International Law: Regional Developments in South and Southeast Asia

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International Law, Regional Developments: South and South-East Asia

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A. South Asia

1. Historical Background: From Antiquity in the Indian Subcontinent to the Rise of Independent South Asian States

Small and large monarchies comprised ancient (antiquity to AD 711) and medieval (AD 711 to AD 1600) India. Different tiers of statehood, sovereignty, kinship, and hierarchies of suzerain-vassal relations characterized ancient and medieval India. From the least powerful Raja (king), the Maharaja (great king), Samrat (strong emperor), to the Chakravartin (emperor who ruled the entire known Indian subcontinent), ancient and medieval Indian States recognized interstate norms on statehood, diplomatic relations, treaties, religious tolerance, non-use of force, neutrality, and humanitarian law. Depending on the nature of the treaty and the security of its performance, analogous to the concept of ‘unequal treaties’ (→ Treaties, Unequal), Indian kingdoms recognized the binding character of treaties.

2. Ancient and medieval India espoused the Dharma Yuddha (just war) and Adharma Yuddha (unjust war), and the Dharmasastras (a code of laws governing the conduct of belligerents during war). The Maurya Empire (321–185 BC), founded by Chandragupta as an absolute monarchy following the withdrawal of Alexander the Great from India in 325 BC, spanned territory roughly equivalent to that of British India in the early 20th century. Following Mauryan Emperor Asoka's defeat of the three Kalinga kingdoms in 256 BC, he issued his Thirteenth Edict (also known as the 'Conquest Edict' or 'Rock Edict XIII' [in NA Nikam and R McKeon (tr) The Edicts of Asoka (University of Chicago Press Chicago 1959) 27–30]). The Thirteenth Edict declared his public remorse over the casualties, privations, and suffering caused by the war with the Kalingas, and first articulated imperial India's policy prohibiting the use of force and advocating neutrality (→ Neutrality, Concept and General Rules; → Use of Force, Prohibition of). Emperor Asoka also issued a Law of Piety, which mandated religious tolerance throughout the empire. Widely enforced throughout ancient India, the Law of Piety insisted on moral imperatives requiring reverence to superiors, parents, teachers, elders, and relations. In light of his other edicts as well as the Law of Piety, Emperor Asoka has been recognized for first establishing principles of humanitarianism and the rejection of the use of force in the Indian subcontinent.

3. Records on medieval India also reflect early imperial policies mandating religious freedom. In particular, Islamic rule under the Mughal Empire (991–1707) is credited with implementing a pluralist subcontinental policy that ensured respect for religious diversity among Islamic and Hindu imperial subjects (see also → International Law, Regional Developments: Islam; → Islamic Approach to International Law). These policies ensured peaceable governance of the subcontinent, and promoted continuity in interstate relations with other Indian States and ancient Asian trading partners. Mughal emperors respected the institutions of embassies, treaties, and laws of peace and war. Judges applied Kazis, written codes of law, to regulate the relation between the empire and its subjects inter se. The Mughal Empire also adopted notions of sovereignty and kingship from predecessor Hindu empires (the Guptas, Mauryas, and the Sultanate of Delhi).

4. Early European relations with medieval India demonstrated recognition of Indian Heads of State as sovereigns. The Mughal Empire established suzerainty relationships with conquered Indian territories, which permitted numerous Rajas
and Maharajas to retain their sovereign rights and administrative prerogatives. In the → Right of Passage over Indian Territory Case, the International Court of Justice ('ICJ') undertook a historical examination of the nature and form of treaty-making in ancient India to affirm the sovereignty capacity of an Indian ruler—the Peshwa of the Maratha State, a vassal of the Mughal Empire—to conclude the 1779 Treaty of Poona (Traité entre le Royaume du Portugal et l'Empire Mahratté conclu a Puname le 17 Décembre 1779 [done 17 December 1779] French version reprinted in Annex I Right of Passage over Indian Territory [Portugal v India] [Memorial of the Government of the Portuguese Republic] [ICJ, 15 June 1956]). The ICJ rejected Portugal's claims of sovereignty over the disputed → enclaves of Dadra, Nagar, Aveli, and surrounding territories. Instead, the ICJ upheld the Peshwa's interpretation of the 1779 Treaty of Poona as merely granting Portugal a saranjam (revenue tenure) and not sovereign rights over such territories.

Colonial rule of the Indian subcontinent began through infiltration of trade monopolies such as the British East India Company (→ Colonialism), until its transfer a century later to official imperial administrators (the 1657 Cromwell Charter) of the British Raj (1858–1947). Consolidation of British imperial control followed after the 'Great Rebellion' or the 'First War of Indian Independence' (1858–60), which resulted in direct British control over three fifths of the subcontinent. The 1858 Queen's Proclamation and Act of Parliament (An Act for the Better Government of India [1858] 21 and 22 Vict c 106 [UK]) formally declared a British takeover of the government of India. In 1876, the British Queen Victoria was formally proclaimed by the British Parliament as 'Empress of India'. The remaining two fifths of the subcontinent continued to be governed independently by over 500 large and small principalities, some of whose rulers had fought the British during the 'Great Rebellion' or 'First War of Indian Independence' but with whom the British Raj subsequently entered into treaties of mutual cooperation. In this manner, the spread of colonial rule was facilitated by the gradual acquisition of prerogatives from indigenous Indian rulers. Under then-prevailing colonialist notions of sovereignty, the British Raj assumed 'absolute sovereignty' and governmental discretion over its colonial territories.

The British Raj would continue to maintain the practice of international maritime principles such as freedom of the seas (→ High Seas), the rules of flag State jurisdiction on the seas (→ Flag of Ships), superior coastal State jurisdiction over all ships while near the coast, the prohibition of → piracy, the rules of charter-party, customs and tolls, permits of entry and departure, and some rules on → contraband. British India was treated as a separate international legal personality. India from 1919–47 had an anomalous international status, since it exercised some powers of self-governance yet remained devoid of the full attributes of statehood since the British government and its Parliament retained control of India's internal and external relations. British India's possession of limited international legal personality under British rule ensured the infusion of classical positivist international law into the Indian normative legal system. This resulted in the early application of the Common Law principle that 'international law is part of the law of the land'. British India became one of the original members of the → League of Nations, an original party to the Statute of the Permanent Court of International Justice and the 1928 General Act for the Pacific Settlement of International Disputes ([concluded 26 September 1928, entered into force 16 August 1929] 93 LNTS 343; ‘1928 Pacific Settlement Act’). British India also ratified the Convention for the Prevention and Punishment of Terrorism ([signed 16 November 1937, never entered into force] [1938] 19 League of Nations Official Journal 23). Later, British India became one of the original signatories of the Declaration by United Nations ([done 1 January 1942, entered into force 1 January 1942] 204 LNTS 381).

The formation of the Indian National Congress ('INC') in 1885 crystallized subcontinental opposition against the British Raj, and brought about collective efforts to regain India's independence (→ Territorial Integrity and Political Independence). Originating from elite intellectual middle classes but gravitating towards a broad-based and diverse mass organization throughout the subcontinent, the INC later splintered into groups that believed in the use of force to overthrow imperial rule—led by Suhas Chandra Bose, who later formed the Indian National Army—and those who stressed non-violent and civil disobedience through satyagraha—led by Mahatma Gandhi.

The British Raj would terminate in 1947, through the official Partition of the British Indian Empire ('Partition') into two separate, self-governing dominions: the Dominion of Pakistan, which declared independence on 14 August 1947, and whose territory included the territories of present-day Pakistan and Bangladesh, and the Union of India, which declared independence a day later on 15 August 1947. The two largest provinces of the British Raj, Punjab and Bengal, would be subdivided between the Dominion of Pakistan and the Union of India. On 26 January 1950 the Union of India would be dissolved in favour of the Republic of India.

Following the Partition, Britain executed treaties recognizing the independence of the remaining South Asian territories (→ Decolonization; → Decolonization: British Territories). Britain recognized Ceylon as a sovereign dominion on 4 February 1948, and by 1972, Sri Lanka would become a full republic. Britain had long recognized → Nepal's independence in the 1923 Treaty of Friendship between Britain and Nepal ([signed 21 December 1923, entered into force 8 April 1925] in CU Aitchison [ed] A Collection of Treaties, Engagements and Sanads relating to India and Neighbouring Countries vol 14 The Treaties relating to Eastern Turkistan, Tibet, Nepal, Bhutan and Siam [Government of India Central Publication Branch Calcutta 1929] 67), and reiterated this → recognition in the Treaty of Peace and
Friendship between the Government of the United Kingdom and the Government of Nepal ([signed 30 October 1950, entered into force 3 May 1951] 97 UNTS 121). Both the Dominion of Pakistan and the Union of India would recognize Nepal's independence. — Bhutan, which had become a politically autonomous suzerain of the United Kingdom in 1910, was given the choice of joining the Union of India. Bhutan opted for independence. Eventually, both the Dominion of Pakistan and the Union of India extended official recognition to fellow South Asian States. In December 1971 Bangladesh seceded from Pakistan, citing differences with the latter on various constitutional questions, such as the allocation of administrative authority between the Dominion and its provinces. Bangladesh established its own independent parliamentary democracy in 1972, and executed the Treaty of Friendship, Cooperation and Peace between the People's Republic of Bangladesh and the Republic of India ([signed and entered into force 19 March 1972] [1972] 12 IJIL 131–134; this treaty expired in 1997 and was not renewed). Britain would also sign a treaty recognizing the independence of Maldives in 1965 (Agreement between Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland and the Government of the Maldives Islands [signed and entered into force 26 July 1965] 548 UNTS 223).

By the latter half of the 1970s, 'South Asia' as a region would be transformed from its subcontinental Indian antecedents to a region composed of eight independent sovereign States: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka.

2. Contested Territorial Claims in Post-independence South Asia

Pakistan's emergence as a sovereign State arose from British recognition, at the time, of the separate national right of Muslims at the time of the Partition process. Despite bi-directional migration at the time of the Partition, Hindu minorities remained in the territory that eventually comprised Pakistan, while millions of Muslims chose citizenship under a constitutionally secular India. During the process of Partition, Britain advised the rulers of the 562 Indian States to choose accession to either Pakistan or India. The process proved largely peaceful, with the exceptions of Hyderabad and Junagarh which were both occupied by Indian military forces, and the State of Jammu and Kashmir. The State of Jammu and Kashmir continues to be territorially contested by both India and Pakistan (Boundary Disputes in the Indian Subcontinent). Around the time of the Partition in 1947, the Maharaja of Kashmir was a Hindu, while the Kashmiri population was predominantly Muslim. Owing to the Maharaja's inaction during the Partition process, Pathan groups invaded Kashmir from the territory of Pakistan. The Maharaja sought and received Indian military assistance to repel the invasion. Consequently, the Maharaja signed the 1947 Instrument of Accession ([26 October 1947] <http://www.indianembassy.org> [23 February 2010]) with India. At the time, then Indian Prime Minister Jawaharlal Nehru promised a plebiscite/ referendum for inhabitants of Jammu and Kashmir to determine their political status as soon as peace was restored. India and Pakistan fought its first war (Indo-Pakistani War) from 1947–48. The United Nations Security Council mediated a ceasefire. A ceasefire line was established in Kashmir on 27 July 1949. The UN Security Council issued Resolution 47 (1948) of 21 April 1948 (SCOR 3rd Year 3) advising both India and Pakistan 'to bring about a cessation of the fighting and to create proper conditions for a free and impartial plebiscite to decide whether the State of Jammu and Kashmir is to accede to India or Pakistan'. The failure to conduct the plebiscite precipitated the resumption of hostilities between India and Pakistan in 1965. With the Union of Soviet Socialist Republics ('USSR') as mediator, India and Pakistan signed the India-Pakistan Tashkent Declaration ([adopted 10 January 1966] [1966] 5 ILM 320) to cease hostilities and resume Indian-Pakistani relations. In 1971, India would sign a Treaty of Peace, Friendship and Cooperation between the Republic of India and the Union of Soviet Socialist Republics ([done 9 August 1971] [1971] 11 IJIL 508–511). Hostilities between India and Pakistan would resume in the same year after the outbreak of a civil war in Pakistan. After the Urdu-speaking West Pakistani government authorized military operations in the Bengali-populated East Pakistan and caused massive inflows of refugees to India, India's military support in the war between Bengali nationalists and Pakistan resulted in the emergence of a third South Asian State: Bangladesh. India and Pakistan would then sign an agreement on bilateral relations in 1972 (Simla Agreement on Bilateral Relations and Statement on its Implementation [signed 3 July 1972, entered into force 4 August 1972] [1972] 11 ILM 954), and an agreement on the repatriation of prisoners of war in 1973 (India–Pakistan: Agreement on the Repatriation of Prisoners of War [concluded 28 August 1973] [1973] 12 ILM 1980), while India and Bangladesh signed the Treaty of Peace and Friendship between the Government of India and the Government of the People's Republic of Bangladesh ([done 19 March 1972] <http://meaindia.nic.in> [23 February 2010]). By 1974, Pakistan would recognize Bangladesh's independence under the Bangladesh–India–Pakistan: Agreement on the Repatriation of Prisoners of War and Civilian Internees ([concluded 9 April 1974] [1974] 13 ILM 501).

The Soviet invasion of Afghanistan in December 1979 intensified external involvement in South Asian affairs during the Cold War (1947–91). The United States of America supported Afghan guerrilla forces against the Soviet army, and, with the cooperation of Pakistan, aided Afghanistan's war against the USSR. After eight years of warfare, the

Hostilities between India and Pakistan did not abate in the 1990s. After India exploded a nuclear device in 1974, India conducted five more underground nuclear tests in May 1998. Pakistan conducted its own underground nuclear tests two weeks later. Military hostilities resumed in 1999 in Kashmir, also known as the Kargil War, which ceased following the signing and issuance of the Lahore Declaration ([adopted 21 February 1999] <http://www.indianembassy.org> [23 February 2010]) by Indian Prime Minister Atal Bihari Vajpayee and Pakistani Prime Minister Nawaz Sharif. As a consequence of this 1999 Indo-Pakistani war, India secured control of half of the disputed territory, while Pakistan obtained control of about a third.

The Partition also triggered the issue of Pakistan and Indian succession to British India treaties (→ State Succession in Treaties). Pakistan stated that it was India's co-successor to all such treaties, particularly the 1928 Pacific Settlement Act. Pakistan invoked the 1928 Pacific Settlement Act to establish the jurisdiction of the ICJ in two disputes with India: Trial of Pakistani Prisoners of War (Pakistan v India) (Order) ([1973] ICJ Rep 347) and Aerial Incident of 10 August 1999 (Pakistan v India) (Jurisdiction of the Court) ([2000] ICJ Rep 12). The ICJ discontinued proceedings in the Trial of Pakistani Prisoners of War (Pakistan v India) upon Pakistan's request. The ICJ declined jurisdiction in the Aerial Incident of 10 August 1999 (Pakistan v India), citing India's Declaration Recognizing as Compulsory the Jurisdiction of the International Court of Justice, in Conformity with Article 36, Paragraph 2, of the Statute of the International Court of Justice ([done 15 September 1974] 950 UNTS 15), which stated that India never considered itself to have been party to the 1928 Pacific Settlement Act as an independent State.

Apart from territorial disputes over Jammu and Kashmir, India and Pakistan also dispute maritime boundaries. India's The Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 ([28 May 1976] <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/IND_1976_Act.pdf> [23 February 2010] [India]) drew its \( \rightarrow \) territorial sea to 12 nautical miles ('nm'), its \( \rightarrow \) contiguous zone to 24 nm, and \( \rightarrow \) exclusive economic zone ('EEZ') to 200 nm, including a continental coastline of about 5700 kilometres, 1200 \( \rightarrow \) islands and islets, and about 131,800 square nm of \( \rightarrow \) continental shelf and margin. India gained about 587,600 square km as part of its EEZ. Pakistan and India also disputed the Rann of Kutch, an area of the border between West Pakistan and the Indian province of Gujarat. Following the signing of the agreement between Pakistan and India to demilitarize the border, the Rann of Kutch, became a no-man's land. The area of the Rann of Kutch is about 75,000 square km. The area of the Rann of Kutch was later reoccupied by Indian military forces in 1971.

A further territorial dispute in the Indian subcontinent involves Sri Lanka's civil war with the Tamil Tiger Eelam, which has enjoyed some support from India's Tamil population. Despite India and Sri Lanka's signing of the Indo–Sri Lanka Agreement to Establish Peace and Normalcy in Sri Lanka ([signed and entered into force 29 July 1987] [1987] 26 ILM 1177), tensions from the civil war have not been allayed. Sri Lanka concluded its boundary delimitations with India in the 1976 Indo-Pakistan Western Boundary (Rann of Kutch) Arbitration (Award) (→ Rann of Kutch Arbitration [Indo-Pakistan Western Boundary]). The remaining tenth awarded to Pakistan was later reoccupied by Indian military forces in 1971.

On the other hand, Bangladesh has a subsisting dispute with India on overlapping maritime boundaries. The Bangladesh and India disputes involve the 1970 formation of a new island in the Bay of Bengal—known as New Moore Island or Purbasha in Bangladesh; the Andaman and Nicobar islands; and Indo-Bangladesh \( \rightarrow \) enclaves, among others. Moreover, citing Bangladesh's unique geomorphologic factors, Bangladesh proposed an amendment to Art. 4 Convention on the Territorial Sea and the Contiguous Zone ([done 29 April 1958, entered into force 10 September 1964] 516 UNTS 205) to delinate \( \rightarrow \) baselines using the depth method, instead of the 'normal' or 'straight' baselines in the \( \rightarrow \) law of the sea. The proposed amendment was rejected in favour of the present formulation of Art. 7(2) UN Convention on the Law of the Sea. Bangladesh and India also signed a treaty on the sharing of the Ganges Waters (Treaty between the Government of the Republic of India and the Government of the People's Republic of Bangladesh on Sharing of the Ganga/Ganges Waters at Farakka [signed and entered into force 12 December 1996] [1997] 36 ILM 523; \( \rightarrow \) Ganges River), which laid the legal regime for sharing waters released by India to Bangladesh at the Farraka Barrage on the Ganges.

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18 Other South Asian States have also negotiated, or are in the process of negotiating, maritime boundaries. Maldives concluded its agreements with India and Sri Lanka in 1976 (Agreement between Sri Lanka, India and Maldives Concerning the Determination of the Trijunction Point between the Three Countries in the Gulf of Mannar [signed 23, 24, 31 July, entered into force 31 July 1976] 1049 UNTS 53), but has an unusual claim based on its 1964 Constitution which defined the territory of Maldives as ‘the islands, air and sea surrounding and in between the islands contained within a rectangle formed by meridians and parallels’ (Anand [2004] 239; the EEZ claim around Maldives’ constitutional rectangle has not yet been recognized). Nepal and Bhutan, both landlocked States dependent on coastal States such as India for transit passage, are constrained to rely on Art. 69 UN Convention on the Law of the Sea to ‘participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region’. On 12 February 1996 India and Nepal signed the Treaty between His Majesty's Government of Nepal and the Government of India Concerning the Integrated Development of the Mahakali River Including Sarrada Barrage, Tanakpur Barrage and Pancheshwar Project ([signed 12 February 1996, entered into force 5 June 1997] [1997] 36 ILM 533), thereby settling a 30 year old dispute.

19 Contested territorial claims have also affected South Asia’s external relations, particularly between two Asian superpowers: the People's Republic of China (→ China) and India. In the aftermath of independence, India initially enjoyed peaceful diplomatic relations with China. In April 1954 they signed the Agreement on Trade and Intercourse between Tibet Region of China and India ([signed 29 April 1954, entered into force 3 June 1954] 299 UNTS 57), which recognized Chinese suzerainty over Tibet since its 1950 occupation by China. The 1954 treaty contained Indian Prime Minister Jawaharlal Nehru's 'Five Principles of Coexistence' or Panch Sheel. These Principles mandated mutual respect for territorial integrity and sovereignty, mutual non-aggression, mutual non-interference in internal affairs, equality and mutual benefit, and peaceful coexistence. In 1962, however, hostilities erupted between India and China in regard to unsettled frontier disputes involving areas that have not been entirely delimited since the British Raj. The most serious of these disputes concerns Aksai Chin, which involves the borders of north-eastern Kashmir, over which China commenced road construction to connect Chinese Tibet and Sinkiang. India also has frontier disputes with China on areas between Kashmir and Nepal, the Sikkim frontier between Nepal and Bhutan, and areas between Bhutan and Burma in the Assam Himalayas. Since 1959, along with these frontier disputes, Indo-Chinese relations deteriorated due to rivalries between Chinese and Indian spheres of influence over the independent state of Nepal, India's grant of refuge to the Dalai Lama after the 1959 Tibetan revolt, and open military conflicts over Sino-Indian borders. In 1962 Chinese military forces invaded Assam and routed Indian military forces, until a December 1962 ceasefire was declared.

3. The Decolonization Process, the New International Economic Order, and South Asian Economic Cooperation through SAARC

20 Early on after attaining independence South Asian States led the initiatives towards the global decolonization process under the auspices of the UN. Indian international law scholar RP Anand argued that the displacement of Indian sovereigns by Britain repudiated an already widespread pre-colonization European practice:

[N]on-Christian states enjoyed full sovereignty and exercised the right of sending and receiving ambassadors. Such views had earlier been expressed by Jean Bodin, and were later endorsed by Hugo Grotius in his famous Mare Liberum, published in 1609. Nobody ever questioned the right of the Indian states to make war or peace, conclude treaties, send embassies, or exercise their sovereign jurisdiction within their territories. Grotius accepted and recognized the sovereign status of the Indian rulers although they were 'infidels', and argued that Portugal had no right over them on account of their religious beliefs (Anand [2005] 54–55).

21 South Asian States spearheaded the decolonization dialogue. Long before the UN General Assembly issued its Declaration on the Granting of Independence to Colonial Countries and Peoples (UNGA Res 1514 [XV] [14 December 1960]; ‘1960 Declaration’), Indian Prime Minister Jawaharlal Nehru convened the 1947 Asian Relations Conference. Joining South Asia, other Asian leaders stressed the end of Western imperialism in Asia, and held the Conference's key objective to bring together the leading men and women of Asia on a common platform to study the problems of common concern to the people of the continent, to focus attention on social, economic and cultural problems of the different countries of Asia, and to foster mutual contact and understanding.

22 The 1960 Declaration held that
1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and cooperation.

2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.

4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.

5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

The 1960 Declaration explicitly held that ‘[a]ny attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations’, and to this end

All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity.


24 The NIEO Declaration sought reform of the international economic system under the following principles: 1) sovereign equality of states, → self-determination of all peoples, inadmissibility of acquisition of territories by force, territorial integrity, and non-interference in the internal affairs of other States; 2) broadest cooperation of all States members of the → international community based on equity; 3) full and effective participation on the basis of equality of all countries in solving world economic problems in the common interest of all countries; 4) the right of every country to adopt the economic and social system that it deems most appropriate for its own development; 5) full permanent sovereignty of every State over its natural resources and all economic activities (→ Natural Resources, Permanent Sovereignty over), entitling each State to exercise effective control over them and their exploitation with means suitable to its own situation, including the right to → nationalization or transfer of ownership to its nationals, this right being an expression of the full permanent sovereignty of the State; 6) the right of all States, territories, and peoples under foreign occupation, alien and colonial domination, or → apartheid to restitution and full → compensation for the exploitation and depletion of, and damages to, the natural resources and all other resources of those States, territories, and peoples; 7) regulation and supervision of the activities of transnational corporations; 8) the right of the developing countries and the peoples of territories under colonial and racial domination and foreign occupation to achieve their liberation and to regain effective control over their natural resources and economic activities; 9) extending assistance, free of any political or military conditions, to developing countries, peoples, and territories which are under colonial and alien domination, foreign occupation, racial discrimination, or apartheid, and all forms of neo-colonialism; 10) just and equitable relationship between the prices of developing country exports and imports; 11) promotion of development in the reform of the international monetary system; 12) preferential and non-reciprocal treatment for developing countries in all fields of international economic cooperation; and 13) developing countries' access to → technology transfer and financial resources.

25 Apart from reflecting principles of the NIEO Declaration, Art. 1 Economic Rights Charter emphasized that every State '“[H]as the sovereign and inalienable right to choose its economic system as well as its political, social and cultural systems in accordance with the will of its people, without outside interference, coercion or threat in any form whatsoever.”'
Stressing South Asia's nationalist position, particularly led by India and Pakistan, Art. 2 Economic Rights Charter recognizes that every State ‘has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources, and economic activities’. Under this provision, each State has the right:

a) To regulate and exercise authority over foreign investment within its national jurisdiction, in accordance with its laws and regulations and in conformity with its national objectives and priorities …;

b) To regulate and supervise activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies. Transnational corporations shall not intervene in the internal affairs of a host State …;

c) To nationalize, expropriate or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals, unless it is freely and mutually agreed by all States concerned that other peaceful means be sought on the basis of the sovereign equality of States and in accordance with the principle of free choice of means (Art. 2 Economic Rights Charter).

26 South Asia's preference for strongly preserving the sovereign prerogatives of States underlies the Charter of the South Asian Association for Regional Cooperation (‘SAARC Charter’). The Preamble SAARC Charter mandates strict adherence to the principles of the United Nations Charter and Non-Alignment, particularly respect for the principles of sovereign equality, territorial integrity, national independence, non-use of force, and non-interference in the internal affairs of other States and the peaceful settlement of all disputes.

The → South Asian Association for Regional Cooperation (SAARC) has remained an intergovernmental organization primarily for socio-economic cooperation, where all seven South Asian Heads of State meet annually or as necessary to decide on the basis of strict unanimity, over all policies and measures taken by the organization. The SAARC Council of Ministers, composed of the Foreign Ministers of the SAARC Member States, meets at least bi-annually to undertake policy-making, review of progress of cooperation, decisions on new areas of cooperation, mechanisms for cooperation, and other matters of general interest to SAARC. The SAARC Standing Committee, composed of the foreign secretaries of SAARC Member States, exercises operational functions and overall monitoring and coordination of SAARC cooperation programmes.


28 In 2004 SAARC enacted the Social Charter of the South Asian Association for Regional Cooperation ([signed and entered into force 4 January 2004] <http://www.saarc-sec.org> [23 February 2010]; ‘SAARC Social Charter’), which held that Member States affirm that the highest priority shall be accorded to the alleviation of poverty in South Asian Countries … (Art. 3(1))
agree that access to basic education, adequate housing, safe drinking water and sanitation, and primary health care should be guaranteed in legislation, executive and administrative provisions, in addition to ensuring an adequate standard of living, including adequate shelter, food and clothing … (Art. 4(4));

share information regarding the outbreak of any communicable disease … (Art. 4(1));

‘agree to hold prior consultation’ on health issues related to livelihood and trade issues which are influenced by international agreements and conventions ‘and to make an effort to arrive at a coordinated stand on issues that relate to the health of their population’ (Art. 4(4)); affirm various obligations to promote the status of women, prevent their discrimination and exploitation, and ensure their empowerment through literacy and education (Art. 6); declare extensively enumerated obligations to promote the rights and well-being of children (Art. 7); and address other urgent social issues such as population stabilization (Art. 8), drug de-addiction, rehabilitation, and reintegration (Art. 9). Both the SAARC Secretariat and the National Coordination Committees are delegated with the implementation of the SAARC Social Charter.

29 To date, SAARC has not realized full regional economic cooperation. The Agreement on SAARC Preferential Trading Arrangement ([signed 11 April 1993, entered into force 7 December 1995] [http://www.saarc-sec.org] [23 February 2010]) entered into force in December 1995, but negotiations on tariff lines have not yet concluded. South Asian scholars attribute this to several factors, such as: 1) political stresses among principal regional actors such as India and Pakistan; 2) low levels of intra-South Asian trade, low levels of per capita incomes and purchasing power; 3) geographic, economic, and population disparities between India and the six other South Asian States; 4) membership of some South Asian States in parallel economic groupings such as the Bangladesh-India-Myanmar-Sri Lanka-Thailand Economic Community and the Indian Ocean Rim Association for Regional Cooperation; 5) the different position of least developed countries among South Asian members (Bangladesh, Bhutan, Nepal, and Maldives); and 6) in the wake of regional political tensions, the shift to bilateral trade agreements such as the Free Trade Agreement between the Republic of India and the Democratic Socialist Republic of Sri Lanka ([signed 28 December 1998, entered into force 1 March 2000] [http://commerce.nic.in] [23 February 2010]). India has also entered into the Agreement on Trade, Commerce and Transit between the Government of the Republic of India and the Royal Government of Bhutan ([signed 28 July 2006, entered into force 29 July 2006] [http://commerce.nic.in] [23 February 2010]).

4. South Asia and International Environmental Law

30 With a population approximating 1.5 trillion, South Asia covers 42,916,000 square kilometres. It is bordered in the south by the Indian Ocean, in the south-east by the Bay of Bengal, and in the southwest by the Arabian Sea. Occupying portions of the Indo-Malayan realm and the Palaeartic realm, the region represents five of the 14 major ecological regions, and is home to 15.5% of global fauna and 12% of global flora. South Asia possesses a monsoon climate and is home to the world's largest river systems. The → Indus River originates in China and flows to Pakistan. The Ganga-Brahmaputra River systems originate partly in China, Nepal, and Bhutan, and flow to India and Bangladesh. The Indus River is one of the world's greatest, measuring 2800 kilometres from its source to the sea. The Ganga River stretches to about 2525 kilometres, and the Brahmaputra, the third great Himalayan river, stretches about 2900 kilometres flowing through Tibet, India, and Bangladesh. There are many other minor rivers originating from the great Himalayan drain into Bangladesh through Nepal and India. There are 103 rivers draining in a radial pattern from the central highland of Sri Lanka. The Ganga, Brahmaputra, and Meghna are the major rivers in Bangladesh. The rivers in Bhutan are the Jadalkha, Torsa, Raidak, Sankosh, Mao Kholo/Aie, and the Manas. The Maldives does not have any rivers.


32 Within a broad spectrum of international environmental issues and concerns, South Asia supports the establishment of international cooperation for ensuring → sustainable development practices and technology transfers, environmental compensation and/or financial assistance, and fundamental international environmental law principles (→ Environment, International Protection) such as the prohibition against transboundary harms, the precautionary principle (→ Precautionary Approach/Principle), the → polluter pays principle, inter-generational equity, and sustainable development. To provide a regional institutional cooperative response to problems of environmental degradation, common resource management, and joint initiatives on environment and development, South Asian States established
an intergovernmental programme, the South Asian Cooperative Environment Programme (‘SACEP’) in 1982 (Colombo Declaration and Articles of Association of the South Asia Co-operative Environment Programme [SACEP] [adopted 25 February 1981] 2253 UNTS 137; → Colombo Plan [CP]). SACEP is also the secretariat for the South Asian Seas Programme (‘SASP’). SASP is a cooperative partnership established in 1995 for the shared protection of the marine waters and associated ecosystems of the five maritime SACEP countries: Bangladesh, India, Maldives, Pakistan, and Sri Lanka.

SACEP’s mission is to

Promote regional cooperation in South Asia in the field of environment, both natural and human in the context of sustainable development and on issues of economic and social development which also impinge on the environment and vice versa; to support conservation and management of natural resources of the region and to work closely with all national, regional, regional, and international institutions, governmental and non governmental, as well as experts and groups engaged in such cooperation and conservation efforts. (SACEP ‘About Us: Our Vision & Mission’ <http://www.sacep.org/html/about_visionmission.htm> [23 February 2010]).

A landmark regional instrument facilitated by SACEP is the April 1998 Malé Declaration on Control and Prevention of Air Pollution and Its Likely Transboundary Effects for South Asia (adopted 22 April 1998) <http://www.rcap.unep.org/male> [23 February 2010]). Ongoing SACEP projects focus on land degradation and → desertification, biodiversity loss, fresh water depletion and degradation, solid waste management, air quality degradation, environmental health, coastal and marine resource degradation and depletion, and natural disasters.

With respect to → outer space law, India's space policies, activities, and institutions demonstrate strong and continued participation in the implementation and/or further interpretive development of multilateral treaties (such as the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and other Celestial Bodies [(signed 27 January 1967, entered into force 10 October 1967) 610 UNTS 205]; the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space [(open for signature 22 April 1968, entered into force 3 December 1968) 672 UNTS 119]; the Convention on Registration of Objects Launched into Outer Space [(open for signature 14 January 1975, entered into force 15 September 1976) 1023 UNTS 15]; and the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies [(adopted 5 December 1979, entered into force 11 July 1984) 1363 UNTS 3]) and resolutions of the UNGA with normative content for regulating space activities (such as, among others, UNGA Resolution 37/92 of 10 December 1982 [GAOR 37th Session Supp 51, 98]; UNGA Resolution 41/65 of 3 December 1986 [GAOR 41st Session Supp 53, 115]; UNGA Resolution 47/68 of 14 December 1992 [GAOR 47th Session Supp 49 vol 1, 88]; and UNGA Resolution 51/122 of 13 December 1996 [GAOR 51st Session Supp 49, 114]).

B. South-East Asia

1. Pre-modern Kingdoms to Independent South-East Asian States

As a distinct region, the concept of ‘South-East Asia’ was initially described during the August 1943 Quebec Conference, when the Western Allied Powers established the South-East Asian Command that included Burma, Malaya, Sumatra, and Thailand. The regional definition of South-East Asia has since expanded to comprise Brunei Darussalam, Malaysia, Singapore, the Philippines, Indonesia, Thailand, Laos, → Vietnam, Cambodia, and Myanmar.

South-East Asia in antiquity was an agglomeration of diverse kingdoms, principalities, and sultanates. Unlike the predominantly Indo-centric South Asian region, pre-modern South-East Asian States had different ethnic, religious, and cultural affiliations. Burma, Vietnam, and Cambodia were agrarian societies ruled by ‘semi-divine’ monarchies, while elite trading fleets ruled the archipelagic kingdoms in Sumatra, Malaya, North Java, and Brunei in North Borneo.

Pre-modern South-East Asian law alternatively shows derivations from Hindu, Buddhist, Islamic, and Chinese legal traditions. Hindu law undergirded Burma, Siam, Champa, and Khmer's legal systems, where moral and social conduct is traceable to the Code of Manu (Mānava-Dharmaśāstra—Code of Manu in P. Olivelle Manu’s Code of Law: A Critical Edition and Translation of the Mānava-Dharmaśāstra [OUP Oxford 2005] 76). The Code of Manu established 10 categories in law, and emphasized conflict resolution through mushawara-mufakat (collective decision-making). This method of conflict resolution would underpin the Javanese administrative system. On the other hand, Buddhism infused monarchical rule in Burma, Thailand, and Laos, where conceptions of legal obligation were drawn from the Dhammathat (in Burma) or the Dhammasattham (in Thailand). Islamic law influenced legal systems in ancient societies in Indonesia,

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Malaysia, the southern Philippines, and Brunei, through the main teachings of the Koran and Shari'a law. Finally, Chinese legal traditions based on Confucian precepts found transmission to the laws of early Vietnam kingdoms.

38 Sources of pre-modern South-East Asian law include written texts, oral law, the laws of social institutions, and indigenous adaptations. Examples of written texts are the Oriental laws derived from India, Islam, or China, and Occidental laws derived from British, French, Dutch, and Spanish-American laws. Oral laws include, among others, the Burmese Minangkabau perbilangan (law tales), the Malay/Javanese wayang and the Thai nang talung. Laws of social institutions could be found in the Indonesian adat and the social codes of Malaya, Ilugao, and Bahnar.

39 From the 17th to 19th centuries, colonial powers such as France, Portugal, the UK, the Netherlands, Spain, and the US would superimpose legal structures over existing pre-modern South-East Asian law. Portuguese colonial enclaves were in Goa, Diu, Calicut, Colombo, Malacca, Macau, Java, the Moluccas, and Timor, with a lease from China in relation to Macau. The UK held colonies in Penang, Singapore, the Malay States, British Borneo, and Burma, with a lease from China in relation to Hong Kong. France held Laos and Vietnam as regions of ‘Indochina’. Spain held the Philippines from 1521 until their cession of the territory to the US in 1898. The US would constitute the Philippines as its colony until 1946. Colonial transplantation of legal concepts would create a pluralist hybrid of Euro-American and traditional or indigenous legal sources among South-East Asian legal systems.

40 Independence was reclaimed rapidly after the end of World War II. Burma signed the Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Provisional Government of Burma Regarding the Recognition of Burmese Independence and Related Matters ([signed 17 October 1947, entered into force 24 December 1949] 70 UNTS 183) in London which declared its independence from British rule and declined to join the British Commonwealth. Initially, Burma sought to remain neutral under its 1960 Boundary Treaty between the Union of Burma and the People's Republic of China ([signed 1 October 1960, entered into force 4 January 1961] 1010 UNTS 111), and the 1971 Treaty of Friendship and Mutual Non-Aggression between the People's Republic of China and the Union of Burma ([done 28 January 1960] [1960] 3(5) Peking Review 12). However, in 1962, the Burmese military seized power, and under General Ne Win, transformed Burma into a socialist State with a one-party system. The 1974 Burmese Constitution (Mranmā-praññ ‘The Constitution of the Socialist Republic of the Union of Burma’ [Rangoon Printing and Publishing Corporation Rangoon 1974]) created a People's Assembly that held supreme legislative, executive, and judicial authority, and called for the establishment of People's Councils. After the 8888 Uprising led by General Saw Maung on 8 August 1988, the military suspended the 1974 Burmese Constitution and declared martial law under the State Law and Order Restoration Council ('SLORC'). In 1989 the SLORC would declare the change of Burma's official name to Myanmar, and called for a Constituent Assembly to revise the 1974 Burmese Constitution. In May 1990, the SLORC permitted multi-party elections, in which the National League for Democracy ('NLD'), led by U Tin U and Aung San Suu Kyi, emerged victorious. The SLORC refused to let the Constituent Assembly convene, and placed both U Tin U and Aung San Suu Kyi under house arrest. In 1997 the SLORC was cosmetically replaced by the State Peace and Development Council. The NLD was not permitted to participate in the 2005 National Convention, which ultimately adjourned in January 2006 without accomplishing the revision of the 1974 Burmese Constitution.

Malaya's independence from Britain was formalized in the 1963 Agreement Relating to Malaysia ([done 9 July 1963] [1963] 2 ILM 816). The Federation of Malaysia was officially declared on 16 September 1963. From 1957–71, the UK, Australia, and New Zealand initially undertook the joint defence of Malaysia, but from 1968–71, the UK followed a process of withdrawal of British garrisons from South-East Asia. The presence of British troops in the Malaysian konfrontasi—undeclared war or military confrontation—with Indonesia from 1963–66 would later be replaced by Singapore-Malaysia defence arrangements. By 1965 Singapore would secede from Malaysia, and Malaysia would sign the Agreement Relating to the Separation of Singapore from Malaysia as an Independent and Sovereign State ([signed 7 August 1965, entered into force 9 August 1965] [1965] 4 ILM 932). In 1971 Australia, the UK, Malaysia, New Zealand, and Singapore would conclude the Five Power Defence Arrangements.

Indonesia under Ahmed Sukarno declared its independence on 7 August 1945. However, the Netherlands would not transfer control of the former Dutch East Indian Empire until December 1949. The Netherlands would dispute sovereignty over the territory of Western New Guinea, until the execution of the Agreement between the Republic of Indonesia and the Kingdom of the Netherlands Concerning West New Guinea (West Irian) ([signed 15 August 1962, entered into force 21 September 1962] 437 UNTS 273) which allowed the territory to pass to Indonesia after a transition period. During the 1963 konfrontasi—undeclared war or military confrontation—Indonesia would contest the creation of Malaysia and its incorporation of North Borneo, Sarawak, and Sabah. After Ahmed Sukarno's overthrow in 1966, Indonesia signed its Agreement to Normalise Relations between Malaysia and Indonesia ([done 11 August 1966] 168 BSP 675). Moreover, Indonesia would host the 1955 Bandung Afro-Asian Solidarity Conference, which brought together

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29 Asian and African nations, to promote economic and cultural cooperation and reject neo-colonialism. The Bandung Afro-Asian Solidarity Conference would lead to the establishment of the → Non-Aligned Movement (NAM) in 1961.

43 The Philippines declared its independence from the US on 4 July 1946. Nevertheless, it maintained close ties with the US, executing a 1947 Mutual Defence Treaty (Agreement between the Government of the United States of America and the Government of the Republic of the Philippines on Military Assistance to the Philippines [signed and entered into force 21 March 1947] 45 UNTS 47). The Philippines also permitted the establishment of US military bases under lease arrangements. In 1954, it joined the (now-defunct) Southeast Asian Treaty Organization. Following the 1986 EDSA Revolution which overthrew the dictatorship of then President Ferdinand Marcos, the government of Corazon Aquino renewed military base agreements with the US. By 1992, however, American military bases in Subic and Clark would be reverted to the Philippines.

44 Following Japan’s displacement of the Vichy French administration in Indo-China in 1945, Japan induced Vietnam, Laos, and Cambodia to issue independence proclamations (→ Decolonization: French Territories). Before Nationalist Chinese forces could occupy North Vietnam and South Vietnam, nationalist independent governments were already functioning in Vietnam, Laos, and Cambodia. However, following France's Charles de Gaulle's refusal to recognize complete independence for Vietnam in favour of limited autonomy, the Vietminh communist nationalists under Ho Chi Minh broke off negotiations with France to fight for independence. Vietnam’s ‘Supreme Advisor’ Bao Dai, however, signed a 1949 Agreement (Exchange of Notes between France and Viet-Nam regarding the Unity and Independence of Viet-Nam [done 8 March 1949] 155 BSP 472) which conferred partial independence to Vietnam within the French Union. Cambodia and Laos would accept both terms. Ultimately, resistance movements to French rule would be led by the Khmer Issarak of Cambodia, the Pathet Lao of Laos, and the Vietminh of Vietnam. After the failure of France and the US to win the Vietnam War, the Vietminh obtained control over Vietnamese territory. In 1953 France would recognize the complete independence of Vietnam, Laos, and Cambodia. Under the Treaty of Friendship and Association between France and Laos ([done 22 October 1953] 160 BSP 658), France committed itself to defend Laos against communist incursions, particularly from the Vietminh. Laos would later sign the Agreement on the Restoration of Peace and Reconciliation in Laos ([done 21 February 1973] reprinted in M Brown and JJ Zasloff Apprentice Revolutionaries: The Communist Movement in Laos, 1930-1985 [Hoover Institution Press Stanford 1986] 364), which provided for the formation of a coalition government and a Council of National Union. On the other hand, communist Khmer Rouge guerrillas under Pol Pot would violently take over Cambodia in 1975, leading to millions of deaths due to State-sponsored massacres or famines (→ Cambodia Conflicts [Kampuchea]). By 1978 Vietnamese military forces would enter Cambodian territory to overthrow Pol Pot, and install a government under Heng Samrin. Vietnam and Cambodia entered into the Treaty of Peace, Friendship and Cooperation between the Socialist Republic of Viet-Nam and the People's Republic of Kampuchea ([done 18 February 1979] [1979] 18 ILM 394) with the tacit support of the USSR.

45 The First Geneva Conference (26 April–21 July 1954) saw three military agreements (Agreement on the Cessation of Hostilities in Viet-Nam [signed 20 July 1954, entered into force 22 July 1954] 935 UNTS 149; Agreement on the Cessation of Hostilities in Laos [signed 20 July 1954, entered into force 22 July 1954] 935 UNTS 165; Agreement on the Cessation of Hostilities in Cambodia [signed 20 July 1954, entered into force 23 July 1954] 935 UNTS 185), six unilateral declarations (Declarations of the Royal Government of Cambodia, the French Republic, and the Royal Government of Laos [done 21 July 1954] 935 UNTS 99; → Declaration), and the Final Declaration, dated 21 July 1954, of the Geneva Conference on the Problem of Restoring Peace in Indo-China, in which the Representatives of Cambodia, the Democratic Republic of Viet-Nam, France, Laos, the People's Republic of China, the State of Viet-Nam, the Union of Soviet Socialist Republics, the United Kingdom, and the United States of America Took Part ([done 21 July 1954] 935 UNTS 95; ‘Final Declaration’). The three military documents established the armistice throughout Indo-China between the French High Command and the Vietminh High Command. The → armistice set a demilitarized zone and a ceasefire line near the 17th Parallel, mutual exchange of prisoners and cessation of hostilities (→ Demilitarization). The US did not sign any of the 1954 Geneva Agreements or the Final Declaration. The 1954 Geneva Agreements were held to be a collection of documents containing no actual treaty binding all the participants; indeed, no political treaties were signed. Nonetheless, the 1954 Geneva Agreements brought hostilities in Indo-China to a swifter conclusion.

2. Regionalism in South-East Asia: From SEATO to Institutional Cooperation under ASEAN

There were several initial attempts to institutionalize regional concerns in South-East Asia. After the 1954 Geneva Conference, several South-East Asian nations under the influence of the US signed the Southeast Asia Collective Defense Treaty (with Protocol) ([signed 8 September 1954, entered into force 19 February 1955] 209 UNTS 28; → Southeast Asia Treaty Organization [SEATO]). Parties to SEATO included Thailand, the Philippines, Pakistan, Australia, the UK, France, New Zealand, and the US. SEATO was an American anti-communist military security initiative. Cambodia and Laos declined SEATO membership. SEATO was followed by the Asian and Pacific Council (‘ASPAC’),
organized through the leadership of South Korean President Park Chung-hee in 1966. ASPAC would only have four South-East Asian members (Malaysia, the Philippines, South Vietnam, and Thailand), and would collapse seven years later due to conflicting objectives. From 1959–61, Malayan Prime Minister Tunku Abdul Rahman initiated the formation of the Association of Southeast Asia (‘ASA’), composed of the Federation of Malaya, the Philippines, and Thailand. ASA proved ineffective upon the outbreak of (undeclared) hostilities between the Philippines and the Federation of Malaya over Philippine claims to Sabah. (The Philippines unsuccessfully attempted to reiterate its claim to Sabah in its intervention in the → Sovereignty over Pulau Ligitan and Pulau Sipadan Case [Indonesia/Malaysia] [2002] ICJ Rep 625; → International Courts and Tribunals, Intervention in Proceedings.) Likewise due to the Malaysia-Philippines dispute over Sabah, the 1963 Malaysia-Philippines-Indonesia Association became defunct, more so when Indonesia engaged in its konfrontasi (undeclared war or military confrontation) with Malaysia until 1967.

47 In May 1961 a second Geneva Conference was convened to deal with the takeover of most of Laotian territory by the communist Pathet Lao. On 23 July 1962, 14 nations signed the Declaration on the Neutrality of Laos ([signed and entered into force 23 July 1962] [1962] 47 DeptStBull 259; see also the Protocol to the Declaration on the Neutrality of Laos [signed and entered into force 23 July 1962] [1962] 47 DeptStBull 261), which formed a Laotian government from three contending political-military groups. Thailand's own security concerns with north-eastern insurgency prompted the US to issue a joint statement with Thailand on 6 March 1962, which declared SEATO treaty commitments to involve individual as well as collective responsibility should there be communist aggression against Thailand (Secretary Rusk, Thai Foreign Minister Discuss Matters of Mutual Concern [26 March 1962] [1962] 46 DeptStBull 498). By May 1962, the US would send military forces to Thailand. The 1963 Gulf of Tonkin Resolution (Joint Resolution to Promote the Maintenance of International Peace and Security in Southeast Asia, Pub L No 88–408, 78 Statutes at Large 384 [10 August 1964]) was used as legislative authority for the use of force in Indo-China short of a formal declaration of war. From 1965 to the end of the military hostilities under the Agreement on Ending War and Restoring Peace in Vietnam ([signed and entered into force 27 January 1973] 935 UNTS 6; ‘Paris Agreement’) signed by the Vietcong, South Vietnam, the US, and North Vietnam, the US would send military troops to support South Vietnam's war with the Communist Vietcong in the North. Canada, China, the US, France, the Vietcong, South Vietnam, Hungary, Indonesia, Poland, North Vietnam, the UK, and the USSR jointly issued a declaration during the 2 March 1973 International Conference on Vietnam held in Paris (International Conference on Viet-nam: Act Concerning the Paris Agreement on Ending the War and Restoring Peace in Viet-nam [signed and entered into force 2 March 1973] [1973] 12 ILM 392), which committed participating States to abide by the Paris Agreement. Canada, Hungary, Indonesia, and Poland were designated as members of the International Commission of Control and Supervision to supervise the ceasefire and treaty terms.

48 Following Cambodia's civil war between supporters of the Khmer Rouge regime and the Vietnamese-installed Heng Samrin regime, a 1989 peace conference was held in Paris. The conference was reconvened, and with the intervention of the UN, the → Association of Southeast Asian Nations (ASEAN), the US, the USSR, and China, the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict ([signed and entered into force 23 October 1991] [1992] 31 ILM 183; ‘Cambodia Agreement’) was concluded. The Cambodia Agreement provided for a political agreement, guarantees of Cambodian sovereignty, independence, and neutrality, and a reconstruction process. The reconstruction process involved an interim UN administration, the return of Cambodian refugees, the holding of UN-supervised elections in 1993, and the formation of a coalition government. In 2003, the Cambodian government signed an agreement establishing a war crimes tribunal in Cambodia (the Extraordinary Chambers in the Courts of Cambodia) with the UN (Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea [signed 6 June 2003, entered into force 29 April 2005] 2329 UNTS 117), which would try Khmer Rouge perpetrators of torture (→ Torture, Prohibition of), → crimes against humanity, and other serious international crimes (→ Mixed Criminal Tribunals [Sierra Leone, East Timor, Kosovo, Cambodia]). The Extraordinary Chambers in the Courts of Cambodia commenced operations under a budget from the UN in 2005. On 29 March 2009, the Khmer Rouge regime's Tuol Sleng/S-21 prison chief, Kaing Guek Eav—better known as Duch—appeared in the first case before the Extraordinary Chambers in the Courts of Cambodia, where he was charged with → war crimes, → crimes against humanity, premediated murder, and torture.

49 ASEAN would prove to be South-East Asia's most enduring institutional regional organization. Initially formed by Indonesia, Malaysia, the Philippines, Singapore, and Thailand under the Declaration Constituting an Agreement Establishing the Association of South East Asian Nations (‘ASEAN Declaration’) and the Treaty of Amity and Cooperation in South-East Asia (‘Amity Treaty’), ASEAN has since expanded its membership to 10 South-East Asian States, including Brunei Darussalam, Vietnam, Laos, and Cambodia. The ASEAN Declaration established ASEAN as an ‘association for regional cooperation’. Operating through strict consensus decisions of its Member States, ASEAN under the ASEAN Declaration and the Amity Treaty laid down the following core developmental and security objectives:
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 fields;

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 international commodity trade, the improvement of their transportation
and communications 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 organizations with similar
aims and purposes, and explore all avenues for even closer cooperation among themselves (ASEAN Declaration).
Amity Treaty strictly enjoins ASEAN Member States to observe the fundamental principles of mutual respect for the
independence, sovereignty, equality, territorial integrity, and national identity of the respective Member States; freedom
from external interference, subversion, or → coercion; renunciation of the threat or use of force; and peaceful settlement
of disputes (→ Peaceful Settlement of International Disputes).

50 Under the institutional frameworks of the ASEAN Declaration and the Amity Treaty, ASEAN successfully contained and
prevented intra-regional conflicts through the ‘ASEAN Way’, or a collective process of → consultation, → negotiation,
and consensus traceable to Indo-Malayan dispute settlement concepts of mushawara and mufakat. To guarantee
South-East Asia’s future insulation from Cold War tensions that had driven wars in Cambodia, Vietnam, and Laos,
ASEAN Member States established South-East Asia as a zone of peace, freedom, and neutrality under the ASEAN
Declaration on South-East Asia as a Zone of Peace (→ Zones of Peace). ASEAN’s entrenched history of promoting
constructive political dialogue since its inception was institutionally formalized through the 1994 ASEAN Regional
Forum (‘ARF’). ARF enables political and security cooperation through confidence-building measures and preventive
diplomacy among ASEAN States and dialogue partners such as Australia, Canada, China, the European Union, India,
Japan, the Democratic Republic of → Korea, the Republic of Korea, Mongolia, New Zealand, Pakistan, Papua New
Guinea, the Russian Federation, and the US. ARF provides a forum for multilateral discussion of instrument-driven
negotiations on nuclear non-proliferation (Treaty on the Southeast Asia Nuclear Weapon-Free Zone), counterterrorism
(2001 ASEAN Declaration on Joint Action to Counter Terrorism), territorial disputes (Declaration on the Conduct of
Parties in the South China Sea), and transnational crime (ASEAN Declaration on Transnational Crime).

51 Following the framework of the ASEAN Declaration and the Amity Treaty, ASEAN Member States set long-term
objectives for deepening regional cooperation in the ASEAN Vision 2020. ASEAN Vision 2020 envisaged a ‘concert of
Southeast Asian nations’ existing under a zone of peace, freedom, and neutrality, where territorial and other disputes are
‘resolved by peaceful means’, where the Amity Treaty functions ‘fully as a binding code of conduct’ for South-East Asian
governments. Moreover, ASEAN Vision 2020 laid down the objective of ‘Partnership in Dynamic Development’ to forge
closer economic integration within ASEAN with consistent economic growth and sustainable development strategies
leading towards an ‘ASEAN Economic Region in which there is a free flow of goods, services and investments, a freer
flow of capital, equitable economic development and reduced poverty and socio-economic disparities’. To this end,
ASEAN Member States pledged to:

• maintain regional macroeconomic and financial stability by promoting closer consultations in macroeconomic and
financial policies.

• advance economic integration and cooperation by undertaking the following general strategies: fully implement the
ASEAN Free Trade Area and accelerate liberalization of trade in services, realise the ASEAN Investment Area by 2010
and free flow of investments by 2020; intensify and expand sub-regional cooperation in existing and new sub-regional
growth areas; further consolidate and expand extra-ASEAN regional linkages for mutual benefit cooperate to strengthen
the multilateral trading system, and reinforce the role of the business sector as the engine of growth.
• promote a modern and competitive small and medium enterprises (SME) sector in ASEAN which will contribute to the industrial development and efficiency of the region

• accelerate the free flow of professional and other services in the region

• promote financial sector liberalisation and closer cooperation in money and capital market, tax, insurance and customs matters as well as closer consultations in macroeconomic and financial policies

• accelerate the development of science and technology including information technology by establishing a regional information technology network and centers of excellence for dissemination of and easy access to data and information

• establish interconnecting arrangements in the field of energy and utilities for electricity, natural gas and water within ASEAN through the ASEAN Power Grid and a Trans-ASEAN Gas Pipeline and Water Pipeline, and promote cooperation in energy efficiency and conservation, as well as the development of new and renewable energy resources

• enhance food security and international competitiveness of food, agricultural and forest products, to make ASEAN a leading producer of these products, and promote the forestry sector as a model in forest management, conservation and sustainable development

• meet the ever increasing demand for improved infrastructure and communications by developing an integrated and harmonized trans-ASEAN transportation network and harnessing technology advances in telecommunication and information technology, especially in linking the planned information highways/multimedia corridors in ASEAN, promoting open sky policy, developing multi-modal transport, facilitating goods in transit and integrating telecommunications networks through greater interconnectivity, coordination of frequencies and mutual recognition of equipment-type approval procedures

• enhance human resource development in all sectors of the economy through quality education, upgrading of skills and capabilities and training

• work towards a world class standards and conformance system that will provide a harmonised system to facilitate the free flow of ASEAN trade while meeting health, safety and environmental needs

• use the ASEAN Foundation as one of the instruments to address issues of unequal economic development, poverty and socioeconomic disparities

• promote an ASEAN customs partnership for world class standards and excellence in efficiency, professionalism and service, and uniformity through harmonised procedures, to promote trade and investment and to protect the health and well-being of the ASEAN community

• enhance intra-ASEAN trade and investment in the mineral sector and to contribute towards a technologically competent ASEAN through closer networking and sharing of information on mineral and geosciences as well as to enhance cooperation and partnership with dialogue partners to facilitate the development and transfer of technology in the mineral sector, particularly in the downstream research and the geosciences and to develop appropriate mechanism for these.

Finally, the landmark ASEAN Vision 2020 also set structural institutional objectives. South-East Asia was to be a socially cohesive and open or outward-looking ‘community of caring societies’, conscious of its history, diverse and pluralist → cultural heritage (→ Cultural Diversity), and common regional identity.

Regional cooperation in ASEAN is broad-based and negotiated among ASEAN Member States through three ‘community’ platforms: the ASEAN Security Community, the ASEAN Economic Community, and the ASEAN Socio-Cultural Community. Through these platforms, a variety of different treaties provide a framework for dealing with, among others, ASEAN dispute settlement and trade and investment issues. Other main areas of economic cooperation are also facilitated through ASEAN treaties: food, agriculture, and forestry; telecommunications and information technology; banking and finance; industrial projects and joint ventures; intellectual property; energy and minerals; standards and conformance policies; as well as tourism, communications and transport regulation. Examples of such framework treaties may be found at <http://www.aseansec.org>.

Spearheaded by the ASEAN Socio-Cultural Community, ASEAN also undertakes functional cooperation in education, culture, disaster management, drugs and narcotics control, health and nutrition, rural development and poverty eradication, science and technology, AIDS and SARS prevention, university networking, and human resource
development. ASEAN Member States have also executed various soft-law instruments and hard-law agreements on environmental protection. → Immigration issues are also governed by ASEAN agreements. Examples of both immigration and environmental agreements can be located at <http://www.aseansec.org>.

In December 1997 ASEAN established external cooperative linkages with East Asia through the ‘ASEAN Plus Three’ (China, Japan, and the Republic of Korea). Apart from bilateral trade agreements, major instruments governing the linkages include, among others, the 2003 ASEAN Plus Three Consultation on Transnational Crime and the Chiang Mai Initiative consisting of an expanded ASEAN Swap Arrangement and bilateral swap arrangements with China, Japan, and the Republic of Korea. ASEAN Plus Three has also launched cooperation on the Asian Bonds Market Initiative.

3. From ASEAN Cooperation to ASEAN Integration: The New ASEAN Charter

After over 40 years as an association for regional cooperation, ASEAN is poised to move towards greater regional integration, this time as a formal international organization with the ability to make decisions binding and enforceable upon all ASEAN Member States. On 20 November 2007, all 10 ASEAN countries signed the Singapore Declaration on the ASEAN Charter (‘Singapore Declaration’), stating their resolve to ‘complete ratification by all Member Countries as soon as possible in order to bring the ASEAN Charter into force’. The signing of the Singapore Declaration followed swiftly after the ASEAN countries issued the Cebu Declaration on the Blueprint of the ASEAN Charter ([done 13 January 2007] 1 Trading Arrangements in the Pacific Rim: ASEAN and APEC Doc I.B.5.s.2, 1), noting that

ASEAN has matured into a regional organisation and is expanding its role as an integrated regional economy and a dynamic force in maintaining regional peace and stability as envisaged in the Declaration of ASEAN Concord II (Bali Concord II) and its plans of action, roadmaps, and the ASEAN Vision 2020 which envisions ASEAN as a concert of Southeast Asian nations, outward-looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring societies.

The move from regional cooperation to integration appears to have been largely motivated by South-East Asia’s economic development over the last 40 years within the framework of ASEAN cooperation. As of April 2008 the total ASEAN population stands at over 575 million, with an annual population growth of almost 2%. Overall GDP for the ASEAN region is now about US$1.3 trillion per annum, under a 6.5% growth rate per annum. Total annual inter-ASEAN trade is at over US $354 billion per annum, with a 14.7% growth rate in nominal value of total trade. Total annual ASEAN trade with non-ASEAN countries (including other regional economic groupings) is nearly US$1.1 trillion per annum, accounting for 74.9% of ASEAN countries' total trade volumes.

The Charter of the Association of Southeast Asian Nations (‘ASEAN Charter’) was fully ratified by all 10 ASEAN Member States on 21 October 2008. The ASEAN Charter entered into force on 15 December 2008, the thirtieth day following the date of deposit of the tenth instrument of ratification with the ASEAN Secretary-General.

The ASEAN Charter is the landmark constitutive and binding international instrument that transforms ASEAN from an institution for regional cooperation to a formal international organization with legal personality (→ International Organizations or Institutions, General Aspects). As stressed by Philippine Ambassador Rosario Manalo, the Chairperson of the High-Level Task Group that drafted the ASEAN Charter, ASEAN would be transformed from a regional cooperation to a rules-based organization with legal personality, which could sue and be sued (J Gomez ‘Draft ASEAN Charter Calls for Human Rights Body, Upholds Noninterference Policy’ Associated Press [Manila Philippines 9 November 2007]). Accordingly, the ASEAN Charter revises the organizational purposes of ASEAN:
1. To maintain and enhance peace, security, and stability and further strengthen peace-oriented values in the region;

2. To enhance regional resilience by promoting greater political, security, economic, and socio-cultural cooperation;

3. To preserve Southeast Asia as a Nuclear Weapon-Free Zone and free of all other weapons of mass destruction;

4. To ensure that the peoples and Member States of ASEAN live in peace with the world at large in a just, democratic, and harmonious environment;

5. To create 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;

6. To alleviate poverty and narrow the development gap within ASEAN through mutual assistance and cooperation;

7. To strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN;

8. To respond effectively, in accordance with the principle of comprehensive security, to all forms of threats, transnational crimes and transboundary challenges;

9. To promote sustainable development so as to ensure the protection of the region's environment, the sustainability of its natural resources, the preservation of its cultural heritage and the high quality of life of its peoples;

10. To develop human resources through closer cooperation in education and life-long learning, and in science and technology, for the empowerment of the peoples of ASEAN and for the strengthening of the ASEAN Community;

11. To enhance the well-being and livelihood of the peoples of ASEAN by providing them with equitable access to opportunities for human development, social welfare, and justice;

12. To strengthen cooperation in building a safe, secure, and drug-free environment for the peoples of ASEAN;

13. To promote a people-oriented ASEAN in which all sectors of society are encouraged to participate in, and benefit from, the process of ASEAN integration and community building;

14. To promote an ASEAN identity through the fostering of greater awareness of the diverse culture and heritage of the region; and

15. To maintain the centrality and proactive role of ASEAN as the primary driving force in its relations and cooperation with its external partners in a regional architecture that is open, transparent, and inclusive.

Under the new ASEAN Charter, ASEAN Member States obligate themselves to act in accordance with the following principles:
a) respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States;

b) shared commitment and collective responsibility in enhancing regional peace, security, and prosperity;

c) renunciation of aggression and of the threat or use of force or other actions in any manner inconsistent with international law;

d) reliance on peaceful settlement of disputes;

e) non-interference in the internal affairs of ASEAN Member States;

f) respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion;

g) enhanced consultations on matters seriously affecting the common interest of ASEAN;

h) adherence to the rule of law, good governance, the principles of democracy and constitutional government;

i) respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice;

j) upholding the United Nations Charter and international law, including international humanitarian law, subscribed to by ASEAN Member States;

k) abstention from participation in any policy or activity, including the use of its territory, pursued by any ASEAN Member State or non-ASEAN State or any non-State actor, which threatens the sovereignty, territorial integrity or political and economic stability of ASEAN Member States;

l) respect for the different cultures, languages and religions of the peoples of ASEAN, while emphasising their common values in the spirit of unity in diversity;

m) the centrality of ASEAN in external political, economic, social and cultural relations while remaining actively engaged, outward-looking, inclusive and non-discriminatory; and

n) adherence to multilateral trade rules and ASEAN's rules-based regimes for effective implementation of economic commitments and progressive reduction towards elimination of all barriers to regional economic integration, in a market-driven economy.

59 The ASEAN Charter contains several new key features that had not been made binding under the previous cooperative regime established in the ASEAN Declaration and the Amity Treaty. These include: the conferral of legal personality on ASEAN; the expansion of the organizational purposes to include strengthening democracy, promoting the → rule of law, and the protection of → human rights and fundamental freedoms; the general obligation of ASEAN Member States to abide by organizational principles such as ‘adherence to the rule of law, good governance, the principles of democracy and constitutional government’; as well as ‘respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice’; and the general obligation of ASEAN Member States to abide by organizational principles that affirm adherence to rules of the international legal order, such as ‘the United Nations Charter and international law, including international humanitarian law’ (→ Humanitarian Law, International), the principle of non-intervention (→ Intervention, Prohibition of), and all multilateral trade rules, emphasizing ‘respect for the different cultures, languages, and religions of peoples of the ASEAN’ given their ‘common values in the spirit of unity in diversity’.

60 The new ASEAN under the ASEAN Charter also centralizes its organizational structure and tightens the network of ASEAN institutions (→ International Organizations or Institutions, Decision-Making Process). ASEAN is governed through various different structures (→ International Organizations or Institutions, Internal Law and Rules). The ASEAN Summit (composed of the Heads of State of the Member States) functions as the ‘supreme policy-making body of ASEAN’, with powers to ‘deliberate, provide policy guidance and take decisions on key issues pertaining to the realization of ASEAN objectives’, including ‘taking appropriate actions in emergency situations’ (Art. 7(2) ASEAN Charter). While decision-making remains primarily based on consultation and consensus, if consensus cannot be achieved, the ASEAN Summit may ‘decide how a specific decision can be made’ (Art. 20 ASEAN Charter). The ASEAN Summit shall also decide over serious breaches of the ASEAN Charter. The ASEAN Coordinating Council—
ASEAN Free Trade Area rules should still strictly comply with all multilateral trading rules. There should be little doubt which is adherence to multilateral trading rules. This implies that ASEAN Member States' national implementation of the signing of the ASEAN Charter, all Member States have assumed the obligation not to defeat its purposes, one of on generally all imports between ASEAN members by 2010 (2015 for Cambodia, Laos, Myanmar, and Vietnam). With authority to resolve disputes among ASEAN members. ASEAN members have agreed to uniformly impose zero tariffs compliance with the rules of origin and the Common Effective Preferential Tariff scheme, with no legally binding charter, ASEAN Member States had to conduct their own national review, analysis, and monitoring to ascertain the same degree of commitment extends to abiding by multilateral trading rules. Prior to the passage of the ASEAN Charter, which includes the key ASEAN organizational purposes of strengthening democracy, promoting the rule of law, and protecting human rights and fundamental freedoms, along with the UN Charter, international law, and international humanitarian law.

The passage and ratification of the ASEAN Charter signals three important developments for the integration of the South-East Asian region: a region-wide commitment to international law, or the rules of the international public order; institutional and Member State accountability as a platform for compliance; and respect for political pluralism under a common conception of shared values. When all ASEAN member countries signed and ratified the ASEAN Charter without qualification, they likewise undertook not to take any action that would ‘defeat the object and purposes’ of the ASEAN Charter, which includes the key ASEAN organizational purposes of strengthening democracy, promoting the rule of law, and protecting human rights and fundamental freedoms, along with the UN Charter, international law, and international humanitarian law.


The same degree of commitment extends to abiding by multilateral trading rules. Prior to the passage of the ASEAN Charter, ASEAN Member States had to conduct their own national review, analysis, and monitoring to ascertain compliance with the rules of origin and the Common Effective Preferential Tariff scheme, with no legally binding authority to resolve disputes among ASEAN members. ASEAN members have agreed to uniformly impose zero tariffs on generally all imports between ASEAN members by 2010 (2015 for Cambodia, Laos, Myanmar, and Vietnam).
that ASEAN and its Member States are bound and committed to the rules of international public order. Exceptionalist positions have been substantially eroded with the entry into force of the ASEAN Charter.

66 The formerly strict consensus requirement in ASEAN decision-making during its cooperative framework (under the ASEAN Declaration and the Amity Treaty) has also been diluted under the ASEAN Charter. Under Arts 20 and 21 ASEAN Charter, consultation and consensus remains a ‘basic principle’ in ASEAN decision-making. However, the ASEAN Charter explicitly provides in Art. 20(2) that ‘[w]here consensus cannot be achieved, the ASEAN Summit may decide how a specific decision can be made’. Nothing in the language of Art. 7 ASEAN Charter (which provides the powers, functions, and prerogatives of the ASEAN Summit as the ‘supreme policy-making body of ASEAN’) could be construed to require the ASEAN Summit to use consensus to ‘decide how a specific decision can be made’ in relation to Art. 20(2) ASEAN Charter.

67 The ASEAN Charter departs from ASEAN's present voluntarist model of international personality by expressly conferring ASEAN with ‘legal personality’ as an ‘inter-governmental organization’, and enjoying functional immunities and privileges ‘necessary for the fulfilment of the purposes of the organization (Art. 17 ASEAN Charter; → International Organizations or Institutions, Privileges and Immunities). The hortatory provisions in the Preamble ASEAN Charter widen ASEAN's orientation from political-economic cooperation towards adherence to the ‘principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms’. While the ASEAN Charter affirms the fundamental principles in the Amity Treaty, the ASEAN Declaration, and other treaties, declarations, agreements, and international instruments annexed to the ASEAN Charter, the ASEAN Charter introduces a novel clause by making ‘respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice’, and ‘adherence to the rule of law, good governance, the principles of democracy and constitutional government’ key principles to govern the conduct of ASEAN and its Member States (Art. 2(1) ASEAN Charter). In relation to these broader purposes and principles of conduct, Member States are expressly obligated to ‘take all necessary measures, including the enactment of appropriate domestic legislation, to effectively implement the provisions of this Charter and to comply with all obligations of membership’.

68 The ‘new’ ASEAN created under the ASEAN Charter bears an objective legal personality, since the organization's existence arises from the satisfaction of international legal requirements for ‘organizationhood’. ASEAN under the ASEAN Charter possesses its own ‘distinct will’ apart from that of its members, evidenced by the organization's power to take binding decisions upon the entire membership through the vote of a mere majority of its members. ASEAN has specific organs and bodies bearing special tasks, and which define the position of members in relation to ASEAN. The ASEAN Charter also grants legal capacity, privileges, and immunities to ASEAN in the territory of each of its Member States.

69 The acquisition of an objective legal personality under the ASEAN Charter (beyond ASEAN's subjective legal personality conferred by its membership within the framework of the Amity Treaty and the ASEAN Declaration) implicates its responsibility as an international organization, as well as the ‘residuary’ responsibility of its Member States to third parties (→ International Organizations or Institutions, Responsibility and Liability). As a distinct legal entity from ASEAN Member States, acts authored by ASEAN cannot automatically be attributed to its Member States. At best, ASEAN Member States’ residuary responsibility to third parties will either partake of ‘secondary member-state responsibility’, where the third party must first present its claim to ASEAN, and recourse to the Member States would be had only if ASEAN is in default in providing an adequate remedy; or ‘indirect responsibility’, where Member States are deemed a priori responsible to the organization to meet its obligations towards third parties (J Klabbers An Introduction to International Institutional Law [2nd ed Cambridge 2009] at 311–13).

70 The ASEAN Charter is the South-East Asian region's strongest binding commitment to international accountability. After over 40 years of largely informal and non-binding cooperative measures and initiatives by ASEAN Member States, the formalization of its commitment within organization of ASEAN institutions demonstrates cohesive regionalism towards compliance with international law.

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