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BINDING OR NON-BINDING: ANALYSING THE NATURE OF THE ASEAN AGREEMENTS

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Summary: ASEAN has gradually attempted to assert itself as a diplomatic force to reckon with. However, over the recent past, it's ability to deal with regional issues and situations has come under scrutiny. This paper argues that the reason behind such lack of clear decision making arises from the large presence of Soft Law nomenclature in ASEAN agreements, resulting in the lack of any Hard Law obligations on these nations. The paper attempts to highlight the lack of clarity in the nomenclature used in ASEAN agreements, the problems that arise from the same, and the possible reasoning behind the usage of such nomenclature. In conclusion, the paper provides a few solutions and recommendations that could be adopted by the ASEAN community of nations to establish themselves as an economic community.

Keywords: ASEAN; nature; binding; hard law; soft law

1 Introduction

The Association of Southeast Asian Nations (ASEAN) is a regional intergovernmental organization which promotes intergovernmental collaboration and cooperation, and facilitates economic, political, socio – cultural, educational, military and security integration among its ten members: Indonesia, Myanmar, Malaysia, Brunei, Singapore, Thailand, Philippines, Cambodia, Laos and Vietnam. The association was established on 8th August, 1967 in Bangkok, Thailand, with the signing of the ASEAN Declaration by its founding fathers: Malaysia, Thailand, Indonesia, Singapore and Philippines.[1] The Declaration was a simply-worded document containing just five articles.[2]

The Declaration affirmed the establishment of the organisation and also stated its aims and purposes. The aims and purposes included cooperation in

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1 ASEAN. *About Asean.* [online]. Available at <https://asean.org/asean/about-asean/>.

2 ASEAN. *The Asean Declaration (Bangkok Declaration) Bangkok, 8 August 1967.* [online]. Available at: <https://asean.org/the-asean-declaration-bangkok-declaration-bangkok-8-august-1967/>.

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the economic, social, cultural, technical, educational, and other fields, and in the promotion of regional peace and stability through abiding respect for justice and the rule of law and adherence to the principles of the UN Charter. It proclaimed ASEAN as representing "the collective will of the nations of Southeast Asia to bind themselves together in friendship and cooperation and, through joint efforts and sacrifices, secure for their peoples and for posterity the blessings of peace, freedom and prosperity."[3]

ASEAN has made notable progress toward economic integration and free trade in the region. In 1992, members created the ASEAN Free Trade Area with the goals of creating a single market, increasing intra-ASEAN trade and investments, and attracting foreign investment.

However, over the recent past, ASEAN's credibility has been dealt a huge blow due to its inability in dealing with regional issues and situations that have cropped up. With the aim of rectifying this situation, ASEAN has pursued institutional reforms, led by the promulgation and ratification of a new ASEAN Charter in 2008 which for the first time in its existence, gives ASEAN a legal personality. With reforms gradually being implemented, supporters argue that ASEAN's relevance as an important regional actor, protecting and working for the rights of its members largely depends on its ability to bolster its organizational capabilities.[4] Along with this however, this paper attempts to look at analysing the various nomenclatures that ASEAN has used in documents both, internally, as well as externally, and how the use of certain nomenclature has led to a weak development of ASEAN law per se.

Members of ASEAN have historically followed two primary methods while dealing with each other.[5] The first being a diplomatic strategy based largely on a consensus-based approach where diplomatic officials engage in consultations and informal discussions to arrive at a consensually agreed decision at official meetings.[6] This method of decision making implies that ASEAN sets aside matters that are controversial, while adopting policies only in areas that all members have agreed upon either because of the policy being modified to suit everyone's needs or because the positions of the member states have converged.[7] The sec-

3 ASEAN. *History, The Founding of ASEAN.* [online]. Available at: <https://asean.org/asean/about-asean/history/>.

4 NARINE, Shaun. ASEAN in the twenty-first century: a sceptical review. *Cambridge Review of International Affairs*, 2009, vol. 22, issue 3, p. 369.

5 SEVERINO, Rodolfo C. *Southeast Asia in Search for Community: Insights from the Former ASEAN Secretary-General.* Institute of Southeast Asian Studies, 2006, p. 35.

6 DAVIDSON, Paul J. The Role of Law in Governing Regionalism in Asia. In THOMAS, Nicholas (ed). *Governance and Regionalism in Asia. First Edition.* Routledge, 2008, p. 228.

7 LOKE, Beverly. The 'ASEAN Way': Towards Regional Order and Security Cooperation? *Melbourne Journal of Politics*, 2005, vol. 30, p. 8.

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ond method refers to six principles that dictate behaviour which was set in 1976, in the Treaty of Amity and Cooperation. These include:[8]

1. Respect for state sovereignty;
2. Freedom from external interference;
3. Non-interference in internal affairs;
4. Peaceful dispute settlement;
5. Renunciation of the use of force; and
6 Cooperation.

The adoption of policies that have only the "lowest common denominator" based on the ASEANs emphasis on consultation, consensus, and non-interference has impeded the institution building efforts of ASEAN.[9]

ASEAN has over the past century conducted thousands of meetings which have come up with agreements at the end forming legal instruments, declarations, reports etc. However, there is no clear distinction between the nomenclature used by ASEAN. This has been one of the key factors stalling its success. One of such nomenclature used is "ASEAN Instrument", but the definition of it is still unclear. Due to this, although the framing of the various ASEAN instruments has been accomplished, their implementation is affected. In most cases, it has led to the creation of soft law rather than hard law.

Based on the spectrum set by Abbot and Snidal towards determining whether an instrument is "hard" or "soft", soft law instruments are more likely to be less precise in wording, not involve hard obligations, and have weak enforcement provisions.[10] The need to arrive at such consensus based agreements that espouse soft law, along with the intricate diversity exhibited by the members of the organization has made the march towards progress, or any other goal for that matter, extremely difficult.

2 Soft and Hard Law

Hard Laws and Soft Laws exist on a scale depending on their binding nature. A simple understanding provides a distinction that while Soft Laws are not legally binding, hard laws refer to legally binding obligations that are binding on the parties that are involved, making them legally enforceable before a legal authority. The understanding of these two concepts though has been varied according to the scholar interpreting it, and the school of jurisprudence that they orient

8 ASEAN. *Treaty of Amity and Cooperation in Southeast Asia Indonesia*. [online]. Available at: <https://asean.org/treaty-amity-cooperation-southeast-asia-indonesia-24-february-1976/>.

9 DESKER, Barry. *Is the ASEAN Charter Necessary?* RSIS Commentaries, 2008. [online]. Available at: https://www.rsis.edu.sg/rsis-publication/rsis/1097-is-the-asean-charter-necessary/.

10 ABBOT, Kenneth W, SNIDAL, Duncan. Hard and Soft Law in International Governance. *International Organization*, 2000, vol. 54, issue 3, pp. 421–422.

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themselves towards. What must however be kept in mind is that while soft and hard laws might be different and distinct, they interact and supplement each other.

2.1 Soft Law

Soft Law infers to rules of conduct which, in principle, have no legally binding force, but which have practical effects on the body that it is looked at being imposed upon.[11] They can be considered as a set of international commitments or obligations that are not regarded as binding in the sense that they cannot be held against, or enforced in the same way by international law proper, but are considered beyond simply being just political gestures. This essentially implies that while there is no legal duty for there to be any compliance, there is rather, an expectation on international bodies to comply to them.[12]

The nature of Soft Law, and the manner of their creation implies a certain support of the bodies that have created them. Soft Law could therefore be said to possibly refer to potential of future law. The support that these norms or rules have from the international community are then reflected in the practice of international actors and due to this, have the possibility of being recognized as binding rules in the course of time.[13] Therefore, Soft Law does not consist or rules, which are binding. Rather, it consists of norms that are followed voluntarily.[14] Despite being non-binding, Soft Law agreements are carefully negotiated and meticulously drafted statements since they have a norm creationary effect. Elements of good faith, and a desire to influence state practice thereby leading to law making and progressive development are often seen in Soft Law instruments.[15]

Soft Law provides an alternative for law making instruments. In areas where parties are ambiguous, or are apprehensive regarding the topic in question, a non-binding agreement offers a viable alternative. This allows parties to discuss and agree upon more detailed provisions at a later point of time.[16]

Binding instruments such as treaties often take a longer time to negotiate, and since they are often rigid, have the weakness of turning obsolete over time. To ensure that this doesn't happen, mechanisms exist that allow the possibility of modification of these treaties, to ensure that the continue maintaining

11 SNYDER, Francis. The Effectiveness of European Community Law: Institutions, Processes, Tools and Techniques. *Modern Law Review*, 1993, vol. 56, pp. 19–32.

12 THIRLWAY, Hugh. *The Sources of International Law. Second Edition.* Oxford: Oxford University Press, 2019, p. 188.

13 *Ibid.*

14 BOYLE, Alana. Some reflections on the Relationship of Treaties and Soft Law. *International and Comparative Law Quarterly*, 1999, vol. 48, pp. 901–902.

15 *Ibid.*

16 *Ibid.,* p. 903.

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relevance despite the passage of time. Soft Law instruments provide a method since they are easy to be adopted and replaced. For example, the United Nations Convention on the Law of the Sea ("UNCLOS") considers International Monetary ("IMO") resolutions as "generally accepted rules and standards established through the competent organisation or general diplomatic conference". By doing so, while the IMO has no power to adopt any binding resolution, the UNCLOS could indirectly make these resolutions obligatory.[17]

2.2 Hard Law

Hard law "refers to legally binding obligations that are precise (or can be made precise through adjudication or the issuance of detailed regulations) and that delegate authority for interpreting and implementing the law".[18] Hard Law instruments are binding in nature, and therefore requires parties to formulate them in a more precise and detailed manner. Apart from a detailed negotiation process followed, they often require going through a ratification process in the domestic country as well.[19] The rigid nature therefore implies that must adhere to these. There are stringent checks present towards ensuring that these binding instruments are respected and followed. While they do not provide immediate evidence, they are more authoritative in nature since they are codified. Codification of an instrument requires the parties to have a stronger commitment to the norms and principles involved.[20]

The presence of Hard Law in treaties as well as an array of other treaties which are for all technicalities contracts between parties makes the conditions present rigid and mandatory to be followed. The relationship between the parties and their actions are dictated by these instruments. The rigid codification of these rules cements the obligations and the rights that the specific parties have towards each other. This contractual nature provides parties with the assurance that the terms and principles present will be adhered to and in case of a default by any of the parties, thy provide remedies as well.[21]

2.3 Distinguishing between Soft Law and Hard Law

The most accepted system of differentiation between Hard Law and Soft Law was proposed by Abbot and Snydal.[22] They provided three dimensions to understand the character of law.

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17 BOYLE, Alan. The Choice of a Treaty: hard law versus soft law. In CHESTERMAN, Simon, MALONE, David M., VILLALPANDO, Santiago (eds). *The Oxford Handbook of United Nations Treaties*. Oxford: Oxford University Press, 2019, p. 101.

18 ABBOTT, Kenneth W., SNIDAL, Duncan, supra note 10, p. 422.

19 BOYLE, Alan, *supra* note 18, p. 115.

20 *Ibid.*

21 *Ibid.*

22 SHAFFER, Gregory, POLLACK, Mark. Hard vs Soft Law: Alternatives, Complements and Antagonists in International Governance. *Minnesota Law Review*, 2010, vol. 94, pp. 706–709.

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1. Precision of rules;
2. Obligation;
3. Delegation to a third-party decision maker.

To identify the nature and characteristic of a law, they suggested that laws had to be analysed on these three grounds and this when taken together, the laws analysed presented a "harder" or a "softer" legal character. In this context, Hard Laws refer to legally binding obligations that delegate authority for the interpretation and the implementation of the law. Soft Laws on the other hand were seen as a residual category, where laws tend to attain a "softer" character if they did not possess one of the above dimensions. For example,

1. If an agreement is not formally binding, it is soft along one dimension.
2. If an agreement is very vague, allowing the parties the liberty of interpretation, then it is soft along the "precision of rules" dimension.
3. If an agreement does not include an authority or a third party to monitor its implementation, or to interpret or enforce it, it is soft along another dimension.

Most scholars agree with this method of categorisation of laws.

The Prototype Theory, another alternate theory suggested suggests that Soft law is in the penumbra of law.[23] It can be distinguished from purely political documents more or less readily, depending on its closeness to the prototype of law. Similar to the characterisation by Abbot and Snydal, this theory also purports that there is no clear distinction between Soft Law and Hard Law. Soft Law can be distinguished from purely political documents more or less readily, depending on its closeness to the prototype of law which is considered as Hard Law. This view essentiates that anything that is closer to resembling to the prototype, that are legally binding documents would be considered to be closer to Hard Law, and anything that is farther away from this prototype becomes "softer".[24]

2.4 The effects of Hard Law and Soft Law

This paper argues that the nomenclature used by ASEAN in the agreements that it enters into are closer to what could be "Soft Law". This characterisation of ASEAN law instruments plays to the detriment of the objectives of the body.

Hard Law instruments allow for states to more credibly commit to international agreements. The costs of reneging from Hard Law commitments are much higher since they involve possible legal sanctions and higher costs to a states' reputation where they are found to have violated their legal commitments.[25]

23 *Ibid.*

24 *Ibid.*

25 DOWNS, George W., JONES, Michaela A. Reputation, Compliance and International Law. *The Journal of Legal Studies*, 2002, vol. 31, pp. 95–108.

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Hard Law treaties have direct legal effects in national jurisdictions. When treaty obligations are to be implemented through domestic legislations, they create new that mobilize domestic actors. This not only leads to a more impactful effect on domestic affairs of the parties, but it also increases the audience costs of a violation and thus making their commitments more credible.[26] They further create mechanisms for the interpretation and elaboration of legal commitments over a longer period of time,[27] and this also permits states to monitor and enforce their commitments.[28]

These positive effects are often lost out by ASEAN countries due to the nomenclature preferred by them, which has a higher tinge of Soft Law with them.

3 A lack of clarity in the nomenclature adopted by ASEAN

3.1 ASEAN Charter

The idea to draft a new ASEAN charter was proposed by Malaysia in 2004, with the decision to draw up a charter for consideration being formally adopted in the Eleventh ASEAN Summit in 2005.[29] With the idea for having a new charter having been floated long back in 1974, in the Seventh ASEAN Ministerial Meeting in 1974, it was eventually considered inappropriate since it did not fit in with ASEAN's practice of a more flexible, informal, and consensus-based approach towards diplomacy.[30] With the aim of transforming ASEAN into a more people-centred community,[31] the charter was formally adopted on November 20th, 2007.

The ASEAN Charter, entered into force in 2008, provides "legal status and institutional framework" for ASEAN through the codification of "ASEAN norms, rules and values".[32] It is a legally binding agreement among the ten member states.[33]

Instead of defining the nomenclatures, it merely partially listed the nomenclatures used by ASEAN, which are "treaties", "conventions", "agreements", "con-

26 ABBOTT, Kenneth W., SNIDAL, Duncan, supra note 10.

27 *Ibid.*

28 *Ibid.,* p. 438.

29 CABALLERO-ANTHONY, Mely. The ASEAN CHARTER: An Opportunity Missed or the One that Cannot be Missed? In SINGH, Daljit, MAUNG MAUNG THAN, Tin (eds). *Southeast Asian Affairs.* Singapore: ISEAS Publishing, 2008, p.71.

30 KARUPPANNAN, Ilango. The ASEAN Community and the ASEAN Charter: Towards a New ASEAN? *Journal of Diplomacy and Foreign Relations*, 2006, vol. 18, p. 49.

31 ASEAN. *Chairman's Statement of the 11th ASEAN Summit. One Vision, One Identity, One Community*. [online]. Available at: <https://asean.org/?static_post=chairman-s-statement-of-the-11th-asean-summit-one-vision-one-identity-one-community>.

32 ASEAN. *Charter of the Association of Southeast Asian Nations*. [online]. Available at: <https://asean.org/asean/asean-charter/charter-of-the-association-of-southeast-asian-nations/>.

33 *Ibid.*

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cords", "declarations", "protocols" and "other ASEAN instruments".[34] A comprehensive typology or a classification of all the documents used by ASEAN is nowhere to be found. According to Aziz and Dehousse, the internal instruments of ASEAN include more than thirty different titles,[35] listed below.

Action Plan	Ministerial Understanding
Action Programme	Plan of Action
Agenda	Policy
Agenda of Action	Guideline
Agreement	Political Declaration
Blueprint	Programme
Code of Conduct	Protocol
Concept Paper	Resolution
Consensus	Roadmap
Convention	Strategic Plan
Criteria	Strategy
Declaration	Terms of Understanding
Declaration of Objectives	Treaty
Declaration of Principles	Understanding
Framework Guidelines	Work Plan
Memo of Understanding	Work Program
Ministerial Declaration	

It should be noted that ASEAN provides no official and comprehensive definitions of these nomenclatures used.

Nomenclature used has to be narrowed down and streamlined to avoid multiple terms having similar interpretations. This would not only ensure a lack of confusion but would also provide clarity and precision with respected to the intended meanings of such terms. A mere provision of precise definitions to these terms would also be a step towards reaching such uniformity.

3.2 ASEAN Instrument

The term "ASEAN instrument" is said to be "found only in the ASEAN Charter and the Protocol to the ASEAN Charter on Dispute Settlement Mechanisms".[36] The problem is that a comprehensive definition of the term is not set out in the Charter nor the Protocol.[37] On ASEAN's official website listing its legal instru-

34 *Ibid.*

35 ABDUL AZIZ, Davinia, DEHOUSSE, Renaud. The instruments of Governance of ASEAN: An Inventory and Critical Analysis. *ASEAN Integration Through Law: Plenary 2, ASEAN Governance, Management and External Legal Relations*, 2013.

36 *Ibid.*

37 *Ibid.*

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ments, these legal instruments were broadly defined as "ASEAN legal instruments concluded among and between ASEAN Member States".[38]

Article 2(1) of the ASEAN Charter states, "In pursuit of the Purposes stated in Article 1, ASEAN and its Member States reaffirm and adhere to the fundamental principles contained in the declarations, agreements, conventions, concords, treaties and other instruments of ASEAN". This provision in the end gives a catch-all phrase of "other instruments of ASEAN". Article 25 of the ASEAN Charter states that "Where not otherwise specifically provided, appropriate dispute settlement mechanisms, including arbitration, shall be established for disputes which concern the interpretation or application of this Charter and other ASEAN instruments."

Article 52(1) of the ASEAN Charter states that "All treaties, conventions, agreements, concords, declarations, protocols and other ASEAN instruments which have been in effect before the entry into force of this Charter shall continue to be valid."

Under Chapter XIV of the 2006 Report of the Eminent Persons Group of the ASEAN Charter (EPG Report) it is stated that

All rights and obligations which arise from declarations, agreements, concords, treaties, protocols, conventions, and other ASEAN instruments, which have been in effect before the entry into force of this Charter, shall to the extent that they are not inconsistent with the provisions of this Charter, continue to be valid and bind Member States that have accepted them, in accordance with their terms, and general international law.[39]

The reference to the term "other ASEAN instruments" has been seen in different provisions of the ASEAN Charter as well as the EPG Report.

Article 20(3) of the ASEAN Charter states that "Nothing in paragraphs 1 and 2 of this Article shall affect the modes of decision-making as contained in the relevant ASEAN legal instruments." In this provision the term "instruments" is qualified into legal instruments.[40]

The Charter gives a partial list of treaties, conventions, agreements, concords, declarations, protocols, as well as a catch-all category of "other instruments". While the Charter does refer to legal instruments it also includes political instruments, the Protocol only refers to legal instruments.[41]

38 ASEAN. *ASEAN Legal Instruments*. [online]. Available at: <http://agreement.asean.org/explanatory/show.html>.

39 ASEAN. *Report of the Eminent Persons Group of the ASEAN Charter.* December 2016, [online]. Available at: <https://www.asean.org/wp-content/uploads/images/archive/19247.pdf>.

40 PHAN, Hao Duy. Towards a Rules-Based ASEAN: The Protocol to the ASEAN Charter on Dispute Settlement Mechanisms. *Arbitration Law Review,* 2013, vol. 5, p. 261.

41 ABDUL AZIZ, Davinia, DEHOUSSE, Renaud, *supra* note 35.

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Neither the Charter nor the Protocol sets out a comprehensive definition of the term "ASEAN instruments", nor do they set out a comprehensive typology of the various ASEAN nomenclature they use, a total of 30 different titles can be seen to be in use including 30 different titles including agreements, framework agreements, arrangements, conventions, protocols, treaties, memorandum of understanding, and ministerial understanding.[42] Agreements, framework agreements, arrangements, conventions, protocols and treaties usually indicate legal instruments. However, the terms memorandum of understanding and ministerial understanding has been used for instruments that are both legal as well as not legal in character.[43]

A distinction has been drawn between documents that have been collectively concluded by ASEAN Member States, which are termed as "ASEAN instruments", and agreements concluded by ASEAN as an inter-governmental organization and a third external party pursuant to Article 41(7) of the ASEAN Charter, which are termed as "international agreements by ASEAN".[44] By stating that an "ASEAN instrument" needs to be concluded by Member States "as ASEAN Member States" any agreement concluded between States in their individual capacity, and not in the capacity of ASEAN Member States, has been excluded.[45] The term "concluded" has been used in the Protocol rather than "signed" which indicates that "other ASEAN instruments" would have to enter into force.[46]

Not all ASEAN instruments are legally binding. Instruments such as the Vientiane Action Programme (VAP),[47] the 2012 Joint Declaration of the ASEAN Defence Ministers on Enhancing ASEAN Unity for a Harmonized and Secure Community,[48] and the 2011 Declaration on ASEAN Unity in Cultural Diversity: Towards Strengthening ASEAN in Community,[49] do not give rise to legal obligations to ASEAN Member States.[50]

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42 *Ibid.*

43 *Ibid.*

44 PHAN, Hau Duy. *supra* note 40.

45 *Ibid.*

46 *Ibid.*

47 ASEAN. *Vientiane Action Plan*. [online]. Available at: <https://www.asean.org/storage/images/archive/VAP-10th%20ASEAN%20Summit.pdf>.

48 ASEAN. *Joint Declaration of the ASEAN Defence Ministers on Enhancing ASEAN Unity for a Harmonized and Secure Community.* [online]. Available at: <https://www.asean.org/wp-content/uploads/images/archive/document/Joint%20Declaration%20on%20Enhancing%20ASEAN%20Unity%20for%20a%20Harmonised%20and%20Secure%20Community.pdf>.

49 National University of Singapore. *2011 Declaration on ASEAN Unity in Cultural Diversity: Towards Strengthening ASEAN in Community.* [online]. Available at: <https://cil.nus.edu.sg/wp-content/uploads/formidable/18/2011-Declaration-on-ASEAN-Unity-in-Cultural-Diversity.pdf>.

50 ABDUL AZIZ, Davinia, DEHOUSSE, Renaud, *supra* note 35.

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The exact status of ASEAN instruments is often unclear.[51] The nomenclature of agreements, declarations, memoranda of understanding (MOU), policies and frameworks, and roadmaps is usually not indicative of whether these instruments impose binding obligations. This is due to the criteria for classifying ASEAN instruments as treaties remaining unclear to date.[52] With the exception of agreements pertaining to economic cooperation and dispute settlement, ASEAN instruments are political rather than legal in nature.[53]

The 2010 Protocol to the Asean Charter on Dispute Settlement Mechanisms retains the term "ASEAN instruments" but then adds on further to it.[54] Under Article 1(a) of the Protocol the definition of an ASEAN Instrument is given as "any instrument which is concluded by Member States, as ASEAN Member States, in written form, that gives rise to their respective rights and obligations in accordance with international law". The definition of "treaty" given in the Vienna Convention on the Law of Treaties (VCLT) is of "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation" Reading the definition of "ASEAN instrument" under the 2010 Protocol to the Asean Charter on Dispute Settlement Mechanisms and the definition of "treaty" under the VCLT one can reasonably conclude that the "ASEAN instruments" in the Protocol means ASEAN legal instruments or ASEAN treaties.[55]

ASEAN instruments also need not have all Member States ratify to them to enter into force, the ASEAN Convention on Counter Terrorism being an example of the same.[56]

Art. XXI (1) of the Convention states that it shall enter into force on the 30th (thirtieth) day following the date of the deposit of the 6th (sixth) instrument of ratification or approval with the Secretary-General of ASEAN in respect of those Parties that have submitted their instruments of ratification or approval.

51 EWING-CHOW, Michael, HSIEN-LI, Tan. The Role of the Rule of Law in ASEAN Integration. *RSCAS 2013/16, Robert Schuman Centre for Advanced Studies Global Governance Programme-41*, 2013, Working Paper.

52 *Ibid.*

53 *Ibid.*

54 National University of Singapore. *2010 Protocol to the Asean Charter on Dispute Settlement Mechanisms.* 8 April 2010. [online]. Available at: <https://cil.nus.edu.sg/databasecil/2010-protocol-to-the-asean-charter-on-dispute-settlement-mechanisms/>.

55 PHAN, Hao Duy, *supra* note 40, p. 262.

56 ASEAN. *ASEAN Convention on Counter Terrorism*. 5 November 2001. [online]. Available at: <https://asean.org/storage/2012/05/ACCT.pdf>.

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ASEAN Law has been defined by Diane Desierto as separately negotiated treaties, agreements and other instruments that applied to specific regulatory areas.[57] They are binding in nature.[58]

There has been an emergence of a body of „ASEAN Law" arising from the combined legislative functions of the ASEAN Summit and the ASEAN Political, Economic and Social Communities.[59] The Southeast Asian region appears to be evolving towards the consolidation of „ASEAN Law," but it does so with some subsisting ambivalence among the ASEAN membership on the process of public interactions between the Member States' domestic legal systems and the new ASEAN institutions.[60]

3.3 ASEAN Instrument vs International Agreement by ASEAN

It has been noted that by referring to "ASEAN Instruments", the scope is limited to those documents which are "collectively concluded by ASEAN member states".[61] For agreements that are concluded between ASEAN in its capacity as an inter-governmental organization and a third external party, these are now termed as "international agreements by ASEAN" under the Rules of Procedure for Conclusion of International Agreements by ASEAN.[62]

3.4 Memo of Understanding vs Treaty

Daniel Seah makes a case for distinguishing memoranda of understanding (MOUs) from treaties.[63] He argues that MOUs are "instruments that are devised to avoid legal obligations",[64] as can be seen from the language used. For instance, under a memorandum on agricultural cooperation, member states are referred to as "participants" rather than "parties" who reached "understandings" not "agreements".[65]

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57 DESIERTO, Diane A. ASEAN'S Constitutionalization of International Law: Challenges to Evolution Under the New ASEAN Charter. *Columbia Journal of Transnational Law*, 2011, vol. 49, pp. 268–285.

58 *Ibid.,* p. 306.

59 *Ibid.,* at 268.

60 *Ibid.,* at 274.

61 DUY PHAN, Hao. Promoting Compliance: An Assessment of Asean Instruments since the Asean Charter. *Syracuse Journal of International Law and Commerce*, 2014, vol. 41, pp. 379–382.

62 ASEAN. *2011 Rules of Procedure for Conclusion of International Agreements by ASEAN*. [online]. Available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2011-Rules-of-Procedure-for-Conclusion-of-International-Agreements-by-ASEAN-1.pdf>.

63 SEAH, Daniel. Problems Concerning the International Law-Making Practice of ASEAN: A Reply to Chen Zhida. *Asian Journal of International Law*, 2016, vol. 6, pp. 265–273.

64 *Ibid.,* p. 274.

65 *Ibid.*; ASEAN. *Memorandum of Understanding Between the Association of Southeast Asian Nations (ASEAN) Secretariat and the Ministry of Agriculture of the People's Republic of China on Agricultural Cooperation*. [online]. Available at: <https://asean.org/?static_

3.5 ASEAN Instruments and ASEAN Legal Instruments

The term "ASEAN Instrument" is found under many articles of the ASEAN Charter[66] and the Protocol to the ASEAN Charter on Dispute Settlement Mechanisms.[67] For example, Article 2(1) stipulated that "in pursuit of the Purposes stated in Article 1, ASEAN and its Member States reaffirm and adhere to the fundamental principles contained in the declarations, agreements, conventions, concords, treaties and other instruments of ASEAN". Article 11(2) (a) stipulated that "The Secretary-General shall...(a)carry out the duties and responsibilities of this high office in accordance with the provisions of this Charter and relevant ASEAN instruments,…", Article 24(1) stipulated that "Disputes relating to specific ASEAN instruments shall be settled through the mechanisms and procedures provided for in such instruments", and Article 25 stipulated that "Where not otherwise specifically provided, appropriate dispute settlement mechanisms, including arbitration, shall be established for disputes which concern the interpretation or application of this Charter and other ASEAN instruments" as well as Article 52 stipulated that "All treaties, conventions, agreements, concords, declarations, protocols and other ASEAN instruments which have been in effect before the entry into force of this Charter shall continue to be valid".

However, neither the Charter nor the Protocol provides a comprehensive definition of that term, nor do they provide a comprehensive typology of the various instruments identified. The ASEAN Charter is a legally binding agreement and contains a list of treaties, agreements, conventions, protocols, declarations, as well as a catch-all category of "other instruments". The Protocol defines ASEAN Instruments as any instrument which is concluded by member states, as ASEAN member states, in written form, that gives rise to their respective rights and obligations in accordance with International Law.[68]

Similarly, the term "ASEAN Legal Instrument", while it is mentioned in the ASEAN Charter, there is no specific definition accorded to it anywhere. The closest provision of something similar to a definition is present on the ASEAN website where it is described as:[69]

Legal instruments, which, within this context, is ASEAN legal instruments concluded among and between ASEAN Member States. There are various understandings and interpretations of what is considered international legal instruments. As such, the Matrix only focuses on legal instruments by which the consent

post=memorandum-of-understanding-between-the-association-of-southeast-asian-nations-asean-secretariat-and-the-ministry-of-agriculture-of-the-people-s-republic-of-china-on-agricultural-cooperation-6>.

66 Charter of the Association of Southeast Asian Nations, *supra* note 32.

67 ASEAN. *Protocol to the ASEAN Charter on Dispute Settlement Mechanisms.* [online]. Available at <http://agreement.asean.org/media/download/20200128121018.pdf>.

68 *Ibid.*

69 ASEAN Legal Instruments, *supra* note at 38.

to be bound is expressed through either signature of the authorized representatives of Member States or the signature is subject to ratification and/or acceptance in accordance with the internal procedures of respective Member States.

What has been derived from these different sources for the definition of ASEAN Instruments and ASEAN Legal Instrument show that they are remarkably similar, broadly worded definitions.[70] However, the definitions also include Legal instruments and there is no clear distinction between the terms.[71]

4 Problems with the current nomenclature

4.1 Difficulty in Locating ASEAN Law

ASEAN law manifests itself in various forms. The variety that exists in the labels or nomenclature used in ASEAN instruments make it hard to locate all the instruments. It is noticed by Aziz and Dehousse, "a significant number of instruments could not be located".[72] As stated in the explanatory note of ASEAN's website on "ASEAN Legal Instruments", it appears that only the legal instruments by which the consent to be bound is expressed through either signature of the authorized representatives of Member States or the signature is subject to ratification and/or acceptance in accordance with the internal procedures of respective Member States are included.[73] It is clearly mentioned that statements nor declarations are included. Furthermore, it was not clear whether or not those instruments available are the latest or the most authoritative versions.

4.2 A Lack of Clarity

The second problem lies in the fact that none of the nomenclatures used are officially defined in any of the ASEAN instruments. With the number of documents published by ASEAN, it is difficult to trace the origin of these instruments and distinguish between different nomenclatures. For example, there appears to be no difference in substance between "agreements", "conventions" and "treaties".[74] As can be seen in this research document, any distinctions and information about legal character are gathered by academics rather than the official ASEAN documents themselves. The fact that such generalizations can only be made by looking at the existing practice of ASEAN also indicates the lack of legal certainty in this area of law. It is hard to imagine how the inter-governmental

70 LIMSIRITONG, Nattapt. The Problems of Law Interpretation under ASEAN Instruments and ASEAN Legal Instruments. *MFU Connexion: Journal of Humanities and Social Sciences*, 2016, vol. 5, issue 2, p. 136.

71 ABDUL AZIZ, Davinia, DEHOUSSE, Renaud, *supra* note 35.

72 *Ibid.*

73 ASEAN Legal Instruments, *supra* note 38.

74 ABDUL AZIZ, Davinia, DEHOUSSE, Renaud, *supra* note 35.

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organization can give due 'respect for justice and the rule of law' if legal certainty and predictability are not guaranteed.[75]

This lack of clarity also extends to the terminologies used in the drafting of ASEAN Instruments by the ASEAN Secretariat. A lack of uniformity and consistency can be noticed in the usage of terms such as "Member Countries", instead of "Member States", despite the latter being used in the ASEAN Charter, and therefore considered as more acceptable.[76]

5 REASONS FOR THE LACK OF CLARITY

5.1 ASEAN Agreements are dynamic

There has been a shift in how ASEAN has been functioning pre and post the ASEAN Charter. The ASEAN was initially a political creature which mainly reached agreements through an informal process called the ASEAN Way. An approach grounded in the usage of procedural mechanisms in dealing with conflicts centred around coming to a consensus with regards to decision-making among the Member States.[77] While this did help in the formative years of ASEAN, where members had the liberty to deal with their domestic issues without the fear of intervention or criticism from their Member States, the respect for sovereignty and the principle of non-interference remain the over-riding framework of regional integration.[78] This however led to instances where these principles were violated, such as clashes between Thailand and Cambodia over border issues and non-use of force,[79] the expulsion of the Rohingya Muslim inhabitants.[80] The lack of development of set of clear, stable, and predictable rules, thus reinforced the tendency of the weakness of institutions, thereby eventually leading to the creation of an ASEAN Charter, making the ASEAN a legal creature.[81]

75 About ASEAN, *supra* note 2.

76 CHALERMPALANUPAP, Termsak. The ASEAN Secretariat and Legal Issues Arising from the ASEAN Charter. *Indonesian Journal of International Law*, 2009, vol. 6, no. 2, p. 186.

77 DEINLA, Imelda. THE DEVELOPMENT OF THE RULE OF LAW IN ASEAN The State and Regional Integration. *Faculty of Law of the University of New South Wales*, 2009, Working Paper.

78 SATHIRATHAI, *Surakiart. Eight challenges ASEAN must overcome*. 10 August 2015. [online]. Available at: <https://www.todayonline.com/world/asia/eight-challenges-asean-must-overcome>.

79 RONDONUWU, Olivia, SUHARMOKO, Aditya. *ASEAN summits fails to resolve Thai-Cambodia conflict.* [online]. Available at: <https://www.reuters.com/article/us-asean/asean-summit-fails-to-resolve-thai-cambodia-conflict-idUSTRE74709V20110508>.

80 SHIVAKOTI, Richa. *ASEAN's role in the Rohingya refugee crisis.* [online]. Available at: <https://www.fmreview.org/latinamerica-caribbean/shivakoti>.

81 MAHASETH, Harsh. *Discussing the Difference in the Pre-Charter and Post-Charter Modalities of ASEAN*. [online]. Available at: <https://grojil.org/2019/11/25/discussing-the-difference-in-the-pre-charter-and-post-charter-modalities-of-asean/>.

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Developments over the recent past have highlighted a departure from loosely based principles to a more rules-based regime based on regional integration.[82]

With the geopolitics of Southeast Asia changing rapidly and substantially, the region is facing radically new and complex security and economic challenges. ASEAN is in a distinct and timely position to ably guide its members toward more sustainable security and prosperity in the years ahead, and to lead member states in the development of a uniquely ASEAN jurisprudence.[83]

In order to effectively grapple with those daunting challenges, ASEAN must consider new and innovative transboundary solutions, and work more deliberately across borders to enhance regional collaboration and implement existing agreements. The need to sustain a common regional identity and organizational coherence requires a fundamental rethinking of ASEAN's institutional capacity and the reach of the ASEAN Secretariat. It is now imperative for ASEAN to help strengthen legal norms and establish effective rule-making systems in ASEAN member states so that the region can cope with the security and economic challenges it is facing.[84]

5.2 Differences in interpretation

National courts' hybrid interpretations of ASEAN norms provoke methodological issues of context within the unitary system of interpretation of the Vienna Convention on the Law of Treaties (VCLT)[85] and particularly, the leeway that ASEAN Member States possess in interpreting the Charter, ASEAN Summit decisions, ASEAN Law and (incorporated) international law from the lens of their respective domestic courts as well as from the comparative jurisprudence of other Southeast Asian courts.[86]

A national court's interpretation of ASEAN law, without due regard for the comparative jurisprudence of other Southeast Asian courts or the regional processes of ASEAN law-making, could jeopardize the future of a Charter-based ASEAN, through creeping erosions on the supposedly binding effect of ASEAN law or the competences of Charter-based institutions.[87]

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82 DIENLA, Imelda, *supra* note 77.

83 CHATTERJEE, Sohini. *ASEAN's Legal Architecture Critical to Addressing Transboundary Challenges.* [online]. Available at: <https://asiafoundation.org/2017/05/17/aseans-legal-architecture-critical-addressing-transboundary-challenges/>.

84 *Ibid.*

85 LINDERFALK, Ulf. *On the Interpretation of Treaties, The Modern International Law as Expressed in the 1969 Vienna Convention on the Law of Treaties. First Edition.* Dordrecht: Springer, 2007, pp. 101–132.

86 ORAKHELASHVILI, Alexander. *The Interpretation of Acts and Rules in Public International Law.* Oxford: Oxford Scholarship Online, 2008, pp. 301–393 and 487–496.

87 DESIERTO, Diane A., *supra* note 57.

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In the pre-Charter era, domestic courts in ASEAN member states undertook the interpretation of ASEAN instruments, conventions and all other agreements according to their respective legal systems' jurisprudence and legal methods.[88] There was no need to look into the comparative jurisprudence used in their counter part courts because the operation of ASEAN was still based on loose informal cooperation that did not require a normative harmonization of jurisprudence between member states.[89] However, with the implementation of the Charter, and the insertion of Article 5(2) which reads as follows:

Member States shall take all necessary measures, including the enactment of domestic legislation, to effectively implement the provisions of this Charter and to comply with all obligations of membership.

The insertion of this Article has hence vested the national governments with the duty of implementing ASEAN Summit decisions, ASEAN Law and international law embraced within the ASEAN Charter, essentially implying the inevitable participation of national courts in the project of constitutionalization of international law in ASEAN.[90] National courts not being conscious of their role as the gatekeepers of the ASEAN Charter framework, and not considering comparative jurisprudential methodology when adjudicating cases involving ASEAN law, decisions and norms could undermine the legality of ASEAN law.

5.3 Diversity amongst members

The membership of ASEAN has a variety of countries with a variety of inherent differences. When one looks at the economic diversity of the members of ASEAN, one can find Singapore, often referred to as the financial and commercial capital of Asia, with a GDP per capita amounting to $97,341.[91] On the other end of the spectrum lies Cambodia, with a staggeringly differing GDP per capita of $4,388.[92] Taking a step further, the governments of each of the members are very different as well, with Indonesia as a democracy, Vietnam and Laos as communist states, and Myanmar for a large part of its history being under military rule. Further, an observation of the World Governance Indicators for the Rule of Law, as of 2019 places Myanmar and Laos below the 20th percentile, while countries like Malaysia and Brunei occupy places close to the 70th percentile. The difference is further evinced with Singapore being placed in the higher 90th

88 NAYA, Seiji, IMADA, Pearl. Implementing AFTA: 1992–2007. In SANDHU, Kernial Singh (ed). *The ASEAN Reader*. Institute of Southeast Asian Studies, 1992, pp. 513–515.

89 DESIERTO, Diane A, *supra* note 57.

90 BENVENISTI, Eval, DOWNS, George W. National Courts, Domestic, Democracy, and the Evolution of International Law: A Rejoinder to Nikolaos Lavranos, Jacob Katz Cogan and Tom Ginsburg. *European Journal of International Law*, 2009, vol. 20, p. 1027.

91 Trading Economics. *Singapore GDP per capita PPP.* [online]. Available at: <https://tradingeconomics.com/singapore/gdp-per-capita-ppp>.

92 Trading Economics. *Cambodia GDP per capita PPP.* [online]. Available at: <https://tradingeconomics.com/cambodia/gdp-per-capita-ppp>.

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percentile, indicating a stark difference as compared to a few other members of ASEAN.[93]

The diverse political and economic backgrounds that each of these members come from orient us towards a possibility that each member may not have a common conception regarding the ASEAN Way. While Myanmar, Cambodia and Laos have historically emphasised on non-interference, older members have underscored points of cooperation and coordination as more important.[94] An example for this can be derived from the Opening Remarks put forth by speakers at the 6th ASEAN Summit held in December 1998, at Hanoi. Senior General Than Shwe, the then Prime Minister of Myanmar and Sisavath Keobounphanh, the then Prime Minister of Laos, mentioned that the solidarity of ASEAN could be maintained only if member states respected the principles of sovereignty and non-interference, and that the strength of ASEAN was derived from the adherence to principles for the independence and identity of all nations, and non-interference in internal affairs respectively. On the other hand, the representatives from Vietnam, Malaysia, and Thailand, the then Prime Ministers Phan Van Khai, Dr. Mahathir Bin Mohamad, and Chuan Leekpai respectively put forth common elements, emphasising on the ASEAN Way and the Treaty of Amity and Cooperation, strengthening the one-mindedness of the member states, the adherence to the principles that foster positive member state relations, and explaining that ASEAN membership entails an individual and collective responsibility to make sacrifices and contributions in service of ASEAN.

With the aforementioned consensus-based model being adopted by ASEAN for decision making processes, these inherent differences impede members from arriving at common solutions to deal with particular difficulties appropriately. The solution that ASEAN has reached in attempting to deal with these differences has led to broadly worded and vague nomenclature used to satisfy the interests of all member nations.

6 Solutions and Recommendations

The ASEAN community needs to come up with more authoritative and comprehensive definitions of the terms "ASEAN Instruments" and "ASEAN Legal Instrument" or "ASEAN Law" to provide a more clarity on the subject. There is a need for a clear and distinctive classification of the various nomenclatures. There needs to be a clarity on the legality and bindingness of the instruments.

93 World Bank. *World Governance Indicators*. [online]. Available at: <http://info.worldbank.org/governance/wgi/Home/Reports>.

94 LEVITER, Lee. The ASEAN Charter: ASEAN Failure or Member Failure. *New York University Journal of International Law and Politics*, 2010, vol. 43, p. 159.

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6.1 Dialogue and declaration

Against a rapidly changing regional environment, an agenda that is gaining greater salience within ASEAN is how to achieve its strategic priorities of building an open, dynamic and resilient ASEAN Community. In this regard, it has been recognised that ASEAN needs to strengthen the basics to ensure that ASEAN continues to be the cornerstone of the foreign policies of its member states.[95]

One of the successes that ASEAN has achieved can be seen through the example of the founding of the ARF. Consisting of large powers such as China, Russia, Japan and the United States, medium powers such as the European Union, Canada and South Korea, and smaller powers such as ASEAN member states, the ARF is Asia's first region-wide security institution. With emphasis on principles such as cultivation of habits of dialogue, and observance of principles of sovereignty, non-interference, and the peaceful settlement of disputes, ASEAN has been able to establish itself as a critical presence in the Forum and has implicitly been accepted by other states to hold a high centrality within the network. Major powers such as China, India, Japan and the United States would never agree to any of the other taking the lead in the region. It is here where ASEAN grabbed the opportunity to provide itself as a viable alternative. What is hey to note here is that the ARF developed from ASEAN's relations with its 10 dialogue partners (Japan, South Korea, China, the United States, Canada, Australia, New Zealand, Russia, the EU and India) with whom there are annual meetings during the Post-Ministerial Conferences held after the grouping's annual post-ministerial meetings.

Trust relations are considered as a key feature for the fruitful development of the political dynamics within a network.[96] ASEAN, as seen above, has used the level of trust that it has built with its partners to persuade them to accept its normative foundation of regional conduct.

6.2 Maintaining ASEAN centrality

At the ASEAN Summits since 2010, the ASEAN Leaders have underlined the need to maintain ASEAN centrality in architecture-building and institution-building in East Asia. This centrality, as articulated by the ASEAN Leaders, is about ensuring that regional processes and engagements are coursed through and defined by ASEAN-led mechanisms. The most recent of these ASEAN-led mechanisms is the EAS. In fact, it is at the EAS where one can hear the loudest pronouncements and iteration of ASEAN centrality and where the dynamics of ASEAN centrality are more clearly played out. An example of former Prime Minister of Australia, Kevin Rudd's attempt to create an "Asia-Pacific Community"

95 CABALLERO-ANTHONY, Mely. Understanding ASEAN's centrality: bases and prospects in an evolving regional architecture. *The Pacific Review*, 2014, vol. 27, pp. 563–584.

96 EILSTRUP-SANGIOVANNI, Mette, JONES, Calvert. Assessing the dangers of illicit networks: why Al Qaida may be less threatening than many think. *International Security*, 2008, vol. 33, no. 2, pp. 7–23.

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shows the importance of ASEAN support to advance regional multilateralism.[97] While the lack of support is what led to the failure of the Asia-Pacific Community, the mix of policy remit, the level at which it meets, its membership profile and its relationship to ASEAN is what gives the EAS considerable potential.[98]

ASEAN's history as a regional organisation, involving the crafting of a path of cooperative security regimes with the aim of promoting trust, building confidence and encouraging inclusiveness has resulted in a history of engagement with like-minded, as well as non-like-minded states. Like the ARF and the EAS, ASEAN has, over the years demonstrated a keen intent of having an open and pragmatic approach by its willingness to continually plug itself in the international community, and getting other states to join ASEAN led networks. The unique position that it managed to attain as the first architect of regional security community institutions in Asia has enhanced and reinforced its centrality. ASEAN's structural position in the presence of such worldwide networks that it has established, and the linkages and relations that it has managed to create with a plethora of states is what has led to ASEAN adopting a central role in Asian regionalism, despite the lack of material power that it possesses.[99]

While ASEAN holds an exceptional position in the global sphere with regards to the relations that it has with other bodies, it has to take higher levels of political courage and coordination, institutionalized regional structures, and unprecedented levels of proactive diplomacy to fulfil the responsibility that it has not only to itself, but to the global population as well, to drive change. The structures that it has managed to create, such as ASEAN + 1, ASEAN + 3, ASEAN Regional Forum (ARF), ASEAN Defense Ministers Meeting Plus (ADMM+), East Asia Summit (EAS), and Asia-Pacific Economic Cooperation (APEC) has connected key actors across the globe, and ASEAN is the glue that binds these actors together.[100]

6.3 Creating a blueprint

ASEAN has identified hurdles to the realization of the AEC and taken action to address them. It is working to attract more investment, to facilitate free flow of skilled labour, and to set up or strengthen a national coordinating agency in each member state to effectively coordinate implementation across various ministries and agencies. Since the adoption of the AEC Blueprint in 2007, ASEAN has redoubled its efforts to expedite the implementation of measures that would lead

97 HE, Baogang. The Awkwardness of Australian Engagement with Asia: The Dilemmas of Australian Ideas of Regionalism. *Japanese Journal of Political Science,* 2011, vol. 12, no. 2, p. 267.

98 BISLEY, Nick, COOK, Malcolm. How the East Asia Summit Can Achieve its Potential. *ISEAS Perspective*, 2014, vol. 56, p. 5.

99 CABALLERO-ANTHONY, Mely, *supra* note 95.

100 BOWER, Ernest. *The Quintessential Test of ASEAN Centrality: Changing the Paradigm in the South China Sea.* [online]. Available at: <https://www.csis.org/analysis/quintessential-test-asean-centrality-changing-paradigm-south-china-sea-0>.

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to the realization of the AEC. As of July 2011, ASEAN implemented 73.4% of the measures under the Blueprint.[101] It has completed two of the four implementation phases planned for the run-up to the 2015 target for the AEC, with modest progress seen. The Blueprint laid down four crucial areas that the member states had identified as their core objectives:

1. A single market and production base
2. A highly competitive economic region
3. A region of equitable economic development; and
4. A region that is fully integrated into the global economy.

While there were questions regarding whether a scorecard approach as a monitoring mechanism would be viable, the adoption of a blueprint showcased ASEAN members' willingness to approach the integration process with clearly defined goals and timelines. There seemed to be an eagerness among participating countries to achieve comprehensive and deeper economic integration and institutional development in the region.[102]

While ASEAN fell short of its target of realizing the ASEAN Economic Community (AEC) by the end of 2015, it still managed to successfully attain 401 of its 506 measures that it had aimed to implement. Based on this success, a successor blueprint called the AEC Blueprint 2025, which lays out the work for ASEAN economic integration in the next 10 years, was adopted at the 27th ASEAN Summit in November 2015.[103]

7 Conclusion

It is therefore, concluded that due to the lack of clarity in the ASEAN Agreements enforcement of the same becomes difficult. Rule of law cannot be upheld if all the members do not follow the same law. Therefore, discussion should be held on this topic. Only then can ASEAN be successful.

To successfully achieve its aim of establishing an economic community, it is suggested that ASEAN should consider adopting a more "consistent, streamlined typology"[104] for its instruments, reducing the number of various nomenclatures. As above, nomenclatures that are overlapping in substance such as "agreements", "conventions" and "treaties" can be narrowed down into "agreements" alone, so as to avoid confusion.

101 CABALLERO-ANTHONY, Mely, *supra* note 95.

102 YEAN, Tham Siew, DAS, Sanchita Basu. The ASEAN Economic Community and Conflicting Domestic Interests: An Overview. *Journal of Southeast Asian Economics,* 2015, vol 32, no. 2, pp. 189–193.

103 MENON, Jayant, MELENDEZ, Anna Cassandra. *Will 2025 be the final deadline for the AEC?* [online]. Available at: <https://blogs.adb.org/blog/will-2025-be-final-deadline-aec>.

104 DAVIDSON, Paul J. *supra* note 6.

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