
Intergovernmental Yet Dynamically Expansive: Concordance Legalization as an Alternative Regional Trading Arrangement in ASEAN and Beyond

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Abstract

The conventional regional trading arrangement landscape holds two primary models. One is the ‘dynamically expansive supranational model’ of the European Union (EU) that progressively enlarges its community beyond the constituent treaty through its evolving laws and institutions. The other is the ‘static intergovernmental model’ of the United States-Mexico-Canada Agreement (USMCA) where members strictly uphold obligations in the original agreement – no more and no less. A certain genre of Asia-Pacific regional trading arrangements (and beyond in the global South) sits uncomfortably within this bifurcated landscape. Sovereignty-centric, they seek a dynamic and ever-expanding community like the EU but, firmly rejecting supranationalism, insist on intergovernmental modalities as seen in the USMCA. Unsurprisingly, they have not been effective. Using post-2007 integration data from the Association of Southeast Asian Nations, this article presents concordance legalization as a new explanatory framework in this landscape, demonstrating how one can regionalize successfully despite being simultaneously agenda expansive and intergovernmentally operational. Concordance legalization’s four-pronged strategy – the constituent treaty explicitly entrenching intergovernmentalism to facilitate dynamic agenda expansion; the dual-step system of primary and secondary laws (with a carefully calibrated use of hard and soft instruments); the organizational hierarchy that expands, implements and exerts intra-regional accountability pressures through numerous meetings and monitoring mechanisms (rather than adjudication) that enforce compliance – has enabled this curious success.

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1 Introduction

This article aims at a different way of understanding and situating the Association of Southeast Asian Nations (ASEAN) in the regional trading arrangement landscape. ASEAN's contemporary regionalization modality, conceptualized here as concordance legalization, may also be of useful reference for other organizations in the Asia-Pacific region and elsewhere in the global South. As the ASEAN puzzle defies some international law conventions, systematic unpacking is required of the general context and theory before dissecting the ASEAN phenomenon.

To begin, the two dominant models in the incumbent regional trading arrangement landscape must be identified. Figuratively speaking, they lie at opposite poles in this environment. This is perhaps best exemplified by the 'dynamically expansive supranational model' of the European Union (EU) at one end and the 'static intergovernmental model' of the United States-Mexico-Canada Agreement (USMCA) (replacing the North Atlantic Free Trade Agreement [NAFTA]) at the other.¹ While many differences between these two entities exist, there are two that are fundamental to their organizational ethos and operations that result in bifurcation.

The EU, from early on, was distinct in that it had broad ambitions going well beyond the economic to cover social and political agendas – in short, the formation of a regional community. Therefore, the EU envisaged the evolution of the range and depth of its activities. Its members were confronted with, and for the most part accepted, a broadening and deepening of the obligations undertaken in the constituent treaties and their subsequent modifications. This process of agenda expansion was dynamic, with implementation and enforcement managed through laws with direct effect and supranational institutions, including a court. An example of such an activity is the Erasmus programme for student exchanges, initiated in 1987 and enlarged substantially over the years to its current iteration of Erasmus+ (2021–2027), which now covers all types of education and training, not just higher education, and makes a real effort to include persons with disabilities.² Variations of the EU's expansive supranational model are found in the Southern Common Market, the Caribbean Community, the Pacific Alliance, the Economic Community of West African States and, more recently, the Eurasian Economic Union.

In contrast, the USMCA is – and NAFTA was – for the most part a static intergovernmental enterprise focused on the free trade area. Once the constituent treaty comes into force, implementation occurs with little agenda variation. Significant changes to the commitments necessitate constituent treaty renegotiation, which was most recently seen in how the Trump administration, in wanting to substantially enlarge NAFTA's issue coverage, had to renegotiate the treaty. This renegotiation resulted in the USMCA, which now includes improved terms for the USA, environmental protection

¹ United States-Mexico-Canada Agreement (USMCA) 2018, available at <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement>; North American Free Trade Agreement (NAFTA) 1992, 32 ILM 670 (1993).

² See Council Regulation 2021/817, OJ 2021 L 189/1.

and labour rights.³ The static USMCA model is representative of numerous regional trading arrangements, including the Regional Comprehensive Economic Partnership (RCEP), the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the European Free Trade Association.⁴

Theory has predicted that international organizations would largely operate along the lines of the latter – that is, static intergovernmental enterprises guided strictly by their constituent treaty. This modality was most prominently propounded by Donald Puchala in his seminal work examining international and regional (especially European) cooperation in the initial two decades after World War II.⁵ Believing states and their governments to be the main actors in the international community, Puchala pushed back against the then prevalent idea of monolithic transnational governance wrought by such organizations upon states. He thus conceptualized the concordance system of international and regional cooperation that is characterized by state actors who cooperate through intergovernmental organizations and the networks of officials within them who carry out the agreed-upon mutual commitments.

Puchala's concordance system is essentially how most international organizations are understood today. Theoretically speaking, they are institutions where officials implement intergovernmentally made rules. In practice, they could be described as 'static intergovernmental enterprises' exemplified not only by regional trading arrangements such as USMCA but equally recognizable in global functional organizations such as the International Civil Aviation Organization and the World Health Organization. These entities, keeping *intra vires* of the constituent treaty, rarely allow dynamic agenda expansion – all agenda changes must arise from constituent treaty renegotiation, as seen in the USMCA example.⁶ In contrast, community-building regional trade arrangements such as the EU manage agenda expansion more 'easily' via supranational processes.

Asia-Pacific regional trading arrangements sit uncomfortably within this bifurcated landscape. At the turn of the 21st century, Miles Kahler and Peter Katzenstein had observed that, notwithstanding legalization, Asia-Pacific regionalization was challenging and unfruitful.⁷ Nevertheless, for the most part like elsewhere in the contemporary world order, the basic expectation was that regional trading arrangements

³ See, e.g., NAFTA, *supra* note 1; USMCA, *supra* note 1.

⁴ Regional Comprehensive Economic Partnership (RCEP) 2020, available at <https://rcepsec.org/legal-text/>; Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) 2018, available at <https://www.mti.gov.sg/Improving-Trade/Free-Trade-Agreements/CPTPP>; European Free Trade Association Convention 1960, available at https://www.efta.int/sites/default/files/documents/Vaduz_Convention_Agreement_Updated_1_November_2021.pdf.

⁵ Puchala, 'Of Blind Men, Elephants, and International Integration', 10 *Journal of Common Market Studies (JCMS)* (1971) 267.

⁶ 'Mission creep' in intergovernmental organizations occurs but gradually and is limited to expanding competences covered in the constituent treaty. It is also more characteristic of global functional organizations than regional trading arrangements. See G.F. Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (2017).

⁷ Kahler, 'Legalization as Strategy: The Asia-Pacific Case', 54 *International Organization (IO)* (2000) 549; Katzenstein, 'Regionalism and Asia', 5 *New Political Economy* (2000) 353.

focused on economic goals within the Asia-Pacific region (or with Asia-Pacific members) would run along the lines of the USMCA model quite smoothly. This was certainly expected of the RCEP, the CPTPP and the long-standing Asia Pacific Trade Agreement. The outliers in this landscape remain intergovernmental Asia-Pacific arrangements with goals going beyond the economic. Even as they emulate the dynamic expansion characterized by the EU, they insist on being intergovernmentally ordered like the USMCA – with little success. A few prominent examples are the South Asian Association for Regional Cooperation (SAARC) and the Melanesian Spearhead Group (MSG) (with no significant cooperation outcomes to date, economic or otherwise) as well as ASEAN (with underwhelming results from the 1970s to 2007).⁸ These organizations remain opposed to institutionalizing supranational powers to facilitate the implementation and enforcement of their expansive agendas.

While a simple (if simplistic) solution may be for these organizations either to switch entirely to the static USMCA model to keep to a fixed set of economic goals or, better yet, to transform into the EU type of supranational integration so that their expansive regionalization ambitions may be fulfilled, neither scenario has occurred. These organizations do not fit easily into the existing USMCA-EU dichotomy. It should be stressed that supranationalism is not something Asia-Pacific states accept easily. As Simon Chesterman has examined, these states have long had an ‘ambivalent’ relationship with international law and its institutions.⁹ This may be because many belong to the global South, they tend to be strongly sovereignty-centric and they staunchly prefer intergovernmental engagement due to their colonial and independence struggles.¹⁰ Consequently, Amitav Acharya advocates that new regionalization conceptualizations must be sought as states bearing diverse social, political, economic and legal foundations as well as institutional resources obviously do not fit into the incumbent models.¹¹

Within this diverse regional trading arrangement landscape, the post-2007 ASEAN exemplifies a plausible new model, which itself poses a multifaceted puzzle. In 2007, ASEAN’s 10 members (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam) undertook through their inaugural constituent ASEAN Charter the obligation to integrate into the ASEAN Community by 2015.¹² ASEAN is dynamically and expansively ambitious like the EU, yet it is intergovernmental in operation like USMCA. More perplexingly, ASEAN abides by extreme intergovernmentalism – consensus of all members (and not merely majority agreement) is compulsory for the organization to move on every action.

⁸ Tan, ‘Regional Organizations’, in S. Chesterman, H. Owada and B. Saul (eds), *The Oxford Handbook of International Law in Asia and the Pacific* (2019) 37.

⁹ Chesterman, ‘Asia’s Ambivalence About International Law and Institutions: Past, Present and Futures’, 27 *European Journal of International Law (EJIL)* (2016) 945.

¹⁰ Tan, *supra* note 8.

¹¹ Acharya, ‘Regionalism Beyond EU-Centrism’, in Tanja A. Börzel and Thomas Risse (eds), *The Oxford Handbook of Comparative Regionalism* (2016) 109, at 110.

¹² Charter of the Association of Southeast Asian Nations (ASEAN Charter) 2007, available at <https://asean.org/wp-content/uploads/2021/09/21069.pdf>, preamble.

This ASEAN puzzle contains three smaller puzzles. Respectively, these are the organization's progress, the efficacy of its laws and the usefulness of its institutions. At the outset, one would expect stagnation (if not failure) of this far-reaching enterprise, as seen in the pre-2007 ASEAN, SAARC and the MSG. However, the post-2007 ASEAN displays organizational progress following an unprecedented level of agenda expansion via prolific law-making and institutional growth (Puzzle 1). Second, one would also expect ASEAN to produce voluminous, commitment-empty rhetoric that achieves nothing. Paradoxically, this is not the case. ASEAN carefully calibrates the production of a variety of legal instruments with differing degrees of 'bindingness' to address the intensity of cooperation desired in each issue area. As a definitional guide, ASEAN typically labels its 'hard' laws (binding obligations that are subject to dispute settlement mechanisms) as treaties and agreements. Its 'soft' laws (non-binding commitments without adjudicative enforcement) are frequently recognized as declarations, concords and action plans (Puzzle 2).¹³ Third, ASEAN's discussion platform is, moreover, not a mere 'talk-shop' – the frequent institutional meetings at every level of the organizational hierarchy act as an informal 'accountability and enforcement' mechanism by reminding members of their shared commitments. Such transparent reaffirmation and reinforcement of regional laws facilitates productive results (Puzzle 3). Given such nuanced legalization, ASEAN Community building thrives.

In analysing ASEAN's post-2007 experience to resolve these puzzles, I have conceptualized the concordance legalization model of regional organization. Concordance alludes to ASEAN's (extreme) intergovernmentalism, while legalization points to ASEAN's particular style of dynamic agenda expansion. Plainly put, concordance legalization is a modality that allows sovereignty-centric states to participate in a simultaneously dynamically agenda-expansive, yet intergovernmental, regional trading arrangement. This article proceeds with section 2 briefly articulating Puchala's concordance system and how its principles characterize most international and regional cooperation. Section 3 draws connections between Puchala's theory and ASEAN's cooperation from 1967 to 2003, demonstrating how intergovernmentalism, coupled with agenda expansion, led to ASEAN's 'regionalization failure'. Consequently, section 4 examines how members added overt legalization to the characteristics of ASEAN's concordance system during 2003 to 2007 to overcome ineffective cooperation. This phase marks the laying of the foundations of concordance legalization. As ASEAN's carefully calibrated legalization concretizes into a regular pattern post-2007, section 5 defines the concordance legalization model, resolves the three puzzles and demonstrates how it helps sovereignty-centric states dynamically expand their regionalization agenda without supranationalism. The conclusion suggests how concordance legalization adds new dimensions to scholarship on international law, international relations and ASEAN studies. It also comments on concordance legalization's practical effects – namely, that it may give rise to new strategies of global cooperation, especially in increasingly polarized environments.

¹³ On soft law debates, see, e.g., d'Aspremont, 'Softness in International Law: A Self-Serving Quest for New Legal Materials', 19 *EJIL* (2008) 1075; Klabbers, 'The Redundancy of Soft Law', 65 *Nordic Journal of International Law* (1996) 167.

On this last note and returning to this article's basic aim to present concordance legalization as a new regional trading arrangement model, it must be stressed that concordance legalization should not be read as the only or the best means of regionalization. It has proven uniquely suitable in ASEAN and may be appropriate elsewhere. If successful, this study will contribute to understanding ASEAN and the broader regional trading arrangement landscape.

2 Puchala's Concordance System

Puchala conceptualized his concordance system theory after observing the post-World War II environment of increasing multilateralism. He rejected the prevailing mindset that states only had a binary choice of realist (unilateralist) behaviour versus supranationally ordered cooperation. A firm counter-realist, Puchala held that, despite different self-interests, states would negotiate to attain mutually beneficial goals.¹⁴ Concomitantly, Puchala disagreed that integration needed an 'approximation of central government' or that 'monolithic structures of authority' were mandatory in organizations.¹⁵ He believed that international and regional cooperation needed inter-governmental entities rather than supranational ones, as (to him) states and national governments were the principal global actors.¹⁶

Puchala proposed the concordance system to counter these two worldviews. He saw states as pragmatic, rational actors cognizant of 'national inadequacy' amid global economic and technological pressures – hence, they invariably seek efficient problem-solving. Puchala theorized that states consistently converge into 'an international system wherein actors find it possible to consistently compromise on their differences and harmonize their interests ... [to reap] the fruit of cooperation'.¹⁷ The concordance system thus rewards cooperation and information sharing for mutually beneficial relations because the alternative – 'competitive, secretive, and deceptive actions' wreaking a zero-sum realist anarchy – undermines everyone.¹⁸ In short, the limitations of unilateralism lead states to act collectively to protect their interests.

To obtain these shared advantages, Puchala's concordance system facilitates inter-governmental multilateral engagement by neutralizing frictions 'in all issue-areas through organizational networks [working] according to routinized procedures'.¹⁹ Instead of ad hoc diplomatic discussions, states in a concordance system act 'via institutionalized ... procedures which all actors commit ... to use and respect'.²⁰ While these institutions are key to the proper functioning of a concordance system, they need not be supranational. An overarching supranational authority (for example, a secretariat,

¹⁴ Puchala, *supra* note 5, at 277.

¹⁵ *Ibid.*, at 270.

¹⁶ *Ibid.*, at 271.

¹⁷ *Ibid.*, at 277–280.

¹⁸ *Ibid.*, at 280–281.

¹⁹ *Ibid.*, at 279.

²⁰ *Ibid.*, at 279.

commission or court) controlling and limiting state action has no place in the regional framework; institutions must always facilitate member states' ambitions.²¹

Puchala had general international cooperation and early-stage European integration in mind when he formulated the concordance system. While his theory did not transpire into reality for the agenda-expansive, supranational EU, it largely reflects international and regional cooperation.²² As mentioned, this system denotes intergovernmental organizations where officials carry out, with little deviation, the mutual commitments that the members have forged. Any substantial change to the original goals necessitates replacing the constituent agreement.

3 Puchala's Concordance System, Dynamic Agenda Expansion and 'Failed Regionalization': ASEAN, 1967–2003

Two core characteristics of the concordance system resonate in ASEAN cooperation: external turbulence compels members towards collective action to safeguard interests, and then an intergovernmental system of officials working through institutional processes emerges. Where ASEAN diverges is in that it is not static. It pursues relentlessly both economic and non-economic agenda expansion – all without renegotiating the constituent instrument or instituting supranational competences. Moreover, as ASEAN's experience from 1967 to 2007 shows (see sections 3 and 4), while the concordance system motivates states to cooperate intergovernmentally, it is insufficient to procure effective results when the entity seeks to be more than a static regional trading arrangement. This is especially so when the types of laws, institutions and processes ensuing from dynamic agenda expansion lack any supranational competence to compel implementation and enforcement.

ASEAN's concordance system traits were first evinced after World War II. Grappling with turbulence arising from intra-regional tensions, internal self-determination and communist movements, ASEAN members urgently sought regional stability and economic prosperity through cooperation. This was exceedingly difficult as establishing ASEAN in 1967 was the fourth attempt to secure peace after the Southeast Asian Treaty Organization, the Association of Southeast Asia and the Malayan-Philippine-Indonesian tripartite 'Maphilindo' had proven disappointing.²³ This environment of mutual suspicion meant that, while the founding members – Indonesia, Malaysia,

²¹ *Ibid.*, at 279.

²² Donald Puchala's insights resonate with functionalist, institutionalist, rationalist and constructivist genres of international cooperation. See, e.g., Nye, 'Comparative Regional Integration: Concept and Measurement', 22 *IO* (1968) 855; Keohane and Nye, 'Transgovernmental Relations and International Organizations', 27 *IO* (1974) 39; Haas, 'Fields and the Theory of Regional Integration', 30 *IO* (1976) 173; Hopf, 'The Promise of Constructivism in International Relations', 23 *International Security* (1998) 171.

²³ Taylor, 'Malaysia, Indonesia – and Maphilindo', 19 *International Journal* (1964) 155; Pollard, 'ASA and ASEAN, 1961–1967: Southeast Asian Regionalism', 10 *Asian Survey* (1970) 244; E. Lim and D. Chua, *ASEAN 50: Regional Security Cooperation through Selected Documents* (2017), at 1–16.

Philippines, Singapore and Thailand – wanted to attain individual and collective good via cooperation, they remained unprepared to be bound by law and operate according to institutionalized processes, let alone allow supranational control over their activities.

Rejecting being subject to treaty obligations and centralized institutions, the 1967 ASEAN Declaration (Bangkok Declaration) establishing the grouping was a soft law focusing on regional security, despite the prominent ‘vener’ of economic growth, agricultural and industrial mutual assistance, scientific and technical collaboration and social and cultural development.²⁴ This constituent instrument prohibited the use of force and interference in any member’s internal affairs, while consultation and consensus (with every member holding veto powers) became the sole mode of intergovernmental decision-making.²⁵ This sovereignty-centric outlook on regional cooperation was also embraced upon membership by Brunei in 1982 and Cambodia, Laos, Myanmar and Vietnam (CLMV) in the 1990s.²⁶

As regional engagement gradually improved relations, ASEAN experienced dynamic agenda expansion beyond the constituent declaration. More elaborate commitments were wrought via harder legal commitments in a piecemeal, reactive fashion to the external pressures. The resultant processes and institutions were thus more perfunctory than substantive, which was apparent in the second phase of regional cooperation. Relations had stabilized sufficiently within a decade such that the leaders could adopt ASEAN’s two inaugural treaties to institutionalize cooperation at the first Summit in 1976. The Treaty of Amity and Cooperation (TAC) codified the Bangkok Declaration’s norms on the non-use of force, peaceful dispute settlement and non-interference in the form of binding obligations.²⁷ Leaders nonetheless refused to activate its adjudicative function. (Even when the TAC Rules of Procedure were finalized in 2001, the emphasis remained on friendly negotiations for dispute settlement).²⁸ The other treaty – the Agreement on the Establishment of the ASEAN Secretariat – formed a central bureaucratic organ with limited powers, which was answerable to the ASEAN foreign ministers.²⁹ These two treaties underscored intergovernmental powers, and the ensuing bureaucratic processes were deferential to the member states.³⁰

Better relations also enabled members to activate and expand their original economic aspiration enunciated in the Bangkok Declaration during this first Summit.

²⁴ ASEAN Declaration (Bangkok Declaration) 1967, available at <https://agreement.asean.org/media/download/20140117154159.pdf>, preamble, paras 1–6.

²⁵ *Ibid.*, preamble, para. 1.

²⁶ Association of Southeast Asian Nations (ASEAN), *Overview of ASEAN Establishment*, available at <https://asean.org/asean/about-asean/overview/>.

²⁷ Treaty of Amity and Cooperation in Southeast Asia (TAC) 1976, available at <https://asean.org/wp-content/uploads/2021/01/20131230235433.pdf>, Art. 2.

²⁸ *Ibid.*, Arts 13, 15, 17; Rules of Procedure of the High Council of the Treaty of Amity and Cooperation in Southeast Asia 2001, available at <https://asean.org/rules-of-procedure-of-the-high-council-of-the-treaty-of-amity-and-cooperation-in-southeast-asia/>.

²⁹ Agreement on the Establishment of the ASEAN Secretariat (Secretariat Agreement) 1976, available at <http://agreement.asean.org/media/download/20140117151823.pdf>, preamble, Arts 3(2)(i), (ii), (vi), (vii).

³⁰ See, e.g., Secretariat Agreement, *ibid.*, Art. 2; TAC, *supra* note 27, Art. 14.

Members adopted the non-binding 1976 Bali Concord I – a programme predominantly administered by the intergovernmental institution of the ASEAN Economic Ministers Meeting (AEMM) – which initiated the diverse regional trading arrangement covering trade liberalization, food, commodities, energy and industrial cooperation between 1976 and 1992.³¹ Although the concordance system's traits explain how ASEAN states were motivated to cooperate more closely through intergovernmental, institutionalized modalities, the economic ventures failed because ASEAN laws and institutions were too weak to engender compliance.³²

Post-Cold War pressures drove ASEAN members towards a third attempt to kick-start substantive cooperation in the 1990s. Again, this effort merely resulted in better relations, not significant action, which was evidenced when they adopted yet another soft law – the 1992 Singapore Declaration – that expanded political and economic cooperation to counter the challenges posed by the post-Soviet states competing in global markets and rising European and North American trade protectionism.³³ The Cambodian conflict's resolution also enabled ASEAN membership to increase for strategic interests. In accepting its Indochinese neighbours as members, ASEAN strengthened regional peace and security as well as global geopolitical and economic relevance.³⁴

Ambitions swiftly expanded.³⁵ ASEAN members agreed to form an economic bloc by 2007 via the 1992 Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area (CEPT-AFTA).³⁶ The 1995 ASEAN Framework Agreement on Services (AFAS)³⁷ and the 1996 Protocol of Dispute Settlement Mechanism were later adopted.³⁸ Although the protocol signalled the readiness to litigate intra-regional economic treaties, as with the TAC, members resisted using it. To

³¹ Declaration of ASEAN Concord 1976, available at <https://asean.org/the-declaration-of-asean-concord-bali-indonesia-24-february-1976/>, paras B.1–3, 5.

³² Tan, 'Will ASEAN Economic Integration Progress beyond a Free Trade Area?', 53 *International and Comparative Law Quarterly* (2004) 935, at 936–938.

³³ *Ibid.*, at 938; Singapore Declaration 1992, available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/1992-Singapore-Declaration.pdf>, Art. 2.

³⁴ Singapore Declaration, *supra* note 33, Arts 2, 3.

³⁵ For a non-exhaustive list of ASEAN economic instruments adopted from the 1970s to the 1990s, see ASEAN, *ASEAN Legal Instruments: ASEAN Economic Community*, available at http://agreement.asean.org/search/by_pillar/2.html.

³⁶ Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area (CEPT-AFTA) 1992, available at <https://asean.org/agreement-on-the-common-effective-preferential-tariff-cept-scheme-for-the-asean-free-trade-area-afta/>, Art. 4(1); Protocol to Amend the Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area for the Elimination of Import Duties 2003, available at [https://asean.org/wp-content/uploads/images/2012/Economic/AFTA/Common_Effective_Preferential_Tariff/Protocol%20to%20Amend%20the%20Agreement%20on%20the%20Common%20Effective%20Preferential%20Tariff%20\(CEPT\)%20Scheme%20for%20the%20ASEAN%20Free%20Trade%20Area%20\(AFTA\)%20for%20the%20Elimination%20of%20Import%20Duties.pdf](https://asean.org/wp-content/uploads/images/2012/Economic/AFTA/Common_Effective_Preferential_Tariff/Protocol%20to%20Amend%20the%20Agreement%20on%20the%20Common%20Effective%20Preferential%20Tariff%20(CEPT)%20Scheme%20for%20the%20ASEAN%20Free%20Trade%20Area%20(AFTA)%20for%20the%20Elimination%20of%20Import%20Duties.pdf), Art. 1. Cambodia, Laos, Myanmar and Vietnam had a 2015 deadline.

³⁷ ASEAN Framework Agreement on Services 1995, available at <https://asean.org/wp-content/uploads/2021/08/ASEAN-Framework-Agreement-on-Services-AFAS.pdf>.

³⁸ Protocol on Dispute Settlement Mechanism 1996, available at <http://agreement.asean.org/media/download/20140119110714.pdf>.

ensure this phase succeeded, more processes and institutions were established. This attempt went beyond the simple institution building of the 1970s as considerable powers were installed, including, most prominently, regularizing the ASEAN leaders' summits to enhance intergovernmental agenda formation; investing the secretary-general with ministerial status; giving more competences and resources to the secretariat; and tasking the Senior Economic Officials Meeting (SEOM), which comprised the most senior civil servants from each member's economic ministry, with the explicit responsibility of implementing the free trade area.³⁹

These efforts were followed by further intensification of processes and institutions after the 1997 Asian financial crisis devastated regional economies. Cognizant that they could only counter external pressures if united, members were motivated to expand their agenda and take 'full ownership' of ASEAN.⁴⁰ China's industrialization and World Trade Organization (WTO) accession and the CLMV's developmental exigencies accelerated this trajectory. New soft legal commitments on intra-regional trade liberalization in goods and services were articulated in the 1997 ASEAN Vision 2020 and the 1998 Hanoi Plan of Action.⁴¹ Agenda expansion also occurred in foreign investment. Deemed vital to regional growth, this was enshrined in treaty – the 1998 Framework Agreement on the ASEAN Investment Area.⁴² Additionally, the 2002–2008 Initiative for ASEAN Integration specified infrastructural and technological programmes to help the CLMV transit into ASEAN.⁴³

ASEAN's intergovernmental cooperation from 1967 to 2003 evinces affinity with Puchala's concordance system. Concomitantly, its agenda expands without constituent instrument renegotiation. Regrettably, friendly relations, not productive outcomes, were the chief result.

4 Laying Concordance Legalization Foundations in ASEAN, 2003–2007

As ASEAN's competitive relevance would wane under unabating geopolitical pressures, members were anxious to consolidate strategic leverage amid group safety. They hastened the trade bloc's establishment and expanded the agenda again. The 2003 Declaration of the Bali Concord II pledged to build an ASEAN Community of

³⁹ Singapore Declaration, *supra* note 33, Art. 8; CEPT-AFTA, *supra* note 36, Art. 7.

⁴⁰ Joint Statement of the Heads of State/Government of the Members of ASEAN on the Financial Situation (1997), available at <https://asean.org/joint-statement-of-the-heads-of-state-government-of-the-member-states-of-asean-on-the-financial-situation-kuala-lumpur-malaysia-15-december-1997/>; Report of the ASEAN Eminent Persons Group on Vision 2020 (2000), paras 5–6, available at <https://asean.org/report-of-the-asean-eminant-persons-group-epg-on-vision-2020-the-peoples-asean/>.

⁴¹ ASEAN Vision 2020 (1997), available at <https://cil.nus.edu.sg/wp-content/uploads/formidable/18/1997-ASEAN-Vision-2020-1.pdf>; Hanoi Plan of Action, 1999–2004 (1998), ss 1, 2, 4, available at <https://cil.nus.edu.sg/wp-content/uploads/formidable/18/1998-Ha-Noi-Plan-of-Action.pdf>.

⁴² Framework Agreement on the ASEAN Investment Area (AIA) 1998, available at <http://agreement.asean.org/media/download/20140119040024.pdf>, Art. 3.

⁴³ Initiative for ASEAN Integration (2002–2008), ss 1–4, available at www.asean.org/wp-content/uploads/images/archive/22325.pdf.

political-security, economic and socio-cultural pillars, with the bloc's single market and production base plugging into global markets.⁴⁴ Although ASEAN did not deviate from its concordance system's pattern of external pressure-motivated intergovernmental cooperation via processes and institutions whilst being agenda expansive – even if following this trajectory could spell another failure – the Bali Concord II built foundations for effective ASEAN cooperation. It signified the nascent dawn of concordance legalization in 2007 under the ASEAN Charter's auspices.

What this new soft law did was to first consolidate the collective vision that had thus far (1967–2003) been an agglomeration of laws, processes and institutions established in reaction to global pressures. ASEAN now possessed through the concord a coherent framework to achieve community aspirations.⁴⁵ Second, to avoid members repeatedly reneging on the diligence needed for integration, the Bali Concord II explicitly aligned the members' net interests with the realization of the ASEAN economic bloc.⁴⁶ This was a constant reminder that, despite the obvious transformational pains, regionalization accrued net advantages to every member. Third and most importantly, the Bali Concord II moved ASEAN members away from their predilection for 'non-legalistic' cooperation (ironic given the prolific law-making).⁴⁷ There was now the shared belief that ASEAN needed an overt environment of legalization to corral members to stay the course. To ensure implementation (given that non-compliance had hitherto been high), members emphasized ASEAN needed stronger rule-based processes and institutions to successfully execute cooperation agendas and that mechanisms for monitoring, administering legal advice and settling trade and investment disputes were necessary to encourage compliance.⁴⁸ More prominently, the Vientiane Action Programme executing the concord highlighted that ASEAN members expressly desired a legally binding charter to spur substantive integration.⁴⁹

Running up to the ASEAN Charter's adoption, legalization accelerated through redoubled efforts to finally establish the free trade area. Treaties were signed to expand substantive cooperation in the ASEAN Single Window regarding rules of origin certification and, *inter alia*, the tourism, healthcare and technology sectors and the mutual recognition of services such as engineering and nursing.⁵⁰ Another attempt

⁴⁴ Declaration of the Bali Concord II (Bali Concord II) 2003, available at <https://asean.org/speechandstatement/declaration-of-asean-concord-ii-bali-concord-ii>, preamble, paras 7, B.3–4.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ Sopiee, 'ASEAN and Regional Security', in K.S. Sandhu *et al.* (eds), *The ASEAN Reader* (1992) 391, at 392.

⁴⁸ Bali Concord II, *supra* note 44, Annex, para. 14; Vientiane Action Programme (2004–2010) (VAP 2004–2010), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2004-2010-Vientiane-Action-Programme.pdf>, paras 5.2–5.3.

⁴⁹ VAP 2004–2010, *supra* note 48, para. 1.2.

⁵⁰ See, e.g., Agreement to Establish and Implement the ASEAN Single Window 2005, available at <https://asw.asean.org/index.php/archives/agreements/item/agreement-to-establish-and-implement-the-asean-single-window>; ASEAN Sectoral Integration Protocol for Tourism 2004, available at www.parliament.go.th/aseanrelated_law/files/file_20171018100356_txtattachEN_.pdf; ASEAN Sectoral Integration Protocol for Healthcare 2004, available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2004-ASEAN-Sectoral-Integration-Protocol-for-Healthcare-1.pdf>; ASEAN Mutual Recognition Arrangement on Nursing Services (2006), available at <http://agreement.asean.org/media/download/20150119183446.pdf>.

at enforcing economic obligations was made by improving the 1996 protocol and its institutions. Its successor – the 2004 Protocol on Enhanced Dispute Settlement Mechanism – featured a WTO-like arbitral procedure, clearer roles for the SEOM and ‘negative consensus’ where arbitration could proceed unless members objected.⁵¹ To further demonstrate that ASEAN members were serious about legalization, external economic relations also began to be legalized – notably, with respect to Korea and China, institutional functions and dispute settlement mechanisms were added.⁵²

Member support for overt legalization gained momentum. By 2007, tasked with identifying what ASEAN required in order to tackle contemporary challenges successfully, the Eminent Persons Group (EPG) for the ASEAN Charter exhorted that ASEAN urgently needed to overcome ‘fragmented markets, high transaction costs, and unpredictable policy environments’ to attract foreign investment and access export markets.⁵³ The EPG stressed that ASEAN needed to end reactive piecemeal cooperation with a systemic legalization overhaul, which meant building a legally binding charter-based framework.⁵⁴ The EPG was very critical of members’ repeated failure to respect commitments and flagged that non-compliance delayed the community’s actualization and diminished ASEAN’s credibility.⁵⁵ It underscored how a legalized architecture was ‘long overdue’ to discipline ASEAN’s trajectory towards ‘a more structured Intergovernmental Organization ... [with] legally-binding rules and agreements’.⁵⁶ The EPG emphasized that ‘effective implementation’ was a problem and cautioned against future formalistic law-making as ‘vision[s], ideas, or action plans’ abounded.⁵⁷ It advocated using hard law to codify regional norms and enforcing compliance via dispute settlement and monitoring mechanisms.⁵⁸

The EPG also deemed that ASEAN’s processes and institutions needed overhauling. It recommended that, first, the networks of officials such as the Summit, the AEMM, secretary-general and secretariat and the SEOM would be sorted according to clear hierarchies of intergovernmental power. There would henceforth be ministerial-level

⁵¹ ASEAN Protocol on Enhanced Dispute Settlement Mechanism 2004, available at <http://agreement.asean.org/media/download/20141217102933.pdf>, Arts 5–12.

⁵² Agreement on Dispute Settlement Mechanism under the Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea 2005, available at <https://asean.org/wp-content/uploads/2021/08/Agreement-on-Dispute-Settlement-Mechanism-Under-the-Framework-Agreement-on-Comprehensive-Economic-Cooperation-Among-the-Governments-of-the-Member-Countries-of-the-Association-of-Southeast-Asian-Nations.pdf>, Art. 5; Framework Agreement on Comprehensive Economic Cooperation between ASEAN and the People’s Republic of China 2002, available at <https://arc-agreement.asean.org/file/doc/2015/03/framework-agreement-on-comprehensive-economic-cooperation-between-asean-and-the-people-s-republic-of-china.pdf>, Art. 11(1).

⁵³ Report of the Eminent Persons Group on the ASEAN Charter (EPG Report) (2006), Executive Summary paras 2–3, 5; Main Report, 14–15, 20, 22, available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2007-Report-of-the-Eminent-Persons-Group-On-The-ASEAN-Charter-1.pdf>.

⁵⁴ *Ibid.*, Executive Summary, paras 2–3; Main Report, paras 27, 43, 47.

⁵⁵ *Ibid.*, Main Report, para. 44.

⁵⁶ *Ibid.*, Executive Summary, paras. 2–3; Main Report, paras 27, 43, 47.

⁵⁷ *Ibid.*, Executive Summary, para. 6.

⁵⁸ *Ibid.*, Executive Summary, para. 6; Main Report, paras 2, 44–45.

councils overseeing all ASEAN integration areas – namely, the political-security, economic and socio-cultural communities.⁵⁹ Second, the EPG acknowledged that the secretariat was insufficiently centralized and understaffed. It exhorted ASEAN members to increase support for and delegate greater powers to the secretary-general and secretariat for more effective administration of regional cooperation.

It is important to highlight that, even as the EPG encouraged members to respect enhanced legalization and centralized competences, it simultaneously assured that the ASEAN Charter would uphold sovereignty through intergovernmental hierarchies and consensus decision-making. The bureaucratic oversight by the secretary-general and secretariat was not a supranational exertion of collective power.⁶⁰ Post-adoption, the ASEAN Charter guided members in building the legalized ASEAN Community comprising the political-security, economic and socio-cultural communities by 2015.⁶¹ It was the turning point where ASEAN continued to dynamically expand its agenda while remaining a staunchly intergovernmental organization but (finally) procuring effective outcomes via authentic legalization.

However, as pre-2007 commitments had an implementation rate of only about 30 percent, ASEAN's transformation was not instantaneous.⁶² The actual practice of legalization post-Charter was difficult as ASEAN states had entrenched normative and practical hurdles to overcome. As the next section shows, it was through trial and error in upholding the ASEAN Charter that concordance legalization emerged as a new model alongside the EU and USMCA paradigm in the regional trading arrangement landscape.

5 Conceptualizing Concordance Legalization: ASEAN, 2007 and Onwards

With the concordance emblemizing ASEAN's pervasive intergovernmentalism, while legalization refers to how it expands its agenda dynamically under the ASEAN Charter, ASEAN's post-2007 phenomenon of successful regionalization also resolves the three smaller puzzles mentioned in the introduction. Despite being dynamically agenda expansive and intergovernmental, ASEAN progressed – it did not falter or stagnate (Puzzle 1); ASEAN's laws are impactful, not meaningless rhetoric (Puzzle 2); and ASEAN's institutions are effective – they are not 'talk shops' but develop the organizational agenda, affirm (and reaffirm) the intergovernmental commitment to the collective good and exert informal accountability and enforcement pressures (Puzzle 3). Concordance legalization comprises four key characteristics.

⁵⁹ *Ibid.*, para. 24.

⁶⁰ *Ibid.*, Executive Summary, paras 6–7; Main Report, paras 36, 39.

⁶¹ ASEAN Charter, *supra* note 12.

⁶² T. Koh *et al.*, *Charter Makes ASEAN Stronger, More United, and Effective*, 8 August 2007, available at https://lkyspp.nus.edu.sg/docs/default-source/ips/pa_tk_st_charter-makes-asean-stronger-more-united-and-effective_0808071.pdf?sfvrsn=4d43730a_2.

First, a constituent treaty entrenches a coherent intergovernmental framework of legalized cooperation at all levels of intra-regional interaction. The centralized secretariat is explicitly cautioned not to overstep its delegated competences. The treaty also spells out long-term goals and their net benefits, coaxing members to persevere (rather than surreptitiously renege) on the common enterprise, thereby facilitating stable relations and productive outcomes as the agenda expands.

Second, there is a continuous and dynamic process of 'constituent treaty enlargement' in a dual-step system of primary and secondary laws (encompassing both hard and soft instruments) to enunciate economic, security and socio-cultural agendas across the ASEAN Community. As there is no constituent treaty limitation on the type of cooperation activities, there is a proliferation of substantive instruments without ASEAN Charter renegotiation. Compliance with all laws is expected.

Third, to produce and implement the ever-expanding agenda, there is a complex and robust hierarchy of intergovernmental and administrative institutions staffed by officials with regional and national portfolios who meet frequently. As compliance is not lightly assumed (recalling ASEAN's poor 1967–2007 results), regular engagement becomes a form of accountability and enforcement. The transparency assures members that laws are implemented, intergovernmental interests and goals are respected and the regional agenda is progressing.

Fourth, members' desire for consensus and regional amicability leads to 'un-orthodox' ways of ensuring compliance. Apart from frequent institutional meetings, ASEAN's reliance on soft law and litigation avoidance preferences means enforcement is often non-adjudicatory. Monitoring mechanisms have evolved to be the primary means of holding members accountable – it minimizes free-riding whilst reducing adversarial litigation, thereby facilitating cohesive relations.

A A Constituent Treaty Entrenching Intergovernmentalism, Long-Term Goals and Net Benefits for Legalized Dynamic Agenda Expansion

Sovereignty-centric states prioritize their autonomy and interests. For them to integrate over the long term and not renege on collective goals due to perceived 'gains' elsewhere or when encountering regionalization difficulties requires a constituent treaty that articulates a logical intergovernmental strategy that all members are able – and want – to follow. For ASEAN, this is its first constituent treaty – the legally binding ASEAN Charter – that sets the environment in which concordance legalization operates. Departing from reactive piecemeal agenda expansion, this legal and institutional framework expresses members' ambitions for the political-security, economic and socio-cultural pillars of their ASEAN Community as they navigate the contemporary and future world order together.⁶³ Besides embodying legalization pathways necessary to achieving these goals, the ASEAN Charter's overt expressions of intergovernmentalism safeguard sovereign autonomy while assuring mutual obligation and transparency throughout intra-regional engagement.

⁶³ ASEAN Charter, *supra* note 12, preamble.

By correcting pre-2007 cooperation modalities, the ASEAN Charter lays the groundwork for ASEAN to thrive and expand its agenda, thereby resolving the three puzzles regarding ASEAN's progress, the efficacy of its laws and the usefulness of its institutions. The Charter guides ASEAN in concordance legalization in six ways. First, the Charter's opening provisions codify a swathe of long-standing agendas that aid the common and individual members' interests. These are security, sovereign independence, non-use of force, peaceful dispute settlement, socio-economic development, integration into a single market and production base and ASEAN centrality in foreign relations.⁶⁴

Second, ASEAN members' new regard for legalization in intra-regional and external relations is explicated in the respect for general international law, multilateral trade systems and ASEAN's own regimes.⁶⁵ The significance of ASEAN's hard and soft laws is highlighted in Article 2(1)'s far-reaching reaffirmation of the 'fundamental principles ... in the declarations, agreements, ... and other instruments of ASEAN'.⁶⁶ To deter non-compliance, Article 5 obligates members to take 'all necessary measures, including ... domestic legislation' to implement the Charter and 'comply with all obligations of membership'.⁶⁷ It is explicit that members now expect mutual commitment to, and results from, their common agenda – ASEAN must expand and progress, and its laws must have real impact.

Third, cognizant that intensifying cooperation may increase intra-regional frictions, and following the EPG's direction on enforcing compliance, Chapter VIII provides binding dispute settlement mechanisms for all political-security, economic and socio-cultural disputes.⁶⁸ Article 23 requires members to first try to resolve discord by negotiation and mediation.⁶⁹ If unsuccessful, Article 24(1) advocates that the dispute settlement mechanism stipulated by the treaty in question should be attempted.⁷⁰ If such a clause is absent, economic disputes should be resolved under the 2004 Protocol on Enhanced Dispute Settlement Mechanism.⁷¹ Otherwise, general disputes not involving treaty interpretation or application should be resolved through the TAC.⁷² In further evidence of their faith in adjudication, ASEAN members included the 'catch-all' Article 25, expressing 'appropriate dispute settlement mechanisms, including arbitration, shall be established' for disputes involving any ASEAN instrument, including the Charter.⁷³ Chapter VIII has profound significance within and without the region – members are signalling to one another and to their external partners that they are serious about

⁶⁴ *Ibid.*, Arts 1, 2.

⁶⁵ *Ibid.*, preamble, Arts 1, 2.

⁶⁶ *Ibid.*, Art. 2(1).

⁶⁷ *Ibid.*, Art. 5.

⁶⁸ *Ibid.*, Arts 24–26.

⁶⁹ *Ibid.*, Arts 22(1), 23.

⁷⁰ *Ibid.*, Art. 24(1).

⁷¹ *Ibid.*, Art. 24(3).

⁷² *Ibid.*, Art. 24(2).

⁷³ *Ibid.*, Art. 25.

legalized community building. They demonstrate that ASEAN laws have real effect and that, unlike pre-2007, they are ready to arbitrate any dispute.⁷⁴

Fourth, the ASEAN Charter's overt intergovernmental clauses reinforce the non-negotiable – members control negotiating collective outcomes for their individual and common good. Chapter IV (Organs) denotes how interests are safeguarded during decision-making at all levels – from political leaders such as ministers to high-level officials and other bureaucrats belonging to the national civil services. The Summit, comprising the heads of state or government, is the 'supreme policy-making body' instructing the Coordinating Council, three Community Councils and Sectoral Ministerial Bodies.⁷⁵ These governing bodies all comprise ministers of member states to exert intergovernmental pressure during regional engagement.

The Coordinating Council (comprising the 10 foreign ministers and assisted by senior foreign ministry officials) holds the overall responsibility for community building.⁷⁶ The national secretariats comprise the ASEAN directorate of each foreign ministry. These work with ASEAN bodies and other national agencies to implement ASEAN laws and policies.⁷⁷ Similarly, the Political-Security, Economic and Socio-Cultural Community Councils facilitate the Sectoral Ministerial Bodies in implementing their portfolios, while senior national officials support these Community Councils and Sectoral Ministerial Bodies.⁷⁸ To enhance intergovernmentalism, the Committee of Permanent Representatives, comprising the members' ambassadors to ASEAN, ensure their respective countries' interests are safeguarded at the ASEAN secretariat. It also assists the Community Councils, national secretariats and Sectoral Ministerial Bodies in implementing integration commitments.⁷⁹

Given intergovernmentalism's precedence, the centralized powers of the secretary-general and secretariat are neutral and more muted relative to the above organs. Although possessing the rank and status of minister, the secretary-general serves 'with the confidence and at the pleasure of the ASEAN Heads of State or Government and upon the recommendation of the ASEAN Foreign Ministers'.⁸⁰ Aided by the secretariat, the secretary-general is ASEAN's 'chief administrative officer', overseeing the implementation of commitments and advancing common interests in external relations.⁸¹ As shown, ASEAN's central administration is firmly subject to members' intergovernmental decisions.

Fifth, although intergovernmentalism is obvious in how ASEAN institutions work, the ASEAN Charter explicitly entrenches intergovernmentalism as the sole regional decision-making modality in Article 20. Ordinarily, intergovernmentalism allows either consensus or majority decisions, but, in sovereignty-centric ASEAN, all

⁷⁴ *Ibid.*, Arts 24–26.

⁷⁵ *Ibid.*, Arts 7(1), (2)(b), (c), (f).

⁷⁶ *Ibid.*, Art. 8.

⁷⁷ *Ibid.*, Art. 13.

⁷⁸ *Ibid.*, Arts 9, 10.

⁷⁹ *Ibid.*, Art. 12.

⁸⁰ *Ibid.*, Art. 7(2)(g).

⁸¹ *Ibid.*, Arts 11(2)–11(4), 11(7).

decisions – whether at the political (ministerial) or bureaucratic (civil servant) level – must be made via consultation and consensus.⁸² To avoid a veto, ASEAN decisions are only concluded when every member is satisfied with the accruing benefits that it has negotiated for itself. There is an exception for economic agreements. As different levels of member development make it difficult for all to advance at the same pace, the ASEAN Minus X formula may be activated. Article 21(2) provides that, if there is consensus, those ready to move on certain economic measures may do so with the rest following duly.⁸³ This arrangement upholds intergovernmental autonomy and protects everyone's interests in reaping integration gains over the shorter and longer term.

Finally, the ASEAN Charter asserts intergovernmentalism in external relations. Article 3 holds that 'ASEAN, as an intergovernmental organization, is hereby conferred legal personality'.⁸⁴ Article 2 of the 2009 Agreement on the Privileges and Immunities of ASEAN elaborates the strict parameters of this new status.⁸⁵ While the secretary-general may sign contracts, acquire property and enter legal proceedings on ASEAN's behalf under domestic law, all international law capacities need the member states' express authorization. In addition, ASEAN's intergovernmental character is further emphasized in the 2011 Rules of Procedure for the Conclusion of International Agreements by ASEAN.⁸⁶ Despite ASEAN's 'single entity' status to conclude such treaties, intergovernmentalism remains fully at work as the ASEAN Foreign Ministers Meeting and relevant Sectoral Ministerial Bodies direct the process.⁸⁷ Additionally, the ASEAN Foreign Ministers Meeting delegates powers to the secretary-general to sign on ASEAN's behalf.⁸⁸

It is telling that, despite ASEAN's new function to sign external agreements as its legal personality affords, members still eschew ASEAN-external actor 'bilateral' partnerships and overwhelmingly prefer to continue signing agreements as 10 parties collectively *vis-à-vis* the external partner.⁸⁹ This demonstrates ASEAN's overriding sovereignty-centric and intergovernmental character and the purely administrative competences of the centralized bureaucracy. In articulating how ASEAN is to build its community and expand its agenda intergovernmentally, the ASEAN Charter sets out the bulwarks of concordance legalization, thus addressing the three puzzles surrounding ASEAN's viability and progression as well as the efficacy of its laws and institutions.

⁸² *Ibid.*, Art. 20.

⁸³ *Ibid.*, Art. 21(2).

⁸⁴ *Ibid.*, Art. 3.

⁸⁵ Agreement on the Privileges and Immunities of ASEAN 2009, available at <https://asean.org/wp-content/uploads/images/archive/15thsummit/Agreement-on-Privileges-and-Immunities.pdf>, Art. 2.

⁸⁶ Rules of Procedure for the Conclusion of International Agreements by ASEAN (2011), available at <https://asean.org/wp-content/uploads/images/archive/documents/ROP%20for%20Conclusion%20of%20International%20Agreements%20by%20ASEAN.pdf>.

⁸⁷ *Ibid.*, Rules 3, 4(2), 11.

⁸⁸ *Ibid.*, Rule 8(5).

⁸⁹ M. Cremona *et al.*, *ASEAN's External Agreements: Law, Practice, and the Quest for Collective Action* (2015), at 23–31, 85–87.

It must be noted that the above ASEAN example is one permutation out of many potential arrangements. Different decision-making and bureaucratic structures are of course possible when organizations adapt concordance legalization. The important thing is to highlight how a constituent treaty may be articulated to safeguard inter-governmentalism in a dynamically agenda-expansive regional trading arrangement.

B Dynamic Agenda Expansion via a Dual-step System of Primary and Secondary Laws

Within the constituent treaty's architecture, the substantive laws guiding community building and expansion must be robust so that members and external partners can confidently expect outcomes. Unlike the EU and USMCA models, however, concordance legalization does not need these laws to be legally binding instruments. As mentioned in the introduction, states in concordance legalization accept hard and soft laws because legal firmness is calibrated to suit issue-area requirements. Generally, states will set primary laws via treaties for their most important collective priorities. This could include facilitating trade and curbing transboundary haze pollution and human trafficking. As these sovereignty-centric states avoid having other institutions making decisions for them and may value intra-regional amicability, adjudication is downplayed in concordance legalization. The attraction of treaty usage is not its judicial enforceability. Rather, it signals that these obligations demand the greatest respect and responsibility. If breaches occur, negotiatory solutions are available, and states need not worry overmuch about triggering costly arbitral processes that take decision-making powers out of their hands. That said, dispute settlement mechanisms remain available as a last resort.

In line with litigation avoidance, primary soft law instruments are often used to articulate goals in either tension-fraught issues such as security and defence or resource-intensive and far-reaching socio-cultural and economic ambitions (where some default due to the progressive attainment nature of these aims is foreseeable). Besides having more negotiating flexibility, soft law has an additional novel usage in realizing complex long-term goals. Here, a dual-step strategy using numerous secondary soft laws containing time-limited programmes may be employed. To illustrate, following the adoption of the primary instrument outlining the broad goals of, and commitment to, collective action, secondary soft laws with explicit deadlines may be used to detail the systematic steps needed to fulfil the primary instrument and corral states towards implementation and compliance. Soft law is a vital secondary legal vehicle in this dual-step strategy. In sum, although soft law is often deemed weaker than hard law, it is taken seriously in concordance legalization. Used prudently and executed in good faith, soft law is a genuine vector of integration.

All this is seen in ASEAN where members have fine-tuned the use of hard and soft primary laws to meet their ASEAN Charter goals and expand their agenda. Pragmatic about securing their interests amid geopolitical limitations, what members desire to achieve determines the instrument's degree of hardness or softness. Issues of fundamental importance find expression in treaties. Otherwise, soft law remains ASEAN

states' predominant instrument of choice to enunciate and implement commitments. Additionally, ASEAN uses secondary soft laws for complex issues where setting out incremental steps and deadlines is necessary. Such dual-step implementation is often used as members prefer drafting primary instruments in general terms, with specificities elaborated in secondary instruments. This practice of having time-limited secondary soft laws emerged in 1992. Following the CEPT-AFTA, action plans were adopted to fulfil the treaty obligations of realizing the free trade area. These included three- and five-year expansion programmes for food, agriculture, forestry and energy.⁹⁰ This dual-step modality was refined and repeated often, including the Bali Concord II with its Vientiane Action Programme.

More contemporarily, political-security, economic and socio-cultural community blueprints accompany the ASEAN Charter as secondary laws to ensure its legalized reform is implemented. The key priority – the 2007–2015 ASEAN Economic Community Blueprint – was endorsed together with the Charter, and, notwithstanding its soft law status, it details the steps needed to achieve the single market and production base. This includes the elimination of tariffs and non-tariff barriers and attracting foreign investment by enhancing investor protections and simplifying investment policies.⁹¹ It also imposes an annual implementation schedule for ASEAN economic treaties. For instance, to fulfil AFAS obligations on services liberalization, the blueprint stipulates year-on-year progressive inroads into priority sectors such as tourism and logistics.⁹²

To bolster this blueprint's soft legal directives, ASEAN members have employed 'treaty-type' language. For example, regional trade facilitation needs the ASEAN Single Window to work. Paragraphs 18(i) and (ii) of the blueprint unequivocally direct members to simplify and standardize customs processes: '[T]he ASEAN-6 ... shall operationalize their National Single Windows by 2008 at the latest' and the 'ASEAN-4 shall operationalize their National Single Windows no later than 2012'.⁹³ Reading the blueprint alongside the Charter, the use of 'shall' and the stipulation of deadlines denote a firm commitment by, or even an obligation on, the members to meet this goal.

Once the ASEAN Charter entered into force in 2008, more secondary soft laws were adopted. The ASEAN Political-Security Community Blueprint and ASEAN Socio-Cultural Community Blueprint were activated in 2009.⁹⁴ The three blueprints

⁹⁰ See, e.g., ASEAN Plan of Action in Transport and Communications (1994–1996), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/1994-1996-ASEAN-Plan-of-Action-in-Transport-and-Communications-1-1.pdf>; ASEAN Medium-Term Programme of Action on Energy Cooperation (1995–1999), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/1995-1999-ASEAN-Medium-Term-POA-on-Energy-Coop.pdf>.

⁹¹ ASEAN Economic Community Blueprint (AEC Blueprint) (2007–2015), paras 13(i), 27(i), 28(i)–(ii), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2007-ASEAN-ECONOMIC-COMMUNITY-BLUEPRINT-1.pdf>.

⁹² *Ibid.*, Strategic Schedule, s. A.2.

⁹³ *Ibid.*, at paras 18(i)–18(ii) (emphasis added).

⁹⁴ ASEAN Political-Security Community Blueprint (APSC Blueprint) (2009–2015), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2009-ASEAN-Political-Security-Community-Blueprint-1.pdf>; ASEAN Socio-Cultural Community Blueprint (ASCC Blueprint) (2009–2015), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/12/2009-ASCC-Blueprint.pdf>.

were then formalized as a cornerstone of the 2009–2015 Roadmap for an ASEAN Community.⁹⁵ There is conspicuously more ‘softness’ and flexibility in these newer blueprints than the economic one because they cover wide-ranging complex aspirations in political, security, social and cultural issue areas held by mainly lower-middle development states. The ASEAN Political-Security Community Blueprint illustrates this well. Unlike the economic blueprint with its hard deadlines and treaty-type language for tangible outcomes, the political-security blueprint takes a fluid approach of progressive attainment, encouraging (not stipulating) measures, including enhancing information flows through building media capacity, strengthening national legal infrastructure and judicial systems, establishing a human rights body and boosting the rights of women, children and migrant workers and securing peace in the South China Sea.⁹⁶

Similarly, the ASEAN Socio-Cultural Community Blueprint has a norm-building function, exhorting members to foster a ‘people-centred’ ASEAN identity.⁹⁷ These long-term goals of identity creation and human development largely depend on each member’s capacity to implement activities. For instance, cooperation projects on attaining compulsory primary education and poverty eradication, improving the workforce’s skills and labour conditions, sharing best practices on countering pandemics and humanitarian crises and improving the rights of women, children and migrant workers would produce outcomes commensurate with member state resources and support.⁹⁸ Overall, this dual-step combination of the ASEAN Charter and blueprints keeps members focused on their collective interests. Flexibility embedded in the soft laws upholds intergovernmentalism and accommodates mutual give and take that respects different national capacities and priorities. It also avoids enabling a culture of punitive action in the event of breach. This strengthens regional unity and encourages perseverance in the diverse and difficult integration tasks.

Despite the ASEAN Charter and its blueprints, implementation and compliance have remained challenging for ASEAN members given lingering path dependencies arising from desultory pre-2007 practices. Through last-minute effort, the members managed to accomplish enough to establish the ASEAN Community in 2015 – with the caveat that community building continues to evolve.⁹⁹ This heralded the next expansion phase – ASEAN 2025: Forging Ahead Together (2016–2025) – a decade-long ‘roadmap’ package comprising a new blueprint for each of the three pillars and other programmes.¹⁰⁰ Beyond the ASEAN Charter and its blueprints, ASEAN’s predilection

⁹⁵ Roadmap for an ASEAN Community (2009–2015), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2009-2015-Roadmap-for-ASEAN-Community-1.pdf>.

⁹⁶ *Ibid.*, paras. A.1.2.i, A.1.3.i, A.1.5, A.2.3.iv.

⁹⁷ ASCC Blueprint, *supra* note 95, paras 4–5.

⁹⁸ *Ibid.*, paras 11–13, 17–19, 23–28.

⁹⁹ Kuala Lumpur Declaration on the Establishment of the ASEAN Community 2015, available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2015-Kuala-Lumpur-Declaration-on-the-Establishment-of-the-ASEAN-Community.pdf>; P. Parameswaran, ‘ASEAN Creates New Community under Malaysia’s Chairmanship’, *The Diplomat* (23 November 2015), available at <https://thediplomat.com/2015/11/asean-creates-new-community-under-malaysias-chairmanship/>.

¹⁰⁰ ASEAN 2025: Forging Ahead Together (2016–2025), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2015-ASEAN-2025-Forging-Ahead-Together-2nd-Reprint-Dec-2015-1.pdf>.

for soft law and its dual-step implementation strategy have become a mainstay in regional integration and agenda expansion. This is further examined below for each community pillar.

1 Economic Integration

Within the ASEAN Economic Community, members use treaties and soft laws to implement the agenda stipulated in the Charter and economic blueprints. As ASEAN members have no ideological ambition of forming a ‘supranationalized union’ like the EU, but still want to expand more dynamically than the members of USMCA, the instruments adopted from 2007 to 2015 are essentially treaties fulfilling the fundamental goal of a free trade area to attract investment and producing goods moving along global supply chains, with additional leeway to extend and diversify their economic agendas as they see fit. This legalization pattern is repeated in the post-2015 landscape, except that the more complex ambitions of this phase require the flexibility that soft law provides.

To secure trade and investment fundamentals to successfully establish the ASEAN Economic Community in 2015, members adopted the 2009 ASEAN Comprehensive Investment Agreement (ACIA) and 2009 ASEAN Trade in Goods Agreement (ATIGA).¹⁰¹ These primary laws (in treaty form) are supported by multilateral transport agreements, including the 2009 ASEAN Framework Agreement on the Facilitation of Inter-State Transport and treaties on air and airfreight services aimed at boosting tourism and the free movement of goods.¹⁰² Subsequently, a swathe of secondary laws (this time a mix of hard and soft instruments) were adopted to smoothen the customs protocols – namely, the 2012 ASEAN Agreement on Customs, the 2011 ASEAN Single Window Pilot Project, the 2011–2015 Strategic Plan of Customs Development and the 2015 Protocol on the Legal Framework to Implement the ASEAN Single Window.¹⁰³ To expand and implement the AFAS agenda, members also adopted mutual recognition arrangements for

¹⁰¹ ASEAN Comprehensive Investment Agreement 2009, available at <http://investasean.asean.org/files/upload/Doc%2005%20-%20ACIA.pdf> (replacing the AIA, *supra* note 42); ASEAN Trade in Goods Agreement 2009, available at <http://investasean.asean.org/files/upload/Doc%2002%20-%20ATIGA.pdf> (replacing the CEPT-AFTA, *supra* note 36).

¹⁰² ASEAN Framework Agreement on the Facilitation of Inter-State Transport 2009, available at <http://agreement.asean.org/media/download/20140119020132.pdf>; ASEAN Multilateral Agreement on Air Services 2009, available at <http://agreement.asean.org/media/download/20140119030138.pdf>; ASEAN Multilateral Agreement on the Full Liberalisation of Air Freight Services 2009, available at <http://agreement.asean.org/media/download/20140119020939.pdf>. These are supported by implementation protocols on successive packages of commitments.

¹⁰³ See, e.g., Memorandum of Understanding on the Implementation of the ASEAN Single Window Pilot Project (2011), available at <http://agreement.asean.org/media/download/20140119104138.pdf>; Strategic Plan of Customs Development (2011–2015), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/11/2011-2015-Strategic-Plan-on-Customs-Development.pdf>; ASEAN Agreement on Customs 2012, available at <https://cil.nus.edu.sg/wp-content/uploads/2017/07/2012-ASEAN-Agreement-on-Customs.pdf>; Protocol on the Legal Framework to Implement the ASEAN Single Window 2015, available at <http://agreement.asean.org/media/download/20150915020056.pdf>.

the medical, dentistry, tourism and accountancy professions as well as the 2012 ASEAN Agreement on the Movement of Natural Persons to enhance services liberalization.¹⁰⁴

Additionally, the strong external interest in the opportunities of ASEAN economic integration pressures ASEAN members to continue striving towards the single market and production base. Many agreements were signed, notably with China and Korea, and cover sanitary and phytosanitary measures, air and maritime transport, services, technical standards, investment and intellectual property.¹⁰⁵ For the second integration phase of 2016 to 2025, ASEAN members have continued using primary hard laws for intra-regional cooperation in traditional sectors and for external partnerships, as seen in the mutual recognition arrangements for medicinal products, food safety, cross-border road passenger transport and flight crew licensing.¹⁰⁶ Undergirded by improved services liberalization, the 2020 ASEAN Trade in Services Agreement was negotiated to replace the 1995 AFAS.¹⁰⁷ Tourism cooperation, which is a significant East Asian economic driver, expanded further with China, Japan and Korea.¹⁰⁸

Interestingly, once the ASEAN Community was established, members noticeably preferred using soft law to enunciate more ambitious, agenda-enlarging goals. For

¹⁰⁴ See, e.g., ASEAN Mutual Recognition Arrangement on Medical Practitioners (2009), available at <http://agreement.asean.org/media/download/20150119183234.pdf>; ASEAN Mutual Recognition Arrangement on Accountancy Services (2014), available at <http://agreement.asean.org/media/download/20150126112310.pdf>; ASEAN Agreement on the Movement of Natural Persons 2012, available at <http://investasean.asean.org/files/upload/ASEAN%20MNP%20Main%20Text.pdf>.

¹⁰⁵ Memorandum of Understanding between the Association of Southeast Asian Nations and the Government of the People's Republic of China on Strengthening Sanitary and Phytosanitary Cooperation (2014), available at <http://arc-agreement.asean.org/file/doc/2015/02/asean-china-memorandum-of-understanding-on-strengthening-sanitary-and-phytosanitary-cooperation.pdf>; Agreement on Maritime Transport between the Governments of the Member Countries of the Association of Southeast Asian Nations and the Government of the People's Republic of China 2007, available at <http://arc-agreement.asean.org/file/doc/2015/02/agreement-on-maritime-transport-between-the-government-of-the-member-countries-of-asean-and-the-government-of-the-people%E2%80%99s-republic-of-china.pdf>; Agreement on Trade in Services under the Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea 2007, available at <https://cil.nus.edu.sg/wp-content/uploads/2019/06/2007-AKFTA-TIS-1-3.pdf>.

¹⁰⁶ See, e.g., ASEAN Mutual Recognition Arrangement for Bioequivalence Study Reports of Generic Medicinal Products (2017), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2017-ASEAN-MRA-FOR-BIOEQUIVALENCE.pdf>; ASEAN Mutual Recognition Arrangement on Flight Crew Licensing (2017), available at <http://agreement.asean.org/media/download/20180223163247.pdf>; ASEAN Sectoral Mutual Recognition Arrangement for Inspection and Certification Systems on Food Hygiene for Prepared Foodstuff Products (2018), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2018-MRA-Prep-Foodstuff-Pdts.pdf>.

¹⁰⁷ ASEAN Trade in Services Agreement 2020, available at <http://agreement.asean.org/media/download/2020111041414.pdf>.

¹⁰⁸ Memorandum of Cooperation between the Governments of the Members of the Association of Southeast Asian Nations and the Governments of the People's Republic of China, Japan, and the Republic of Korea on Strengthening Tourism Cooperation (2016), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2016-APT-Tourism-Cooperation-MOC.pdf>.

example, in upholding the ATIGA, the ACIA and the AFAS, the 2016–2025 ASEAN Economic Community Blueprint retains the core goal of reducing trade barriers, increasing investment and improving production networks linking up to the global supply chains.¹⁰⁹ The 2016 ASEAN Trade Facilitation Framework and the 2018 Guidelines for the Implementation of ASEAN Commitments on Non-Tariff Measures on Goods follow this through by streamlining customs procedures and decreasing non-tariff barriers.¹¹⁰

The predominance of soft law usage is further evidenced in extensive new programmes covering competition laws, intellectual property, financial and capital markets, consumer protection and developing access to markets for small and medium enterprises – all of which must be completed by 2025 to meet the demands of businesses and consumers.¹¹¹ Cognizant of rapid economic digitalization, members adopted the 2016 Master Plan on ASEAN Connectivity 2025 and the 2018 ASEAN Digital Integration Framework that are executed by master plans on communications; information, communications and technology; and electronic commerce.¹¹² All these diverse tracks are enfolded within the multi-sectoral ASEAN Economic Community's 2025 Consolidated Strategic Action Plan (CSAP).¹¹³ To boost compliance and accountability by the ASEAN sectoral bodies during implementation, the CSAP imposes a monitoring and reporting requirement to

¹⁰⁹ ASEAN Economic Community Blueprint (2016–2025), para. 6, available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2015-ASEAN-2025-Forging-Ahead-Together-2nd-Reprint-Dec-2015-1.pdf>.

¹¹⁰ ASEAN Trade Facilitation Framework (2016), paras 5–7, available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2016-ASEAN-Trade-Facilitation-Framework.pdf>; Guidelines for the Implementation of ASEAN Commitments on Non-Tariff Measures on Goods (2018), paras. 13–17, available at <https://cil.nus.edu.sg/wp-content/uploads/2019/10/2018%20Guidelines%20for%20the%20Implementation%20of%20ASEAN%20Commitments%20on%20Non-Tariff%20Measures%20on%20Goods.pdf>.

¹¹¹ See, e.g., ASEAN Food Safety Regulatory Framework (2016), available at <https://cil.nus.edu.sg/wp-content/uploads/2020/05/2016-AFSRF.pdf>; ASEAN Tourism Strategic Plan (2016–2025), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2016-2025-ASEAN-Tourism-Strategic-Plan.pdf>; ASEAN Capital Markets Forum Action Plan (2016–2020), available at <https://cil.nus.edu.sg/databasecil/2016-2020-asean-capital-markets-forum-action-plan/>; Strategic Action Plans for Financial Integration (2016–2025), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2016-2025-SAP-for-Financial-Integration.pdf>; ASEAN Institutional Framework on Access to Finance for Micro, Small and Medium Enterprises (2016), available at <https://asean.org/wp-content/uploads/2016/08/ASEAN-Institutional-Framework-on-MSME-Access-to-Finance.pdf>.

¹¹² See, e.g., Master Plan on ASEAN Connectivity 2025 (2016), available at <http://aadcp2.org/wp-content/uploads/Master-Plan-on-ASEAN-Connectivity-20251.pdf>; ASEAN Digital Integration Framework (2018), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/10/2018%20ASEAN%20Digital%20Integration%20Framework.pdf>; ASEAN Work Programme on Electronic Commerce (2017–2025), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2017-2025-ASEAN-WP-e-Commerce.pdf>.

¹¹³ ASEAN Economic Community 2025 Consolidated Strategic Action Plan (2017), para. 5, available at <https://cil.nus.edu.sg/databasecil/2017-asean-economic-community-2025-consolidated-strategic-action-plan/>.

track progress and facilitate stakeholder feedback for real-time programmatic adjustment.

As seen, since 2016, the more complex or newer sectors of integration have been guided largely by soft laws, while treaties have continued to be used for traditional issues. All these ambitious secondary soft laws have significantly expanded and developed the ASEAN trading bloc beyond the traditional cooperation areas of tourism, energy, transport, fisheries, food security, agriculture and forestry. With outcomes monitoring and programmatic deadlines built into these secondary laws, compliance and real results are strongly anticipated. Although this aspect of concordance legalization of using hard and soft laws and employing a dual-step implementation strategy where necessary for economic cooperation might seem counter-intuitive or even antithetical to the classical regional trade arrangement models exemplified by the EU and USMCA, it affords sovereignty-centric states a flexible, yet legalized, pathway to realize their expansive common interests.

2 Political-Security Cooperation

In the political-security arena, sovereignty-centric ASEAN states tread more cautiously on what and how they cooperate. Hence, hard law is less frequently used than in economic integration. Here, concordance legalization is likewise advantageous in procuring effective laws and agenda expansion. To respect the long-standing obligations on non-interference and non-use of force enshrined in the ASEAN Charter and the common interests enunciated in the political-security blueprints (2009–2015 and 2016–2025), members have distinguished three types of instruments – diplomatic (or political), declaratory and treaty – according to the legal firmness required.¹¹⁴

Military defence bears the highest level of national sensitivity. It is realistic to expect more loose cooperation than with harmonized integration. ASEAN members often use diplomatic instruments (arguably non-legal) to signal their initial intentions. After frequent engagement to build mutual confidence, members tend to adopt firmer soft laws to implement substantive programmes. This is seen in the ASEAN Regional Forum (ARF), a military security discussion platform established in 1994 for ASEAN and external partners to align interests and announce statements of cooperation.¹¹⁵ While diplomatic statements have little substantive value, their real merit lies in engendering goodwill that enables legally stronger future measures. ARF engagement has led ASEAN members to transparently discuss national security interests, thus facilitating breakthroughs on common interests. These include the adoption of soft external legal instruments to manage tense situations such as ‘unplanned

¹¹⁴ APSC Blueprint (2009–2015), *supra* note 95; ASEAN Political-Security Community Blueprint (2016–2025), available at <https://asean.org/wp-content/uploads/2012/05/ASEAN-APSC-Blueprint-2025.pdf>.

¹¹⁵ See, e.g., *ASEAN Regional Forum*, available at <https://aseanregionalforum.asean.org>; *ARF-related Documents*, available at http://worldjpn.grips.ac.jp/documents/indices/asean/arf_eng.html.

encounters' and 'maritime emergencies' in the multi-claimant South China Sea, air military skirmishes and border controls.¹¹⁶

Likewise, intra-regional military defence has its own interest alignment platform. The ASEAN Defence Ministers' Meeting was instituted in 2007 via political statements as the region's 'highest ministerial defence and security consultative and cooperative mechanism'.¹¹⁷ Over a decade later, relations have improved such that, despite the jealously guarded territorial claims, ASEAN members are able to prioritize their common interest in negotiating a legally obligatory Code of Conduct for the South China Sea with China.¹¹⁸ This mutual understanding that a treaty codifying peaceful engagement benefits everyone – however hard it is to compromise and negotiate – markedly contrasts with the past where parties refused to be bound to any shared goals due to stubbornly held individual interests.¹¹⁹

For political-security matters outside of military defence – mainly, human rights and transnational crimes such as radicalization, terrorism and human and drug trafficking – ASEAN members share more commonalities. Therefore, they are more ready to use substantive soft laws to commit collective action.¹²⁰ Treaties are

¹¹⁶ ASEAN Regional Forum Work Plan for Maritime Security (2015–2017), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2015-2017-ARF-WP-FOR-MARITIME-SECURITY.pdf>; Joint Statement on the Application of the Code for Unplanned Encounters at Sea in the South China Sea (2016), available at <https://cil.nus.edu.sg/databasecil/2016-joint-statement-on-the-application-of-the-code-for-unplanned-encounters-at-sea-in-the-south-china-sea/>; Guidelines for Hotline Communications among Senior Officials of the Ministries of Foreign Affairs of ASEAN Members and China in Response to Maritime Emergencies in the Implementation of the Declaration on the Conduct of Parties in the South China Sea (2016), available at <https://cil.nus.edu.sg/databasecil/2016-guidelines-for-hotline-communications-among-senior-officials-of-the-ministries-of-foreign-affairs-of-asean-member-states-and-china-in-response-to-maritime-emergencies-in-the-implementation-of-the/>.

¹¹⁷ Protocol to the Concept Article for the Establishment of the ASEAN Defence Ministers' Meeting (2007), para. 4, available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2007-Protocol-to-the-ADMM-Concept-Article-1.pdf>; ASEAN Defence Ministers' Meeting Guidelines for Maritime Interaction (2019), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/11/2019-ADMM-Guidelines-Maritime-Interaction.pdf>; Concept Article on the Role of ASEAN Defence Establishments in Supporting Border Management (2019), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/11/2019-ADMM-CP-Border-Mgt.pdf>.

¹¹⁸ Joint Declaration of the ASEAN Defence Ministers on Sustainable Security (2019), available at www.mindf.gov.sg/web/wcm/connect/mindf/ea68c5d3-14d1-4051-9f47-c0e3d7bfe823/11jul19_joint-declaration.pdf?MOD=AJPERES&CVID=mLwCDaY.

¹¹⁹ See, e.g., Storey, 'Assessing the ASEAN-China Framework for the Code of Conduct for the South China Sea', 62 *ISEAS Perspective* (2017).

¹²⁰ See, e.g., ASEAN Work Plan on Combating Illicit Drug Production, Trafficking, and Use (2009–2015), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2009-2015-ASEAN-Work-Plan-on-Combating-Illicit-Drugs.pdf>; Kuala Lumpur Declaration on Combating Transnational Crime (2015), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2015-KL-Decl-on-Transnational-Crime.pdf>; ASEAN Plan of Action against Trafficking in Persons, Especially Women and Children (2015), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2015-ASEAN-TIP-POA.pdf>; ASEAN Comprehensive Plan of Action on Counter Terrorism (2017), available at <https://asean.org/wp-content/uploads/2012/05/ACPoA-on-CT-Adopted-by-11th-AMMTC.pdf>; ASEAN Plan of Action to Prevent and Counter the Rise of Radicalization and Violent Extremism (2018–2025), available at [https://cil.nus.edu.sg/wp-content/uploads/2019/10/2018%20ASEAN%20Plan%20of%20Action%20to%20Prevent%20and%20Counter%20the%20Rise%20of%20Radicalisation%20and%20Violent%20Extremism%20\(2018-2025\).pdf](https://cil.nus.edu.sg/wp-content/uploads/2019/10/2018%20ASEAN%20Plan%20of%20Action%20to%20Prevent%20and%20Counter%20the%20Rise%20of%20Radicalisation%20and%20Violent%20Extremism%20(2018-2025).pdf).

eschewed as a matter of preference or due to the open-ended nature of the attainment of these goals. Nevertheless, members are willing, on the rare occasion, to bind themselves in treaties for certain regional concerns with which they have substantial experience. These are, namely, the 2007 ASEAN Convention on Counter Terrorism and the 2015 ASEAN Convention against Trafficking in Persons, Especially Women and Children.¹²¹

3 *Socio-cultural Cooperation*

Flexible cooperation occurs more frequently than strict integration in socio-cultural activities. In becoming a ‘people-oriented and people-centred ASEAN’, members cooperate on wide-ranging areas of human rights, equitable development, environmental protection and disaster management.¹²² While seeking to collectively improve these areas in their own societies, national capacities vary widely. Concordance legalization is useful as it allows members to set in place dual-step implementation strategies. As exemplified below, numerous soft laws such as declarations and time-limited work plans are used to achieve these long-range goals rather than treaties that could be unduly punitive in case of breach and set the members and the cooperation programme up for failure.

This is most obvious in human rights cooperation, which crosscuts both the political-security and socio-cultural communities – the former community’s involvement signals the importance and sensitivity of human rights, while the latter community rolls out the substantive action. Given members’ sensitivities regarding sovereignty impingement, the ASEAN Charter’s introduction of this obligation is radical. However, to manage potential implementation resistance, ASEAN human rights commitments are all soft laws. The ASEAN Intergovernmental Commission on Human Rights, established in 2009, is guided by the 2012 ASEAN Human Rights Declaration and the 2010–2015, 2016–2020 and 2021–2025 work plans that coax members to ratify international human rights treaties and conduct thematic studies.¹²³

¹²¹ ASEAN Convention on Counter Terrorism (2007), available at <https://cil.nus.edu.sg/database/cil/2007-asean-convention-on-counter-terrorism/>; ASEAN Convention against Trafficking in Persons, Especially Women and Children (2015), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2015-ASEAN-Convention-against-Trafficking-in-Persons-Especially-Women-and-Children.pdf>.

¹²² Kuala Lumpur Declaration on a People-Oriented, People-Centred ASEAN (2015), preamble, ss 1, 2, available at <https://cil.nus.edu.sg/wp-content/uploads/formidable/18/2015-Kuala-Lumpur-Declaration-On-A-People-Oriented-People-Centred-ASEAN.pdf>.

¹²³ See, e.g., Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights (2009), para. 4, available at <https://aichr.org/wp-content/uploads/2020/02/TOR-of-AICHR.pdf>; ASEAN Human Rights Declaration 2012, available at <https://asean.org/asean-human-rights-declaration/>; Five-Year Work Plan of the ASEAN Intergovernmental Commission on Human Rights (2016–2020), s. IV, available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2016-2020-Five-Year-Work-Plan-Of-The-ASEAN-Intergovernmental-Commission-On-Human-Rights-1.pdf>; Five-Year Work Plan of the ASEAN Intergovernmental Commission on Human Rights (2021–2025), s. IV, available at https://aichr.org/wp-content/uploads/2020/10/AICHR-FYWP-2021-2025-approved-at-53rd-AMM_for-web.pdf.

Additionally, due to its robust cooperation on socio-economic issues pertaining to women, children and migrant workers, ASEAN focuses on developing the rights of these groups. The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children's 2009 Terms of Reference and its 2012–2016, 2016–2020 and 2021–2025 work plans work to end gender discrimination in education and employment, increase protections against human trafficking and enable access to institutional welfare and justice at public agencies.¹²⁴ Recognizing specific vulnerabilities, members also actively cooperate to tackle violence against women and children, adopting the 2013 ASEAN Declaration on the Elimination of Violence against Women and Elimination of Violence against Children and its 2016–2025 work plans.¹²⁵ There are also declarations to safeguard children's rights in the context of migration and cyberspace activities.¹²⁶

The considerable migrant labour flows and their vulnerabilities have led to the adoption of the 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers and its 2008 work plan.¹²⁷ Overcoming intra-regional tensions between the sending and receiving states of migrant labour, members have finally adopted the 2017 ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers and are implementing its 2018–2025 action plan to increase access to healthcare and other social services, tackle human trafficking and improve labour conditions.¹²⁸ There are also soft laws on the rights of disabled people,

¹²⁴ Terms of Reference of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (2009), para. 5, available at www.refworld.org/pdfid/4ec3e2822.pdf; ASEAN Commission on the Promotion and Protection of the Rights of Women and Children Work Plan (2016–2020), ss 1–16, available at <https://cil.nus.edu.sg/wp-content/uploads/2019/06/2018-ACWC-Work-Plan-2016-2020.pdf>. The ACWC Workplan 2021–2025 remains unavailable.

¹²⁵ ASEAN Declaration on the Elimination of Violence against Women and Elimination of Violence against Children (2013), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2013-ASEAN-Decl-EVAWC.pdf>; ASEAN Regional Plan of Action on Elimination of Violence against Children (2016–2025), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2016-2020-ASEAN-RPA-EVAC.pdf>; ASEAN Regional Plan of Action on the Elimination of Violence against Women (2016–2025), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2016-2025-RPA-on-Elimination-of-Violence-against-Women-1.pdf>.

¹²⁶ Declaration on the Rights of Children in the Context of Migration (2019), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/11/2019-ASEAN-Decl-Rights-of-Children-in-Migration.pdf>; Declaration on the Protection of Children from All Forms of Online Exploitation and Abuse in ASEAN (2019), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/11/2019-Decl-Protection-of-Children-from-Online-Exploitation.pdf>.

¹²⁷ ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/12/2007-ASEAN-Decl-Rights-Migrant-Wkrs.pdf>; ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers Work Plan (2008), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/12/2008-ACMW-Work-Plan.pdf>.

¹²⁸ ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (2017), available at <https://cil.nus.edu.sg/wp-content/uploads/formidable/14/2017-ASEAN-Consensus-on-the-Protection-and-Promotion-of-the-Rights-of-Migrant-Workers-2.pdf>; Action Plan to Implement the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (2018–2025), ss 1–38, available at https://asean.org/wp-content/uploads/Action-Plan-of-ASEAN-Consensus_EXTRACT-FOR-ASEAN-WEBSITE_25-NOV-2020.pdf.

equitable socio-economic development, welfare programmes and labour and industrial practices.¹²⁹

Lastly, two critical issues are cooperated on using binding obligations. Socio-cultural treaties are rare in ASEAN – members only adopt treaties when the transnational impact surpasses national capacities, necessitating collective efforts. The first such treaty – the 2002 ASEAN Agreement on Transboundary Haze Pollution – entered into force in 2015 after Indonesia finally ratified despite its land-clearing practices; it is now implemented by the 2016 Roadmap on ASEAN Cooperation towards Transboundary Haze Pollution Control with Means of Implementation, which targets domestic air pollution with cross-border consequences.¹³⁰ The second pertains to ASEAN's efforts to ramp up regional disaster relief (after the 2004 tsunami ravaged many coastal communities) by adopting the 2005 ASEAN Agreement on Disaster Management and Emergency Response and 2011 Agreement on the Establishment of the ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management.¹³¹ Members have since signed three declarations and set in place a programme to strengthen their collective humanitarian crisis response.¹³²

This detailed exposition shows how the dual-step system of primary and secondary laws and how varying the legal instruments' firmness are useful concordance legalization strategies that enable states to set ambitious goals, attain them realistically and continue agenda enlargement, all the while respecting

¹²⁹ See, e.g., ASEAN Enabling Masterplan: Mainstreaming the Rights of Persons with Disabilities (2016–2025), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/06/2025-ASEAN-Enabling-Masterplan-Mainstreaming-the-Rights-of-Persons-with-Disabilities.pdf>; ASEAN Guidelines for Corporate Social Responsibility on Labour (2016), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2016-ASEAN-Guideline-CSR-on-Labour.pdf>; ASEAN Framework for Equitable Economic Development (2011), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2011-The-ASEAN-Framework-For-Equitable-Economic-Development-1.pdf>; ASEAN Framework Action Plan on Rural Development and Poverty Eradication (2011–2015), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2011-2015-ASEAN-Framework-Action-Plan-on-Rural-Development-and-Poverty-Eradication-1.pdf>; ASEAN Strategic Framework on Social Welfare and Development (2011–2015), available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2011-ASEAN-Strategic-Framework-for-Social-Welfare-and-Development-1.pdf>.

¹³⁰ ASEAN Agreement on Transboundary Haze Pollution (AATHP) 2002, available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2002-ASEAN-Agreement-on-Transboundary-Haze-Pollution-1.pdf>; Roadmap on ASEAN Cooperation towards Transboundary Haze Pollution Control with Means of Implementation (2016), s. 6, available at <https://cil.nus.edu.sg/wp-content/uploads/2020/07/Haze-Roadmap.pdf>.

¹³¹ AATHP, *supra* note 132; ASEAN Agreement on Disaster Management and Emergency Response 2005, available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2005-ASEAN-Agreement-on-Disaster-Management-and-Emergency-Response-1.pdf>.

¹³² ASEAN Declaration on Enhancing Cooperation in Disaster Management 2013, available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2013-ASEAN-Declaration-on-Enhancing-Cooperation-in-Disaster-Management-1.pdf>; ASEAN Declaration on One ASEAN, One Response: ASEAN Responding to Disasters as One In the Region and Outside the Region 2016, available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2016-ASEAN-Declaration-One-ASEAN-One-Resp-1.pdf>; ASEAN Agreement on Disaster Management and Emergency Response Work Programme 2016–2020, available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2016-2020-ASEAN-Agreement-On-Disaster-Management-And-Emergency-Response-Work-Programme-1.pdf>.

their sensitivities about sovereign autonomy and maintaining amicable relations. Summarily, treaties signal to ASEAN members and the international community the presence of non-negotiable obligations, while soft law allows some implementation leeway, is not punitively enforceable and creates a less judgmental atmosphere if non-compliance occurs. The latter characteristic is especially important for ASEAN members as they correct their pre-2007 non-compliant practices. The presence of soft law does not mean lower legal commitment. Instead, it enables members to legalize the organization without the censure that treaty adjudication carries. Regardless of whether treaty or soft law is used and whether there are legal consequences in the event of breach, the entire corpus of laws within the concordance legalization system must be respected. Accordingly, Puzzle 2 about the efficacy of ASEAN laws is resolved.

C An Intergovernmental Organizational Hierarchy to Expand and Implement the Regional Agenda

In terms of institutionalization, concordance legalization structures are complex and generate frequent engagement. As seen from ASEAN's pre-2007 experience, regionalization is hard work, and programmes can often fail. Even if external pressures compel states to cooperate and regionalization brings net positives, members may be inclined to renege on (or delay) fulfilling long-term collective goals, which could be due to myriad reasons ranging from resource limitations, non-legalistic path dependencies, weak frameworks or even members' reluctance to persevere with the high costs of integration. This becomes more acute when costs such as harmonizing regional and national policies, lowering trade barriers and unemployment from transforming industries and economic restructuring start biting. To overcome these transitional pains and improve compliance, concordance legalization must carefully construct an intergovernmental institutional hierarchy to implement laws, sustain cooperation activities and bring about actual outcomes.

Concordance legalization's organizational hierarchy thus comprises intergovernmental and centralized administrative institutions staffed by officials from member states' governments and the regional secretariat. Regardless of their level in the organizational hierarchy, these officials follow a general *modus operandi*. They meet frequently at various committees and platforms to communicate and coordinate with one another to ensure that intergovernmental decision-making and common interests remain upheld and that all members are implementing regional laws domestically. Such mutual surveillance and accountability helps to maintain the sovereignty-centric interests of every member. It also guards against members potentially hijacking or renegeing on agendas, thereby hurting common interests. More prosaically, institutions within the hierarchy implement laws, execute programmes and carry out the day-to-day administration to actualize outcomes.

In fulfilling this third aspect of concordance legalization, ASEAN members depart radically from their ineffective pre-2007 institutions. While the Charter-based intergovernmental institutions have already been explained in section 5.A, this section elucidates how these bodies coordinate to form an organizational hierarchy of four

levels. The topmost intergovernmental decisions emanate from the Summit. General oversight of these politically decided legal commitments is vested one level down in the ASEAN Coordinating and Community Councils of ministers; these institutions are supported by their senior officials (highest-ranked civil servants such as permanent secretaries or directors general).¹³³ Cooperation activities are subgrouped into specialized areas for execution by the ASEAN Sectoral Ministerial Bodies residing in the third level. They in turn are supported by the fourth level, their senior officials and subsidiary bodies (namely, 'Annex 1' sectoral committees comprising national experts).¹³⁴ It is at this fourth level that the sectoral senior officials and Annex 1 officials, coordinating with their staff back at the national ministries, implement integration domestically. There are currently 16 political-security, 35 economic and 37 socio-cultural Annex 1 sectoral committees implementing ASEAN's community-building objectives, ranging from general economic integration to transnational crime and public health.¹³⁵

Concomitantly, the secretary-general and secretariat,¹³⁶ the Committee of Permanent Representatives¹³⁷ and the national secretariats¹³⁸ are actively involved in implementation processes. This hierarchy of ASEAN institutions meet frequently to maintain cordial relations and develop cooperation agendas. As the ASEAN National Calendar 2021 illustrates, high-level meetings across these four levels are conducted virtually every day of the year.¹³⁹ Including the peripheral and follow-up meetings, ASEAN (anecdotally) holds more than 1,500 meetings annually to discuss work in progress.¹⁴⁰ The transparency and accountability demanded by these meetings inevitably act as an informal enforcement mechanism, pressuring all members to implement their shared commitments. To explain in more detail how these institutions work across the three community pillars, in economic integration, the ASEAN Economic Ministers Meeting, the High-Level Task Force on ASEAN Economic Integration, the Senior Economic Officials Meeting and the ASEAN Community Statistical System Committee must first align the myriad state interests towards collective outcomes and then implement the various hard and soft laws by working with the relevant sectoral officials and the secretariat.¹⁴¹

Similar alignment and implementation processes occur in the political-security and socio-cultural pillars, although the measures and oversight are more flexible. For

¹³³ ASEAN Charter, *supra* note 12, Arts 8(2)–8(3), 9(2)–9(6).

¹³⁴ *Ibid.*, Art. 10(2), Annex 1.

¹³⁵ *Ibid.*, Annex 1.

¹³⁶ *Ibid.*, Arts 11(2), 11(8).

¹³⁷ *Ibid.*, Art. 12(2).

¹³⁸ *Ibid.*, Arts 13(a)–13(c).

¹³⁹ ASEAN, *ASEAN Notional Calendar 2021*, available at https://asean2021.bn/docs/default-source/page-documents/asean-notional-calendar-2021-3.pdf?sfvrsn=cfc5e8cb_5.

¹⁴⁰ E. Laksmana, *CO21041/ Asian Multilateralism in Uncertain Times – Defence Diplomacy in ASEAN: Running in Circles?*, 8 March 2021, available at www.rsis.edu.sg/rsis-publication/rsis/asian-multilateralism-in-uncertain-times-defence-diplomacy-in-asean-running-in-circles/#.YWUWtpBw2w; H. Dinh and J. Gomez, 'ASEAN Leaders Hold Virtual Summit amid COVID-19 Pandemic', *The Diplomat* (14 April 2020), available at <https://thediplomat.com/2020/04/asean-leaders-hold-virtual-summit-amid-covid-19-pandemic/>.

¹⁴¹ ASEAN Charter, *supra* note 12, Annex 1.

instance, to combat transnational crime (a first-pillar sectoral issue that includes tackling smuggling, drug and human trafficking and money laundering), laws such as the 2016–2025 ASEAN Plan of Action in Combating Transnational Crime are implemented via the chain of command involving the ASEAN Ministerial and Seniors Officials Meetings on Transnational Crime, the directors general of immigration and consular affairs departments (from home and foreign affairs ministries respectively).¹⁴² At the domestic level, this would necessitate new or revised national policies to be implemented by relevant bureaucrats and the police.¹⁴³

Health cooperation in the last pillar follows the same format. Guided by the 2025 ASEAN Socio-Cultural Community Blueprint and other instruments, the four regional Health Clusters (healthy lifestyles, emerging threats, health systems and access to care and food safety) support members' national efforts in the 2016–2020 ASEAN Post-2015 Health Development Agenda.¹⁴⁴ The ASEAN Health Sector also supports members in managing public health emergencies such as the COVID-19 pandemic.¹⁴⁵ For these emergencies, decisions made by the ASEAN Health Ministers and Senior Officials' Meetings on Health Development are implemented by sectoral bureaucrats and colleagues from the responsible national agencies, all the while respecting each state's sovereignty.

As evidenced, sectoral officials and their domestically based colleagues are the main workers traversing the regional-national implementation channel in a concordance legalized system of integration. While these intergovernmental actors are important, the centralized administrative institution – the secretary-general and secretariat – also has a vital supporting role in ASEAN's organizational hierarchy. Since 2007, the powers of the secretary-general and the secretariat have increased to facilitate integration. Of key importance is the secretary-general's ministerial rank that enables participation alongside ASEAN ministers at meetings, though this is somewhat diminished by the concomitant duty to be at the service of Summit leaders and foreign ministers.¹⁴⁶ Nonetheless, the secretary-general, as ASEAN's 'chief administrative officer', oversees regional integration, assisted by four deputy secretaries general – one for each Community pillar and one for the Community and Corporate Affairs portfolio (covering public relations, outreach and administrative functions).¹⁴⁷

How the centralized institution works is that, under each primary department headed by a deputy secretary-general, there are two to three directorates that execute the myriad forms of substantive integration and cooperation.¹⁴⁸ For instance,

¹⁴² *Ibid.*, Annex 1, s. 5.

¹⁴³ *Ibid.*

¹⁴⁴ See ASEAN Post-2015 Health Development Agenda (2016–2020), s. 3, available at <https://asean.org/wp-content/uploads/2017/02/APHDA-In-a-Nutshell.pdf>.

¹⁴⁵ ASEAN Health Sector Efforts in the Prevention, Detection and Response to Coronavirus Disease 2019 (COVID-19), available at <https://asean.org/asean-health-sector-efforts-in-the-prevention-detection-and-response-to-coronavirus-disease-2019-covid-19-1/>.

¹⁴⁶ ASEAN Charter, *supra* note 12, Art. 7(2)(g).

¹⁴⁷ *Ibid.*, Arts 11(2)–11(6).

¹⁴⁸ ASEAN, ASEAN Organizational Structure, available at <https://asean.org/asean/asean-structure/organisational-structure-2/>.

the Political-Security Community Department oversees the Political and Security and External Relations Directorates. These directorates in turn manage the work done by the Political, Security and External Relations Divisions as well as the ‘standalone’ Human Rights Division (which crosscuts the socio-cultural pillar).

Similarly, the Economic Community Department oversees the Market Integration and Sectoral Development Directorates, under which many divisions, including the Trade Facilitation, Services and Investment and Transport Divisions, are run. The Socio-Cultural Community Department runs the Human Development and Sustainable Development Directorates, and these are supported by thematic divisions such as health, poverty eradication and gender and disaster management and humanitarian assistance. All these secretariat offices coordinate with their national counterparts, reinforcing the regional-national interaction and the implementation of integration commitments.

Lastly, there is the Community and Corporate Affairs Department encompassing the Corporate Affairs and Legal Services and Agreements Directorates and the Administration and General Affairs, Human Resources, and Community Relations Divisions that are responsible for the day-to-day running of the organization. Interestingly, while the above mix of intergovernmental and centralized institutions would satisfy the conditions for an organizational hierarchy to work in concordance legalization, ASEAN members have gone a step further to exert intergovernmental oversight and interest alignment by installing the Committee of Permanent Representatives in the secretariat.¹⁴⁹ Although this committee comprises national ambassadors to ASEAN and is thus technically subordinate to the secretary-general, it exercises substantial delegated competences overlapping with the latter’s, thereby contributing a hybridized political-administrative character to the centralized institution.

Like the secretary-general, the Committee of Permanent Representatives has a direct reporting line to the Coordinating Council; its recommendations feed into policy discussions at the sectoral, ministerial and Summit levels; it can monitor and implement the Summit and ministerial decisions; and it can facilitate external relations.¹⁵⁰ On the administrative front, the committee provides intergovernmental input on day-to-day operations. Its power is most obvious as budgetary approver, signing off on critical operations such as the secretariat’s annual operations, centrally funded ASEAN projects and some joint programmes with dialogue partners.¹⁵¹

In establishing this organizational hierarchy, ASEAN members uphold their constituent treaty. They have taken ‘all necessary measures, including the enactment of appropriate domestic legislation, to effectively implement the ... Charter and to comply with all obligations of membership’.¹⁵² Since 2007, ASEAN institutions and their implementation and accountability processes have further strengthened their ability to

¹⁴⁹ ASEAN Charter, *supra* note 12, Art. 12.

¹⁵⁰ *Ibid.*, Art. 12(2); Terms of Reference for the Committee of Permanent Representatives to ASEAN (CPR TOR) (2008), paras. 4–8, available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2008-Terms-of-Reference-for-the-Committee-of-Permanent-Representatives-to-ASEAN-1.pdf>.

¹⁵¹ ASEAN Charter, *supra* note 12, Art. 30(3); CPR TOR, *supra* note 152, para. 4(h).

¹⁵² ASEAN Charter, *supra* note 12, Art. 5.

realize collective agendas. In answer to Puzzle 3, therefore, ASEAN institutions are not 'talk shops' but are indeed effective drivers of regionalization. For broader application outside of ASEAN, whichever way the intergovernmental organizational hierarchy is built, how many tiers the hierarchy holds or how the secretariat is structured, the essential aim in concordance legalization is that the organizational hierarchy is formed in a manner that regional-national networks can cooperate seamlessly via stable and transparent processes for mutual accountability and productive outcomes.

D Enforcing Compliance via Monitoring

The final feature of concordance legalization is that it respects members' sovereignty and preference for amicable relations. Naturally, the heavy reliance on soft law precludes recourse to litigation to deter or redress violations. Even for treaty disputes, concordance legalization respects that sovereignty-centric states may shy away from using regional arbitral panels. Reasons could include resenting any judgment and direction of state action; distrust of, and diminished control in, adjudication and its outcomes; perceived antagonism and escalation of intra-grouping tensions in adversarial litigation; lack of, or reluctance to, expend technical and financial resources on legal proceedings; or even having a less legalistic or litigious culture. Such states would welcome less intrusive and punitive modalities to encourage implementation and compliance.

In such circumstances, unlike the EU- or USMCA-type of regimes where courts are the main enforcement mechanisms, monitoring mechanisms have become concordance legalization's primary mode of accountability and enforcement of commitments. As seen in how the organizational hierarchy interacts, increasing data transparency and feedback generates peer pressure to comply. Additionally, formal monitoring mechanisms deter members from free-riding (or cheating) and keeps them working towards the common goals. Using monitoring mechanisms thus reduces the likelihood of adversarial litigation, thereby allaying sovereign-centric concerns about third-party decisions on disputes and maintaining regional amicableness. Nonetheless, dispute settlement mechanisms remain available as a last resort for treaty violations.

This aspect of accountability and enforcement in concordance legalization arose in ASEAN via trial and error. While the EPG was correct that the ASEAN Charter would guide ASEAN's legalized integration, its expectation of using arbitral panels to deter non-compliance did not transpire. Just as none had been used prior to 2007, members remained reluctant to use the Charter-based mechanisms for enforcing obligations. As mentioned, mechanisms are available for all ASEAN disputes in Chapter VIII of the Charter. In particular, the 2010 Protocol to the ASEAN Charter on Dispute Settlement Mechanisms elaborates the 'catch-all' Article 25 covering disputes involving the Charter or other ASEAN treaties, providing that the ASEAN chair or secretary-general can mediate before any recourse to arbitration.¹⁵³ If disputants disagree on

¹⁵³ Protocol to the ASEAN Charter on Dispute Settlement Mechanisms 2010, available at <https://cil.nus.edu.sg/wp-content/uploads/2019/02/2010-Protocol-to-the-ASEAN-Charter-on-Dispute-Settlement-Mechanisms-1.pdf>, Arts 6, 8.

initiating arbitration, the ASEAN Coordinating Council can step in to counsel them to seek mediation or arbitration.¹⁵⁴ If the Council fails to facilitate resolution, the Summit's counsel may be sought.¹⁵⁵

Digging deeper, however, if a dispute is especially difficult, apart from Rule 4(3) (d) allowing expert clarification on technical issues, the 2010 Rules for Reference of Unresolved Disputes to the ASEAN Summit is silent on how the matter may be settled, whether by political (diplomatic) or legal means.¹⁵⁶ Similarly, in the event of non-compliance with an arbitral award or a mediation settlement and the Coordinating Council fails to encourage compliance, affected members can ask the Summit to intervene, though (again) there is silence on what the Summit can or should do.¹⁵⁷

Despite the availability of resolution mechanisms for any type of ASEAN dispute, none has been activated – though international tribunals have been used occasionally – to settle differences or compel compliance.¹⁵⁸ Some reasons for the lack of usage are structural. As seen, the Coordinating Council and Summit's dispute resolution mandates uphold sovereignty and intergovernmentalism – they can neither decide on the matter nor push disputants towards arbitration or mediation – so limbos remain. Moreover, despite the post-Charter hope for the 2004 Enhanced Dispute Settlement Mechanism to spur economic integration, its short timelines (relative to the WTO's mechanism) continue to undermine its utility.¹⁵⁹

Other reasons may be cultural. ASEAN's practice suggests that the non-litigious institutional psyche is deeply rooted. Apart from lingering scepticism of legalistic practices, initial proposals to include Charter provisions on punishing non-compliance and having an ASEAN court were vetoed.¹⁶⁰ Additionally, officials had quietly signalled during the Charter negotiations that regional-level adjudication might prove difficult if the rule of law remained weak in some members – regional tribunals could be compromised if a judge had to take instruction from members or the confrontational nature of litigation caused public embarrassment.¹⁶¹ Given this lukewarm reception of arbitral modalities, soft law's prevalence and the fact that the EPG had mooted surveillance to strengthen compliance, bureaucratized monitoring vested in the secretary-general has been increasingly preferred as a concordance legalization strategy. Through the ASEAN Charter, members boosted the secretary-general's

¹⁵⁴ *Ibid.*, Arts 8(4), 9(1).

¹⁵⁵ *Ibid.*, Art. 9(4).

¹⁵⁶ Rules for Reference of Non-Compliance to the ASEAN Summit (Rules for Reference of Non-Compliance) (2012), Rules 1(b), 3, 4(3)(d), available at <https://cil.nus.edu.sg/wp-content/uploads/2020/05/2012-AC-Rules-Non-Compliance.pdf>; see also W. Woon, *The ASEAN Charter: A Commentary* (2016), at 186–187.

¹⁵⁷ Rules for Reference of Non-Compliance, *supra* note 158, Rule 5.

¹⁵⁸ *Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Judgment (Merits), 15 June 1962, ICJ Reports (1962) 6; see also Woon, *supra* note 158, at 188–197.

¹⁵⁹ Woon, *supra* note 158, at 179; see also R. Beckman et al., *Promoting Compliance: The Role of Dispute Settlement and Monitoring Mechanisms in ASEAN Instruments* (2016), at 76.

¹⁶⁰ Caballero-Anthony, 'The ASEAN Charter: An Opportunity Missed or One that Cannot be Missed?', in D. Singh and T.M. Than (eds), *Southeast Asian Affairs* (2008) 71, at 75; Woon, *supra* note 158, at 163.

¹⁶¹ Woon, *supra* note 158, at 163, 173.

monitoring function (which had been dormant since 1976) by conferring the office with ministerial rank and oversight of regional integration (with annual reports to the Summit).¹⁶² Admittedly, it has taken a while to work out a suitable mechanism – centralized institutional monitoring was weak in the years immediately following the Charter’s adoption. It has since been strengthened.

ASEAN’s first monitoring system was limited to the second pillar using the ASEAN Economic Community Scorecard. While this provided previously unobtainable information to the members and public, and thus was considered eye-opening, its own implementation was (ironically, yet unsurprisingly) lacklustre with infrequent publication. Only two scorecards were published – 2008 and 2012 – from the time the Charter was adopted until the ASEAN Community was established.¹⁶³ Methodologically, the scorecard was also imprecise. The self-reported information to the secretariat contained no statistical detail. It had only three categories comprising ‘all/more than half/less than half of measures implemented’, there was no explanation of what exact implementation measures were taken and all the members rated themselves very favourably.¹⁶⁴

Economists and practitioners have critiqued the scorecard’s lack of detailed data as members were noted to report a commitment as ‘implemented’ if national laws were enacted, never mind substantive fulfilment.¹⁶⁵ Other critiques questioned whether the scorecard was tracking just the 2009–2015 ASEAN Economic Community Blueprint’s trade and investment action lines or encompassed more challenging aspects such as equitable development.¹⁶⁶ Its biggest flaw was the lack of useful information to propel serious integration. Since gaps or challenges were never disclosed, members and the public could not press for more accountability, thus corrective and supportive regional measures could not be applied.¹⁶⁷

These challenges underscore monitoring’s importance in the absence of litigation – effective integration requires robust data. As the 2015 deadline to establish the ASEAN Community loomed, the World Bank and Australia Development Cooperation Program supported a comprehensive ASEAN monitoring and evaluation exercise to pressure implementation. Addressing integration sceptics, the report emphasized how regionalization had improved intra-regional and external investment and further progress necessitated the sustained removal of non-tariff

¹⁶² Secretariat Agreement, *supra* note 29; ASEAN Charter, *supra* note 12, Arts 7(2)(g), 11(2)(b).

¹⁶³ See ASEAN Secretariat, ASEAN Economic Community Scorecard: Charting Progress toward Regional Economic Integration (2012), Annex 2: Implementation of AEC Scorecard by Country under Phase I (2008–2009) and Phase II (2010–2011), available at www.asean.org/wp-content/uploads/images/documents/scorecard_final.pdf.

¹⁶⁴ S.Y. Chia and M.G. Plummer, *ASEAN Economic Cooperation, and Integration: Progress, Challenges and Future Directions* (2015), at 135.

¹⁶⁵ Das, ‘Huge Challenges Await AEC 2025’, 48 *ISEAS Perspective* (2016) 1, at 3–4; S.B. Das, *ASEAN Economic Community Needs Higher Transparency*, 5 May 2015, available at www.iseas.edu.sg/wp-content/uploads/2017/02/Sanchita-AEC-BT-May2015.pdf; E. Sim, ‘Grading the ASEAN Economic Community Scorecard’, *ASEAN Economic Community Blog* (25 May 2012), available at <http://aseanec.blogspot.com/2012/05/grading-asean-economic-community.html>.

¹⁶⁶ Chia and Plummer, *supra* note 166, at 134, 140–141.

¹⁶⁷ *Ibid.*

barriers.¹⁶⁸ The monitoring and data transparency imperative was further highlighted when the ASEAN Community was established – the secretariat’s assessment of the blueprint’s implementation rate of 92.7 per cent markedly contrasted with the Asian Development Bank’s figure of 79.2 per cent.¹⁶⁹ This discrepancy called into question ASEAN’s monitoring capabilities and the impact upon the confidence of public and private stakeholders.

Hence, the scorecard was abolished, and, from 2016, an Analysis and Monitoring Unit was formed in all three communities, with the Australia Development Cooperation Program’s further support, to track the progress of the ASEAN 2025: Forging Ahead Together blueprints. Naturally, ASEAN’s prioritization of economic integration and the fluid nature of political-security and socio-cultural cooperation has meant economic monitoring is the most advanced. Relative to the simplistic scorecard, it is institutionally and procedurally substantive. The ASEAN Integration Monitoring Directorate (AIMD) administers the new ASEAN Economic Community 2025 Monitoring and Evaluation Framework (M&E Framework) in three ways:

1. Compliance monitoring – quantitative and qualitative data are collected from members and sectoral bodies, implementation action must be evidenced (enacting national legislation or policy is insufficient) and country visits are part of the new protocol.
2. Outcomes monitoring – practical results and economic indicators arising from integration are measured.
3. Impact evaluation – positive and negative integration effects and equitable development in ASEAN societies are examined.¹⁷⁰

It is notable that the AIMD’s four divisions have inched towards global standards in assessing the 2016–2025 economic blueprint’s progress. The Statistics Division has adopted the United Nations Fundamental Principles of Official Statistics to supply reliable data, with the online database including indicators on trade in goods and services, investment and population.¹⁷¹ The Surveillance and Coordination, Trade, Industry, and Emerging Issues and Finance and Socio-Economic Issues Divisions provide confidential high-level policy and technical advice on economic integration to ASEAN institutions and disseminate general information to the public.¹⁷² In all this,

¹⁶⁸ ASEAN Secretariat and the World Bank, ASEAN Integration Monitoring Report (2013), available at <https://openknowledge.worldbank.org/bitstream/handle/10986/16695/83914pdf.pdf?sequence=1&isAllowed=y>, at paras. 3, 80.

¹⁶⁹ ASEAN Secretariat, A Blueprint for Growth. ASEAN Economic Community 2015: Progress and Key Achievements (2015), at 9; J. Menon and A.C. Melendez, ‘(Re)realising the ASEAN Economic Community’, *East Asian Forum* (24 August 2017), available at www.eastasiaforum.org/2017/08/24/rerealising-the-asean-economic-community/.

¹⁷⁰ ASEAN Secretariat, Towards the ASEAN Economic Community 2025: Monitoring ASEAN Economic Integration (2017), at 3–16.

¹⁷¹ ASEAN Statistics Division, available at www.aseanstats.org/about-aseanstats/.

¹⁷² ASEAN Integration Monitoring Directorate, available at <https://asean.org/asean-economic-community/aec-monitoring>.

Australia provides technical aid, while the EU conducts training workshops to improve in-country qualitative data collection.¹⁷³

To respect sovereignty sensitivities, the release of implementation outcomes is tailored to specific constituents. As a rule, AIMD reports are ‘exclusively presented’ to members, and the blueprint is open for review every three or more years to fine-tune integration efforts, though regular business stakeholder feedback is encouraged to bridge the public–private dissonance.¹⁷⁴ For the public, however, summaries of the blueprint’s progress and impact are published in a biannual newsletter – the *ASEAN Integration Brief* – that reports on the regional economic climate and the adoption of specific measures such as the ASEAN Single e-Window.¹⁷⁵ While this is not robust enough for public accountability, the new system provides more rigorous surveillance and follow-up action and generates greater pressure for the blueprint’s fulfilment.¹⁷⁶

To bridge the information gap, the AIMD publishes a more comprehensive *ASEAN Integration Report* every few years, giving an overview of the regional macro-economic landscape, highlighting megatrends in ASEAN and recommending policies. For instance, the 2019 report emphasized the importance of engaging the private sector and foreign business councils to spur integration, developing the digital economy and working towards equitable societies by providing opportunities for micro, small and medium enterprises and narrowing the development gap.¹⁷⁷

Monitoring of the political-security and socio-cultural communities is much more nascent relative to the economic community. The monitoring and analysis divisions provide basic information in biannual bulletins – quantitative and qualitative data assessment of blueprint milestones remains unavailable. For instance, the first issue of the *ASEAN Political-Security Community Outlook* briefly reviews the blueprint’s implementation over 2018, while the second issue explains the importance of external relations to regional security and ASEAN’s efforts towards nuclear non-proliferation and disarmament.¹⁷⁸ Similarly, *Voices: Bulletin of the ASEAN Socio-Cultural Community* presents the community-building projects in an accessible magazine format, highlighting programmes that tackle climate change, gender discrimination, online child sexual exploitation and online radicalization.¹⁷⁹ ASEAN members are conscious that monitoring competences in the first and third pillars must strengthen. Steps are currently

¹⁷³ Memorandum of Understanding between ASEAN and Australia on the Second Phase of the ASEAN-Australia Development Cooperation Programme (2009), available at <https://asean.org/wp-content/uploads/images/archive/documents/MOUONAADCPII.pdf>; ASEAN Regional Integration Support from the EU, Component 4: ASEAN Economic Integration Monitoring and Statistics (undated), available at <https://ariseplus.asean.org/program/asean-economic-integration-monitoring-and-statistics/>.

¹⁷⁴ ASEAN Secretariat, *supra* note 173, at 14.

¹⁷⁵ ASEAN Secretariat, ASEAN Economic Integration Brief no. 6 (2019), available at https://asean.org/wp-content/uploads/2021/08/AEIB_6th_Issue.pdf, at 4–5.

¹⁷⁶ ASEAN Secretariat, ASEAN Community Progress Monitoring System (ACPMS) 2012 (2012), at 13–60.

¹⁷⁷ ASEAN Secretariat, ASEAN Integration Report (2019), at 143–151, 164–165.

¹⁷⁸ ASEAN Secretariat, APSC Outlook, vols 1 and 2 (2019).

¹⁷⁹ ASEAN Secretariat, *Voices: Bulletin of the ASEAN Socio-Cultural Community* no. 3 (2018), available at <https://asean.org/wp-content/uploads/2018/08/20-ASCC-Bulletin-3.pdf>.

being taken in the socio-cultural pillar where, supported by the Japan-ASEAN Integration Fund, regional officials are introduced to M&E operations, including how to develop appropriate indicators to measure work plan outcomes and produce information for the public.¹⁸⁰

Overall, even if the level of data is less than ideal, ASEAN's current monitoring framework across the three pillars is much better than in the early days of the ASEAN Charter. Members are increasingly sensitized to the importance of effective implementation, the multiple steps needed to improve compliance and the fact that increased scrutiny is not a sovereignty violation. In concordance legalization, effective monitoring improves compliance due to mutual scrutiny and self-policing to avoid censure. It also enables members to achieve their collective goals without engendering too much acrimony or undermining regional unity. Of course, in the case of treaty violation, if members decide to have recourse to their arbitral tribunals, definitive rulings will go some way in enforcing laws.

6 Conclusion

Post-2007, ASEAN has overcome its challenges to become an effective regional trading arrangement. It remains staunchly intergovernmental while dynamically expanding its agenda. Concordance legalization's four-pronged strategy has enabled this – the constituent treaty entrenches intergovernmentalism to facilitate dynamic agenda enlargement; the dual-step system of primary and secondary laws (comprising treaty and softer instruments); the organizational hierarchy that expands, implements and exerts intra-regional accountability pressures through its numerous meetings; and the monitoring mechanisms enforcing compliance. Hence, the three puzzles are resolved – organizationally, ASEAN succeeds and its laws and institutions are effective.

It is hoped that, by presenting concordance legalization as a new model in the regional trading arrangement landscape, this article brings an additional perspective alongside the classical models of the 'dynamically expansive and supranational' EU and the 'static intergovernmental' USMCA. While concordance legalization is not the only or the best means of regional organization, it has proven uniquely useful to ASEAN and could be appropriately applied elsewhere, particularly in the wider Asia-Pacific region or even beyond in the global South.¹⁸¹ For instance, concordance legalization could add comparative insights to contemporary discussions on the limitations that states face during regional integration. It may especially resonate with the post-colonial states of the global South where sovereignty concerns continue to contest against the necessity of regionalization for security and economic development.

¹⁸⁰ ASEAN Secretariat, ASEAN Continues Improving Monitoring and Evaluation Capacity, 1 February 2019, available at <https://asean.org/asean-continues-improving-monitoring-evaluation-capacity/?highlight=monitoring>.

¹⁸¹ See the discussion surrounding notes 5–9 above.

These challenges have fed the long-running debates on African and Latin American integration.¹⁸²

The intergovernmental and soft law traits of concordance legalization may also be of comparative interest to EU scholars in the post-2009 Euro crisis and post-Brexit arena. Christopher Bickerton, Dermot Hodson and Uwe Puetter have for some time observed a distancing from supranational modalities in post-Maastricht integration, and this has only intensified since 2009.¹⁸³ Consequently, they have advocated the theory of deliberative intergovernmentalism to explain EU integration in the newer, more sensitive issue areas of economic governance, foreign relations and security and defence that rely on non-supranational decision-making (vested in political entities such as the European Council and outside the purview of the Commission and Court) and the use of policy rules (rather than treaty law).

Additionally, concordance legalization plugs a significant lacuna in existing ASEAN scholarship both in international law and in international relations. Concordance legalization is the first theory of legalized ASEAN regionalism across the entire community. International law expositions on ASEAN have focused on substantive issues such as trade and dispute settlement, while ASEAN regionalism theories arise from the field of international relations.¹⁸⁴ More particularly, it pushes the theoretical debate on ASEAN regionalism beyond the dominant ideas of realist or constructivist frameworks of non-legalized political-security cooperation.¹⁸⁵ Omitting law and the activities of the economic and socio-cultural communities means a profound inadequacy in explaining (or even describing) the post-2007 ASEAN.

Lastly, certain aspects of concordance legalization could also be useful to officials and practitioners in the business of making regional trading arrangements work. Given the increasing tensions in the current world order, and widening socio-political outlooks and economic variances within regions, states are more sensitive about sovereign autonomy and interests when cooperating. Reliance on soft legal commitments

¹⁸² See, e.g., Aniche, 'African Continental Free Trade Area and African Union Agenda 2063: The Roads to Addis Ababa and Kigali', *Journal of Contemporary African Studies*, 7 August 2020; Akinkugbe, 'Dispute Settlement under the African Continental Free Trade Area Agreement: A Preliminary Assessment', 28(S) *African Journal of International and Comparative Law* (2020) 138; Sanchez, 'On (the Lack of) Latin American Supranationalism', 29 *Global Change Peace and Security* (2017) 179; Elias-Roberts and Hanoman, 'CARICOM, the CSME, and Absolute Sovereignty: Lessons Learnt on the Road towards Regional Integration', 44 *Commonwealth Law Bulletin* (2018) 66.

¹⁸³ See, e.g., Puetter, 'Europe's Deliberative Intergovernmentalism: The Role of the Council and European Council in EU Economic Governance', 19 *Journal of European Public Policy* (2012) 161; Bickerton, Hodson and Puetter, 'The New Intergovernmentalism: European Integration in the Post-Maastricht Era', 53 *JCMS* (2015) 703; C. Bickerton, D. Hodson and U. Puetter, *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era* (2015).

¹⁸⁴ See, e.g., J.H.H. Weiler and Tan H-L. (eds), *ASEAN Integration through Law Series* (2015–present). On ASEAN regionalism theories, see, e.g., Ba, 'Institutional Divergence and Convergence in the Asia-Pacific? ASEAN in Practice and in Theory', 27 *Cambridge Review of International Affairs* (2014) 295; S. Narine, *Explaining ASEAN: Regionalism in Southeast Asia* (2002).

¹⁸⁵ See, e.g., Peou, 'Realism and Constructivism in Southeast Asian Security Studies Today', 15 *Pacific Review* (PR) (2002) 119; Haacke, 'ASEAN's Diplomatic and Security Culture: A Constructivist Assessment', 3 *International Relations of the Asia-Pacific* (2003) 57; Acharya, 'Ideas, Identity, and Institution-Building: From the "ASEAN Way" to the "Asia-Pacific Way"?'', 10 *PR* (1997) 319.

is taking shape in regional trading arrangements – for example, the Digital Economy Partnership Agreement between New Zealand, Chile and Singapore was signed in reaction to the challenges and opportunities afforded by the COVID-19 pandemic; and more recently, the US President Biden’s Indo-Pacific Economic Framework for Prosperity.¹⁸⁶ In extrapolated form, especially in terms of exerting intergovernmental preferences, treaty and soft law usage, hierarchical organization of transnational institutions and monitoring rather than litigating to enforce compliance, facets of concordance legalization could offer flexible cooperation options amid global uncertainty.

¹⁸⁶ J. Kelsey, ‘DEPA Lacks Added Value’, *East Asia Forum* (10 April 2020), available at www.eastasiaforum.org/2020/04/10/depa-lacks-added-value/. See also, United States Government, *Statement on Indo-Pacific Economic Framework for Prosperity* (23 May 2022), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/23/statement-on-indo-pacific-economic-framework-for-prosperity/>.