

Draft Charter of
The East Asian Community
An Academic Proposal

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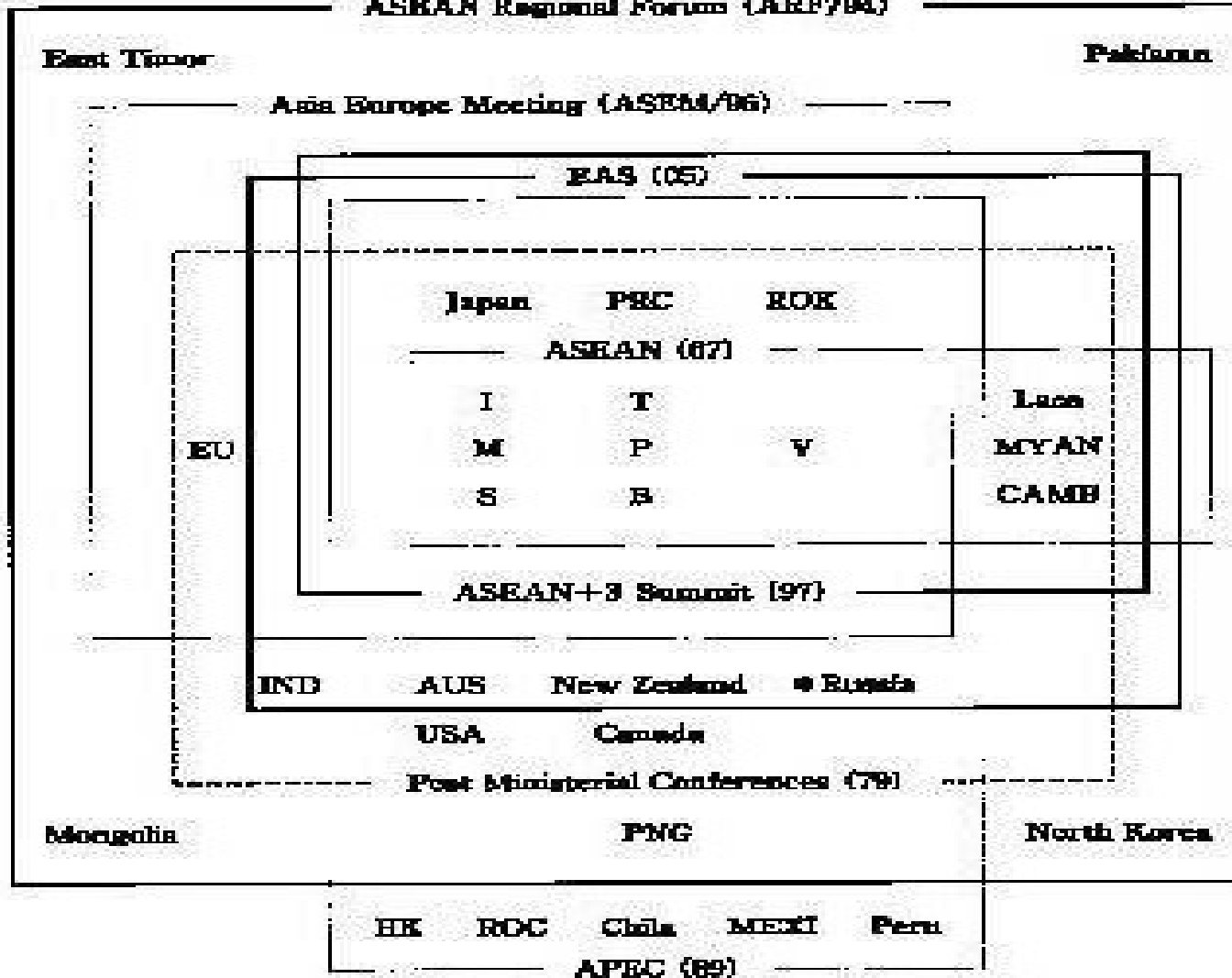
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Current Features
of
East Asian Regionalism

1. Overlapping Regimes : functional, issue-specific, not inter-linked

- Layers of regional **multilateral** regimes, theme by theme
- Proliferation of **bilateral** Free Trade Agreements

Figure 1 ASEAN States and Dialogue Partners
ASEAN Regional Forum (ARF/94)



*AUS: Australia, B: Brunei, CAMB: Cambodia, HK: Hong Kong, I: Indonesia, IND: India, M: Malaysia, MEXI: Mexico, MYAN: Myanmar, P: Philippines, PRC: Papua New Guinea (ASEAN observer), ROK: Republic of Korea, S: Singapore, T: Thailand, V: Vietnam.
 *APEC: Asia Pacific Economic Cooperation Conference, EAS: East Asia Summit, Post Ministerial Conferences: Post Ministerial Conferences with Dialogue Partners (PMDC)

- Problems

- **Diversification** of trading **rules**
- **Few** systematic **connections** between the regional arrangements

Little room for **inter-linking**

approach (e.g. free trade + narrowing the development gap, in the whole region)

2. Flexible multilateral regimes

- Made **Few** legally **binding** agreements
- **Voluntary** action of the participating states

3. Insistence of State Sovereignty

- **Young** nation-states
- Many experienced **colonisation**.

Cf. Europe: nation-state building from
17th Century

- Problems of Flexibility, Sovereignty
 - Arrangements may become **ineffective** in practice (e.g. APEC)
 - Allow state **action by convenience**, not by principle
 - **Little** possibility of keeping **long-term targets shared**, of accumulating **universal norms and principles**

3. Economically “Open” regionalism: ASEAN, APEC

- EA economy needs the world market, world resources, world finance.
- EA cannot be a closed self-sufficient economic unit.

- Problems with “Open”-ness
 - No guiding concept for other activities in and beyond the region
 - (e.g. security, poverty alleviation....)
 - regionalism “Open” to the people?

Operating principle - unclear:

Good Governance? Transparency?
Democratic legitimacy?

4. Private-led regionalisation

- (Economic) Business entities -active in the region.
- (non-economic) NGO's transnational activities.
- (non-economic) Local authorities' international networks.

- Problems of Private-Led regionalism
 - Mostly **independent** activities, person to person relations, **not** extend **beyond** the **immediate** topic or human **relations**.
 - **No systematic accumulation** of information and experience.
 - **Weak linkages** of **Public/Private** activities

5. Law perceived as regulatory tool

- **Multilateral** functional cooperation
with little law (very broad agreements)
- **Bilateral** agreements: legal contracts specifying
agreed contents (very specific agreements)
- Law as a regulatory tool for those who
govern - **Coercive** function of Law

- Problem of the narrow perception of Law
 - Law has a **constructive** function as well.
e.g. EC/EU: “Integration through Law”

Our solution 1)

Learning from ASEAN (1967-)

- inter-governmental **multilateral** cooperation
- *Functional* (starting from security)
- *Flexible* organisation of its regime
- Respect for State *Sovereignty*
- Economically “*open*” regionalism (1990s -)
- + wide-ranging cooperation (2000s-)
- Charter process : regulatory+constructive law
(2007)

Our solution 2)

Finding Common Law of East Asia

- Commonly Shared **Legal Norms** (Preamble 2)
 - the **constitutional principles** of the EA countries
 - **general principles of international law**
 - the **international treaties** most EA countries have subscribed to

Main Points
of
the draft EAC Charter

CAVEAT

- The Draft Charter is **an independent, Academic Proposal.**
- It does **not represent** any view or position of **any government.**

1. “East Asia”: a political concept

- **Beyond geographical concept**

- “a first step” (Preamble 12)

- starting with ASEAN+3

- welcoming other “East Asian” countries to join, i.e., those who accept the Charter.

Start with ASEAN+3

- **common core of layered regimes** (Pre.1)
- **Geographical proximity,
historical/cultural ties** (Pre.3)
- **regional security , other risk
managements are immediate common
concerns** (Pre 4, 5, 6)

2. Aims: Addressing Basic and Long Term Regional Concerns with principles (I-2)

- **Reconciliation and Peace**
- **Better life, equitable prosperity**
- **Effective response to regional concerns**
- **Sharing basic universal principles**
- **Contribution to World Order**

3. Targets in forming a Community

1) Link layered regional activities

use ASEAN+3 as the core of the layers
to bridge various regimes' activities

2) Accumulate Common Law

3) Build suitable Institutions

4) With effectiveness

1) Linking layered regional activities

- Community to **discuss wide-ranging policy issues** (I-3 and Part II)
- Put ASEAN+3 into **Standard Decision-Making Procedure** (Part III)
- **Concentrate information** (Secretariat)

2) Accumulating Common Law

- **Fundamental Rules** between the States in the Community (Art I-4)
- **Principles of Cooperation** for all Community participants, public or private (Art I-5)
- List up those policy **issues** that need **common actions** (Part II)

3) Suitable Institutions

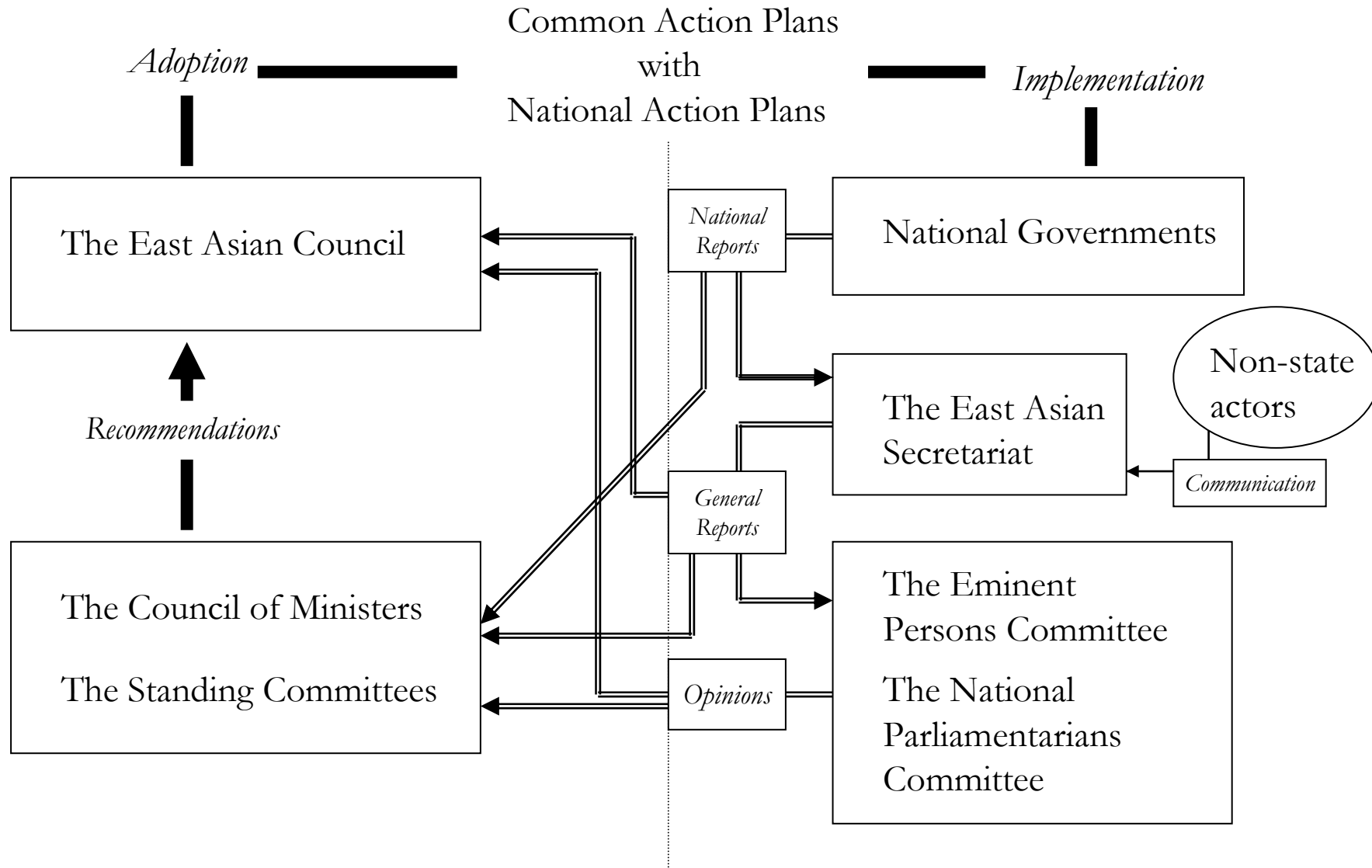
- Intergovernmental (sovereignty)
 - East Asian Council
 - Council of Ministers + Standing Com.
- Other voices: (public/private cooperation)
 - Eminent Persons
 - National Parliamentarians
 - [Registered NGOs] (monitoring)
- Secretariat (Information concentration)

Mode of Operation

- Prior consultation in linking with other regimes activities (III-9)
 - + agreements if necessary (III-10)
- Annual decision-making and reviewing procedure (III-9)
- Procedure against serious breach (III-15)

POLICY-MAKING PROCESS

MONITORING PROCESS



4) With Effectiveness

- Voluntary commitment (*not coercive*)
 - Common APs by consensus
 - + national APs (may involve private sector)
- Regular Monitoring
 - National Report + private Communication to the Secretariat

Conclusion

- A Modest Proposal
- With long-term visions
- With Evolutionary approach
- Primary focus on procedure and basic principles
- Wider participation (Public/Private)

Reference

- Nakamura, Tamio. Ed. 2007. *The Dynamics of East Asian Regionalism in Comparative Perspective*. Institute of Social Science Research Series No.24. University of Tokyo.
- Sato, Koichi. 2007. “ASEAN Regime: Its Implications for East Asia Cooperation - A Japanese View”. In Nakamura 2007:19-30*. [*The diagram quoted in the slide no.4 in this presentation appears on p. 22.]