear axles for commercial vehicles
Singapore	fuel injection pumps
Thailand	carburettors.

(3) *ASEAN Industrial Joint-Ventures (AIJVS)*

These are private sector equivalents enjoying exclusive privileges similar to AIC products. There was also the question of the extent of non-ASEAN equity participation and the nature of preferential trading arrangements to be thrashed out. Many of these ventures are now operational.

(4) *ASEAN cooperation on minerals*

Various proposals have been put into effect within the ASEAN Minerals Cooperation Plan including: (i) Beneficiation and marketing of kaolin; (ii) Beneficiation of low grade Barite; and (iii) the establishment of an ASEAN training centre for brine safety and health.

(5) *ASEAN cooperation on energy*

A coal information centre was created as part of ASEAN cooperation on energy.

(6) *ASEAN cooperation in power utilities/automatics*

Working groups have been established in each of the following projects: microhydro development; computer applications; interconnection; research, development and engineering; training; geothermal development; nuclear power for electric power generation; rural and urban electrification; standardization and the development of an electric power information centre.

5. *Cooperation in finance and banking*

Extensive cooperation exists within ASEAN countries on matters relating to finance and banking. The following projects now in operation should be mentioned:

²⁸ See the Basic Agreement on ASEAN Industrial Complementation, 18 June, 1981, Asean Law Series, *op. cit.*, pp. 195-200.

- a. ASEAN bankers acceptance. This resulted from the meeting of the Expert Group of ASEAN Central Banks and Monetary Authorities.
- b. Customs and insurance matters. An ASEAN Customs Code of Conduct was adopted, covering basic principles and standards on customs valuation, classification, techniques and related matters. ASEAN insurance Commissioners have proposed measures for cooperation in the field of reinsurance, marine cargo insurance and export credit insurance.
- c. ASEAN swap arrangement. This arrangement is designed to alleviate temporary shortage of international liquidity among member countries, providing each member country with a credit line of US\$80 million.
- d. Access to capital markets. Various projects have been implemented and new avenues of promise pursued, including access to capital markets in the EEC, the United States, Japan and West Asia.
- e. Avoidance of double taxation, continuing progress has been achieved as between member states of ASEAN.

6. *Cooperation in science and technology*

The activities of ASEAN cooperation in science and technology cover extensive grounds, many of which have been considered under food and agricultural development, transportation and communication development, ASEAN climatic atlas and compendium of climatic statistics and map of ASEAN as well as ASEAN project on the environment. Suffice it to mention that in addition there has been active cooperation within ASEAN in the following projects:

- a. ASEAN trust fund, to finance ASEAN plan of action on science and technology;
- b. Management and utilization of food-waste materials;
- c. Food technology research and development project;
- d. Non-conventional energy research;
- e. Action plan on the East Asian seas;
- f. ASEAN cooperative programme on marine sciences;
- g. ASEAN cooperation in the field of corrosion;
- h. ASEAN cooperation in materials processing; and
- i. Science and technology infrastructure development.

7. ASEAN cooperation in political and security matters

Without the collective political will, ASEAN solidarity could not endure the harsh realities of regional economic cooperation. Without political consciousness and national resilience, ASEAN could not weather and survive the storm of dissensions left by departing external powers. Cooperation in the political field is absolutely vital to the very existence of ASEAN as a regional association. External and intra-regional security is the lifeline of the organisation. Cooperation in the six areas outlined above inevitably and irreversibly led to ASEAN cooperation in political and security matters. The transition from economics to politics was only a matter of time. With ASEAN, as it has been with the EEC, the process has taken no more than a decade or a cycle of twelve years to reach the transformation ASEAN now enjoys, notwithstanding the absence of a permanent ASEAN forces to ensure the collective defence and maintain the peace and security of the region. Military cooperation exists on a bilateral rather than regional basis. Joint border patrols are periodically in operation between Thailand and Malaysia as between Malaysia and Indonesia. Thai-Indonesian combined forces have been engaged in military and naval exercises as well as in active combat operation, as on one occasion, in the rescue operation of a hijacked Garuda Indonesian aircraft in Bangkok in the early eighties. A number of areas of political cooperation deserve mention.

(1) *Regional tolerance*

To tolerate and accept the existing differences within ASEAN was the first step towards closer understanding and deeper appreciation of one another within the ASEAN community. To a large extent the ASEAN studies and cultural exchange programme have done much to foster ASEAN consciousness, resilience and solidarity.

(2) *Principles of non-use of force and good neighbourliness*

The practice by ASEAN of non-use of force and good neighbourliness towards one another within the region, time honoured principles traceable to the Bandung Conference and the commitment to the Charter of the United Nations, has contributed to the burying of hatchet and the shelving of bilateral and sub-regional differences. The ASEAN spirit of give-and-take must replace national pride, as equality of partnership has displaced domination and hegemony in the region. It was in this broader perspective and for long term peace and security of the region that the nations of ASEAN have been able to put aside whatever differences that might have existed or continued to subsist among themselves.

(3) *Creation of ASEAN mechanism for conflict resolution*

As a corollary to the principles of non-use of force and non-interference in internal affairs, a machinery has been set up to facilitate the settlement of disputes that require attention. The Treaty of Amity and Cooperation in Southeast Asia²⁹ concluded on 24 February 1976, following the Bali Summit, contains provisions requiring ASEAN member states to refrain from the threat or use of force and at all times to settle disputes among themselves through friendly negotiations, failing which regional processes are available for settlement by the High Council comprising a representative at ministerial level from each of ASEAN member states. The High Council is designed "to take cognizance of the existence of disputes or situations likely to disturb regional peace and harmony". Appropriate means of settlement by the Council include good offices, mediation, inquiry and conciliation. A committee may be set up for this purpose and the High Council may also recommend appropriate measures for the prevention of deterioration of the dispute or situation. It should be noted that by the Protocol Amending the Treaty of Amity and Cooperation in South-East Asia, adopted on 15 December 1987 following the Manila Summit,³⁰ Article 14 of the Treaty may also apply to any of the States outside Southeast Asia which have acceded to the Treaty only in cases where that state is directly involved in the dispute to be settled through the regional processes".

(4) *Adoption of intra-ASEAN standard for the promotion and protection of regional investments*

Within the Group of 77, each of the ASEAN nations has followed the majority view, approaching consensus of opinion, with regard to the measure of compensation in the event of expropriation of foreign investment in general. A standard not dissimilar from that proposed by Secretary Hull in the Mexican treatment of American investments appears to have been adopted for ASEAN investments within ASEAN. Thus, Article VI (1) of the ASEAN Agreement for the Promotion and Protection of Investments of December 15, 1987,³¹ provides:

Investments of nationals and companies of any Contracting Party shall not be subject to expropriation or nationalization or any measure equivalent thereto, except for public use, or public pur-

²⁹ See in particular Articles 13, 14 and 15 of the Treaty, in Asean Law Series, *op. cit.*, pp. 67-74.

³⁰ See Article 1 of the Protocol of December 1987, in *International Legal Materials* (1988) Vol. XXVII, No. 3, 597-624, at p. 609.

³¹ *Ibid.*, at p. 613. See also M. Sornarajah, "The New International Economic Order, Investment Treaties and Foreign Investment Laws in ASEAN" (1985) 27 *Mal. L.R.* 450-458.

pose, or in the public interest and under due process of law, on a non-discriminatory basis and upon payment of adequate compensation. Such compensation shall amount to the market value of the investment affected, immediately before the measure of dispossession became public knowledge and it shall be freely transferable in freely-usable currencies from the host country. The compensation shall be settled and paid without undue delay....”

The treatment thus accorded to intra-ASEAN investments appears therefore to be more attractive than normally agreed upon by individual ASEAN country with a non-ASEAN partner. This is more political than the economic standard ordinarily adhered to by developing countries. It is an exception to the most favoured nation clause.

(5) *Internal structural and administrative changes*

Coinciding more or less with the shift of the local ASEAN secretariats to a permanent and centralised secretariat in Jakarta³² parallel transformation has taken place in national secretariats within ASEAN member states. Structurally, ASEAN affairs initially came under the economic department within the foreign ministries of member countries while in some states the political department might have a small role to play. Today, each national ASEAN department is independent of the traditional department of economic affairs and has a separate Director General. Furthermore, the deputy head of mission accredited to an ASEAN country has been upgraded to the rank of Minister. The initial rounds of the Annual Ministerial Meeting were attended by Ministers of Foreign Affairs assisted by their national ASEAN Secretary-General. Subsequently, senior officials in political affairs also accompanied the Foreign Ministers with the result that the annual joint communique now consist of two combined components; one on economic cooperation and development and the other on matters of common political concern relating to international situation or foreign affairs of the region,³³ such as Kampuchea, the Arab-Israeli conflict, Lebanon and East Timor. Special meetings of ASEAN foreign ministers have also been held to consider political matters and to formulate ASEAN positions on the issues.

³² See the Agreement on the Establishment of the ASEAN Secretariat, 24 February, 1975, and the Agreement between the Government of the Republic of Indonesia and the ASEAN Relating to the Privileges and Immunities of ASEAN, 20 January 20, 1979, in Asean Law Series, *op. cit.*, pp. 113-123, and 130-137.

³³ The Joint Press Release, the First ASEAN Ministerial Meeting, the Second, Third, Fourth, Fifth, Sixth and Seventh Joint Communique, and compare the Eighth and subsequent communiqués, ASEAN Documents, Ministry of Foreign Affairs, Bangkok, Thailand.

(6) *Restatement of common ASEAN posture*

Reiterating ASEAN commitment to the principle of the Bangkok Declaration of 1967 that "the countries of Southeast Asia share a primary responsibility for strengthening the economic and social stability of the region and ensuring their peaceful and progressive national development, and that they are determined to ensure their stability and security from external interference in any form or manifestation in order to preserve their national identity in accordance with the ideals and aspirations of their peoples", the ASEAN foreign affairs ministers at their special meeting in Kuala Lumpur on 27 November 1971 adopted the Zone of Peace, Freedom, and Neutrality (ZOPFAN) Declaration, known as Kuala Lumpur ZOPFAN Declaration, agreeing that "the neutralization of Southeast Asia is a desirable objective and that ASEAN ministers should explore ways and means of bringing about its realisation."³⁴ This declaration was warmly welcomed by China and subsequently by Japan, while developed countries in the West have shown no enthusiasm in their response in spite of the Nixon doctrine of Vietnamization of the Vietnam War. In a subsequent declaration of the ASEAN Concord adopted by the Heads of Government of ASEAN at their Bali Summit on February 24, 1976, the ASEAN Heads of Government, *inter alia*, agreed to meet as and when necessary, sign the Treaty of Amity and Cooperation in South-East Asia, settle intra-regional disputes by peaceful means, take steps towards recognition of and respect for ZOPFAN, improve ASEAN machinery to strengthen political cooperation, including judicial cooperation, extradition treaties and strengthening of political solidarity by promoting harmonization of views, coordinating position and, wherever possible and desirable, take common action. They also agreed to continue ASEAN cooperation between member states in security matters in accordance with their mutual needs and interests on a non-ASEAN basis.³⁵

B. *Cooperation with Non-ASEAN Entities*

ASEAN was never conceived nor was ASEAN ever designed to function in isolation as an inward looking association or exclusive club of Southeast Asian nations. On the contrary, ASEAN is an open community to which outsiders from the non-ASEAN world are welcome without exception. Neighbouring Southeast Asian states have attended ASEAN meetings as observers and gradually may consider it opportune to participate as full members as did, indeed, one richest sultanate, Brunei Darussalam, which became the sixth member of ASEAN on 7

³⁴ See Zone of Peace, Freedom and Neutrality Declaration, in Asean Law Series, Declaration No. 2, *op. cit.*, pp. 18-21.

³⁵ See Declaration of ASEAN Concord, Declaration No.4, in Asean Law Series, *op. dr.*, pp. 24-29.

January, 1984.³⁶ The accession process has been as smooth as it was informal.

Informality is, indeed, a noteworthy characteristic of ASEAN from the inception of ASEAN itself. One question needs to be addressed relating to the legitimacy and constitutionality of the international personality of ASEAN, without which, in the eyes of international law governing international organisations, ASEAN may not have come into being.

1. *International legal personality of ASEAN*

Specialists in the law of international organisations may disagree with regard to the vital necessity for an international organisation to be born and blessed with an international legal personality. There is, nevertheless, a common ground that legal capacity to conclude treaty or international agreement is strong evidence if not an attribute of international legal personality. An international organisation by definition must be inter-governmental, and that is all that it needs to be. There is no additional requirement that it has to have a sizeable membership or population. So long as there is a constituent instrument creating it with clear and unequivocal intention on the part of the states agreeing to its establishment. Such is the clear intention discernible from the Charter of the United Nations for the establishment of the United Nations Organization, the Charter being its constituent instrument as well as a Treaty among its signatories. So also was the Bangkok (ASEAN) Declaration of 1967 regardless of its form or the lack of formality. Notwithstanding non-registration with the United Nations Secretariat, the Bangkok Declaration is without a shadow of doubt a constituent instrument by which ASEAN was brought into being.

2. *Cooperation with other international organisations*

ASEAN member states clearly recognise ASEAN as a regional organisation from the very start as they have solemnly, although informally, established the association without initially designating a permanent secretariat. Within the legal system of each of the ASEAN founding members, the association has received tacit if not express recognition by the establishment of official relations with each member country, in the preparation of studies, documents, etc., for the various ASEAN meetings at different levels in compliance with obligations under the ASEAN constituent instrument. What was urgently needed was the facility to conduct relations with the outside world, *i.e.*, non-ASEAN world consisting of the many pre-existing regional bodies, commissions and organisations in the eyes of international law. Contact with these organisations will imply their recognition.

³⁶ See the Declaration on the Admission of Brunei Darussalam into the Association of ASEAN Nations, Declaration No. 13, in Asean Law Series, *ibid.*, pp. 64-67.

The first such contact came in 1968 from the then United Nations Economic Commission for Asia and the Far East (ECAFE now ESCAP) relating to an offer of assistance from an EEC member, Belgium, for an ASEAN study.³⁷ Negotiation and conclusion of an agreement with the United Nations were the first acts of mutual recognition and relations with the outside world. ASEAN was represented by the Chairman of its Standing Committee in Jakarta, the then foreign minister Adam Malik. From then on, there has been a breakthrough with countless contacts and fruitful relations with the outside world. Within the United Nations, ASEAN has established ASEAN committees of accredited representatives in New York as well as in Geneva.

Relations with the United Nations through its regional commissions have been thorough and extensive, covering all activities of the specialized agencies of the United Nations, notably FAO, WHO, WMO as well as other subsidiary organs of the United Nations such as UNDP and UNHCR. Even non-governmental organizations such as ICRC (International Committee of the Red Cross) have maintained contacts and active relations with ASEAN.

3. Cooperation with EEC

Special attention is directed towards the ASEAN-EEC relations. Since the establishment of ASEAN Brussels (EEC) Committee (ABC) in 1972, relations between ASEAN and its member states with EEC and its member states have grown by leaps and bounds, culminating in the Cooperation Agreement between the countries of ASEAN and the EEC on 7 March 1980,³⁸ following successive ASEAN-EEC Ministerial meetings in Brussels (1975),³⁹ and in Kuala Lumpur (1980).⁴⁰ The ASEAN-EEC Cooperation Agreement set out the basic principles of most favored nation treatment and cooperation in trade and development as well as economic cooperation and a joint cooperation committee was set up. It should be noted that the EEC now maintains an office in Bangkok, an ASEAN capital, for its relations with countries in Asia, except Japan.⁴¹ A second office has been established in Jakarta and a third one under preparation in Manila.

³⁷ See Joint Communique, Second ASEAN Ministerial Meeting, Jakarta, August 67, 1968, para. 6, welcoming the offer of services made by ECAFE to carry out an economic survey, ASEAN documents, Bangkok, pp. 120-121.

³⁸ See ASEAN-EEC Cooperation Agreement, 7 March, 1980, Agreement No. 14, in ASEAN Law Series, *op. cit.*, pp. 176-182.

³⁹ See ASEAN Documents, Bangkok, pp. 235-240.

⁴⁰ *Ibid.*, pp. 240-245; see also the Meetings in London, 1981, pp. 145-247, and in Bangkok, 1983, pp. 247-252.

⁴¹ It should be noted that EEC maintains only three permanent missions of ambassadorial rank, *viz.*, Washington, Tokyo and Bangkok.

4. Cooperation with countries in Southeast Asia

ASEAN continues to play an active role in its cooperation with neighbouring states in Southeast Asia including Laos, Kampuchea and Burma. Relations with Vietnam have undergone some fluctuations but appear to have improved since the withdrawal of Vietnamese forces from Kampuchea. It should be recalled that one of ASEAN founding members, Thailand, is inextricably linked with Burma, and the former French Indochinese states, Laos, Vietnam and Kampuchea, the last three through the United Nations Committee on the Coordination and Investigations of Lower Mekong Basin. With the Southeast Asian states adjacent to Thailand and through Thailand, ASEAN as a whole maintains the closest cooperation.

(1) ASEAN-JAPAN

In spite of Japan's invasion and occupation of large portions of ASEAN territories during the second world war, and the ensuing bloodbath in the Philippines, Indonesia, Singapore and Malaysia, ASEAN countries stand ready to cooperate with Japan on the understanding that the latter adheres to a code of conduct prescribed by ASEAN, especially "Equality of Partnership" and not "domination or hegemony" or anything reminiscent of the unforgettable "Co-Prosperty Sphere"⁴² under whose name Japan indiscriminately invaded all her Asian neighbours. ASEAN-Japan dialogue started in 1977 with a summit meeting.

As a consolation, a half-hearted measure has been adopted by Japan which allows the setting up since 1980, of the ASEAN Promotion Centre on Trade, Investment and Tourism in Tokyo.⁴³ Several obstacles remain to be overcome before the market for Japan may be opened for ASEAN export. Unlike the unique Centre for the Promotion of Imports from South-East Asia in Rotterdam, which has been beneficial to ASEAN, Japan maintains an active and aggressive export policies through its Export Trade Agency (JETRO).

Trade problems with Japan continue to exist. Japan needs to be constantly reminded not only of her past misdeeds suffered by each ASEAN state, but more significantly of her dependence on ASEAN for the supply of basic raw materials, and of ASEAN's strategic position. Japan cannot afford any posture that appears hostile to ASEAN and must suppress anti-ASEAN sentiments at any cost and at all times. To provoke ASEAN unfriendly reactions may spell the collapse of Japan's economy. Japan would cease to be an economic power within

⁴² Japan needs the occasional reminder. Prime Minister **Kaifu** recently proposed the **Kaifu** Doctrine declaring the intention to propose a Free Trade Area between Japan and East Asia, including ASEAN, knowing full well that Japan remains closed to ASEAN agricultural products but wishes to exploit still further the open ASEAN market.

⁴³ See the Agreement Establishing the ASEAN Promotion Centre on Trade, Investment and Tourism in Tokyo, Agreement No. 14, in Asean Law Series, *op. cit.*, pp. 184-194.

a short time, if no crude oil could flow through the Malacca Straits or Lombok or Sunda. Perhaps a pipeline could be laid across the Kra Isthmus in Southern Thailand. But again Thailand is part and parcel of ASEAN which Japan should refrain from antagonizing.

(2) *ASEAN-Canada*

ASEAN-Canada dialogue may have started somewhat later than ASEAN dialogues with Japan, Australia and New Zealand. Since the Summit of 1977, however, Canada has been much faster on the uptake. Thus, the agreement between the governments of the member countries of ASEAN and the government of Canada on economic cooperation was signed on 25 September, 1981,⁴⁴ setting out broad principles and guidelines for cooperation in all fields including industrial, commercial, development, and the establishment of institutional arrangements. A Joint Cooperation Committee was set up to review the various cooperation activities envisaged in this Agreement which has in fact proved mutually beneficial for all parties.

(3) *ASEAN-Australia*

ASEAN-Australia dialogue started in 1974 even before the ASEAN-Japan Summit. Cooperation with Australia has been fruitful and several ASEAN projects were implemented. Six fora existed by 1981 for ASEAN-Australia Economic Cooperation Projects (AAECP), many of which have now come to fruition. For continuing cooperation, a glance at ASEAN pending projects will give readers an accurate notion of how intense and wide-ranging ASEAN-Australian cooperation has evolved including contracts to explore and exploit mineral resources in East Timor.⁴⁵

(4) *ASEAN-New Zealand*

ASEAN-New Zealand cooperation began in 1975 followed by the Summit Dialogue in 1977. Not dissimilar to that of Australia, New Zealand has maintained the position of a friendly and beneficial partner of ASEAN in trade as well as in development promotion.

(5) *ASEAN-USA*

The cooperation between the United States and ASEAN started on political issues. United States supported ASEAN's position and draft resolutions on Kampuchea since 1979. The dialogue between the United States and ASEAN has continued on a regular basis since

⁴⁴ See Agreement No. 17, in Asean Law Series, *op. cit.*, pp. 201-210.

⁴⁵ See generally Annual Reports of the ASEAN Standing Committee, 1989-1990.

1981. In 1982, six ASEAN projects were approved in agriculture, public health, and academic training. Now the United States ranks as one of ASEAN's closest trading partners, with whom ASEAN countries maintain annual ministerial dialogue in the same manner as Japan, Canada, Australia and New Zealand.⁴⁶

(6) *ASEAN-USSR*

The next candidate on the list of future ASEAN partners in trade and economic cooperation could be the Soviet Union. The atmosphere of *glasnost* and *perestroika* now prevails in the Soviet Union and the withdrawal of the Soviet Union's support of Vietnamese occupation of Kampuchea create the right timing for the establishment of meaningful relations with the Soviet Union. In fact, there might be more peace and harmony in the region with more active participation by the USSR.

(7) *Cooperation with other Asian Nations*

China, Hong Kong, Taiwan, Korea and India may be next in line for closer bilateral relations with the ASEAN member governments. A more complete and balanced series of cooperation will then take shape for ASEAN.

IV. CONCLUDING OBSERVATIONS

The foregoing survey of ASEAN activities in various fields of cooperation within and outside the region may not lend itself to a readily discernible conclusion. Whatever the criticism outsiders may have against ASEAN, whether it relates to slowness, lack of aggressiveness, insufficiency in the degree of integration, or even absence of outward signs of more democratic institutions from a Westerner's perspective, ASEAN must be gratified by its glaring achievements.

In the first place, since the ASEAN was launched, the association has managed to retain the fullest measure of its sovereignty, political independence and territorial integrity of each and every member state. It has not lost a single one of its members. Rather it has gained a new member. This reflects the nature of ASEAN's continuing growth. ASEAN credibility remains intact.

Secondly, ASEAN has succeeded in putting aside whatever internal differences or conflicts it has encountered among its members, thereby reducing tension within the region and strengthening regional stability and solidarity.

⁴⁶ For an interesting analysis of US-ASEAN relations, see Hans H. Indorf, "Thailand as Indirect Beneficiary of US-ASEAN Relations in Thai-American Relations" (1982) *Contemporary Affairs*.

Thirdly, notwithstanding its imperfections, ASEAN has received universal recognition and is known throughout in every international and regional forum where friendly relations and fruitful cooperation have been assured. ASEAN's strength is appreciated in political organisations such as the United Nations and its specialised agencies such as GATT, or other bodies such as UNCTAD and the Group of 77, as well as in its relations with the EEC with which it has established firm and sound relationship.

Fourthly, ASEAN's resilience has been recognized and will continue to play a stabilizing role in the political development of Southeast Asia particularly in regard to Kampuchea and Vietnam as well as in other areas of conflict such as the Arab-Israel conflict and the conflict in Lebanon.

Finally, whatever its shortcomings the Association has steered its way through several storms of world-wide economic recession, and each time ASEAN has come out stronger with renewed vigour. Admittedly, the expansion of trade, investment and tourism in each ASEAN country has been and continues to be phenomenal even at the height of global recession or stagflation. Due to its inherent outward-looking character, ASEAN not only promotes cooperation within the region of Southeast Asia but has demonstrated its unlimited capacity and desire to cooperate meaningfully with the rest of the world.

As ASEAN is steadily progressing as an association for regional economic cooperation and as a viable regional organisation to expand its trade, investment and tourism, it is looking beyond its national and regional confines. It is a natural partner of the various agencies of the world organizations such as the Regional Commission of the United Nations and UNDP, as well as the EEC for fruitful collective negotiations and cooperation.

Other natural trading partners of ASEAN are inevitably Japan, Australia, New Zealand, Canada and the United States. This by no means detracts from the growing trade expansion ASEAN countries enjoy with other trading partners, namely, the other three Asian tigers, South Korea, Taiwan and Hong Kong, all of which have heavily invested in development projects in ASEAN countries. The relations with China and the Soviet Union continue unabated both on the economic and political fronts.

The future of the former Indochinese states, regardless of their economic or political structures, is tied up with Thailand in the Lower Mekong Basin, which in principle covers Burma and Southern China. The leaders of the the largest socialist countries, China and the Soviet Union, have paid special attention to bilateral cooperation with ASEAN during their frequent visits to ASEAN countries.

Should the more advanced states on the eastern shores of the Pacific Rim and of the Atlantic community allow this golden opportunity to pass by without entering into closer relations of equal partnership and mutually beneficial cooperation with ASEAN, such as that maintained

by countries on mainland Asia, it would take time and patience to develop the capacity to accept and maintain the ongoing relations of friendly cooperation offered by ASEAN countries.

The challenge is thus clearly stated.

The choice is ours.

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