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The ASEAN Charter and the ASEAN Economic Community*

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The ASEAN Charter was signed at the 13th ASEAN Summit in November 2007. After each country ratified the Charter, it went into effect on December 15, 2008. This was the first time that a Charter was signed and went to effect for ASEAN. The ASEAN Charter will play a very significant role in the development of ASEAN intra-regional economic cooperation and economic integration including the ASEAN Economic Community (AEC). This paper will examine the significance and contents of the ASEAN Charter from the perspective of AEC and intra-regional economic cooperation/economic integration.

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1. Introduction

The ASEAN Charter was signed at the 13th ASEAN Summit in November 2007. After each country ratified the Charter, it went into effect on December 15, 2008. This was the first time that a Charter was signed and went to effect for ASEAN. The ASEAN Charter will play a very significant role in the development of ASEAN intra-regional economic cooperation and economic integration including the ASEAN Economic Community (AEC).

As stated in Shimizu (2008a, 2009a and 2009c), ASEAN must strengthen the cooperation and integration of its own members. Furthermore ASEAN must attract foreign capital and secure export markets for the development of ASEAN countries and it must maintain the initiative in East Asian regional cooperation. Moreover, AESAN must clarify its objectives and develop its institutions to establish AEC. Therefore, ASEAN and ASEAN countries required the establishment of the ASEAN Charter.

This paper will examine the significance and contents of the ASEAN Charter from the perspective of AEC and intra-regional economic cooperation/economic integration. Section 2 discusses the process of the ASEAN Charter and the Report by the Eminent Persons Group (EPG). Section 3 discusses the signing of the ASEAN Charter and its implementation. Section 4 examines the contents of the ASEAN Charter. Section 5 evaluates the ASEAN Charter from the standpoint of AEC and economic integration. The concluding section summarizes these analyses.

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2. The Process of the ASEAN Charter and the Report by the Eminent Persons Group (EPG)

The main actions to establish the ASEAN Charter by ASEAN were implemented in recent years. It was only after the release of the "Declaration of ASEAN Concord II" in 2003. Thus, the actions taken toward the establishment of the ASEAN Charter followed in a similar way toward the establishment of AEC.

ASEAN heads declared that they will actively work toward establishing an ASEAN Charter in Vientiane Action Program (VAP) at the 10th ASEAN Summit in November 2004. VAP was the second action program to realize "the ASEAN Vision 2020." VAP was predicated on the basis that ASEAN heads agreed to pursue the comprehensive integration of ASEAN towards the realization of an ASEAN Community by 2020 as envisioned in the "Declaration of ASEAN Concord II." VAP stated that "We recognise the need to strengthen ASEAN and shall work toward the development of an ASEAN Charter," in the "Preamble."[1] This was the first step toward the ASEAN Charter.

In the 11th ASEAN Summit in December 2005, ASEAN heads signed "the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter," and agreed "to establish an Eminent Persons Group (EPG), comprising highly distinguished and well respected citizens from ASEAN Member Countries, with the mandate to examine and provide practical recommendations on the directions and nature of the ASEAN Charter relevant to the ASEAN Community as envisaged in the Bali Concord II."[2]

At the 12th ASEAN Summit in January 2007, "The Report of the Eminent Persons Group on the ASEAN Charter (the EPG Report)" was presented to ASEAN heads. This report became the basis for the ASEAN Charter.

The EPG comprised members from each Member State totaling 10 members, including former President of the Philippines, Fidel V. Ramos, and former Indonesian Foreign Minister, Ali Alatas, and they composed the EPG Report.

The EPG Report was comprised of three parts: "Part I: Strategic Stocktaking," which described the significance of creating the Charter, stating that the ASEAN Charter would build considerable momentum for the establishment of the ASEAN Community including AEC.[3]

"Part III: Recommendations for Inclusion in the ASEAN Charter" indicated the EPG's recommendation for the text of the Charter, which would comprise 14 Chapters of "Objectives, Principles, Memberships, the Organizational Structure, Decision-Making Process, Dispute Settlement Mechanism, Budgetary and Financial Issues, Legal Status/Immunities/Privileges, External Relations, ASEAN Identity and Symbols, Ratification/Entry into Force/Registration, Amendments, General Undertaking Concerning Implementation, and Legal Continuity." Many of

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1) "Vientiane Action Program." http://www.aseansec.org/VAP-10th%20ASEAN%20Summit.pdf.
2) "Kuala Lumpur Declaration on the Establishment of the ASEAN Charter Kuala Lumpur, 12 December 2005," http://www.aseansec.org/18030.htm.
3) Refer to "The Report of the Eminent Persons Group on the ASEAN Charter," http://www.aseansec.org/19247.pdf.

these Chapters were adopted by the ASEAN Charter.

At this Summit, ASEAN heads signed "the Cebu Declaration on the Blueprint of the ASEAN Charter" to endorse the EPG Report and they directed the High Level Task Force to complete the drafting of the ASEAN Charter in time for the 13th Summit in Singapore in 2007.

The EPG Report recommended, first of all, that in the "Decision-Making Process," the consensus method should be revised, and that in areas other than security and foreign policy, decisions may be taken through voting, either on the basis of a simple majority, or on the basis of a two thirds or three quarter majority, in cases where a consensus could not be reached.

Second, in "Membership," it suggested the ASEAN Council take measures, including the suspension of rights and privileges, upon the proposal of Member States concerned and the recommendation of the ASEAN Foreign Ministers, for any serious breach by any Member State of the objectives, principles, and commitments as contained in the existing ASEAN declarations, agreements and treaties, as well as the norms and values adhered to by ASEAN.

If the ASEAN Charter were to be based on this Report, this meant that ASEAN's consensus method would be revised and that the principle of non-intervention in internal affairs would change.

3. The Signing of the ASEAN Charter and Its Implementation

3-1. The 13th ASEAN Summit and the Signing of the ASEAN Charter

At the 12th Summit, ASEAN heads signed "the Cebu Declaration on the Blueprint of the ASEAN Charter" to endorse the EPG Report and they directed the High Level Task Force (HLTF) made up of high-ranking officials in each country, to complete the drafting of the ASEAN Charter in time for the 13th Summit in Singapore in 2007.

HLTF presented the ASEAN Charter to the ASEAN Foreign Ministers on November 19th. ASEAN heads signed "the ASEAN Charter" at the 13th ASEAN Summit in Singapore on November 20th.

At the "Opening Plenary Remarks," the chairman of the 13th ASEAN Summit, the Prime Minister of Singapore, Lee Hsien Loon stated that "to make ASEAN strong and relevant, we must accelerate and deepen regional integration. The ASEAN Charter is a crucial step in this process," and "The Charter also crystallises our aspirations to be a strong and cohesive ASEAN Community, supported by three pillars – economic, social and security."[4] He stated the ASEAN Charter's vital role in the establishment of the ASEAN Community, including AEC.

ASEAN leaders adopted the "ASEAN Economic Community Blueprint (AEC Blueprint)."[5] The AEC Blueprint was a roadmap in which each ASEAN member country should abide by and implement the AEC by 2015. The "Declaration on the ASEAN Economic Community Blueprint" stated "the AEC Blueprint

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4) "Opening Plenary Remarks by Prime Minister Lee Hsien Loong at the ASEAN Summit Singapore, 20 November 2007," http://www.aseansec.org/21063.htm.

5) "ASEAN Economic Community Blueprint," http://www.aseansec.org/21083.pdf.

will transform ASEAN into a single market and production base, a highly competitive economic region, a region of equitable economic development, and a region fully integrated into the global economy." The AEC Blueprint was the first adopted Blueprint for ASEAN Community including ASC, AEC and ASCC. ASEAN leaders stated that ASC and ASCC would be adopted at the next Summit. This revealed that AEC was the most important and the main program of the three communities.

Other meetings included the 11th ASEAN Plus Three Summit, various ASEAN Plus One Summits, and the 3rd East Asia Summit (EAS). Additionally, the ASEAN-EU Commemorative Summit was held, commemorating the 30th anniversary of establishing dialogue between ASEAN and EU.

The Myanmar problem was one of the main issues of these Summits. Singapore invited United Nations special envoy Ibrahim Gambari to meet ASEAN leaders and their counterparts at the 3rd EAS. He was to brief them on his two missions to Myanmar since the junta's crackdown on pro-democracy protesters. But the meeting with Professor Gambari was put off since Myanmar had objected to it.[6] Only the Chairman's statement: "ASEAN Chairman Statement on Myanmar" was stated.[7]

The Myanmar problem would have an effect on the future of the ASEAN Charter. Philippine President Arroyo warned that her country would be hard-pressed to ratify the ASEAN Charter if Myanmar refused to embrace democracy and free opposition leader Aung San Suu Kyi.

3-2. Postponement of the 14th ASEAN Summit and the Implementation of the ASEAN Charter at the Special ASEAN Foreign Ministers Meeting

After being signed at the 13th ASEAN Summit, the ASEAN Charter went into the process of ratification by each country. Moreover, prior to the ratification and implementation of the ASEAN Charter by all Member States, it was decided at the Foreign Ministers meeting held in July to move up a number of the goals indicated in the ASEAN Charter. It was decided to, firstly, appoint two additional Deputy Secretary Generals, and secondly, to synchronize the ASEAN Single Chairmanship with the calendar year, commencing in 2009. Thirdly, it was also decided to establish a Committee of Permanent Representatives to ASEAN in Jakarta by January 2009; and fourthly, it was agreed to form a High-Level Panel on an ASEAN human rights body (HLP) and a High-Level Legal Experts' Group on Follow-up to the ASEAN Charter (LHEG), and to have the HLP and HLEG submit their recommendations to the 14th ASEAN Summit.[8]

In the process of ratification, Singapore first ratified the Charter in January, followed by the other Member States. Even in the Philippines, where a certain amount of resistance was anticipated, the Charter was ratified by the Upper House in October. Indonesia also ratified the Charter in October. Lastly, Thailand ratified the Charter. Thus the ratification process was completed. This ratifi-

6) "The Straights Times," 20 November.
7) "ASEAN Chairman Statement on Myanmar," http://www.aseansec.org/21057.htm.
8) "Statement on the ASEAN Charter," http://www.aseansec.org/21796.htm.

cation was accomplished due to many pressures among ASEAN.

After ratification by all members, the ASEAN Charter were scheduled to go into effect at the 14th ASEAN Summit, which was to be held in Bangkok in December. However, political unrest in Thailand forced the Summit to move its venue to Chang Mai and ultimately to postpone it altogether. Nevertheless, on the suggestion of Indonesia, a Special ASEAN Foreign Ministers Meeting was held in Jakarta on December 15, and then the Charter finally went into effect.

4. The Contents of the ASEAN Charter

4-1. "Purposes"

The ASEAN Charter includes a "Preamble" and fifty five "Articles" (Refer to **Table 1** about the main contents of the ASEAN Charter).[9] It also includes four "Annexes (1. ASEAN Sectoral Ministerial Bodies, 2. Entities Associated ASEAN, 3. ASEAN Flag and 4. ASEAN Emblem)."[10] The Preamble emphasizes the realization of an ASEAN Community.

"Article 1" of "Chapter I Purposes and Principles" of the ASEAN Charter lists the "Purposes," and include 15 purposes. "The Purposes of ASEAN" states "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." These were declared in previous ASEAN declarations. The fourth purpose is "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."

The next two are the economic purposes. The first economic purpose is "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." This is the same content as AEC, and reveals the establishing of AEC. The establishment of AEC is one of main purposes of the ASEAN Charter.

The second economic purpose is "6. To alleviate poverty and narrow the development gap within ASEAN through mutual assistance and cooperation." This is an important theme for ASEAN since VAP.

The next purpose relates to democracy and human rights, which were connected to the Myanmar problem. This purpose is "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."

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9) "Charter of the Association of Southeast Asian Nations," http://www.aseansec.org/21069.pdf. Refer to this for the articles of the ASEAN Charter.

10) "Annex 1 ASEAN Sectoral Ministerial Bodies (http://www.aseansec.org/21071.pdf)," "Annex 2 Entitites Associated ASEAN (http://www.aseansec.org/21072.pdf)," "Annex 3 ASEAN Flag (http://www. aseansec.org/21073.pdf)" and "Annex 4 ASEAN Emblem (http://www.aseansec.org/21074.pdf)."

Table 1: Main Contents of the ASEAN Charter

CHAPTER I PURPOSES AND PRINCIPLES
ARTICLE 1: PURPOSES
• To maintain and enhance peace, security and stability in the region • To enhance regional resilience • To preserve Southeast Asia as a Nuclear Weapon-Free Zone and free of all other weapons of mass destruction • **To create a single market and production base which is stable, prosperous, highly competitive and economically integrated** • **To alleviate poverty and narrow the development gap within ASEAN** • To strengthen democracy, enhance good governance and rule of law, and to promote and protect human rights and fundamental freedoms • To promote sustainable development • 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
ARTICLE 2: PRINCIPLES
• Respect for the independence and sovereignty of all ASEAN Member States • Non-interference in the internal affairs of ASEAN Member States • Enhanced consultations on matters seriously affecting the common interest of ASEAN • Adherence to the rule of law, good governance and the principles of democracy • Respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice • Upholding the United Nations Charter and international law, including international humanitarian law • **Adherence to multilateral trade rules and ASEAN's rules-based regimes**
CHAPTER II LEGAL PERSONALITY
ARTICLE 3: LEGAL PERSONALITY OF ASEAN
• ASEAN is conferred legal personality as an inter-governmental organization.
CHAPTER III MEMBERSHIP
CHAPTER IV ORGANS
ARTICLE 7: ASEAN SUMMIT
• The ASEAN Summit shall be the supreme policy-making body of ASEAN. • The ASEAN Summit shall appoint the Secretary-General of ASEAN, with the rank and status of Minister. • ASEAN Summit Meetings shall be held twice annually.
ARTICLE 8: ASEAN COORDINATING COUNCIL
• The ASEAN Coordinating Council shall comprise the ASEAN Foreign Ministers and meet at least twice a year.
ARTICLE 9: ASEAN COMMUNITY COUNCILS
• The ASEAN Community Councils shall comprise the ASEAN Political-Security Community Council, the ASEAN Economic Community Council and ASEAN Socio-Cultural Community Council, meeting at least twice a year
ARTICLE 10: ASEAN SECTORAL MINISTERIAL BODIES
ARTICLE 11: SECRETARY-GENERAL OF ASEAN AND ASEAN SECRETARIAT
• The Secretary-General of ASEAN shall be appointed by the ASEAN Summit for a non-renewal term of office of five years, selected from among nationals of the ASEAN Member States, based on alphabetical rotation • The Secretary-General shall monitor progress in the implementation of ASEAN agreements and decisions • The Secretary-General shall present the views of ASEAN. • The Secretary-General shall be assisted by four Deputy Secretaries-General, of whom two shall be openly recruited.
ARTICLE 12: COMMITTEE OF PERMANENT REPRESENTATIVES TO ASEAN
• Each ASEAN Member State shall appoint a Permanent Representative to ASEAN with the rank of Ambassador, based in Jakarta, who collectively constitutes a Committee of Permanent Representatives.
ARTICLE 14: ASEAN HUMAN RIGHTS BODY
• In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body.

CHAPTER V ENTITIES ASSOCIATED WITH ASEAN
CHAPTER VI IMMUNITIES AND PRIVILEGES
CHAPTER VII DECISION-MAKING
ARTICLE 20: CONSULTATION AND CONSENSUS
• As a basic principle, decision-making within ASEAN shall be based on consultation and consensus. • Where consensus cannot be achieved, the ASEAN Summit may decide how a specific decision can be made. • In the case of a serious breach of the Charter or non-compliance, the matter shall be referred to the ASEAN Summit for decision.
ARTICLE 21: IMPLEMENTATION AND PROCEDURE
• **In the implementation of economic commitments, a formula for flexible participation, including the ASEAN Minus X formula, may be applied where there is a consensus to do so.**
CHAPTER VIII SETTLMENT OF DISPUTES
ARTICLE 24: DISPUTE SETTLEMENT MECHANISMS IN SPECIFIC INSTRUMENTS
• **Disputes which concern the interpretation or application of ASEAN economic agreements shall be settled in accordance with the ASEAN Protocol on Enhanced Dispute Settlement Mechanism.**
ARTICLE 26: UNRESOLVED DISPUTES
• When a dispute remains unresolved, this dispute shall be referred to the ASEAN Summit for its decision.
ARTICLE 27: COMPLIANCE
• The Secretary-General of ASEAN shall monitor compliance with the findings, recommendations or decisions resulting from an ASEAN dispute settlement mechanism.
CHAPTER IX BUDGET AND FINANCE
CHAPTER X ADMINISTRATION AND PROCEDURE
ARTICLE 31: CHAIRMAN OF ASEAN
• The Chairmanship of ASEAN shall rotate annually. • ASEAN shall have, in a calendar year, a single Chairmanship.
ARTICLE 32: ROLE OF THE CHAIRMAN OF ASEAN
• The Member State holding the Chairmanship of ASEAN shall represent ASEAN.
ARTICLE 34: Working language of ASEAN
• The working Language of ASEAN shall be English.
CHAPTER XI IDENTITY AND SYMBOLS
Article 35: ASEAN IDENTITY
• ASEAN shall promote its common ASEAN identity.
ARTICLE 36: ASEAN MOTTO
• "Once Vision, One Identity, One community"
ARTICLE 37: ASEAN FLAG
ARTICLE 38: ASEAN EMBLEM
ARTICLE 39: ASEAN DAY
ARTICLE 40: ASEAN ANTHEM
CHAPTER XII EXTERNAL RELATIONS
ARTICLE 41: CONDUCT OF EXTERNAL RELATIONS
• ASEAN shall be the primary driving force in regional arrangements.
ATICLE 46: ACCREDITATION OF NON-ASEAN MEMBER STATES TO ASEAN
• Non-ASEAN Member States and relevant inter-governmental organizations may appoint and accredit Ambassadors to ASEAN.
CHAPTER XIII GENERAL AND FINAL PROVISIONS

Note: Sections specifically related to ASEAN intra-regional economic cooperation/economic integration are stated in bold letters.

Source: Compiled from the ASEAN Charter ("Charter of the Association of Southeast Asian Nations," http://www.aseansec.org/21069.pdf).

The ninth purpose is "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." Sustainable development was an important theme in this Summit.

The final purpose is related to ASEAN economic cooperation. This is "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." This states ASEAN should be the primary driving force in a regional architecture including East Asian economic cooperation. This emphasizes ASEAN's main role in East Asian cooperation.

4-2. "Principles" and "Legal Personality"

"Article 2" of Chapter I of the ASEAN Charter is the "Principles," which includes 14 principles (from (a) to (n)). Article 2 states that "ASEAN and its Member States shall 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." Principle (e) states "non-interference in the internal affairs": "(e) non-interference in the internal affairs of ASEAN Member States." The next principle is "(f) respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion."

The final principle is an economic related principle: "(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." This states the adherence to ASEAN's rules-based regimes.

"Chapter II Legal Personality" includes "Article 3 Legal Personality of ASEAN." This article states that "ASEAN, as an inter-governmental organisation, is hereby conferred legal personality." This part is short but important for ASEAN with regard to its legal position.

4-3. "Organs"

"Chapter IV Organs" includes 8 articles. These articles explain the ASEAN Summit, ASEAN Coordinating Council, ASEAN Community Council, ASEAN Sectoral Ministerial Bodies, Secretary-General of ASEAN and ASEAN Secretariat, Committee of permanent Representatives to ASEAN, ASEAN National Secretariats, ASEAN Human Rights Body and ASEAN Foundation.

"ASEAN Summit (Article 7)" states that "The ASEAN Summit shall: (a) be the supreme policy-making body of ASEAN; (b) deliberate, provide policy guidance and take decisions on key issues pertaining to the realisation of the objectives of ASEAN, important matters of interest to Member States and all issues referred to it by the ASEAN Coordinating Council, the ASEAN Community Councils and ASEAN Sectoral Ministerial Bodies."

This article also states " (g) appoint the Secretary-General of ASEAN, with

the rank and status of Minister, who will serve with the confidence and at the pleasure of the Heads of State or Government upon the recommendation of the ASEAN Foreign Ministers Meeting." "ARTICLE 7" also states that "ASEAN Summit Meetings shall be: (a) held twice annually." These are new rules for ASEAN Summit.

"ASEAN Coordinating Council (Article 8)" states that "1. The ASEAN Coordinating Council shall comprise the ASEAN Foreign Ministers and meet at least twice a year," and that "2. The ASEAN Coordinating Council shall: (a) prepare the meetings of the ASEAN Summit; (b) coordinate the implementation of agreements and decisions of the ASEAN Summit; (c) coordinate with the ASEAN Community Councils to enhance policy coherence, efficiency and cooperation among them." "ASEAN Coordinating Council" is an extension of the current ASEAN Ministers Meeting (AMM).

"ASEAN Community Councils (Article 9)," which is related to AEC, states that "1. The ASEAN Community Councils shall comprise the ASEAN Political-Security Community Council, ASEAN Economic Community Council, and ASEAN Socio-Cultural Community Council" and "5. Each ASEAN Community Council shall meet at least twice a year."

"Secretary-General of ASEAN and ASEAN Secretariat (Article11)" states that "1. The Secretary-General of ASEAN shall be appointed by the ASEAN Summit for a non-renewable term of office of five years, selected from among nationals of the ASEAN Member States based on alphabetical rotation, with due consideration to integrity, capability and professional experience, and gender equality."

This article also states that "2. 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, protocols and established practices; (b) facilitate and monitor progress in the implementation of ASEAN agreements and decisions, and submit an annual report on the work of ASEAN to the ASEAN Summit; (d) present the views of ASEAN," "3. The Secretary-General shall also be the Chief Administrative Officer of ASEAN," and "4. The Secretary-General shall be assisted by four Deputy Secretaries-General with the rank and status of Deputy Ministers."

"Committee of Permanent Representatives to ASEAN (Article12)" states that "1. Each ASEAN Member State shall appoint a Permanent Representative to ASEAN with the rank of Ambassador based in Jakarta." The "Committee of Permanent Representatives" would replace the former Standing Committee. The Standing Committee had been an organization to assist the Foreign Ministers Meeting. "ASEAN National Secretariats (Article13)" states that "Each ASEAN Member State shall establish an ASEAN National Secretariat."

"ASEAN Human Rights Body (Article 14)" is a new organ, which the EPG Report didn't recommend but which is introduced in the ASEAN Charter. This Article states that "1. In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish an ASEAN human rights body," and "2. This ASEAN human rights body shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting."

4-4. "Decision-Making" and "Settlement of Disputes"

"Chapter VII Decision-Making" includes two articles: "Article 20 Consultation and Consensus" and "Article 21 Implementation and Procedure." "Consultation and Consensus (Article 20)" states that "1. As a basic principle, decision-making in ASEAN shall be based on 'consultation and consensus.' " 'Consultation and consensus' is the current ASEAN decision making style. However, this article states that "2. Where consensus cannot be achieved, the ASEAN Summit may decide how a specific decision can be made," and "4. In the case of a serious breach of the Charter or noncompliance, the matter shall be referred to the ASEAN Summit for decision."

"Implementation and Procedure (Article 21)" refers to the rule of Intra-ASEAN economic cooperation. This article states that "2. In the implementation of economic commitments, a formula for flexible participation, including the ASEAN Minus X formula, may be applied where there is a consensus to do so."

"Chapter VIII Settlement of Disputes" includes seven articles. "General Principles (Article 22)" states that "1. Member States shall endeavour to resolve peacefully all disputes in a timely manner through dialogue, consultation and negotiation." The "Consultation and Consensus" is the principle of the decision-making of this ASEAN Charter. This chapter includes "Unresolved Disputes" and "Compliance." "Unresolved Disputes" is an important rule for this ASEAN Charter. "Article 26" states that "When a dispute remains unresolved, after the application of the preceding provisions of this Chapter, this dispute shall be referred to the ASEAN Summit, for its decision."

"Compliance (Article 27)" addressed the monitoring role of the Secretary-General. This article states that "1. The Secretary-General of ASEAN shall monitor the compliance with the findings, recommendations or decisions resulting from an ASEAN dispute settlement mechanism, and submit a report to the ASEAN Summit."

4-5. "Administration and Procedure," "Identity and Symbols," "External Relations" and "General and Final Provisions"

"Chapter X Administration and Procedure" includes "Chairman of ASEAN (Article 31)" and "Working Language of ASEAN (Article 34)," which states that "The working language of ASEAN shall be English." "Chapter XI Identity and Symbols" includes "ASEAN Identity (Article 35)," "ASEAN Motto (Article 36), ASEAN Flag (Article 37), ASEAN Emblem (Article 38), ASEAN Day (Article 39) and ASEAN Anthem (Article 40). "The ASEAN motto" is stated as "*One Vision, One Identity, One Community.*" "ASEAN Day" stated that "The eighth of August" shall be observed as ASEAN Day. ASEAN stated that the Working Language, the Motto and the Anthem were three ways in which ASEAN had outdone the European Union.[11)]

"Chapter XII External Relations" includes six Articles. "Conduct of External Relations (Article 41)" states that "3. ASEAN shall be the primary driving

11) "Media Release ASEAN Leaders Sign ASEAN Charter Singapore, 20 November 2007," http://www.aseansec.org/21095.htm.

force in regional arrangements that it initiates and maintain its centrality in regional cooperation and community building." This reveals that ASEAN should take and maintain the initiative in East Asian regional cooperation.

5. The ASEAN Charter and AEC

5-1. Evaluating the ASEAN Charter: Overall Assessment

We will evaluate the significance and the contents of the ASEAN Charter.[12] The ASEAN Charter was signed by all Member States, including Myanmar, at the 13th ASEAN Summit in November 2007, and went into effect at the Special ASEAN Foreign Ministers Meeting in December 2008, upon ratification by all Member States. First of all, this fact was in itself a considerable achievement.

Second, through the establishment of the Charter, the foundation for ASEAN was fortified. The establishment of the ASEAN Charter was the first step for ASEAN to acquire its legal base. ASEAN was based not on a charter and treaty, but on only a declaration ("the ASEAN Declaration: Bangkok Declaration" in 1967). But with the enactment of the Charter, its grounds for establishment grew from the declaration to actual laws and rules.

Third, it was an achievement to state the purpose, principles and many rules of ASEAN in the law and rules: the ASEAN Charter. It summarized the declarations, agreements and treaties, which had accumulated since the "Bangkok Declaration."

Fourth, it was an achievement to establish a new organ and to arrange the current organization in the Charter.

By these achievements, first, ASEAN will be forced by principles and rules stated in the ASEAN Charter. Second, compliances and obligations for the commitments will be strengthened. Third, ASEAN will be directed and accelerated for the establishment of the ASEAN Community including AEC.

However, first, the details of contents are not yet determined. Second, ASEAN holds the current main principles including the "non-interference in the internal affairs" and the "Decision-Making" by 'consultation and consensus.' Third, the penal provisions are not stated.

Although the ASEAN Charter has already gone into effect, deciding the details will be crucial. Moreover, implementation of what was already articulated will also be crucial. The actual outcome will depend largely on future developments.

5.2. The ASEAN Charter and the EPG Report

We will compare the contents of the ASEAN Charter and the ERG Report. It can be found that the ASEAN Charter is mainly based on the EPG Report. Most parts of the ASEAN Charter are similar to the EPG Report recommended.

However, first, the ASEAN Charter did not include some important EPG recommendations. Second, the ASEAN Charter adopted a new organ, "ASEAN

[12] Refer to Shimizu (2008b, 2008c) and Nakamura, Sato, Shimizu and Sekizawa (2008) about the assessment of the ASEAN Charter.

Human Rights Body," which the EPG Report didn't recommend.

The ASEAN Charter did not include some important EPG recommendations. First, the EPG Report recommended that "The ASEAN Council may consider taking any measure, including, among others, 'the suspension of rights and privileges,' upon the proposal of Member States concerned and the recommendation of the ASEAN Foreign Ministers, for any serious breach by any Member State of the objectives, principles, and commitments as contained in the existing ASEAN declarations, agreements, concords, and treaties as well as the norms and values adhered to by ASEAN."

But this recommendation was not adopted, though the ASEAN Charter states that "Where consensus cannot be achieved, the ASEAN Summit may decide how a specific decision can be made," and "In the case of a serious breach of the Charter or noncompliance, the matter shall be referred to the ASEAN Summit for decision." Furthermore, the ASEAN Charter states "non-interference in the internal affairs of ASEAN Member States" in "Principles," though the EPG Report did not include this in its "Principles."

Second, the EPG Report recommended that "The decision-making process in ASEAN shall, as a general rule, be based on consultation and consensus, especially on decisions in more sensitive areas of security and foreign policy," but the EPG Report recommended that "On other areas, if consensus cannot be achieved, decisions may be taken through voting, either on the basis of a simple majority, or on the basis of a 2/3rd or 3/4th majority." This voting process was a new Decision-making process for ASEAN.

But this recommendation about the voting process was not adopted. The ASEAN Charter maintains the "Decision-Making" by 'consultation and consensus' in every area. "Consultation and Consensus" in "Decision-Making" states that "As a basic principle, decision-making in ASEAN shall be based on 'consultation and consensus,' " though this article states that "Where consensus cannot be achieved, the ASEAN Summit may decide how a specific decision can be made."

5-3. The ASEAN Charter and AEC

The ASEAN Charter is examined from a point of view of economic integration. First, the ASEAN Charter states the establishment of AEC. This is the first purpose of the economic purposes on the ASEAN Charter. The establishment of AEC is one of the main purposes of the ASEAN Charter.

Second, the ASEAN Charter states to alleviate poverty and narrow the development gap within ASEAN in "Purposes." The second economic purpose is "to alleviate poverty and narrow the development gap within ASEAN through mutual assistance and cooperation." This has been an important theme for ASEAN especially since VAP.

Third, the ASEAN Charter states ASEAN should be the primary driving force in a regional architecture including East Asian economic cooperation. The final purpose in "Purposes" is "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."

Fourth, the ASEAN Charter states the adherence to ASEAN's economic

rules-based regimes. The last principle in "Principles" states the economic related principles: "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."

Fifth, the ASEAN Charter states "a formula for flexible participation, including the ASEAN Minus X formula may be applied where there is a consensus to do so" in "the implementation of economic commitments."

From these points, the establishment of the ASEAN Charter will be an important milestone to establish AEC. First, the establishment of the ASEAN Charter will be an important step for the establishment of AEC. The establishment of the ASEAN Charter itself had the purpose to establishing AEC.

Second, the state of many rules and the institutionalization of many organs will assist to deepen Intra-ASEAN economic cooperation and to establish AEC. For example, the settlement of disputes or clearing up conflicts of interest will be possible in some cases. Some rules including the compliance article will strengthen pressures to implement economic commitments, and assist to deepen Intra-ASEAN economic cooperation.

As was the case with AFTA, the important thing is to determine the details after determining the objectives and the basic principles, and finally to put into practice.

Lastly, we will compare ASEAN and EU. EU will be a model of economic integration in the current world economy. For ASEAN, the ASEAN Charter was the first step toward developing its legal infrastructure and institutionalization. The many organizations and institutions described in the ASEAN Charter, including Summit Meetings, Community Councils, the Committee of Permanent Representatives and the Chairmanship, referred to the organizations and institutions of the EU.

However, in ASEAN's case, the Member States continue to uphold a solid nation-state framework and are maintaining their traditional course of cooperation among nation states.

Furthermore, the concept to limit the sovereignty of the nation state and to establish a super-national organization is almost non-existent in the Charter at the current time. The Charter also has not provided for the Council and the Court, which are provided for in the EU. In terms of economic integration, the goal of the AEC is only to achieve an FTA Plus.

We conclude ASEAN is promoting its own unique type of cooperation and integration, though ASEAN referred to some organizations and institutions.

6. Conclusion

The establishment of the ASEAN Charter realized many achievements for ASEAN. It also paved the way for the development of institutions indispensable to the establishment of the AEC. The Charter will encourage the deepening of intra-regional economic cooperation and the realization of the AEC. The Charter will assist ASEAN to have the initiatives in East Asian economic cooperation. Furthermore,

the Charter will be one of the principles for East Asian regional cooperation.[13)]

However, first, the details of the contents are not yet determined. Second, ASEAN maintains the current main principles. The history of ASEAN was a history of setting up objectives first, then following gradual institutionalization and implementation, as seen the case of AFTA.

The establishment of the ASEAN Charter was a crucial first step in the establishment of the AEC and economic integration.

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[13)] In terms of the East Asian Charter, the Comparative Regionalism Project (CREP: Institute of Social Science, University of Tokyo) made a draft of an East Asia Charter. The author joined the project. Refer to Nakamura (2009) and Nakamura, Suami, Usui and Sato (2008), for this draft of the East Asia Charter.

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