

Measuring International Authority

A Postfunctionalist Theory
of Governance, Volume III

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Contents

| | |
|---|------|
| <i>Detailed Contents</i> | xi |
| <i>List of Tables</i> | xv |
| <i>List of Figures</i> | xvii |
| <i>List of Boxes</i> | xix |
| | |
| Part I. Measurement | |
| 1. International Authority: From Concept to Measure | 3 |
| 2. How We Apply the Coding Scheme | 34 |
| 3. From Scoring to Aggregation: The MIA Dataset | 107 |
| Appendix to Part I | 133 |
| | |
| Part II. Profiles of International Organizations | |
| Africa | 167 |
| Americas | 295 |
| Asia-Pacific | 430 |
| Europe | 491 |
| Middle East | 621 |
| Multi-Regional | 669 |
| | |
| <i>References</i> | 827 |
| <i>Index</i> | 885 |

Asia-Pacific

| Code | Name | Years in MIA |
|------|--|--------------|
| 750 | Association of Southeast Asian Nations (ASEAN) | 1967–2010 |
| 4200 | Pacific Islands Forum (SPF/PIF) | 1973–2010 |
| 4170 | South Asian Association for Regional Cooperation (SAARC) | 1986–2010 |
| 5550 | Shanghai Cooperation Organization (SCO) | 2002–2010 |
| 4200 | Pacific Community (SPC) | 1950–2010 |

Association of Southeast Asian Nations (ASEAN)

The Association of Southeast Asian Nations is a general purpose organization with ten members: Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. The main purpose of the organization is to “promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific, and administrative fields” (Bangkok Declaration). The 2008 ASEAN Charter also emphasizes the goal to “maintain and enhance peace, security and stability” and “to preserve Southeast Asia as a nuclear weapon-free zone” (Arts. 1.1 and 1.3). The headquarters of ASEAN are located in Jakarta, Indonesia.

ASEAN has predecessors in a variety of failed cooperation initiatives following decolonization in the 1940s and 1950s, including Malaysia’s proposal for a Southeast Asian Friendship and Economic Treaty (1959), a Thai-initiated effort to help along economic cooperation among the Philippines, Malaysia, and Thailand through the Association of Southeast Asia (1961), and a Filipino proposal to merge Malaysia, the Philippines, and Indonesia in a single Malay confederation, Maphilindo (1963). Each of these foundered on deep-seated distrust (Gordon 1966; Leifer 1989; Turnbull 1999).

In the mid-1960s, Communist expansion and great power domination intensified fears of intra-regional conflict, and this propelled the regional leaders to try again, now with more success. ASEAN was founded in August 1967 in Bangkok, as the five founding members Indonesia, Malaysia, Philippines, Singapore, and Thailand signed the ASEAN Declaration (also known as the Bangkok Declaration). Cooperation started slowly and focused mostly on security. As Chin (1995: 425) summarizes, “the first decade of ASEAN’s existence was characterized by cautious intra-regional confidence-building but rudimentary functional and economic cooperation.” The organization contributed to the stabilization of interstate relations through the “diplomacy of accommodation” (Antolik 1990). This laid the foundation for the “ASEAN way”—an informal style of cooperation that upholds the principles of consultation and consensus, non-interference, and weak institutionalization. These principles were codified in the 1976 Treaty of Amity and Cooperation (Acharya 2001).

The first ASEAN Summit in 1976 gave the green light for closer economic cooperation. Early efforts, including a Preferential Trading Arrangement that provides a framework for voluntary tariff reductions for specific imports, and industrial cooperation schemes such as the ASEAN Industrial Projects, ASEAN Industrial Complementation, and ASEAN Industrial Joint Venture schemes, had mixed success (for an early assessment, see Langhammer 1991).

The organization deepened and widened in the 1990s. Growing economic interdependence and deeper regionalism in Europe and North America induced ASEAN states to negotiate the ASEAN Free Trade Agreement (AFTA) in 1992. For the first time, member states agreed a binding schedule for trade liberalization (Ravenhill 1995a, 1995b). Throughout the decade, the member states signed several additional economic integration agreements including a Framework Agreement on Services (1995), an Industrial Cooperation Scheme (1996), and the ASEAN Investment Area (1998). At the same time, the organization expanded: Vietnam joined in July 1995, Laos and Myanmar in July 1997, and Cambodia in April 1999.¹

The Asian financial crisis of 1997 damaged ASEAN’s credibility and legitimacy as member states sought national solutions to the crisis (Rüland 2000). This triggered ASEAN to reconsider the non-interference principle which was central to the “ASEAN way.” Members came up with softer concepts, such as flexible engagement or enhanced interaction, in an effort to justify ASEAN involvement in domestic issues that have negative externalities for ASEAN members.

In the early 2000s deeper economic integration came back on the agenda, in part motivated by concerns about investment diversion to China. The Bali Concord II of 2003 envisaged the formation of a three-pillar ASEAN Community

¹ Brunei Darussalam had joined in January 1984.

Profiles of International Organizations

consisting of an ASEAN Security Community, an ASEAN Economic Community, and an ASEAN Social-Cultural Community. This triggered the ASEAN Charter-making process, which produced the 2008 ASEAN Charter. The Charter rendered the organization more rule-governed, which could be conceived, at least potentially, as a departure from Kahler's (2000: 555) depiction of ASEAN as a "model of institutional development without legalization." At the time of writing, implementation of the Charter is progressing slowly, and as one observer notes, "a closer examination of the ASEAN Community and its component parts reveals it has poor prospects of success, largely because its member states continue to choose the preservation of their sovereignty over effective regional integration" (Narine 2016: 174).²

The key documents are the Bangkok Declaration (signed and in force 1967), the Treaty of Amity and Cooperation (signed and in force 1976), the Declaration of ASEAN Concord II (2003), the ASEAN Protocol on the Enhanced Dispute Settlement Mechanism (signed and in force 2004), and the Charter of the Association of Southeast Asian Nations (signed 2007; in force 2008). ASEAN has three main bodies: the ASEAN Summit, which acts as its assembly, the ASEAN Coordinating Council, which is the executive, and the Secretariat General.

Institutional Structure

A1: ASEAN MINISTERIAL MEETING (1967–2007)

When ASEAN was founded with the Bangkok Declaration in 1967, the annual meeting of the member states' foreign ministers, the so-called ASEAN Ministerial Meeting, formed the main decision making body (Art. 3a). It was entirely composed of member state representatives, all members were represented, and representation was direct.

ASEAN decision making has always been characterized by a strong preference for consensus—a "habit" that became known as the "ASEAN way" (Severino 2006: ch. 1). Consensus was also endorsed as ASEAN's chief decision mode in the ASEAN Charter.

The Meeting's decisions were prepared by the Standing Committee, which was chaired by the foreign minister of the host country or his representative and comprised the ambassadors of the other member states (Bangkok Declaration, Art. 3b).

With the ASEAN Charter, all ministerial meetings were subordinated to the ASEAN Coordinating Council, which is now ASEAN's executive. Today, the Summit is ASEAN's supreme and only assembly.

² The ASEAN Community was established on December 31, 2015 (Kuala Lumpur Declaration on the Establishment of the ASEAN Community).

A2: ECONOMIC MINISTERS MEETING (1992–2007)

With the move toward economic integration in the early 1990s, the Economic Ministers Meeting became the second assembly, tasked in particular to take decisions on ASEAN's Free Trade Agreement (AFTA) or Common Effective Preferential Tariff Agreement (1992 CEPT Agreement, Art. 7.1). Composition and character of representation were the same as for the ASEAN Ministerial Meeting.

A3: ASEAN SUMMIT (1992–2010)

During the first three decades, the heads of state met only three times within the ASEAN framework. These meetings were formalized with the 1992 Singapore Declaration, which decides that they “shall meet formally every three years” (Para. 8). The Summit gives political guidance and resolves disputes. It is composed of member state representatives, all members are represented, and it takes decisions by consensus. Until 2001, it met every three years; between 2001 and 2006, it met annually; since then, it has been meeting almost twice a year.

The ASEAN Charter makes the Summit “the supreme policy making body of ASEAN” (Art. 7.2a). It provides guidance on general policy, takes decisions on important issues, instructs the other councils, addresses emergencies, and appoints the secretary general. It is composed of the heads of state or government from all member states (Charter, Art. 7). The presidency rotates. The general decision rule under the Charter continues to be “consultation and consensus” (Art. 20.1), even though the Summit could decide to use a different decision quorum if consensus cannot be reached (Art. 20.2).^β

E1: FROM THE ASEAN NATIONAL SECRETARIATS (1967–2007)
TO THE ASEAN COORDINATING COUNCIL (2008–10)

In the first decades executive decision making was decentralized. Each member state had an ASEAN National Secretariat “to carry out the work of the Association on behalf of that country and to service the Annual or Special Meetings of Foreign Ministers, the Standing Committee and such other committees as may hereafter be established” (Bangkok Declaration, Art. 3d). There was no chair to coordinate the work.

The ASEAN Charter centralizes executive decision making in the ASEAN Coordination Council, which sits atop a layered institutional structure of executive and administrative bodies. The Coordinating Council prepares the meetings of the Summit, coordinates the implementation of agreements and Summit decisions, considers the annual report of the secretary general, and appoints the deputy secretary generals. The Council comprises the ASEAN foreign ministers and meets at least twice a year (Charter, Art. 8). The Charter omits to say how the chair is selected, but it seems sensible that the chair

Profiles of International Organizations

rotates among the members according to the same time clock as for the Summit and the Community Councils.⁸

Reporting to the Coordinating Council are three Community Councils: the Political-Security Community Council, the Economic Community Council, and the Socio-Cultural Community Council. Each Community Council meets at least twice a year and is chaired by the appropriate minister from the member state holding the ASEAN chair (Charter, Art. 9.5).

The Community Councils provide guidance to a number of specialist sectoral ministerial bodies, which meet regularly in the following sectors: agriculture and forestry, economics (trade), energy, environment, finance, health, information, investment, labor, law, regional haze, rural development and poverty alleviation, science and technology, social welfare, telecommunications, transnational crime, transportation, tourism, and youth. These ministerial bodies, in turn, are supported by committees of senior officials, technical working groups, and task forces.

Since 2009, a Committee of Permanent Representatives, to which each ASEAN member state appoints a delegate with the rank of Ambassador, coordinates affairs in Jakarta. It collaborates closely with the National Secretariats (Charter, Art. 12.2(b)), each of which is to “serve as the national focal point” between ASEAN and its polity and society (Charter, Art. 13a).

E2: SENIOR ECONOMIC OFFICIALS’ MEETING (1992–2007)

With the move toward economic integration in the early 1990s, the Senior Economic Officials’ Meeting (SEOM) obtained a central role in agenda setting and implementation of the AFTA and CEPT agreements (1992 CEPT Agreement, Arts. 7.1 and 7.3; also 1992 Singapore Agreement, Art. 8). We code it as a second executive from 1992 until the ASEAN Charter entered in force in 2008, which centralized executive functions in the ASEAN Coordinating Council. The SEOM consisted of high level officials from the member states’ ministries of economy and trade. It was fully composed of member state representatives, all members were represented, and representation was direct. The agreements do not specify how the chair of these meetings was selected.^α

GS1: ASEAN SECRETARIAT (1981–2010)

The ASEAN General Secretariat was established in 1976 (Declaration of ASEAN Concord, Art. F.1) and became operational in 1981 (Chin 1995: 434), which is when we start coding. It initially consisted of seven staff, seconded from national ministries, and a secretary general, who was “appointed by the ASEAN Foreign Ministers upon nomination by a Contracting Party on a rotational basis” for two years (1976 ASec Agreement, Art. 3.1). He serves as

Asia-Pacific

the administrative head of the Secretariat, but can also “initiate plans and programs of activities for ASEAN regional cooperation in accordance with approved policy guidelines” (ASec Agreement, Art. 3.2.viii). He also prepares the annual budget.

With ASEAN’s move toward market integration in 1992, the role of the Secretariat and its secretary general was considerably strengthened. The secretary general was elevated to ministerial status, and the tenure was extended to five years. Nomination was explicitly based on merit, and the nominee had to be endorsed by the Summit, upon recommendation of the ASEAN Ministerial Meeting (1992 Protocol amending the Agreement on Establishment of the ASEAN Secretariat, Art. 2.1). The secretary general was given the authority to “initiate, advise, co-ordinate and implement ASEAN activities” and to “serve as spokesman and representative of ASEAN on all matters” (1992 Protocol amending the ASec Agreement, Arts. 2.1.4 and 2.1).

The ASEAN Charter codifies mandate and selection procedure. The secretary general is appointed by the ASEAN Summit for a non-renewable term of five years based on the recommendation of the ASEAN Coordinating Council (Charter, Art. 7). The position rotates among ASEAN member states in alphabetical order but “with due consideration to integrity, capability and professional experience, and gender equality” (Charter, Art. 11.1). So there continues to be a strong element of rotation in recruiting the ASEAN Secretariat’s most senior officer, even though the final decision is collective. Article 7.2g of the Charter specifies that the secretary general serves “with the confidence and at the pleasure of the Heads of State or Government,” which is why we code the Summit as having the authority to remove the person from office.^a

CB1: ASEAN INTER-PARLIAMENTARY ASSEMBLY (AIPA) (2010)

The ASEAN Inter-Parliamentary Assembly (AIPA) is a regional parliamentary organization and arguably the most important consultative body. It was originally formed in 1977 as the ASEAN Inter-Parliamentary Organization, but for a long time it had no formal links to the ASEAN institutional machinery.

Its origins lie in the ASEAN parliamentary meetings initiated by the Indonesian parliament in 1975. During the Charter-making process, the organization renamed itself the Inter-Parliamentary Assembly, and all member states except Myanmar sent representatives. Its stated goals are, according to its 2006 Statute, to promote solidarity and understanding among parliaments, keep AIPA parliaments informed, facilitate ASEAN goals, exchange information and consult with ASEAN institutions, study and suggest solutions to common problems, and promote human rights, democracy, peace, security, and prosperity throughout ASEAN. The ASEAN Charter mentions AIPA only in the

Profiles of International Organizations

Annex that lists associated entities of the organization (Annex 2). AIPA has no formal rights to consultation.

In 2010, the ASEAN Summit and AIPA established an official consultative channel, which allows for regular coordination on AIPA resolutions prior to ASEAN summit meetings (Rüland and Bechle 2014). As from 2010, AIPA is judged to meet our minimal criterion for inclusion as a consultative body.³

Decision Making

MEMBERSHIP ACCESSION

The Bangkok Declaration of 1967 merely stated that “the Association is open for participation to all States in the South-East Asian Region subscribing to the aforementioned aims, principles and purposes” (Art. 4), but did not outline a procedure. Membership decisions throughout the 1990s followed ad hoc rules. The ASEAN Charter changes this. The ASEAN Summit makes decisions on admission by consensus based on the recommendation of the ASEAN Coordinating Council, which also decides by unanimity (Charter, Art. 6.1). No ratification is required.

MEMBERSHIP SUSPENSION

Until 2008, there were no explicit rules on suspension. During the negotiations leading up the ASEAN Charter an advisory group, the Eminent Persons Group, recommended to make it possible for ASEAN to temporarily suspend rights and privileges of a member country (the background was Myanmar), but these provisions were substantially watered down by the political leaders (Tomotaka 2008: 2). The ASEAN Charter merely states that “[I]n the case of a serious breach of the Charter or non-compliance, the matter shall be referred to the ASEAN Summit for decision” (Art. 20.4). The wording of the Charter is considerably weaker than what we usually find in an IO contract, and we come down on not coding this as empowering ASEAN to suspend members.^β

CONSTITUTIONAL REFORM

The Bangkok Declaration was primarily a document of intent with skeleton institutional provisions and no language on how this might be amended. The 1976 Treaty of Amity and Cooperation also did not contain an amendment provision, but we can trace its decision process as well as the decision process of the declarations, agreements, and protocols which, together with the

³ AIPA remains weak compared to other transnational parliamentary bodies.^β Rüland (2014: 9) characterizes it as “a merely consultative body without representative, oversight or legislative functions” that “remains a highly affirmative body which seeks to persuade fellow legislators at home to support ASEAN policies.”

Treaty, make up ASEAN's Constitution. This reveals that member states are consistently the sole initiators, and that member states convening at ministerial or heads of state level decide. Hence, we code member states as initiators, and the ASEAN Ministerial Meeting as the final decision maker from 1976. With the formalization of the Summit in 1992, we code the Summit as final decision maker. Ratification by all member states is required (e.g. Treaty of Amity and Cooperation, Art. 18).

The rules on constitutional reform were formalized in the 2008 ASEAN Charter. Any member state can propose an amendment, which is then discussed by the Coordinating Council. If the Council endorses the amendment by consensus, it goes to the ASEAN Summit which decides, also by consensus. All member states need to ratify (Charter, Arts. 48.1–3). Hence, we add the Coordinating Council at the initiation stage.

REVENUES

The original institutional machinery was so lean that it needed no organizational revenues. Each member state financed its own participation. This changed with the establishment of the ASEAN Secretariat in 1981. The Agreement creating the body stated that "recurrent expenditure shall be shared on a basis to be determined by the ASEAN Foreign Ministers" (ASec Agreement, Art. 9.6). Since that time, all member states contribute equally to ASEAN's budget. This formula was codified in the Charter (Art. 30).

BUDGETARY ALLOCATION

The creation of the ASEAN Secretariat also meant that the organization developed a budgetary procedure. From the start, the secretary general had the authority "to prepare the Annual Budget Estimates," which the ASEAN Ministerial Meeting approves, presumably by consensus (ASec Agreement, Art. 3.2x). It was initially not clear whether the budget was binding, so we code "no written rules."

The ASEAN Charter codifies the procedure. It states that "the Secretary-General shall prepare the annual operational budget of the ASEAN Secretariat for approval by the ASEAN Coordinating Council upon the recommendation of the Committee of Permanent Representatives" (Art. 30.3). Although the decision rule in the Coordinating Council for budget allocation is not discussed explicitly, ASEAN takes decisions by consensus (Charter, Art. 20.1). Since we conceive of the Committee of Permanent Representatives as auxiliary to the Coordinating Council, we code the Coordinating Council in agenda setting as well as final decision. The budget becomes binding because the Charter states that member states "shall take all necessary measures... to effectively implement the provisions of this Charter and to comply with all obligations of membership" (Art. 5.2).

Profiles of International Organizations

FINANCIAL COMPLIANCE

The ASEAN Charter, for the first time, mentions a rudimentary non-compliance procedure in Art. 20.4, but not specific to financial non-compliance: “In the case of a serious breach of the Charter or non-compliance, the matter shall be referred to the ASEAN Summit for decision” (Art. 20.4). Similar to the wording on membership suspension, we find this language to be too imprecise to qualify as a legal basis for a financial compliance procedure.^β

POLICY MAKING

ASEAN uses a range of legal instruments to make policy: treaties, protocols or agreements, Summit declarations, and multi-annual programs. The protocols set out intentions and instruments, but Summit declarations and multi-annual programming give the intentions flesh. ASEAN works mainly through intergovernmental coordination in a broad range of policy areas, and these efforts are described in the secretary general’s annual report.

The literature suggests that ASEAN’s early period was characterized more by conversations and negotiations aimed at establishing trust among deeply suspicious states than by concrete policy output (e.g. Poon-Kim 1977: 758–9). There were some high-profile declarations, such as the ZOPFAN Declaration (Zone of Peace, Freedom and Neutrality), and from 1976 onwards, there was a fairly constant stream of programs and projects, especially in the economic realm (Severino 2006). Both declarations and projects/programs appear to have dominated policy making in the early decades. Fortunately, the procedure for their adoption is very similar. The initial procedure, as laid out in the Bangkok Declaration, was rudimentary. The Annual Meeting of Foreign Ministers took final decisions, presumably by consensus. No written rules existed on initiation and bindingness. There is no indication that declarations, projects, or programs required ratification. Following the first Summit in 1976, the initiation stage was specified. The newly created secretary general was given the authority to “initiate plans and programs of activities for ASEAN regional cooperation in accordance with approved policy guidelines” (ASec Agreement, Art. 3.2.vii). We code this as a non-exclusive right to set the agenda from 1981 onwards, when the Secretariat was made operational. The role of the Secretariat was further expanded by the 1992 Manila Protocol, which details that it shall “initiate, advise, coordinate and implement ASEAN activities; (a) develop and provide the regional perspective on subjects and issues before ASEAN; (b) prepare the ASEAN three-year plan of cooperation for submission to appropriate ASEAN bodies and approval by the Heads of Governments” (Arts. 4a and b). At the same time, the National Secretariats as well as member states themselves could propose initiatives (Art. 3d), and we code these from 1976.

With the inception of the ASEAN Free Trade Agreement (AFTA) in 1992, we consider a second policy stream: protocols and conventions. While economic cooperation gained some pace throughout the 1980s, including the adoption of several economic agreements, it was only with the inception of AFTA that a consistent policy pattern emerged (Severino 2006). The Economic Ministers Meeting decided by consensus. Both the Secretariat (CEPT Agreement, Arts. 7.1 and 7.3) and the Senior Economic Officials' Meeting (SEOM) had a codified but non-exclusive right to initiative. The latter proposed initiatives to the "economic ministers by 'flexible consensus,' a break with ASEAN traditional insistence on effective unanimity" (Kahler 2000: 554). These agreements were binding (CEPT Agreement, Art. 10.1). During this period, most agreements did not require domestic ratification.

The ASEAN Charter centralizes policy making by streamlining the organization's institutional architecture, but it makes sense to continue coding two policy streams: projects and programs, which appear mostly non-binding, and agreements or protocols, which are binding. The Charter clarifies that the ASEAN Summit is the supreme decision body on major issues; it can deliberate, provide policy guidance, and "take decisions on important issues pertaining to the goals and principles of ASEAN" (Charter, Art. 7).

Initiation of programs and projects is mostly in the hands of the secretary general, who is instructed to "carry out the duties and responsibilities of this high office in accordance with the provisions of this Charter and relevant ASEAN instruments, protocols and established practices" (Charter, Art. 11a). The Coordinating Council coordinates the Community Councils and a myriad of sectoral policy meetings at ministerial and bureaucratic level—some 400 in 2010, all of which have an explicit right to initiate (Art. 9.4c and Art. 10.1c and d). We no longer code member states as having a right of initiative because the National Secretariats have been downgraded. Hence we code the Secretariat and the Coordinating Council in setting the policy agenda. It is not clear whether the Summit is involved in day-to-day policy making; the buck seems to stop at the Community Councils and the Coordinating Council.⁴ Since only the Summit is authorized to take binding decisions,⁴ we infer that programming and projects are at most conditionally binding.⁷ As a basic

⁴ The Charter stipulates that all other bodies "recommend." At the same time, Articles 5.3 and 20.4 of the Charter indicate the intention of ASEAN members to move beyond voluntary policy making. Still, the Charter and other policy documents that we consulted fall short of making policy making binding.⁷ A note on the ASEAN website suggests that only agreements and protocols can generate unambiguous legal commitments: "There are various understandings and interpretations of what is considered international legal instruments. As such, the Matrix only focuses on legal instruments by which the consent to be bound is expressed through either signature of the authorized representatives of Member States or the signature is subject to ratification and/or acceptance in accordance with the internal procedures of respective Member States." The list only includes agreements or protocols, and no programs or projects. See <<http://agreement.asean.org/explanatory/show.html>> (accessed February 13, 2017).

Profiles of International Organizations

principle, all voting in interstate bodies is subject to consensus (Art. 20.1). Ratification is not required.

With the Charter, agreements become a more widely used instrument. They can be concluded in each of the three pillars of the ASEAN Community: ASEAN political-security Community, ASEAN economic Community, and ASEAN socio-cultural Community. The decision process is similar for agreements and protocols. The Secretariat and the Coordinating Council (through the Community Councils and the sectoral meetings) initiate. The Community Council in charge recommends these proposals to the Summit, which takes the final decision.

Agreements are generally binding. The Charter obliges member states “to effectively implement the provisions of this Charter and to comply with all obligations of membership” (Art. 5.2). The legal literature concurs that ASEAN “agreements still have binding force as ASEAN commitments” (Inama and Sim 2015: 163). Reviewing the lists of agreements and protocols posted on the ASEAN website suggests that, with the Charter, ratification has become the norm.⁵ Conditions of ratification vary, but the most common option appears to be binding after ratification for those that ratify.

DISPUTE SETTLEMENT

Ever since the early days of ASEAN, there is a strong preference for political dispute resolution, which has prevented member states from creating meaningful legal dispute settlement in the form of an independent court or tribunal. However, since 1997 there is some legal dispute settlement for economic disputes.

ASEAN’s first formal dispute mechanism was political and involved security. The 1976 Treaty of Amity and Cooperation (TAC) envisaged a so-called “High Council” composed of ministerial representatives from all member states to settle disputes that were “likely to disturb regional peace and harmony” through negotiations, mediation, or other measures. It required all parties to the dispute to consent to apply the TAC (Arts. 13–15). Member states could also use dispute settlement under Art. 33(1) of the UN Charter (TAC, Art. 17). The rules of procedure of this mechanism were only adopted in 2001. Dispute settlement by politicians or their delegates belongs in the political sphere.

An important step to legal dispute settlement was the 1996 Protocol on Dispute Settlement Mechanism, which followed in the footsteps of the creation of a free trade area in 1992. The Protocol establishes a binding dispute settlement mechanism that applies to all ASEAN economic agreements. Coverage is obligatory (Art. 12). It first envisages direct consultations between

⁵ See <http://agreement.asean.org/search/by_pillar/2/6.html> (accessed February 13, 2017).

disputing parties. If this is unsuccessful, parties can raise the issue with the Senior Economic Officials' Meeting (SEOM), which can decide to establish a panel or decide to deal with the dispute directly in order "to achieve an amicable settlement without appointing a panel" (Art. 4.3). So third-party access is conditional on the decision by a political body. If a panel is established, the panel report needs to be adopted by the SEOM by simple majority, excluding the disputing parties (Art. 7). The respective SEOM decision can be appealed before the ASEAN Economic Ministers, which has final authority to settle the dispute. Hence we score adjudication as conditionally binding. Only state parties can initiate dispute settlement; the Secretariat's role is explicitly restricted to secretarial support to the panels and to monitoring implementation. The ministers of economics can also authorize suspension of concessions in case of non-compliance. So retaliatory sanctions are tightly controlled politically and far from automatic, which is why we do not code this as an effective remedy for non-compliance.

The 2004 Protocol for Enhanced Dispute Settlement Mechanism considerably strengthens the procedure. It introduces a standing tribunal—the Appellate Body—that consists of seven legal experts, appointed for a four-year term and renewable once (Art. 12.2); they are independent and "unaffiliated with any government" (Art. 12.3). However, the judges of the Appellate Body have not been appointed (Alter 2014: 153), and so we continue to code the tribunals as *ad hoc*. Access to third-party review as well as the Tribunal's final recommendations remain politically influenced, but much less so than under the earlier agreement. Panels are now created by reverse consensus: when a disputing party requests a panel, the SEOM can only reject the demand by consensus (Art. 5.1), which we conceive as equivalent to automatic access.^β Panel recommendations are also subject to reverse consensus (Arts. 9.1 and 12.13). When the recommendations are not implemented within a set time, the complaining party may suspend concessions toward the other party subject to approval by the SEOM (instead of the Economics Ministers as before). Approval is, once again, by reverse consensus: "the SEOM, upon request, shall grant authorization to suspend concessions or other obligations . . . unless the SEOM decides by consensus to reject the request" (Art. 16.6). We continue to code conditional bindingness, but we increase the score on remedy to reflect the fact that a member state can impose sanctions barring near-unanimous opposition amongst the member states.^β To date, private actors or other treaty organs have no access to third-party review, and there is no preliminary rulings procedure that links regional dispute settlement to national legal systems.

The ASEAN Charter codifies and unifies these different agreements on dispute settlement without substantially altering them. It maintains that conflicts have to be resolved, first, by recourse to dialogue, consultation, and

Profiles of International Organizations

negotiation (Art. 24.2), before arbitration can be sought. Disputes not concerning the application or interpretation of ASEAN agreements are resolved in accordance with the TAC. Disputes relating to ASEAN economic agreements are covered by the 2004 Enhanced Dispute Settlement Mechanism. ASEAN agreements with their own built-in dispute settlement measures continue to apply. Where not otherwise specifically provided, all other disputes are covered by the 2010 Protocol to the ASEAN Charter on Dispute Settlement Mechanism, which has, as of March 2017, not yet entered into force. It provides for consultations and, subsequently, the possibility to convene an arbitral tribunal. Disputes that are unresolved and cases of non-compliance are referred to the ASEAN Summit (Arts. 27.1 and 27.2). Finally, the Charter assures its member states' right of recourse to the modes of dispute settlement listed in the United Nations Charter.

Pacific Islands Forum (PIF)

The Pacific Islands Forum (PIF) is composed of sixteen independent or self-governing islands: Fiji, Tonga, Cook Islands, Samoa, the Federated States of Micronesia, Kiribati, Nauru, Niue, Marshall Islands, French Polynesia, New Caledonia, Palau, Papua New Guinea, Solomon Islands, Tuvalu, and Vanuatu alongside Australia and New Zealand. Its key objectives are to “strengthen regional cooperation and integration, including through the pooling of regional resources of governance and the alignment of policies, in order to further Forum members’ shared goals of economic growth, sustainable development, good governance, and security” (PIF Agreement, Art. 2). The organization’s headquarters are in Suva, Fiji.

The Forum was established in 1971 “as a counterpoint” to the South Pacific Commission (SPC) (see SPC profile), which had been set up by the administering countries of UN trustees in the Pacific Ocean to coordinate technical assistance (Braveboy-Wagner 2009: 199). The SPC had been perceived as “paternalistic and metropolitan-centered” (Braveboy-Wagner 2009: 199) and as the islands became independent, beginning in 1962 with Western Samoa, they sought to establish “new organizations which would represent indigenous, rather than colonial, interests” (Fry 1994: 137).

The Pacific Islands Producers Organization (PIPO), set up in 1965, was an early precursor (Haas 1989: 81–4). Its success prompted the creation of the South Pacific Forum as an annual forum to discuss cooperation among the Pacific states. The first meeting, initiated by New Zealand and held in Wellington in August 1971, convened the leaders of Fiji, Tonga, Cook Islands, Western Samoa, and Nauru as well as Australia and New Zealand. It facilitated