Chapter 1

Introduction

1.1 Background and Context

Southeast Asia is characterized by remarkable diversity, dynamism and, at times, tragedy. The current ten members of the Association of Southeast Asia Nations (ASEAN) span a political spectrum that extends from thin and thick models of democracy, to authoritarian regimes (whether under military or monarchical rule) to states with one-party, communist systems. Culturally, this extraordinary region encompasses a rich set of linguistic traditions, diverse customs and religious beliefs encompassing Islam, Buddhism, Hinduism and Christianity. Its modern history too is a study in turbulence. Other than Thailand, all of the member states of ASEAN were colonized by Western (mainly European) states. The post–Second World War project of acquiring independence and self-determination has deeply shaped the political and economic contours of the region.

Indeed, some of the independence movements and post-colonial states in Southeast Asia began to experiment with political (and economic) models influenced by Marxist principles through the 1950s and 1960s. Tragically, that would in turn trigger (overt or covert) hostile interference by Western states (particularly the United States). Post-colonial turbulence though is not only a story of disastrous Western interventions in this region. Internal conflicts too are an essential background script. Perhaps most significantly of all, there was the violent
INTRODUCTION

episode of Konfrontasi that stemmed from Indonesia’s opposition to the amalgamation of the Federation of Malaya, Singapore and the crown colony/British protectorates of North Borneo and Sarawak.1 Spanning 1963 to 1966, Konfrontasi was triggered by Indonesia’s increasingly aggressive post-colonial foreign policy in the period, leading to overt and covert military operations in the region with hundreds of casualties.2

Shortly after the end of Konfrontasi, the Bangkok Declaration3 established ASEAN in 1967 to prevent destructive behavior by embedding security cooperation among the five founding members (Indonesia, Malaysia, the Philippines, Thailand, and Singapore). The timing here is significant and telling. While ASEAN sought to develop regional security cooperation, its economic mandate was almost non-existent in this early period. In fact, when dealing with economic matters, the 1967 ASEAN Declaration focuses only on trade in goods and even then, on a sub-set of agricultural trade. This omission is by no means accidental. It reflects, at first instance, existing colonial-era patterns at that time of agricultural specialization among individual ASEAN members, largely in commodity trade.4

Of course, a number of ASEAN states were implementing (non-liberal) strategies throughout the 1950s–1970s

2 Id.
3 The ASEAN Declaration (Bangkok Declaration), Aug. 8, 1967, 6 I.L.M. 1233 (1967).
4 Rodolfo C. Severino, Southeast Asia in Search of an ASEAN Community: Insights from the Former ASEAN Secretary-General 213 (2006).
1.1 BACKGROUND AND CONTEXT

(usually of import substitution) that were designed to move their economies toward rapid industrialization. A curious collective instrument supplemented these strategies that sharply elucidates the limits of economic cooperation between the ASEAN members in this period. By the mid-1970s, the idea had begun to form that ASEAN should be employed as a system of managed industrialization through the centralized allocation of different industrial sectors and projects among the member states. At the first ASEAN Summit in 1976, the member states called for the establishment of large-scale industrial projects in ASEAN countries that would use available materials, increase food production, augment or save foreign exchange and create jobs. At a later meeting of economic ministers, a decision was made to allocate different industrial projects among the grouping – a urea fertilizer plant each for Indonesia and Malaysia, superphosphates for the Philippines, diesel engines for Singapore and soda ash for Thailand. The goal of state-managed industrialization reaches its early and short apotheosis in this period with ministers even agreeing to consult with one another on plans to establish other industries with a view to “avoiding unnecessary duplication and competition.”

Needless to say then, the origin of ASEAN as a “security community” is fundamentally different to other regional settings such as the European Union (EU). Famously, the EU’s evolution follows something of a reverse sequence, with

5 *Id.* at 214.  
6 *Id.*  
7 *Id.*  
8 Amitav Acharya, *Constructing a Security Community in South East Asia: ASEAN and the Problem of Regional Order*, at chp. 7 (3rd ed. 2014).
INTRODUCTION

a choice to begin with, facially at least, economic integration. The variances between these two regional schemes transcend start-points. The story of integration in the European Union is, to a very large degree, one of law and legal actors. The intergovernmental structure of ASEAN, by contrast, is characterized by more fluid arrangements, with stronger reliance on informality and consensus coupled with domestic implementing measures. There is a danger then of making false comparisons here. Researchers and policymakers must be mindful of the diversity of genuses, traditions and political economies of different regional organizations, which is itself a fundamental premise of this book.

On the economic front, ASEAN members would only shift their dominant paradigm from a closed to open strategy in the 1980s. By that time, of course, inward-orientated models (such as import substitution) had proved disappointing in their ability to deliver sustainable levels of economic growth and development outcomes. Some ASEAN states even signed their first bilateral investment treaties (BITs) from the late 1980s onwards, such as Brunei (with Germany


in 1998), Cambodia (with Malaysia in 1994), Laos (with France in 1989), Myanmar (with the Philippines in 1998) and Vietnam (with Italy in 1990). For the other ASEAN members, while there was sporadic use of BITs during the 1960s–1980s, there were exponential growth and clustering of BIT activity throughout the 1990s. More significantly, the late 1980s witnessed the first attempt by the ASEAN states to develop a dedicated ASEAN treaty on foreign investment in the form of the 1987 ASEAN Agreement on the Promotion and Protection of Investment. Strikingly, the ASEAN members would refine legal tools and develop deeper normative commitments in two further iterations culminating in the 2009 ASEAN Comprehensive Agreement on Investment.

In comparison to significant liberal and protective grants to foreign investment, the ASEAN states moved relatively cautiously on the trade front. It was only by the 1990s that the ASEAN members had established the ASEAN Free Trade Area (AFTA). At inception, the AFTA was a cautious free trade area. Originally, the members committed to only reduce tariffs on intra-ASEAN trade to 0–5 per cent on non-sensitive goods over a 15-year period. Moreover, the AFTA’s complicated administrative procedures required to meet rules

---


14 Id. art. 4.
INTRODUCTION

of origin led to low levels of utilization by businesses. Yet political commitment to economic integration would advance throughout the 1990s with governmental change in key ASEAN member states. By 2003, in the Bali Concord, the ASEAN members had committed to establishing a single market and production base by 2020, with a later detailed plan targeting trade liberalization in 11 sectors. With the adoption of the ASEAN Charter in 2008, the members articulated their vision of an Economic Community which would comprise:

[A] single market and production base which is stable, prosperous, highly competitive and economically integrated with effective facilitation for trade and investment in which there is free flow of goods, services and investment: facilitated movement of business persons, professionals, talents and labour; and freer flow of capital.

1.1 BACKGROUND AND CONTEXT

Indeed, across this time frame, trade and investment flows have been nothing short of spectacular. Between 1990 and 2014, the investment inflow to, and outflow from, this region has increased approximately 10 times and 34 times, respectively.\textsuperscript{20} By 2014, foreign direct investment (FDI) flows to ASEAN exceeded inflows to China, making it the largest recipient of FDI in the developing world.\textsuperscript{21} More recently, ASEAN has been a center of gravity in global economic developments. The disastrous trade war between the United States and China, as well as the subsequent outbreak of the COVID-19 pandemic, have pushed multinational enterprises (MNEs) to diversify their supply chains – especially from China – to some ASEAN nations, such as Vietnam. The United States–China trade war has even pushed Chinese investors to move labor-intensive manufacturing facilities from China to ASEAN nations.\textsuperscript{22} Strikingly, in the middle of the pandemic, FDI flows to Vietnam have remained relatively robust.\textsuperscript{23}

\textsuperscript{21} ASEAN Secretariat & UNCTAD, \textit{ASEAN Investment Report 2015}, at xv (Nov. 2015), https://perma.cc/W7YR-KJTB.
INTRODUCTION

Moreover, the newly-minted Regional Comprehensive Economic Partnership (RCEP) is hailed as a golden opportunity for ASEAN members to deepen trade and investment liberalization among themselves to maximize the RCEP’s true potential being the synthesis of extra-ASEAN and intra-ASEAN economic flows. Indeed, RCEP can be said to be a brainchild of the “ASEAN Centrality” or the “Global ASEAN” under the AEC Blueprint 2025. The potential benefits of RCEP are manifold.

---


26 “Create a deeply integrated and highly cohesive ASEAN economy”; “to increase ASEAN’s competitive edge in moving the region up the global value chains (GVCs) into higher technology and knowledge-intensive manufacturing and services industries.” ASEAN, ASEAN Economic Community Blueprint 2025, ¶ 6 (Nov. 2015) www.asean.org/wp-content/uploads/2012/05/8.-March-2016-ASCC-Blueprint-2025.pdf; “ASEAN is continuing to make steady progress towards integrating the region into the global economy through FTAs and comprehensive economic partnership agreements (CEPs) with China, Japan, Republic of Korea, India, Australia and New Zealand. Negotiations to conclude the Regional Comprehensive Economic Partnership (RCEP) and the ASEAN–Hong Kong FTA (AHKFTA) are also ongoing. These FTAs/CEPs have been strengthening ASEAN’s position as an open and inclusive economic region, and lay the foundation for ASEAN to retain its centrality in global and regional engagements, where possible. ASEAN Member States are also engaged in FTAs and CEPs with their strategic trade partners to complement the regional FTAs/CEPs.” ASEAN, ASEAN Economic Community Blueprint 2025, ¶ 79 (Nov. 2015).
of using foreign investment to position ASEAN as an integrated production base are extraordinary, including the possibility of higher employment, wages and overall development throughout the region. As about a quarter of total FDI flows into the ASEAN region originate from non-ASEAN RCEP member countries, ASEAN economies are expected to benefit greatly from the RCEP connectivity through a deep nexus between trade and investment. Consider the telling point that the top 100 multinational enterprises (MNEs) from non-ASEAN RCEP member countries retain commercial presence in the ASEAN region, holding an enormous investment potency of $13.6 trillion in assets and $1.1 trillion in cash as of 2019. As ASEAN economies have committed to unprecedented improvements in infrastructure (such as power, telecommunication and transportation) since the COVID-19 pandemic, foreign investors from RCEP states are critically positioned in infrastructure development, where the investment need is estimated to be between $110 billion and $184 billion annually from 2015 to 2030.

1.2 The COVID-19 Pandemic and ASEAN Investment

The ASEAN region has recently been one of the most popular FDI destinations across the globe. In 2019, ASEAN was the
largest recipient of FDI among developing economies, as the region witnessed the highest-ever FDI inflows in history ($182 billion). Despite a temporary decline due to the COVID-19 pandemic in 2020, the region’s share of global FDI actually rose from 11.9 percent to 13.7 percent that year. (Figure 1.1) At the same time, *intra*-ASEAN investment flows have also

---

\[30\] *Id.* at 3–4. \[31\] *Id.* at 24–5.