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ASEAN’S LEGAL PERSONALITY
AND ITS TREATY-MAKING POWER

Hao Duy Phan (SJD)
Centre for International Law (CIL)
National University of Singapore
Organization of Presentation

1. Pre-ASEAN Charter
2. ASEAN Charter
3. 2011 RoP & Post-ASEAN Charter
4. Conclusion
Part 1 - ASEAN’s Legal Personality and Its Treaty-making Practice Prior to the ASEAN Charter
ASEAN’s Past Practice

Start
1967~1975
Establishment of a Cooperation Mechanism

Initial Moves
1976~1991
Initial Moves towards A Legal Personality

Development
1992~2007
De facto International Legal Personality with Limited Treaty-Making Capacity
1967-1975: Establishment of a Cooperation Mechanism

- **No Legal Framework**
  - 1967 Bangkok Declaration is not a treaty

- **No Centralized Structure**
  - 1967 Bangkok Declaration did not establish a secretariat.

- **No external instruments**
  - ASEAN did not establish relationship with other actors.

- **No Legal Rights and Obligations**
  - ASEAN was not provided with capacities.

Legal Personality?
1976-1991: Initial Moves towards A Legal Personality

- First ASEAN Summit: 1976 Agreement on the Establishment of the ASEAN Secretariat
  - 1979 of the Agreement between Indonesia and ASEAN on the Privileges and Immunities of the ASEAN Secretariat;
  - 1981 Agreement between Indonesia an ASEAN on the Use of Maintenance of the Premises of the ASEAN Secretariat
- Dialogue Partnerships with Major States;
- Collective External Agreements with states and organizations

ASEC v. ASEAN

Indonesia v. international plane

Collective agreements v. agreements by ASEAN

1992 Protocol to 1976 Agreement
“The Secretary-General of ASEAN” was authorized to (i) serve as spokesman and representative of ASEAN; (ii) conduct consultations with contracting parties and (iii) coordinate ASEAN dialogues with other organizations

Agreements by the ASEAN Secretariat
2002 MoU with ESCAP Secretariat, 2005 MoU with ECO Secretariat, 2005 MoU with SCO: “not legally binding under international law”

Agreements by ASEAN as an organization
Part 2 –
ASEAN’s Legal Personality in the ASEAN Charter

ASEAN shall have legal personality; the capacity to own property, enter into contracts, sue and be sued and enjoy privileges and immunities.

AMS “ensure that they give effect to the separate legal personality of ASEAN” and “put in place domestic measures, including legislation, to give effect to privileges and immunities to ASEAN.”

Secretary-General should be empowered to negotiate on behalf of ASEAN and play a greater role in managing external relations for ASEAN.

Secretary-General “shall be delegated the authority to sign non-sensitive agreements” and represent ASEAN as observer at the UN and other organizations.
ASEAN, as an inter-governmental organisation, is hereby conferred legal personality.

ASEAN shall enjoy immunity and privileges.

ASEAN shall develop relations and may conclude agreements with states and organizations.

Non-AMS and organizations may appoint Ambassadors to ASEAN.
Part 3 - 2011 Rules of Procedure and ASEAN’s Practice after the ASEAN Charter
Implementing Agreements of ASEAN Charter

In exercising its capacities under international law, including the power to conclude agreements, ASEAN shall act through its representatives authorised by the Member States.

"International agreement by ASEAN" is “any written agreement, regardless of its particular designation, governed by international law which creates rights and obligations for ASEAN as a distinct entity from its Member States.”
ASEAN Sectoral Bodies (ASB), in coordination with Committee of Permanent Representatives (CPR), submit proposal to ASEAN Foreign Ministers Meeting (AMM).

Appointed representative has to adhere to "ASEAN common position"; consult and keep ASB and CPR informed.

After negotiation, the text shall be submitted to ASB for endorsement (initialing by representative does not have any effect).

The endorsed text shall be submitted to AMM for approval. The AMM shall decide on the signing of, and/or an act of formal confirmation.

Primary actors are member states.

The ASEAN Secretary-General does not have any substantive role while the ASEAN Secretariat has merely an assisting role.
Practice after the ASEAN Charter

- 2011 Joint Declaration on Comprehensive Partnership with the UN;
- 2012 MoU with ADB

- 2012 Agreement between Indonesia and ASEAN on Hosting and Granting Privileges and Immunities to the ASEAN Secretariat

- 2007 Cooperation Agreement between ASEC and ILO Secretariat;
- 2008 MoU between ASEC and the World Tourism Organization;
- 2008 MoU between the IDB and ASEC.
Part 4 - Conclusion
ASEAN’s Legal Personality and Its Treaty-making Power

- **Establishment**: 1967
- **P&I Agreement**: 1976
- **ASEAN Charter**: 1979
- **Intl Agreements by ASEAN**: 1992
- **RoP**: 2007
- **Centralized Administration**: 2011

**International Legal Personality**
ASEAN’s Legal Personality and Its Treaty-making Power

- Substantive
- Procedural
- Institutional

Constraints
Thank you!

Hao Duy Phan (S.J.D.)
Senior Research Fellow, Centre for International Law (CIL)
National University of Singapore
Email: cilpdh@nus.edu.sg
Website: www.nus.edu.sg