

# **Regional Inter-Governmental Organizations in Africa and Asia**

Victor Essien, Fordham Law Library

Evelyn Ma, Yale Law Library

# Regional IGOs in Asia

- ASEAN (Association of South East Asian Nations)
- SAARC (South Asian Association for Regional Cooperation)
- APEC (Asia Pacific Economic Cooperation)

# Association of South East Asian Nations (ASEAN)

- Membership: Founding members; CMLV; Brunei; members with candidate/observer status
- History and Major Documents
  - 1967 ASEAN/Bangkok Declaration
  - 1971 Zone Of Peace, Freedom And Neutrality Declaration
    - principle of non-intervention
  - 1976 Bali Declaration (Declaration Of ASEAN Concord)
    - TAC (Treaty of Amity and Cooperation in Southeast Asia)
    - Signatories: Core members; non-regional members permitted to accede (15 states joined including CJK, Australia, Russia, India and US in 2009)

# The ASEAN Way

- Underlying principle of non-intervention in domestic affairs of member states and non-use of force
  - emphasis on consensus-building and diplomacy instead of legally binding and enforceable commitments and agreements
  - underlying adherence to principle of sovereignty and sovereign equality of states

# What is ASEAN law

- ASEAN Charter entered into force Dec.15 2008
- Three pillars:
  - ASEAN Political-Security Community (APSC)
  - ASEAN Economic Community (AEC) = a single market (ASEAN Economic integration 2015)
  - ASEAN Socio-Cultural Community (ASCC)
- Each pillar has a blueprint and all documents are integrated into a Roadmap for an ASEAN community 2009-2015

# ASEAN integration

- ASEAN vision 2020
- 2015 ASEAN economic integration – ASEAN Economic Community (AEC)
  - A single market and production base
  - A highly competitive economic region
  - A region of equitable economic development
  - A region fully integrated into the global economy
- Is ASEAN a supranational organization with similar mandates as EU?

# ASEAN Charter

- “Conferred legal personality” on ASEAN (Article 3)
- Expressly “permitted ASEAN to conclude treaties” (Article 41(7))
- Member states are obliged to “take all necessary measures, including the enactment of appropriate domestic legislation, to ... comply with all obligations of membership” (Article 5(2))

# ASEAN Governance

- ASEAN Summit
- ASEAN Co-coordinating Council
- ASEAN Community Councils
- Committee of Permanent Representatives to ASEAN
- ASEAN Intergovernmental Commission on Human Rights (AICHR)
- ASEAN Dispute Settlement Mechanism

# ASEAN Summit

- Consists of heads of State or government of member states
- Art.7(3): As the “supreme policy-making body of ASEAN
- Art.20: Decision-making based on “Consultation and consensus”
  - Art. 20(2): “Where consensus cannot be achieved, the ASEAN Summit may decide how a specific decision can be made”
- Limitations
  - Diffuse institutional structure
  - Compliance mechanism (incorporation, interpretation by national courts, lack of oversight)

# Challenges

- Intersection of Member States competencies and ASEAN institutional mandate unclear
- Implementation of ASEAN legal instruments and summit decisions in member states
- Harmonization of ASEAN treaty instruments with summit decisions and recommendations by ASEAN's three Pillars/Communities
- Recourse for review of ASEAN decisions and judicial oversight

# Free Resources

- [ASEAN official website](#)
  - [Basic Documents](#)
  - [Legal Instruments](#)
- [NUS CIL Database](#) of ASEAN and International Law Documents
  - Selected ASEAN and International Law Documents up to 2012
- ASEAN Law Association
  - [ADR](#): Arbitration and Dispute Resolution Laws & Institutions of member states
- Liu et al., [GlobaLex Research Guide on the Trading Systems in the Asian-Pacific Region: APEC, ASEAN and their Members](#) (2011)

# South Asian Association for Regional Cooperation (SAARC)

- History and Membership
  - Post-WWII decolonization; 1974 NIEO Declaration (New International Economic Order)
  - First summit in Dhaka, Dec. 8 1985 with goal to foster regional cooperation among inner South Asian states
  - Members: India, Pakistan, Bangladesh, Bhutan, Nepal, Maldives, Sri Lanka, Afghanistan; some states (including U.S.) with observer status
  - SAFTA Agreement (entered into force 2006) paves the way for South Asian Free Trade Area (SAFTA)
- Charter
  - Preamble: strict adherence to principles of UN Charter and non-alignment; respect for sovereignty equality, territorial integrity, national independence, non use-of-force, non-interference in the internal affairs of states, and peaceful settlement of disputes

# SAARC

- Governance
  - Annual meetings of heads of states; decision-making on basis of strict unanimity
  - Council of Ministers review progress of cooperation and decision-making; Standing Committee as the operational arm
  - Lacks institutional procedure or mechanism for conflict resolution or dispute settlement
- [SAARC](#) website: legal instruments; declarations and statements (summit and ministerial)

# Asia Pacific Economic Cooperation (APEC)

- History and Membership
  - APEC begins as an informal Ministerial-level dialogue group with 12 members in 1989 and now has 21 full members
  - 1994 APEC sets the Bogor Goals of "free and open trade and investment in the Asia-Pacific by 2010 for developed economies and 2020 for developing economies"

# APEC

- Non-binding soft law guidelines - “Decisions made within APEC are reached by consensus and commitments are undertaken on a voluntary basis”
  - Non-binding Investment Principles (NBIP)
  - Best Practice for FTAs and RTAs
- No treaty commitments
  - No dispute settlement mechanism
  - Peer review process
- [APEC](#) website: legal instruments, searchable meeting papers and APEC publications databases

# Regional IGOs in Africa

- AU (AFRICAN UNION)
- ECOWAS (Economic Community Of West African States)

# African Union (AU): Early History & Membership

- The [African Union](#) is the pre-eminent inter-governmental organization in Africa
- Its 53 members encompass all independent States on the continent except Morocco
- Morocco withdrew its membership in 1984 in protest of the decision to extend OAU membership to the Sahrawi Arab Democratic Republic (Western Sahara)
- The OAU is the predecessor of the present-day AU.
- It was established in 1963 by and among the Independent African States [479 UNTS 39 (1963)]

# Objectives of the Continental Organization

## The Casablanca Group vs. The Monrovia Group

- Two rival groups vied for the objectives and direction of the emerging organization.
  - The Casablanca Group, including Morocco, Algeria, Ghana and Egypt was the radical group which championed a political union of Africa.
  - The Monrovia group included Senegal, Liberia and Nigeria and was a more moderate wing opting instead for gradual unity through economic cooperation.
- The organization that emerged in 1963 had the following major objectives:
  - to rid the continent of the remaining vestiges of colonization and apartheid
  - to promote unity and solidarity among African States; to coordinate and intensify cooperation for development
  - to safeguard sovereignty and territorial integrity of Member States and to promote international cooperation within the framework of the United Nations.

# From OAU to AU: A New Beginning

- 1980 Lagos Plan of Action and Final Act
- 1991 Treaty Establishing the African Economic Community. [30 ILM 1241 (1991)]
- 1999 Sirte Declaration
- 2000 Constitutive Act of the African Union

# AU: Main Organs & Institutions

- Assembly of Heads of State and Government (AHSG)
- Executive Council (EC)
- Permanent Representatives' Committee (PRC)
- AU Commission (AUC)
- Peace and Security Council (PSC)
- Pan-African Parliament (PAP)
- Economic, Social and Cultural Council (ECOSOCC)
- African Court of Justice and Human Rights (ACJHR), Partnership for Africa's Development (NEPAD) and its African Peer Review Mechanism (APRM),
- African Central Bank (ACB), African Monetary Fund (AMF), African Investment Bank (AIB)
- Specialized Technical Committees

# Legal Regime

- Three categories:
  - Regulations
  - Directives
  - Recommendations, Declarations, Resolutions and Opinions
- Decision-making
  - Based on consensus and the principle of equitable regional representation

# Economic Community Of West African States (ECOWAS)

## Early History & Membership

- The treaty establishing the Economic Community of West African States (“ECOWAS”) was signed in Lagos, Nigeria on May 28, 1975.
- ECOWAS now has 15 Member States, namely, Benin, Burkina Faso, Cape Verde, Cote d’Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo

# Aims & Institutions

- Aims: to promote cooperation and development in all fields of economic activity
- Institutions:
  - Authority of Heads of State and Government (AHSG)
  - The Council of Ministers (COM)
  - Executive Secretariat (ES)
  - Technical and Specialized Commissions
  - External Auditors and
  - Tribunal

# 1993 Revised Treaty

- Additional community institutions:
  - Community Parliament
  - Economic and Social Council
  - Arbitration tribunal
- The 1975 Treaty Community Tribunal was transformed into a full-fledged Community Court of Justice

# Legal Regime

## Under 1993 Revised Treaty

- AHSG decisions are binding on the Member State and all community institutions
- COM regulations are binding on all subordinate community institutions and bind Member States only upon their approval by the AHSG
- Community legislation was adopted depending on the subject matter under consideration by unanimity, consensus or two-thirds majority

# Supra-nationalism: The New Imperative

- 2006 Supplementary Protocol A/SP.1/06/06 amending the Revised Treaty of 1993 was adopted to accelerate ECOWAS integration process
  - ECOWAS Secretariat was transformed into a nine-member Commission
  - New structure for ECOWAS Parliament
  - Independent Community Court of Justice

# Legal Regime

## Under the Supranational ECOWAS

- Supplementary Acts adopted by the AHSG are binding on the Member States and community institutions
- Regulations have general application and are binding on the Member States and community institutions
- Directives are binding on Member States in terms of the objectives to be realized but Member States are free to adopt modalities they deem appropriate for the realization of such objectives
- Decisions are binding upon all those to whom they are addressed
- Recommendations and Opinions are not legally binding

# AU & ECOWAS: Challenges and Promise

- Challenges:
  - Presence of rival, parallel and competing regional organizations
  - Lack of political will on the part of leaders of Member States
  - Dilemma of relinquishing part of state sovereignty
- Paths of reform:
  - Embracing supra-nationality
  - Stronger emphasis on rule of law and respect for institutions promoting and safeguarding human rights
  - Collective action in conflict prevention, resolution and humanitarian intervention