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978-1-107-49526-5 - Towards a Rules-Based Community: An Asean Legal Service

Jean-Claude Piris and Walter Woon

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Chapter 1

ASEAN as an organisation

1.1 Chronology of the development of ASEAN

- 1967 Signing of the ASEAN Declaration in Bangkok on 8 August by the Foreign Ministers of Indonesia, Malaysia, the Philippines, Singapore and Thailand, marking the foundation of the association. This counts as the first ASEAN Ministerial Meeting (AMM). The AMM meets annually thereafter. Creation of the ASEAN Standing Committee (ASC) to prepare meetings of the AMM.
- 1971 ASEAN Senior Officials' Meeting (ASEAN SOM) established to discuss sensitive issues before submission to the ASEAN Ministerial Meeting (AMM). The SOM leader is the permanent secretary or equivalent.
- 1973 Foreign Ministers decide to establish an ASEAN Secretariat.
- 1975 End of the Vietnam War with the fall of South Vietnam. ASEAN Economic Ministers meet for the first time in Bali (the next meeting in Kuala Lumpur the following year adopted the name ASEAN Economic Ministers' Meeting). ASEAN Labour Ministers (ALMM) meet in Jakarta and thereafter biannually.
- 1976 First ASEAN Summit held in Bali. Issue of the Declaration of ASEAN Concord (Bali Concord).

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- Signing of the Treaty of Amity and Cooperation in Southeast Asia (TAC). Establishment of the ASEAN Secretariat in Jakarta.
- 1977 Second ASEAN Summit held in Kuala Lumpur. ASEAN Economic Ministers' Meeting (AEM) formalised. Establishment of the Senior Economic Officials' Meeting (SEOM). The AEM meets annually thereafter. ASEAN Education Ministers (ASEM) meet for the first time in Manila; meetings are held irregularly thereafter.
- 1978 Invasion of Cambodia by Vietnamese forces. Special meeting of ASEAN Foreign Ministers held in January 1979 to deplore the invasion. ASEAN diplomats thereafter work together to deny diplomatic recognition to the new regime in Cambodia.
- 1980 Establishment of the ASEAN Ministers of Health Meeting (AHMM), ASEAN Ministerial Meeting on Science and Technology (AMMST) and ASEAN Ministers on Energy Meeting (AMEM).
- 1981 ASEAN Ministerial Meeting on the Environment (AMME) held in Manila for the first time.
- 1986 ASEAN Law Ministers' Meeting (ALAWMM) established, to be held every thirty-six months thereafter with Senior Law Officials' Meetings (ASLOMs) in between.
- 1987 Brunei joins ASEAN. Third ASEAN Summit held in Manila.
- 1989 Conference of Ministers Responsible for Information (AMRI) inaugurated.
- 1991 Withdrawal of Vietnamese forces from Cambodia and election of a new government.

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1.1 CHRONOLOGY OF THE DEVELOPMENT OF ASEAN

- 1992 Secretary-General of the ASEAN Secretariat redesignated as Secretary-General of ASEAN and given an enhanced role carrying with it ministerial status. ASEAN Secretariat ostensibly professionalised by open recruitment of staff rather than nomination by member states.
- 1992 Fourth ASEAN Summit held in Singapore. Signing of the Agreement on Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area (AFTA) and the Framework Agreement on Enhancing ASEAN Economic Cooperation.
- 1995 Vietnam joins ASEAN. Fifth ASEAN Summit held in Bangkok. Signing of the Treaty on the Southeast Asia Nuclear-Weapon-Free Zone (SEANWFZ). ASEAN Transport Ministers' Meeting (ATM) held for the first time and annually thereafter.
- 1996 First informal ASEAN Summit held in Jakarta, marking the de facto inauguration of annual meetings of the heads of state/government.
- 1997 Laos and Myanmar join ASEAN. Cambodia's application to join is postponed because of a coup in the country. Second Informal ASEAN Summit held in Kuala Lumpur, marking the thirtieth anniversary of the founding of ASEAN. ASEAN Vision 2020 adopted. ASEAN Finance Ministers' Meeting (AFMM) and ASEAN Ministerial Meeting on Transnational Crime (AMMTC) established. Asian financial crisis impacts ASEAN member states severely.
- 1998 Sixth ASEAN Summit held in Hanoi, the first to be hosted by one of the new member states. Hanoi Action

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ASEAN AS AN ORGANISATION

- Plan launched to realise the Vision 2020. Conclusion of the Framework Agreement on the ASEAN Investment Area (AIA). Establishment of the ASEAN Tourism Ministers' Meeting (M-ATM). First meeting of the ASEAN Ministers on Rural Development and Poverty Eradication (AMRDPE).
- 1999 Cambodia joins ASEAN. This rounds off the current membership of the organisation. Inauguration of the ASEAN Foreign Ministers Retreat, allowing the Foreign Ministers to discuss issues informally.
- 2001 From this year ASEAN Summits are held annually. ASEAN Telecommunications and IT Ministers' Meeting (TELMIN) established.
- 2002 Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China. This is the first of several such agreements with external partners. Subsequently, agreements have been entered into with Japan, India, South Korea, Australia and New Zealand.
- 2003 Ninth ASEAN Summit held in Bali. Adoption of the Declaration of ASEAN Concord II (Bali Concord II). Leaders declare their intention to establish an ASEAN Community consisting of three pillars: political and security cooperation, economic cooperation and socio-cultural cooperation. Meeting of ASEAN Ministers Responsible for Culture and the Arts (AMCA) established.
- 2004 Tenth ASEAN Summit held in Vientiane; Protocol on Enhanced Dispute Settlement Mechanism adopted by the Economic Ministers. Vientiane Action Programme (designed to deepen economic integration and narrow

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[More information](#)

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- the development gap) replaces the Hanoi Plan of Action. ASEAN Socio-Cultural Community Plan of Action and the ASEAN Security Community Plan of Action adopted, with a commitment to work towards the development of an ASEAN Charter. Legal unit in the ASEAN Secretariat set up. ASEAN Consultation to Solve Trade and Investment Issues (ACT) and the ASEAN Compliance Body (ACB) established.
- 2005 Eleventh ASEAN Summit held in Kuala Lumpur. ASEAN heads of state/government issue the Declaration on the Establishment of the ASEAN Charter. Eminent Persons' Group (EPG) formed. ASEAN Ministerial Meeting on Minerals (AMMin) established.
- 2006 ASEAN Defence Ministers' Meeting (ADMM) established.
- 2007 Twelfth ASEAN Summit held in Cebu in January 2007. Cebu Declaration on the Blueprint for the ASEAN Charter issued endorsing the Report of the Eminent Persons' Group and setting up a High Level Task Force (HLTF) for Drafting of the ASEAN Charter. HLTF completes work on the Charter. Completed Charter presented to the Heads of State/ Government at the Twelfth ASEAN Summit in Singapore on 20 November 2007. ASEAN Economic Community Blueprint adopted.
- 2008 Creation of the ASEAN Political-Security Community Council (APSC), the ASEAN Economic Community Council (AECC) and the Socio-Cultural Community Council (ASCC). ASEAN Coordinating Council

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Excerpt

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(ACC) and Committee of Permanent Representatives (CPR) established. ASEAN Charter comes into force on 15 December 2008.

- 2009 Declaration on the Roadmap for the ASEAN Community (2009–15) adopted at the Fourteenth ASEAN Summit in Cha-Am, Thailand. Initiative for ASEAN Integration Workplan 2 replaces the Vientiane Action Programme. ASEAN Intergovernmental Commission on Human Rights (AICHR) established in October 2009 at the Fifteenth ASEAN Summit in Cha-Am, Thailand.
- 2010 Protocol to the ASEAN Charter on Dispute Settlement Mechanisms (the DSM Protocol) signed by the Foreign Ministers at the Sixteenth ASEAN Summit in Hanoi.
- 2011 Declaration on ‘ASEAN Community in a Global Community of Nations’ (Bali Concord III) issued at the Nineteenth ASEAN Summit in Bali.
- 2012 ASEAN Human Rights Declaration (AHRD) adopted by the ASEAN leaders at the Twenty-first ASEAN Summit in Phnom Penh, Cambodia.

1.2 ASEAN from its founding until the adoption of the ASEAN Charter

1.2.1 A short history of ASEAN

The Association of Southeast Asian Nations was founded on 8 August 1967 by means of the Bangkok Declaration (officially, the ASEAN Declaration), a modest document that did

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Excerpt

[More information](#)

1.2 ASEAN FROM ITS FOUNDING

not even purport to be a treaty.¹ The Bangkok Declaration did not create an organisation. What it sought to do was to set up a mechanism to foster mutual trust among the original five founder states.

At the time of ASEAN's founding Southeast Asia was in an unsettled state. Malaysia was formed in 1963, comprising the Federation of Malaya and the former British colonies in Southeast Asia, namely Singapore, British North Borneo (Sabah) and Sarawak.² Indonesia had opposed this, seeing it as a neocolonialist plot and an impediment to unification of the Malay archipelago.³ The idea of an Indonesia Raya (Greater Indonesia) had germinated during the Japanese occupation of 1942–5. Indeed, Indonesia's success in incorporating Dutch

¹ The Bangkok Declaration was signed in Bangkok by the Foreign Ministers of Indonesia (Mr Adam Malik), Malaysia (Tun Abdul Razak, who was Deputy Prime Minister rather than Foreign Minister), the Philippines (Mr Narciso Ramos), Singapore (Mr S. Rajaratnam) and Thailand (Mr Thanat Khoman). The Heads of State/Government were not involved.

² Brunei declined to join Malaysia and remained under British protection until 1984, becoming a member of ASEAN that same year. See Declaration of the Admission of Brunei Darussalam into ASEAN, signed in Jakarta on 7 January 1984.

³ The history of the Malay independence movement and its Pan-Indonesian ambitions is recounted in Cheah Boon Kheng, *Red Star Over Malaya*, 3rd edn (Singapore University Press, Singapore, 2003), chap. 4. The suspicions of the independence generation of Indonesians regarding the British are understandable, given the part that British and Indian troops played in restoring Dutch rule in the East Indies after the Japanese surrender in September 1945.

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[More information](#)

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New Guinea in 1963⁴ may have given fresh life to the ambition to realise an Indonesia Raya. The Philippines too opposed the formation of Malaysia because of its claim to Sabah.⁵ Indonesian hostility to Malaysia led to an undeclared war (euphemistically termed *Konfrontasi*, from the Dutch word for ‘confrontation’). Though fighting took place primarily along the jungle border between East Malaysia and Indonesian Kalimantan, there were repeated attempts to infiltrate Peninsular Malaysia (including a paratroops drop in the southern state of Johore) and one notorious incident where Indonesian marines detonated a bomb at MacDonald House in Singapore, killing three civilians. *Konfrontasi* came to an end with the fall of President Soekarno in October 1965 after an abortive Communist coup.

However, all was not well even within Malaysia. Tensions between the state government of Singapore and the federal government in Kuala Lumpur came to a head in 1965 over the incendiary issue of whether the new Malaysian federation would be multiracial (a line espoused by the People’s Action Party in Singapore) or communal (which was the leitmotiv of Malayan politics ever since the demise of the short-lived Malayan Union in 1948). These tensions led to the ejection of Singapore from the Malaysian federation in

⁴ After the success of the Indonesian revolution, the only portion of the Dutch East Indies to remain under the suzerainty of the Netherlands was Western New Guinea. This was placed under United Nations administration in 1962 and transferred to Indonesia in 1963. See Britannica Online (www.britannica.com) under ‘Papua: History’.

⁵ See Rodolfo Severino, *Southeast Asia in Search of an ASEAN Community* (ISEAS Publishing, Singapore, 2006), pp. 2, 164–6.

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August 1965.⁶ On the northern border of Peninsular Malaysia, the remnants of the Communist Malayan People's Liberation Army lurked in the jungles of Thailand, continuing to pose a sporadic danger even after the end of the Malayan Emergency.⁷ Relations between Singapore and Indonesia were fraught after the conviction for murder in 1966 of the Indonesian marines who had perpetrated the MacDonald House bombing.⁸ Continued tensions between Malaysia and the Philippines over Sabah had led to the postponement of the Fourth ASEAN Ministerial Meeting, which was supposed to have been held in 1970 in Manila.⁹

Looming over all these disputes was the shadow of the Vietnam War. The unspoken motive for the formation of ASEAN was fear of Communist expansion. It was felt that cooperation among the five non-Communist states of South-east Asia was essential to meet the challenge. Four of the five founders were aligned to the Western bloc. As US allies, the Philippines and Thailand played host to American bases.

⁶ The story is told (albeit from only one side) in Lee Kuan Yew, *The Singapore Story: Memoirs of Lee Kuan Yew* (Times Editions, Singapore, 1998).

⁷ This was a Communist insurrection lasting from 1948 until 1960, when it was officially declared to be over. See Richard Clutterbuck, *The Long, Long War: The Emergency in Malaya 1948–1960* (Cassell, London, 1966).

⁸ The Indonesian marines were in civilian clothes. They were tried and convicted of murder, the Federal Court in Singapore holding that they had forfeited the right to be treated as prisoners of war: see *Osman v. Public Prosecutor* [1965–67] SLR (R) 402. The decision of the Federal Court was affirmed by the Privy Council [1968–70] SLR (R) 117.

⁹ The Fourth AMM finally took place in March 1971.

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Singapore was home to the major British naval base in the Far East, while the Training Depot for the British Brigade of Gurkhas was in Sungai Patani in West Malaysia. Indonesia was non-aligned and determined to remain so. ASEAN was not conceived as a military or security organisation. Given the unhappy history of international relations amongst the five original member countries, the primary objective of ASEAN was the fostering of trust amongst the member states in order to meet the Communist threat and keep Southeast Asia free of big power rivalries.¹⁰

The foundation of ASEAN did not lead to an immediate outburst of fraternal feeling. In an assertion of newly independent Singapore's prickly sovereignty, the Indonesian marines who had perpetrated the MacDonald House bombing were hanged in October 1968, an act which provoked severe anti-Singapore riots in Indonesia.¹¹ Also in 1968, information surfaced about a Filipino plot to infiltrate saboteurs in Sabah.¹² Meanwhile, North Vietnam had launched the Tet offensive in 1968, which demonstrated to the world that the war would not be won by America. Racial riots racked Malaysia in May 1969, threatening to spill over into

¹⁰ See the Preamble to the 1967 ASEAN Declaration. The first four paragraphs emphasise the need for regional cooperation, solidarity and partnership while the final two paragraphs make plain the desire to exclude external meddling in the politics of the member states.

¹¹ Lee, *From Third World to First*, pp. 37–8.

¹² Severino, *Southeast Asia*, p. 164. See also <http://countrystudies.us/philippines/93.htm>. This website contains online versions of books previously published by the Federal Research Division of the Library of Congress.