

PROMOTING COMPLIANCE: AN ASSESSMENT OF ASEAN INSTRUMENTS SINCE THE ASEAN CHARTER

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I. INTRODUCTION

For nearly 47 years of its existence and development, the Association of Southeast Asian Nations (ASEAN) has made much progress on its way to building a cooperative framework for Southeast Asian countries.¹ It has, in fact, made significant contributions to the maintenance and promotion of peace, stability and cooperation for

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1. ASEAN was established in 1967 and currently consists of Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. See Charter of the Association of Southeast Asian Nations, Feb. 24, 1976, 1331 UNTS 243 [hereinafter ASEAN Charter].

development not only in Southeast Asia, but also in the Asia-Pacific region at large.² Until 2007, however, ASEAN operated without a strong legal basis. The founding instrument of the Association, the 1967 Bangkok Declaration, was more of a political declaration than a constitutional treaty.³ Although the number of regional instruments has proliferated, many have not been fully observed. Whereas the 1967 Bangkok Declaration sets out principles and purposes of cooperation and establishes annual meetings of Ministers of Foreign Affairs, a Standing Committee, an ad-hoc Committee, and a National Secretariat in each country, it does not stipulate the Association's legal personality, principles, functions, authorities, decision-making procedures, dispute settlement mechanisms, or any financial contribution arrangements.

Against that background, the adoption of the ASEAN Charter in 2007 was a breakthrough in the evolution of the organization. The ASEAN Charter entrusts the Association with a legal capacity so that it may, to some extent, act independently, and on behalf of, the region as a whole.⁴ It makes clear the Association's objectives and principles.⁵ It officially brings human rights into ASEAN cooperation,⁶ establishes dispute settlement mechanisms in all areas of ASEAN activities;⁷ streamlines ASEAN's structure and defines the Association's decision-making process; and enhances the role of the ASEAN Secretariat. The ASEAN Summit is to be convened biannually instead of in a three-year round as it was before.⁸ The ASEAN Coordinating Council shall

2. The Twenty-sixth ASEAN Ministerial Meeting and Post Ministerial Conference 1993, for example, agreed to establish the ASEAN Regional Forum (ARF) to foster constructive dialogues on political and security issues of common interest and concern, and to make significant contributions to efforts towards confidence-building and preventive diplomacy in the Asia-Pacific region. *About the ASEAN Regional Forum*, ASEAN REGIONAL FORUM, available at <http://aseanregionalforum.asean.org/about.html> (last visited Mar. 19, 2014). Its current participants include Australia, Bangladesh, Brunei Darussalam, Cambodia, Canada, China, Democratic People's Republic of Korea, European Union, India, Indonesia, Japan, Lao PDR, Malaysia, Mongolia, Myanmar, New Zealand, Pakistan, Papua New Guinea, Philippines, Republic of Korea, Russia, Singapore, Sri Lanka, Thailand, Timor-Leste, United States, and Vietnam. *Id.* In addition to the ARF, various mechanisms have been established to promote peace and cooperation in the wider Asia – Pacific region, e.g. ASEAN + 1, ASEAN + 3 and the East Asia Summit. *Id.*

3. ASEAN, *ASEAN Declaration (Bangkok Declaration)* (Aug. 8, 1967), available at <http://cil.nus.edu.sg/rp/pdf/1967%20ASEAN%20Declaration-pdf.pdf> (last visited Mar. 19, 2014).

4. ASEAN Charter, *supra* note 1, art. 3.

5. *Id.* arts. 1, 2.

6. *Id.* arts. 1, 2, 14.

7. *See id.* art. 22(2).

8. *Id.* art. 7(3)(a).

comprise ASEAN Foreign Ministers and meet at least twice a year.⁹ Three Community Councils shall be established, including ASEAN Political and Security Community Council, ASEAN Economic Community Council, and ASEAN Socio-Cultural Community Council.¹⁰ A Committee of Permanent Representatives shall also be appointed.¹¹ The Chair of the ASEAN Summit shall also be the Chair of other key ASEAN bodies. In particular, the Secretary-General of ASEAN shall have an enhanced role to play in monitoring progress in implementing ASEAN decisions and ASEAN agreements, reporting to the ASEAN Summit on important issues which require approval by ASEAN Leaders, and representing ASEAN's views in meetings with external parties.¹²

Since the signing of the ASEAN Charter, more than sixty ASEAN instruments have been concluded.¹³ Commitments have been made across many fields of cooperation. ASEAN is trying to build the ASEAN Community by 2015 on three foundational pillars political-security, economic and social-cultural,¹⁴ and so ensuring compliance by ASEAN Member States with these commitments is a pressing priority.¹⁵ However, it remains unclear how compliance with ASEAN instruments will be ensured and which mechanisms the ASEAN instruments will employ to monitor the translation of state commitments into compliance.

This article aims to examine and assess compliance monitoring mechanisms as provided in the ASEAN Charter and different ASEAN

9. ASEAN Charter, *supra* note 1, art. 8(1).

10. *Id.* art. 9.

11. *Id.* art. 12.

12. *Id.* art. 11.

13. ASEAN Secretariat, TABLE OF ASEAN TREATIES/AGREEMENTS AND RATIFICATION (Oct. 2012), *available at* <http://www.asean.org/images/2012/resources/TABLE%20OF%20AGREEMENT%20%20RATIFICATION-SORT%20BY%20DATE-Web-October2012.pdf> (last visited Mar. 19, 2014) (the Table does not specify which documents are treaties, agreements or instruments) [hereinafter ASEAN SECRETARIAT'S TABLE].

14. In 2003, ASEAN adopted the Declaration of ASEAN Concord II (Bali Concord II), seeking to bring the ASEAN Vision 2020 into reality by setting the goal of building an ASEAN Community by 2020 that would be comprised of three pillars, namely political-security community, economic community and socio-cultural community. In 2007, ASEAN adopted the Cebu Declaration to accelerate the establishment of the ASEAN Community by five years to 2015. In 2009, ASEAN adopted the Cha-am Hua Declaration reaffirming its commitment to building an ASEAN Community by 2015. *Id.*

15. See REPORT OF THE EMINENT PERSONS GROUP ON THE ASEAN CHARTER 4, *available at* <http://www.asean.org/archive/19247.pdf> (last visited Mar. 19, 2014) [hereinafter "EPG REPORT"].

instruments concluded since 2007.¹⁶ For that purpose, the article is divided into four sections including the Introduction and the Conclusion. The second section examines the implementation and compliance monitoring provisions in the ASEAN Charter. The third section assesses different compliance monitoring bodies and mechanisms as stipulated in the ASEAN instruments signed after the ASEAN Charter, including self-report by ASEAN Member States; report by the ASEAN Secretary-General, the ASEAN Secretariat and ASEAN sectoral bodies; review, evaluation and recommendation by monitoring bodies; capacity building and technical assistance; and consultation. The last section argues that, although ASEAN has taken some initial steps to promote implementation, still much more needs to be done to ensure compliance and realize ASEAN's goal of building a common community. Finally, the paper also offers a number of recommendations to improve ASEAN compliance monitoring systems and further ensure implementation of ASEAN instruments. It makes the case for more institutionalized mechanisms to serve coordinating functions and monitor the implementation of existing and future instruments and thereby contribute to further advancing ASEAN in a rules-based direction.

By focusing on "ASEAN instruments," this article limits its scope of assessment to documents that have been collectively concluded by ASEAN Member States, as opposed to agreements concluded between ASEAN as an inter-governmental organization and a third external party pursuant to Article 41(7) of the ASEAN Charter¹⁷ such as, the Agreement between Indonesia and ASEAN on Hosting and Granting Privileges and Immunities to the ASEAN Secretariat.¹⁸ Under the Rules

16. Specifically, the article examines instruments concluded from November 2007 through October 2012.

17. ASEAN Charter, *supra* note 1, art. 41(7) (providing that as an intergovernmental organization, ASEAN may conclude agreements with countries or sub-regional, regional, and international organizations and institutions; the procedure for concluding such agreements has been prescribed by the ASEAN Coordinating Council in consultation with the ASEAN Community Councils).

18. The Agreement between Indonesia and ASEAN on Hosting and Granting Privileges and Immunities to the ASEAN Secretariat was signed on April 3, 2012. *Id.*; see 2012 Agreement between the Government of the Republic of Indonesia and the Association of Southeast Asian Nations (ASEAN) on Hosting and Granting Privileges and Immunities to the ASEAN Secretariat, Indonesia – ASEAN (Apr. 2, 2012), available at <http://cil.nus.edu.sg/rp/pdf/2012%20Agreement%20betw%20Indonesia%20and%20ASEAN%20on%20Hosting%20and%20Granting%20P&I%20to%20ASEC-pdf.pdf> (last visited Mar. 19, 2014) [hereinafter 2012 Indonesia – ASEAN]. This Agreement is not an ASEAN instrument but rather an international agreement by ASEAN as an intergovernmental organization in its conduct of external relations as provided in the ASEAN Charter. ASEAN Charter, *supra* note 1, art. 41(7); see 2012 Indonesia – ASEAN, *supra*.

of Procedure for Conclusion of International Agreements by ASEAN, documents such as the Agreement between Indonesia and ASEAN on Hosting and Granting Privileges and Immunities to the ASEAN Secretariat are now called “international agreements by ASEAN.”¹⁹ This article does not address the agreements concluded by all ten ASEAN Member States with an external party such as, the 2010 Agreement on Cultural Cooperation between the Governments of the Member States of ASEAN and the Government of the Russian Federation.²⁰ It also excludes bilateral agreements concluded between two regional states in their individual capacity and not in their capacity of ASEAN Member States such as, the 2003 Agreement between the Government of the Socialist Republic of Vietnam and the Government of the Republic of Indonesia concerning the delimitation of the continental shelf boundary.²¹

In examining different mechanisms that have been adopted to promote compliance with ASEAN instruments since the ASEAN Charter, this article relies on the Table of ASEAN Treaties/Agreements and Ratification prepared by the ASEAN Secretariat as of October 2012.²² It should be noted that not all ASEAN instruments listed in the Table are legally binding. Instruments such as the 2012 Vientiane Action Programme (VAP) Joint Declaration of the ASEAN Defense Ministers on Enhancing ASEAN Unity for a Harmonized and Secure Community and the 2011 Declaration on ASEAN Unity in Cultural Diversity: Towards Strengthening ASEAN in Community are not

19. See Rules of Procedure for Conclusion of International Agreements by ASEAN (Nov. 16, 2011), available at <http://cil.nus.edu.sg/2011/2011-rules-of-procedure-for-the-conclusion-of-international-agreements-by-asean-adopted-on-17-november-2011/> (last visited May 7, 2014).

20. See 2010 Agreement on Cultural Cooperation between the Governments of the Member States of ASEAN and the Government of the Russian Federation, available at <http://cil.nus.edu.sg/2010/2010-agreement-on-cultural-cooperation-between-the-governments-of-the-member-states-of-the-association-of-southeast-asian-nations-and-the-government-of-the-russian-federation/> (last visited May 7, 2014). Other examples include, among others, the 2011 Memorandum of Understanding between Members of the Association of Southeast Asian Nations (ASEAN) and the World Organization for Animal Health (OIE), the 2009 Memorandum of Understanding between the Governments of the Member Countries of ASEAN and the Government of the People’s Republic of China on Information and Media Cooperation, and the 2008 Agreement on Comprehensive Economic Partnership among Member States of the Association of Southeast Asian Nations and Japan (AJCEP). See ASEAN SECRETARIAT’S TABLE, *supra* note 13.

21. See Agreement between the Government of the Socialist Republic of Vietnam and the Government of the Republic of Indonesia (Jun. 26, 2003), available at <http://123.30.50.199/sites/en/agreementbetweenthegovernmentofthe-gid-engf2f41-nd-enge190a.aspx> (last visited May 7, 2014).

22. See ASEAN SECRETARIAT’S TABLE, *supra* note 13.

treaties *per se* that give rise to legal obligations to ASEAN Member States as in the case of the 2007 ASEAN Convention on Counter-Terrorism or the 2004 ASEAN Treaty of Mutual Legal Assistance in Criminal Matters. It is, however, not the purpose of this article to further categorize the ASEAN instruments in the Table or make a fine distinction between ASEAN treaties from treaty-like documents. For its own purpose, this article considers all ASEAN instruments listed in the Table as commitments made by ASEAN Member States that need to be translated into reality. Further, in the context of ASEAN, binding documents do not always include compliance monitoring provisions whereas monitoring mechanisms may exist for a number of non-legally binding instruments.

II. COMPLIANCE MONITORING PROVISIONS IN THE ASEAN CHARTER

1. Report of the Eminent Persons Group

ASEAN announced its intention to create a “legal and institutional framework” through a Charter in the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter in 2005.²³ To implement the Declaration, ASEAN established the Eminent Persons Group on the ASEAN Charter to brainstorm “bold and visionary ideas”²⁴ and recommend key elements of the ASEAN Charter. The Eminent Persons Group consists of ten eminent individuals from all ASEAN Member States nominated by their respective governments. In 2006, the Eminent Persons Group submitted its Report to the ASEAN Summit. In the Report, the ASEAN Eminent Persons Group stated that “ASEAN’s problem is not one of lack of vision, ideas, and action plans”²⁵ but the “real problem” facing ASEAN is “ensuring compliance and effective implementation.”²⁶ The Eminent Persons Group expressed its concerns that delay in implementation or non-compliance would not only be counter-productive to ASEAN cooperation and integration efforts, but also undermine ASEAN’s credibility and disrupt the process towards building a common community.²⁷ The Eminent Persons Group

23. *Kuala Lumpur Declaration on the Establishment of the ASEAN Charter* (Dec. 12, 2005), available at <http://www.asean.org/news/item/kuala-lumpur-declaration-on-the-establishment-of-the-asean-charter-kuala-lumpur-12-december-2005> (last visited Mar. 15, 2014).

24. EPG REPORT, *supra* note 15, at Executive Summary para. 1.

25. *Id.* para. 44.

26. *Id.* para. 6, para. 44.

27. *Id.* para. 44.

concluded that ASEAN Member States must take obligations seriously.²⁸ They further emphasized that a culture of commitment must be established to honor and implement ASEAN decisions, agreements, and timelines.²⁹

As a result, the Eminent Persons Group put forward the following recommendations to ensure that obligations are taken seriously. First, ASEAN dispute settlement mechanisms should be established in all fields of cooperation and they should include compliance monitoring, advisory, consultation and enforcement mechanisms.³⁰ Second, the ASEAN Secretariat should be entrusted with monitoring ASEAN Member States' compliance with ASEAN instruments and the ASEAN Secretary-General should report the findings to ASEAN leaders on a regular basis,³¹ including cases of non-compliance.³² Third, ASEAN should have the power to take measures to redress cases of serious breach of commitments to important agreements.³³ In this regard, the Eminent Persons Group did not further elaborate as to what would constitute a "serious breach of commitments" and "important agreements," perhaps leaving it to be worked out later or resolved on a case-by-case basis.³⁴

For the Eminent Persons Group, the key to ensuring effective implementation of ASEAN instruments is through: (1) establishing comprehensive dispute settlement mechanisms, and (2) entrusting the ASEAN Secretary-General with the role of monitoring. Unfortunately, the Report of the Eminent Persons Group does not specify how to ensure the ASEAN Secretary-General's monitoring role. It leaves the job of monitoring compliance with all ASEAN agreements and decisions to the ASEAN Secretary-General without mentioning the need to strengthen the capacity of the ASEAN Secretariat. It does not touch upon many other important mechanisms to promote and ensure compliance, including self-reporting by ASEAN Member States, monitoring by expert committees, verification, evaluation, reviewing, consultation, and technical assistance.

28. *Id.* para. 6.

29. EPG REPORT, *supra* note 15, Executive Summary para. 6.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. See generally EPG REPORT, *supra* note 15. At a time when many governments in the region still prefer to see ASEAN activities carried out in accordance with the traditional ASEAN norms and principles, including non-interference, non-confrontation, and quiet diplomacy, the recommendations of the EPG, especially those on sanctions against violators, could be considered extraordinary. *Id.*

2. Compliance Monitoring Provisions in the ASEAN Charter

The ASEAN Charter, signed in November 2007 and entered into force in December 2008,³⁵ incorporates many recommendations of the Eminent Persons Group. Specifically, the ASEAN Charter establishes ASEAN dispute settlement mechanisms in all fields of cooperation.³⁶ In regards to implementing and monitoring the implementation of ASEAN instruments, it provides that the ASEAN Coordinating Council, composed of the Ministers of Foreign Affairs of ASEAN Member States, shall coordinate the implementation of ASEAN agreements.³⁷ Each of the three ASEAN Community Councils (Economic, Political/Security, and Socio/Cultural) ensures the implementation of relevant decisions of the ASEAN Summit, coordinates the work of different sectors under its purview, and submits reports and recommendations to the ASEAN Summit on matters under its purview.³⁸ The ASEAN Sectoral Ministerial Bodies implement the agreements and decisions of the ASEAN Summit under their respective purview.³⁹ Further the ASEAN Secretary-General shall facilitate and monitor the progress in the implementation of ASEAN agreements and decisions.⁴⁰ The ASEAN Secretary-General shall also submit an annual report on the work of ASEAN to the ASEAN Summit.⁴¹ In terms of compliance monitoring, this presents a step forward for ASEAN to have a formal division of labor in implementing and monitoring all ASEAN instruments. With the ASEAN Charter, at least there is now one body responsible for implementing the ASEAN instruments, agreements, and decisions, and another one in charge of monitoring and reporting on the progress of the implementation to ASEAN leaders.

Nevertheless, how the ASEAN Secretary-General carries out this monitoring function is a different story. Although the ASEAN Charter maintains that the ASEAN Secretary-General shall facilitate and monitor the implementation of all ASEAN agreements and decisions, there is no provision that authorizes the ASEAN Secretary-General to

35. See *ASEAN Foreign Ministers to Celebrate the Entry into Force of the ASEAN Charter at the ASEAN Secretariat*, ASEAN, available at <http://www.asean.org/news/item/press-release-asean-foreign-ministers-to-celebrate-the-entry-into-force-of-the-asean-charter-at-the-asean-secretariat-asean-secretariat-9-december-2008> (last visited Feb. 11, 2014).

36. See ASEAN Charter, *supra* note 1, art. 22(2).

37. *Id.* art. 8(2)(b).

38. *Id.* art. 9(4).

39. *Id.* art. 10(1)(b).

40. *Id.* art. 11(2)(b).

41. ASEAN Charter, *supra* note 1, art. 11(2)(b).

determine the appropriate indicators or tests to evaluate compliance, verify cases of violations, or simply request ASEAN Member States to submit their implementation reports. It is not clear how the ASEAN Secretary-General will be able to gather sufficient compliance information or whether the ASEAN Secretary-General can obtain necessary information from non-state sources such as NGOs while monitoring Member States' implementation of ASEAN instruments. Nor is it clear how the ASEAN Secretary-General can assemble all pieces of information on the implementation of hundreds of agreements and decisions, a number that will keep increasing in the future, and convey them effectively in one general, annual report to the ASEAN Summit. One may wonder what effect this report will have "on the work of ASEAN"⁴² and whether it will be a generic, annual report on ASEAN's main activities or a specific and separate report on Member States' compliance with ASEAN instruments.⁴³ Clearly, ASEAN needs more standard procedures for the ASEAN Secretary-General to fulfil these monitoring responsibilities under the ASEAN Charter.

It is important to note that while the ASEAN Charter has a provision on monitoring the implementation of ASEAN instruments in general, it does not specifically deal with the issue of monitoring compliance with the ASEAN Charter itself. It may be argued that the ASEAN Charter shall be subject to the same general monitoring scheme undertaken by the ASEAN Secretary-General with respect to other ASEAN instruments. But again, the question remains concerning the details of how the ASEAN Secretary-General fulfils the job. The ASEAN Charter does not have a provision requesting ASEAN Member States or ASEAN sectoral bodies to support the monitoring role of the ASEAN Secretary-General by providing periodic reports on their implementation of the ASEAN Charter.

Article 5 of the ASEAN Charter simply states that "ASEAN Member States shall take all necessary measures, including the enactment of appropriate domestic legislation, to effectively implement the provisions of the Charter."⁴⁴ In case of serious breach of the ASEAN Charter or noncompliance, Article 20 instructs that "the matter shall be referred to the ASEAN Summit for a decision."⁴⁵ It is not clear, however, who may refer the matter to the ASEAN Summit and what

42. *Id.* art. 7(3)(a).

43. *See Evolving Towards ASEAN 2015: ASEAN Annual Report 2011-2012*, ASEAN (July 1, 2012), available at <http://www.asean.org/resources/publications/asean-publications/item/asean-annual-report-2011-2012> (last visited Mar. 24, 2014).

44. ASEAN Charter, *supra* note 1, art. 5(2).

45. *Id.* art. 20(4).

procedure must be followed. There are no criteria to determine when a breach is serious enough to merit being referred to the ASEAN Summit. Further, it is unclear whether the term 'noncompliance' applies to any of the ASEAN instruments or only the ASEAN Charter.

Under Article 27(2) of the ASEAN Charter, and pursuant to the Rules of Procedure for Reference of Noncompliance to the ASEAN Summit,⁴⁶ ASEAN Member States only have the right to refer to the ASEAN Summit cases of noncompliance with the findings, recommendations or decisions resulting from an ASEAN dispute settlement mechanism, not those of noncompliance with the ASEAN Charter or other ASEAN instruments. Even if an ASEAN Member State brings a case of serious violation of an instrument to the ASEAN Summit, there is not much the ASEAN Summit could do, except perhaps to issue a statement encouraging concerned parties to comply with the ASEAN Charter since the ASEAN Summit comprises the heads of all ASEAN Member States and is limited by its consensus-based decision-making process.⁴⁷

III. COMPLIANCE MONITORING PROVISIONS IN ASEAN INSTRUMENTS IN THE POST-CHARTER AGE

1. *Monitoring Bodies*

Of the more than sixty ASEAN instruments that have been concluded since the ASEAN Charter up until October 2012, more than 20 instruments contain provisions on compliance monitoring.⁴⁸ However, a great deal of inconsistency exists among these instruments in terms of who monitors whom, who shall submit or receive implementation reports, and what to do with the implementation reports. The ASEAN Charter provides that ASEAN sectoral bodies are implementing bodies.⁴⁹ In many ASEAN instruments, however, they are monitoring bodies. Whereas the ASEAN Charter assigns a monitoring role to the ASEAN Secretary-General,⁵⁰ in many ASEAN instruments, the ASEAN Secretary-General or the ASEAN Secretariat merely serves a technical assistance function without any monitoring mandate. In

46. ASEAN Charter, *supra* note 1.

47. ASEAN Charter, *supra* note 1, art. 20(1) and (2). Providing that, as a basic principle, decision-making in ASEAN shall be based on consultation and consensus. Where consensus cannot be achieved, the ASEAN Summit may decide how a specific decision can be made.

48. See ASEAN SECRETARIAT'S TABLE, *supra* note 13.

49. ASEAN Charter, *supra* note 1, art. 10(1)(b).

50. *Id.* art. 11(2)(b).

some cases, both the ASEAN Secretariat and ASEAN sectoral bodies have monitoring authority. Article 52 of the ASEAN Charter states that, “[i]n case of inconsistency between the ASEAN Charter and another ASEAN instrument, the ASEAN Charter shall prevail.”⁵¹ Yet, this provision is *prima facie* only applicable to ASEAN instruments that were concluded and entered into force prior to the adoption of the ASEAN Charter and not applicable to those concluded after the ASEAN Charter.⁵²

For the three pillars of cooperation, ASEAN has three separate blueprints, namely the 2007 ASEAN Economic Community Blueprint, the 2009 ASEAN Political-Security Community Blueprints, and the 2009 ASEAN Socio-Cultural Community Blueprint. On November 20, 2007, ASEAN Leaders signed the Declaration on the ASEAN Economic Community Blueprint and adopted the ASEAN Economic Community Blueprint to put in place “rules-based systems to realize the establishment of the ASEAN Economic Community by 2015.”⁵³ According to the Blueprint, ASEAN Economic Ministers are responsible for the *overall* implementation of the Blueprint.⁵⁴ Relevant ASEAN sectoral bodies, on the other hand, are held accountable for the specific implementation of the Blueprint.⁵⁵ Furthermore, relevant ASEAN sectoral bodies are also responsible for monitoring the implementation of the Blueprint under their purview.⁵⁶ In other words, two different, and supposedly independent tasks of implementing and monitoring are given to the same ASEAN sectoral bodies. Adding to the complexity, the ASEAN Secretariat also has the responsibility of monitoring the implementation of the Blueprint,⁵⁷ which means that the same function of monitoring is assigned to two different bodies. It may be understood that the monitoring function of ASEAN sectoral bodies is limited to monitoring the implementation of commitments under their

51. *Id.* art. 52(2).

52. According to the ASEAN Charter, “all treaties, conventions, agreements, concords, declarations, protocols and other ASEAN instruments which have been in effect before the entry into force of this Charter shall continue to be valid. In case of inconsistency between the rights and obligations of ASEAN Member States under such instruments and this Charter, the Charter shall prevail.” *Id.* art. 52.

53. ASEAN Economic Community Blueprint (Nov. 20, 2007), *available at* <http://cil.nus.edu.sg/2007/2007-asean-economic-community-blueprint-adopted-on-20-november-2007-in-singapore-by-the-heads-of-stategovernment/> (last visited Mar. 8, 2014) [hereinafter 2007 ASEAN Economic Community Blueprint].

54. *Id.* para. 70 (emphasis added).

55. *Id.*

56. *Id.*

57. *Id.*

purview whereas the ASEAN Secretariat's role is extended to monitoring the overall implementation of the Blueprint. However, if there is any mechanism for coordination between these two monitoring bodies, it is not provided for in the Blueprint.

Under the 2009 ASEAN Socio-Cultural Community Blueprint, the ASEAN Socio-Cultural Community Council is the body responsible for the overall implementation of the Blueprint.⁵⁸ The ASEAN Socio-Cultural Community Council is also responsible for coordination among sectoral bodies in implementing the Blueprint.⁵⁹ All relevant ASEAN ministerial bodies have the responsibility to ensure effective implementation of various elements, actions and commitments in the Blueprint by incorporating them in their respective work plans, mobilizing resources for their implementation, and undertaking national initiatives to meet these commitments.⁶⁰ The ASEAN Secretariat shall monitor the implementation of the 2009 ASEAN Socio-Cultural Community Blueprint with a view toward ensuring that all activities are responsive to the needs and priority of ASEAN.⁶¹

The 2009 ASEAN Political-Security Community Blueprint does not specifically assign a monitoring role to any organ of ASEAN. Instead, it creates the Coordinating Conference for the ASEAN Political-Security Community Plan of Action to serve as a platform for coordinating efforts of various sectoral bodies in implementing the Blueprint.⁶² The ASEAN Political-Security Community Council shall also coordinate the implementation of the Blueprint.⁶³ Hence, there are two bodies responsible for coordination, both of which are comprised of ASEAN Foreign Ministers. No formal division of work between these two bodies is explicitly provided. The difference could be that whereas the Coordinating Conference for the ASEAN Political-Security Community Plan of Action only coordinates efforts within the Political-Security Community, the ASEAN Political-Security Community Council may also coordinate activities that cut across the other Community Councils.⁶⁴ All relevant ASEAN senior official bodies are

58. ASEAN Socio-Cultural Community Blueprint ¶ III.1 (Mar. 1, 2009), available at <http://cil.nus.edu.sg/2009/2009-blueprint-on-the-asean-socio-cultural-community/> (last visited Mar. 17, 2014) [hereinafter 2009 ASEAN Socio-Cultural Community Blueprint].

59. *Id.*

60. *Id.* para. III.2.

61. *Id.* para. III.7.

62. ASEAN Political-Security Community Blueprint ¶ 30 (Mar. 1, 2009), available at <http://cil.nus.edu.sg/2009/2009-blueprint-on-the-asean-political-security-community/> (last visited Mar. 17, 2014) [hereinafter 2009 ASEAN Political-Security Community Blueprint].

63. *Id.*

64. *Id.* para. 31.

responsible for ensuring the implementation of various elements, actions and commitments in the Blueprint.⁶⁵

In addition to these blueprints, some other ASEAN instruments also give the monitoring authority to different ASEAN sectoral bodies while providing the ASEAN Secretariat with little more than a technical or administrative role in the process. The 2012 ASEAN Agreement on Customs, for example, states that the ASEAN Directors-General of Customs Meeting, with the support of the ASEAN Secretariat, shall monitor, review and coordinate all aspects relating to the implementation of the Agreement.⁶⁶ The 2012 Protocol Six on Railways Border and Interchange Stations provides that the ASEAN Senior Transport Officials Meeting is the body responsible for the monitoring, review, coordination and supervision of all aspects relating to implementation of the Protocol⁶⁷ and that the ASEAN Secretariat shall render necessary technical assistance to the ASEAN Senior Transport Officials Meeting.⁶⁸ In fact, few instruments concluded after the ASEAN Charter are fully consistent with the ASEAN Charter in terms of mandating the ASEAN Secretary-General or the ASEAN Secretariat to facilitate and monitor implementation progress. The 2009 ASEAN Trade in Goods Agreement is among the few instruments that give such a mandate to the ASEAN Secretariat. Specifically, under this Agreement, the ASEAN Secretariat has two roles, namely, (1) supporting the ASEAN Economic Ministers and the Senior Economic Officials' Meeting in supervising, coordinating and reviewing the implementation of the Agreement; and (2) monitoring the progress in the implementation of the Agreement.⁶⁹

Interestingly enough, a few ASEAN instruments also establish a separate committee to monitor or facilitate the implementation of commitments contained therein. Most of these instruments were

65. *Id.* para. 29.

66. ASEAN Agreement on Customs art. 53(1) (Mar. 30, 2012), available at <http://www.asean.org/images/archive/DG%2021%2014%20Annex%2003%20AAC%20True%20Certified%20Copy.pdf> (last visited Mar. 19, 2014) [hereinafter 2012 ASEAN Agreement on Customs].

67. Protocol Six: Railways Border and Interchange Stations, art. 7(1) (Dec. 16, 2011), available at <http://www.asean.org/archive/documents/Protocol%206%20Railways%20Border%20and%20Interchange%20Stations.pdf> (last visited Mar. 19, 2014) [hereinafter 2012 Protocol Six on Railways Border and Interchange Stations].

68. *Id.* art. 7(3).

69. 2009 ASEAN Trade in Goods Agreement art. 90(3) (Feb. 26, 2009), available at <http://cil.nus.edu.sg/2009/2009-asean-trade-in-goods-agreement-adopted-on-26-february-2009-in-cha-am-thailand-by-the-economic-ministers/> (last visited Mar. 19, 2014) [hereinafter 2009 ASEAN Trade in Goods Agreement].

concluded in 2009, one year after the ASEAN Charter entered into force. The 2009 Memorandum of Understanding on ASEAN Cooperation in Agriculture and Forest Products, for example, establishes a Joint Committee that includes the Chairperson of the National Focal Points Working Group or Industry Clubs, concerned government officials, representatives of the ASEAN Chambers of Commerce and Industry, relevant private sectors recommended by the National Coordinators, and the ASEAN Secretariat as the secretary of the Joint Committee to oversee the implementation of the cooperation scheme.⁷⁰ Similarly, the 2009 ASEAN Framework Agreement on the Facilitation of Inter-State Transport and the 1998 ASEAN Framework Agreement on the Facilitation of Goods in Transit also set up a Transit Transport Coordinating Board composed of a senior official nominated from each ASEAN Member State and a representative of the ASEAN Secretariat to oversee and monitor the Agreement's implementation.⁷¹ In the same vein, the 2009 ASEAN Mutual Recognition Arrangement on Dental Practitioners creates the ASEAN Joint Coordinating Committee on Dental Practitioners comprising no more than two appointed representatives from each ASEAN Member State to facilitate and review the implementation of the Mutual Recognition Arrangement.⁷² Under the 2009 ASEAN Comprehensive Investment Agreement, the ASEAN Investment Area (AIA) Council shall oversee, coordinate, and review the implementation of the Agreement. The AIA Council shall also facilitate the avoidance and settlement of disputes arising from the Agreement, and consider and recommend to the ASEAN Economic Ministers any amendments to the Agreement.⁷³ Yet

70. Memorandum of Understanding on ASEAN Cooperation in Agriculture and Forest Products Promotion Scheme para. 19 (Nov. 11, 2009), *available at* <http://www.asean.org/archive/publications/ADS2009.pdf> (last visited Mar. 19, 2014) [hereinafter Memorandum of Understanding on ASEAN Cooperation in Agriculture and Forest Products Promotion Scheme].

71. ASEAN Framework Agreement on the Facilitation of Inter-State Transport art. 27(2) (Dec. 10, 2009), *available at* <http://cil.nus.edu.sg/2009/2009-asean-framework-agreement-on-the-facilitation-of-inter-state-transport/> (last visited Mar. 19, 2014); 1998 ASEAN Framework Agreement on the Facilitation of Goods in Transit art. 29(2) (Dec. 16, 1998), *available at* <http://cil.nus.edu.sg/1998/1998-asean-framework-agreement-on-the-facilitation-of-goods-in-transit-signed-on-16-december-1998-in-hanoi-vietnam-by-the-transport-ministers/> (last visited Mar. 19, 2014).

72. ASEAN Mutual Recognition Arrangement on Dental Practitioners art. VI (Feb. 26, 2009), *available at* <http://cil.nus.edu.sg/2009/2009-asean-mutual-recognition-arrangement-on-dental-practitioners-signed-on-26-february-2009-in-cha-am-thailand-by-the-economic-ministers/> (last visited Mar. 19, 2014) [hereinafter 2009 ASEAN Mutual Recognition Arrangement on Dental Practitioners].

73. ASEAN Comprehensive Investment Agreement art. 42, *available at* <http://cil.nus.edu.sg/2009/2009-asean-comprehensive-investment-agreement-signed-on-26->

another example is the 2009 ASEAN Trade in Goods Agreement, which provides that ASEAN Economic Ministers shall, for the purposes of the Agreement, establish an ASEAN Free Trade Area (AFTA) Council that includes one ministerial-level nominee from each Member State and the ASEAN Secretary-General to supervise, coordinate and review the implementation of the Agreement.⁷⁴

2. Reports on Implementation Progress by the ASEAN Secretariat or ASEAN Sectoral Bodies

Among the ASEAN instruments that were concluded after the ASEAN Charter and have provisions on implementation reports,⁷⁵ the majority tend to place reporting obligations on an ASEAN organ rather than on ASEAN Member States. Among those that assign reporting obligations to an ASEAN organ, some require the ASEAN Secretariat to submit reports and an ASEAN sectoral body to receive reports. Others, conversely, assign an ASEAN sectoral body the responsibility to submit reports and the ASEAN Secretariat to receive reports. As indicated below, there is no consistency with regards to clarifying the reporting and reported bodies. Nor is there a compelling rationale provided for requiring the ASEAN Secretariat to report in one case and an ASEAN sectoral body to report in another case.

For the 2007 ASEAN Economic Community Blueprint, as mentioned in the first part of this section, relevant ASEAN sectoral bodies are responsible for implementing the Blueprint,⁷⁶ whereas the ASEAN Secretariat is tasked with monitoring compliance with the Blueprint.⁷⁷ Implementation of the above programs is to be monitored, reviewed and reported to all stakeholders.⁷⁸ The Blueprint, however, does not require the implementing body, ASEAN sectoral bodies, to report to the ASEAN Summit on the progress of implementation of the Blueprint, but instead assigns that role to the ASEAN Secretary-General.⁷⁹

The 2007 Declaration on the ASEAN Economic Community Blueprint nonetheless states that the implementing body, that is, the concerned sectoral Ministers, not the ASEAN Secretary-General, shall

february-2009-in-cha-am-thailand-by-the-economic-ministers/ (last visited Mar. 17, 2014) [hereinafter 2009 ASEAN Comprehensive Investment Agreement].

74. ASEAN Trade in Goods Agreement, *supra* note 69, art. 90.

75. See ASEAN SECRETARIAT'S TABLE, *supra* note 13.

76. ASEAN Economic Community Blueprint, *supra* note 53, para. 70.

77. *Id.* para. 73.

78. *Id.* para. 70.

79. *Id.* para. 71.

report to the ASEAN Summit through the ASEAN Economic Community Council.⁸⁰ As a result, there is an inconsistency between the Blueprint and the Declaration, the latter was signed to adopt the Blueprint. For cooperation in the financial sector, the Blueprint further provides that “an appropriate implementation mechanism in the form of regular progress reports to the Leaders” shall be established,⁸¹ despite the fact that there already exists a provision as to how reports on the implementation of all sectors of cooperation under the Blueprint shall be submitted to the ASEAN Leaders. Also, there is no further provision as to who shall submit the report, what counts as an “appropriate” mechanism, and what the content of these reports should be.

Under the 2009 ASEAN Socio-Cultural Community Blueprint, similarly, reports on implementation progress are not prepared by the implementing countries, that is, ASEAN Member States, or the implementing bodies, which are ASEAN sectoral bodies, but by the monitoring body – the ASEAN Secretary-General.⁸² The three bodies that receive the reports include the ASEAN Summit, the ASEAN Socio-Cultural Community Council and the relevant sectoral ministerial meetings.⁸³ It is not clear in this Blueprint how the ASEAN Secretary-General can produce the reports when there is no provision obligating the implementing bodies to provide the Secretary-General with the necessary information.

The 2009 ASEAN Political-Security Community Blueprint also has a similar reporting mechanism whereby implementation progress shall be reported annually by the ASEAN Secretary-General to the annual ASEAN Summit through the ASEAN Political-Security Community Council.⁸⁴ In 2011, however, ASEAN Leaders signed the Bali Declaration on ASEAN Community which aims to promote the implementation of the three blueprints and strengthen cooperative activities in these three pillars. In this Declaration, it is the ASEAN Coordinating Council (ACC), not concerned Ministers from ASEAN member states or the ASEAN Secretary-General, who shall prepare and submit implementation reports to the ASEAN Summit.⁸⁵

80. Declaration on the ASEAN Economic Community Blueprint (Nov. 20, 2007), available at <http://cil.nus.edu.sg/2007/2007-declaration-on-the-asean-economic-community-blueprint-signed-on-20-november-2007-in-singapore-by-the-heads-of-stategovernment/> (last visited Mar. 17, 2014).

81. ASEAN Economic Community Blueprint, *supra* note 53, para. 74.

82. ASEAN Socio-Cultural Community Blueprint, *supra* note 58, para. III.A.4.

83. *Id.*

84. *Id.*

85. Bali Declaration on ASEAN Community in a Global Community of Nations “Bali

In addition to these instruments on building the ASEAN Community, reporting mechanisms by the ASEAN Secretariat or ASEAN sectoral bodies are also provided in a few other ASEAN instruments. Pursuant to the 2009 ASEAN Trade in Goods Agreement, the ASEAN Secretariat shall regularly report to the ASEAN Free Trade Area Council on the progress of implementing of the Agreement.⁸⁶ According to the 2007 Memorandum of Understanding on the ASEAN Power Grid, the tasks of reporting and receiving reports are not handled by the ASEAN Secretariat or the ASEAN Secretary-General, but rather by two different ASEAN bodies. The Heads of ASEAN Power Utilities/Authorities (HAPUA) Council, assisted by the ASEAN Power Grid Consultative Committee, has to make the reports. Reports shall then be submitted to the ASEAN Ministers on Energy Meeting at the ASEAN Senior Officials Meeting on Energy.⁸⁷ The ASEAN Secretariat does not have any major role to play in this process. Similarly, under the 2009 ASEAN Comprehensive Investment Agreement, the ASEAN Coordinating Committee on Investment (CCI) is responsible for making implementation reports and submitting them to the ASEAN Investment Area (AIA) Council through the Senior Economic Officials Meeting (SEOM).⁸⁸

The 2009 Memorandum of Understanding on ASEAN Cooperation in Agriculture and Forest Products Promotion Scheme, on the other hand, provides that reports are made by an ASEAN entity, not an ASEAN official body.⁸⁹ Specifically, the ASEAN Forest Products Industry Club may report its implementation to the overseeing Joint Committee on Forest Productions Promotion Scheme.⁹⁰ Thus, in this case, the reporting body is an ASEAN private entity and the recipient

Concord III," para. C(3) (2011), *available at* http://www.preventionweb.net/files/23664_baliconcordiii28readyforsignature29.pdf (last visited Mar. 25, 2014).

86. ASEAN Trade in Goods Agreement, art. 90(3) (Feb. 26, 2009), *available at* <http://cil.nus.edu.sg/2009/2009-asean-trade-in-goods-agreement-adopted-on-26-february-2009-in-cha-am-thailand-by-the-economic-ministers/> (last visited Mar. 24, 2014).

87. Memorandum of Understanding on the ASEAN Power Grid, art. V (Aug. 23, 2007), *available at* <http://cil.nus.edu.sg/tp/pdf/2007%20Memorandum%20of%20Understanding%20on%20the%20ASEAN%20Power%20Grid-pdf.pdf> (last visited Mar. 24, 2014).

88. 2009 ASEAN Comprehensive Investment Agreement, *supra* note 73, art. 42.

89. ASEAN entities are not official ASEAN organs. They are entities that support the ASEAN Charter, especially its purposes and principles and are listed in Annex 2 of the ASEAN Charter. The ASEAN Charter provides that ASEAN "may engage" with these institutions. *See* ASEAN Charter, *supra* note 1, art. 16.

90. Memorandum from Understanding on ASEAN Cooperation in Agriculture and Forest Products Promotion Scheme, *supra* note 70, art. IV.

body is a committee that has both public and private representatives. It should be noted, however, that this Memorandum of Understanding uses the term *may* instead of *shall*,⁹¹ which suggests that reporting is an option, not an obligation.⁹²

Another example of a complicated reporting mechanism can be found in the Protocol Six on Railways Border and Interchange Stations which ASEAN concluded in 2012 to implement the 1998 ASEAN Framework Agreement on the Facilitation of Goods in Transit. The 2012 Protocol provides that the ASEAN Senior Transport Officials Meeting is the monitoring body.⁹³ The 1998 ASEAN Framework Agreement on the Facilitation of Goods in Transit, however, gives the monitoring authority to the Transit Transport Coordinating Board.⁹⁴ Under the 2012 Protocol, the ASEAN Senior Transport Officials Meeting has the obligation to submit, through the ASEAN Secretariat, regular reports on the progress of implementation of the Protocol to the Transit Transport Coordinating Board.⁹⁵ The Transit Transport Coordinating Board, in turn, has the obligation under the 1998 Framework Agreement to submit reports on implementation progress to relevant ASEAN Ministerial bodies.⁹⁶ In other words, the 1998 Framework Agreements and its 2012 Protocol establish two different monitoring bodies. The monitoring body in the 2012 Protocol has to report to the monitoring body in the 1998 Framework, which then has to report to relevant ASEAN Ministerial bodies. The process is even more confusing when the ASEAN Secretariat, though given only a technical assistance role, has the obligation to submit evaluation reports directly to the Transit Transport Coordinating Board for further actions.⁹⁷

Yet another example of unclear reporting responsibilities is the mechanism established for the 2010 ASEAN Plan of Action for Energy

91. *Id.*

92. *Id.* (Emphasis added.)

93. 2012 Protocol Six on Railways Border and Interchange Stations, *supra* note 67, art. 7(1).

94. ASEAN Framework Agreement on the Facilitation of Goods in Transit art. 29(2) (1998), available at <http://cil.nus.edu.sg/1998/1998-asean-framework-agreement-on-the-facilitation-of-goods-in-transit-signed-on-16-december-1998-in-hanoi-vietnam-by-the-transport-ministers/> (last visited Feb. 1, 2014) [hereinafter 1998 ASEAN Framework Agreement on the Facilitation of Goods in Transit].

95. 2012 Protocol Six on Railways Border and Interchange Stations, *supra* note 67, art. 7(2).

96. 1998 ASEAN Framework Agreement on the Facilitation of Goods in Transit art. 29(3) (1998).

97. "Further actions" are not specified in article 29(4) of the 1998 ASEAN Framework Agreement on the Facilitation of Goods in Transit.

Cooperation 2010-2015.⁹⁸ Under this instrument, reports shall be jointly prepared by two institutions, the ASEAN Centre for Energy (ACE) and the ASEAN Secretariat, and submitted to the annual ASEAN Senior Officials Meeting on Energy and the ASEAN Ministers on Energy Meeting meetings. However, there is no instruction provided in the instrument, regarding a division of work between these two institutions.⁹⁹ Having a similar degree of ambiguity in the chain of responsibilities, the 2012 ASEAN Agreement on Custom asks the ASEAN Secretariat to regularly report to the ASEAN Directors-General of Customs Meeting on the implementation progress¹⁰⁰ and, at the same time, asks the ASEAN Directors-General of Customs Meeting to submit a report to the ASEAN Finance Ministers Meeting.¹⁰¹ Yet, the Agreement on Customs does not clarify whether the report submitted by the ASEAN Directors-General of Customs Meeting to the ASEAN Finance Ministers Meeting is the one prepared by the ASEAN Secretariat.

It is important to note that all of the ASEAN instruments in the examples cited above do not have a provision with respect to the obligations of ASEAN Member States to provide relevant information to the reporting bodies. It is not clear in these instruments how monitoring reports can be prepared, where relevant information can be obtained and how the reports are handled by the recipient bodies. Provisions on required reporting frequency are sometimes clear¹⁰² but other times can be vague¹⁰³ or, in some cases, unavailable altogether. ASEAN, in short, is yet to have a clear reporting system to monitor its Member States' compliance with ASEAN instruments.

3. Self-reporting by ASEAN Member States

Multilateral treaties usually place an obligation on State parties to communicate information and submit reports on the legislative, executive and judiciary measures and programs that they have taken to implement their treaty obligations. Self-reporting is indeed one of the most popular techniques employed internationally to monitor treaty

98. ASEAN Plan of Action for Energy Cooperation 2010 – 2015 Bringing Policies to Actions (2010), available at [http://cil.nus.edu.sg/rp/pdf/2010%20ASEAN%20Plan%20of%20Action%20on%20Energy%20Cooperation%20\(APAEC\)%202010-2015-pdf.pdf](http://cil.nus.edu.sg/rp/pdf/2010%20ASEAN%20Plan%20of%20Action%20on%20Energy%20Cooperation%20(APAEC)%202010-2015-pdf.pdf) (last visited Feb. 1, 2014).

99. *Id.* para. 68.

100. ASEAN Agreement on Customs, *supra* note 66, art. 53(3) (2012).

101. *Id.*

102. Some instruments provide that reports shall be submitted annually.

103. Some instruments provide that reports shall be submitted regularly.

compliance by State parties, whether it is a treaty on human rights, the environment or anti-corruption.¹⁰⁴ Self-reporting also offers State parties an opportunity to review, assess and improve their own treaty implementation records. Compared to other compliance mechanisms such as verification or inspection, self-reporting may be perceived by States as less intrusive and less sensitive in terms of impact on sovereignty, and more acceptable. Treaty monitoring bodies, especially those for a regional organization of developing countries like ASEAN, are usually unable, in terms of technical capacity and human resources, to closely monitor each State party's compliance or to inspect and verify the implementation of every single instrument that a State has ratified.

It makes sense, therefore, for ASEAN to rely on self-reporting by its Member States, at least in the first stage, for purposes of monitoring compliance.¹⁰⁵ The reality, nevertheless, is that self-reporting requirements do not appear very frequently in ASEAN instruments. In the list of ASEAN instruments concluded from 2008 until 2012, the 2009 Initiative for ASEAN Integration Strategic Framework, the Initiative for ASEAN Integration Work Plan 2 (2009 – 2015), and the 2010 Protocol to Amend the Protocol to Provide Special Consideration for Rice and Sugar are among the very few ASEAN instruments that impose a reporting obligation on ASEAN Member States.

The Initiative for ASEAN Integration Strategic Framework and the Initiative for ASEAN Integration Work Plan 2 (2009 – 2015) were adopted on March 1, 2009 with a view to “narrowing the development gap” within ASEAN and enhancing the organization’s competitiveness by regional cooperation “through which the more developed ASEAN Members could help those member countries that most need it.”¹⁰⁶ Under the Initiative, different groups of ASEAN Member States are subject to different reporting requirements. Reporting frequency is clearly provided, according to which ASEAN Member States have to

104. See, for example, human rights and environment treaties deposited with the United Nations Secretary-General. *United Nations Treaty Collections*, UN, available at <http://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=en> and <http://treaties.un.org/pages/Treaties.aspx?id=27&subid=A&lang=en> (last visited Mar. 31, 2014).

105. ABRAM CHAYES & ANTONIA HANDLER CHAYES, *THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS* 154 (1995).

106. *Initiative for ASEAN Integration Strategic Framework and Initiative for ASEAN Integration Work Plan 2 (2009 – 2015)*, para. 1, NAT'L U. SING. (2009), available at <http://cil.nus.edu.sg/2009/2009-initiative-for-asean-integration-iai-strategic-framework-and-iai-work-plan-2-2009-2015-adopted-on-1-march-2009-in-cha-am-thailand-by-the-heads-of-stategovernment/> (last visited Mar. 31, 2014) [hereinafter *2009 Initiative for ASEAN Integration Strategic Framework and Initiative for ASEAN Integration Work Plan 2 (2009–2015)*].

submit their reports to relevant bodies annually. The Initiative for ASEAN Integration Work Plan is also reportedly reviewed on a periodical basis to account for the ASEAN Community building process and the emerging needs of Cambodia, Laos, Myanmar and Vietnam.¹⁰⁷ These countries are required to submit annual reports on the assistance they have received from all sources, concentrating on the utility, impact and effectiveness of the projects benefiting from the assistance. Six other ASEAN Member States (Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand) are also required to submit annual reports on their assistance programs for Cambodia, Laos, Myanmar and Vietnam.¹⁰⁸ Although there is no specific provision with regard to which body shall ultimately consider the reports, since the ASEAN Secretariat is tasked with consolidating them,¹⁰⁹ it may be presumed that the reports by ASEAN Member States shall be sent initially to the ASEAN Secretariat. However, it remains unclear as to which one of the following three bodies the reports shall go to (or whether the reports shall go to all three bodies): the ASEAN Summit, which guides and advises the implementation of the Initiative; the ASEAN Coordinating Council, which provides recommendations to the ASEAN Summit on the Initiative's implementation; or the Initiative for ASEAN Integration Task Force, which provides policy guidelines, directions and general advice on the Initiative for ASEAN Integration Work Plan.¹¹⁰

Another self-reporting mechanism was established under the 2007 Protocol to Provide Special Consideration for Rice and Sugar. The 2007 Protocol was concluded to allow an ASEAN Member State, under exceptional cases, to request a waiver from the obligations imposed under the Agreement on Common Effective Preferential Tariff and its related Protocol, with regard to rice and sugar.¹¹¹ ASEAN Member States that have been granted the waiver have the obligation to submit an annual report for review to the ASEAN Free Trade Area Council.¹¹² The ASEAN Free Trade Area Council shall, at its annual meeting, review the waiver to determine whether the exceptional circumstances

107. *Id.* para. 25.

108. *Id.* para. 23.

109. *Id.*

110. *Id.* paras. 11-13.

111. Protocol to Provide Special Consideration for Rice and Sugar art. 1(1) (Aug. 23, 2007), [available at http://ditjenkpi.kemendag.go.id/website_kpi/files/content/5/Protocol_to_provide_special_consideration_for_rice_and_sugar20071031111849.pdf](http://ditjenkpi.kemendag.go.id/website_kpi/files/content/5/Protocol_to_provide_special_consideration_for_rice_and_sugar20071031111849.pdf) (last visited Feb. 4, 2014).

112. *Id.* art. 5(2).

that justify such waiver still remain and whether the terms and conditions, if any, attached to the waiver are being met.¹¹³ Based on the outcome of the annual review, the ASEAN Free Trade Area Council shall render its decision on whether to continue, modify or terminate the waiver.¹¹⁴ The reporting process is, in short, very clear. The ASEAN Secretary-General or the ASEAN Secretariat does not have any formal role during this whole process. It should be noted that this is not exactly a report on implementation, but rather an update on the exceptional circumstances justifying a waiver from CEPT obligations. Apart from the two cases examined above, there are few, if any, other self-reporting mechanisms established under an ASEAN instrument concluded after the ASEAN Charter until October 2012. This is an indication that, since the ASEAN Charter was adopted, ASEAN instruments usually do not have a strong monitoring mechanism when it comes to self-reporting.

4. Review, Evaluation and Recommendations by Monitoring Bodies

Reporting is certainly one of the popular techniques for monitoring compliance, but it is usually not enough. In many cases, information obtained through reporting is provided by the States under scrutiny and since States tend to emphasize what they have achieved over what they have failed to do, these reports sometimes lack credibility. To resolve this problem, there often needs to be mechanisms through which reports are reviewed, verified and evaluated, and recommendations are made by the monitoring bodies on steps that should be taken to improve compliance.

The International Labour Organization (ILO), for example, has established an elaborate procedure for reviewing and evaluating member States' reports whereby member States have to periodically (every two years for some conventions and five years for others) submit their implementation reports to the reviewing body – the Committee of Experts on the Application of Conventions and Recommendations.¹¹⁵ The Committee, composed of twenty experts, albeit having no investigatory powers, can request a State to provide further specific information and is mandated to make critical evaluations of State

113. *Id.* art. 5(1).

114. *Id.* art. 5(3).

115. See International Labour Organization, Committee of Experts on the Application of Conventions and Recommendations, available at <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang---en/index.htm> (last visited Feb. 5, 2014).

reports. It then makes suggestions to improve implementation, which are published in its annual reports.¹¹⁶

In the World Trade Organization (WTO), all members are subject to the Trade Review Policy Mechanism whereby the Trade Policy Review Body¹¹⁷ reviews and evaluates States' law and policy statements and the Secretariat's reports.¹¹⁸ In preparing its reports, which contain details about State policy, law and practice, the WTO Secretariat seeks the cooperation of member States, but has the sole responsibility for the facts presented and views expressed. Reports of the Secretariat, statements by States and concluding remarks by the Trade Policy Review's Chairperson are all published.¹¹⁹ The aim of the process is to improve the adherence by all members to the rules and commitments made under the Multilateral Trade Agreements, hence contributing to a smoother functioning of the multilateral trade system.¹²⁰

In the area of human rights, State parties to the International Covenant on Political and Civil Rights submit reports to the Human Rights Committee on the measures they have adopted that give effect to the rights recognized.¹²¹ The Human Rights Committee then reviews and examines the reports and offers recommendations to the State parties.¹²² The Committee on the Elimination of Racial Discrimination (CERD)¹²³ was also established under the International Convention on

116. *See id.*

117. The WTO General Council meets as the Trade Policy Review Body. The Trade Policy Review Body is thus open to all WTO members. *See* WTO, *Trade Policy Review Body*, available at https://www.wto.org/english/tratop_e/tpr_e/trbdy_e.htm (last visited Feb. 5, 2014).

118. PEW CTR. ON GLOBAL CLIMATE CHANGE, PEW CHARITABLE TRUST, MRV: A SURVEY OF REPORTING AND REVIEW IN MULTILATERAL REGIMES 8 (2010), available at <http://www.c2es.org/docUploads/survey-reporting-review-multilateral-regimes.pdf> (last visited Mar. 17, 2014).

119. *Id.*

120. *Trade Policy Review Mechanism ("TPRM")*, WORLD TRADE ORG., available at https://www.wto.org/english/tratop_e/tpr_e/annex3_e.htm (last visited Feb. 4, 2014).

121. International Covenant on Civil and Political Rights (ICCPR) art. 40.1, Dec. 16, 1966, 999 U.N.T.S. 171.

122. The Human Rights Committee (CCPR) is composed of 18 independent experts who are persons of high moral character and recognized competence in the field of human rights. The Committee convenes three times a year for sessions of three weeks duration in Geneva (Switzerland) or New York (United States). *Id.*

123. The Committee on the Elimination of Racial Discrimination (CERD) was the first body created by the UN to monitor actions by States to fulfil their obligations under the Convention on the Elimination of Racial Discrimination. The Committee meets in Geneva, Switzerland and holds two sessions per year consisting of three weeks each to consider state reports, review the implementation, address arising issues, and make recommendations to

the Elimination of Racial Discrimination to "make suggestions and general recommendations based on an examination of reports and information received from the State parties."¹²⁴ The Committee on Economic, Social and Cultural Rights,¹²⁵ the Committee on the Elimination of Discrimination against Women,¹²⁶ the Committee against Torture,¹²⁷ the Committee on the Rights of the Child,¹²⁸ and the Committee on Migrant Workers¹²⁹ were similarly established by their relevant human rights treaties to review and evaluate reports and supervise the protection and promotion of those rights recognized by the treaties.

Among all ASEAN instruments listed in the ASEAN Secretariat's Table, the 2007 ASEAN Economic Community Blueprint and the 2009 ASEAN Socio-Cultural Community Blueprint are among the rare cases where there is actually specific guidance for evaluating implementation. As provided in the 2007 ASEAN Economic Community Blueprint, the ASEAN Secretariat shall develop and maintain a set of statistical indicators, including an integrated tariff and trade database system and the ASEAN Economic Community scorecards, to monitor and assess compliance with each element of the ASEAN Economic Community.¹³⁰ In fact, the ASEAN Secretariat has set up the ASEAN Economic Community Scorecard to identify actions that must be undertaken by ASEAN collectively and by its Member States individually to establish

state parties. *Id.*

124. International Convention on the Elimination of All Forms of Racial Discrimination art. 9.2, Dec. 21, 1965, 660 U.N.T.S. 195.

125. The Committee on Economic, Social and Cultural Rights (CESCR) is the body of independent experts, originally established under the ECOSOC, empowered to monitor the implementation of the International Covenant on Economic, Social and Cultural rights. The Committee was established in 1985 by ECOSOC Resolution 1985/17. *Id.*

126. The Committee on the Elimination of Discrimination against Women (CEDAW) was established under the International Convention on the Elimination of Discrimination against Women to monitor the implementation of the Convention.

127. The Committee against Torture (CAT) was established pursuant to art. 17 of the Convention and began to function on January 1, 1988 to monitor the implementation of the Convention. In addition to the reporting procedure, the Convention establishes three other mechanisms: consideration of individual complaints, undertaking of inquiries and examination of inter-state complaints.

128. The Committee on the Rights of the Child (CRC) was established pursuant to art. 43 of the Convention on the Rights of the Child to supervise the implementation of the Convention.

129. The Committee on Migrant Workers (CMW) monitors the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. G.A. Res. 45/158, U.N. GAOR, 45th Sess., Supp. No. 49A, U.N. Doc. A/45/49, art. 72 (Dec. 18, 1990).

130. 2007 ASEAN Economic Community Blueprint, *supra* note 53, para. 73

the ASEAN Economic Community by 2015. The ASEAN Economic Community Scorecard components include: (1) qualitative and quantitative indications of the ratification, adoption and transposition into domestic laws, regulations and administrative procedures of agreed obligations and commitments within the prescribed timeframes as specified in the ASEAN Economic Community Blueprint; (2) tracking implementation of agreements/commitments and achievement of milestones in the ASEAN Economic Community Strategic Schedule; and (3) statistical indicators on the ASEAN Economic Community.¹³¹ The ASEAN Economic Community Scorecard is structured into: (1) single market and production base; (2) competitive economic region; and (3) equitable economic development and integration into the global economy.¹³² Evaluation levels of the Scorecard are categorized as “fully implemented,” “on-going,” “not fully-implemented,” and “not yet commenced.” The dates for reporting the Scorecard are in April and October annually. Monitoring of the ASEAN Economic Community using the Scorecard mechanism started in 2008 and is being conducted in four phases: 2008-2009, 2010-2011, 2012-2013, and 2014-2015.¹³³ A report on Phase I (2008-2009) and Phase II (2010-2011) has already been released. The ASEAN Economic Community Scorecard is also used to review and evaluate the implementation of the 2010 ASEAN Strategic Action Plan for Small and Medium Enterprises Development (2010-2015).¹³⁴ The implementation and monitoring of the Strategic Action Plan shall be further guided by a medium-term Strategic Schedule and annual work programs.¹³⁵

The 2009 ASEAN Socio-Cultural Community Blueprint also provides that the ASEAN Secretariat shall fulfil its monitoring function by developing and adopting indicators and systems to monitor and assess the progress of implementation of the various elements and actions in the Blueprint.¹³⁶ In 2011, two years after the conclusion of the 2009 ASEAN Socio-Cultural Community Blueprint, the ASEAN

131. ASEAN Secretariat, *ASEAN Economic Community Scorecard: Charter Progress toward Regional Economic Integration Phase I (2008-2009) and Phase II (2010-2011)*, ASEAN (2012), available at <http://www.asean.org/resources/publications/asean-publications/item/asean-economic-community-scorecard-3> (last visited Mar. 19, 2014).

132. *Id.*

133. *Id.*

134. *2010 ASEAN Strategic Action Plan for SME Development (2010 – 2015)*, ASEAN, art. 6 (Aug. 25, 2010), available at <http://cil.nus.edu.sg/2010/2010-asean-strategic-action-plan-on-sme-development-2010-2015/> (last visited Mar. 18, 2014) [hereinafter *2010 ASEAN Strategic Action Plan for SME Development (2010 – 2015)*].

135. *Id.*

136. 2009 ASEAN Socio-Cultural Community Blueprint, *supra* note 58, at III.D

Secretariat officially submitted to ASEAN sectoral bodies under the ASEAN Socio-Cultural Community, the development of the ASEAN Socio-Cultural Community Scorecard to assess the achieved goals, targets and outcomes and the ASEAN Socio-Cultural Community Blueprint Implementation-focused Monitoring System to monitor the implementation of activities and programs under the Blueprint.¹³⁷ It is anticipated that the report of the ASEAN Secretary-General to the ASEAN Leaders on the implementation of the ASEAN Socio-Cultural Community Blueprint will comprise: (1) a quantitative implementation-focused monitoring Review of the ASEAN Socio-Cultural Community Blueprint; (2) a quantitative Scorecard of the ASEAN Socio-Cultural Community - 2012 and 2015; and (3) a brief qualitative assessment of progress that states the challenges and suggests solutions.¹³⁸ Information that the monitoring system can provide includes: (1) number of actions taken by ASEAN sectoral bodies or ASEAN Member States; (2) actions that remain unattended; (3) levels of cooperation; (4) levels of intervention; (5) outputs of projects and activities and (6) the status of implementation and activities. The ASEAN Socio-Cultural Community Scorecard and Implementation-focused Monitoring System for the ASEAN Socio-Cultural Community Blueprint Implementation were endorsed by the Senior Officials Committee in 2011.¹³⁹

For most of the other ASEAN instruments, the guidelines and procedures for monitoring, reviewing and evaluating implementation are not that specific. The 2009 ASEAN Trade in Goods Agreement, for example, provides that the ASEAN Secretariat shall have monitoring, reporting and supporting roles, and the ASEAN Economic Ministers Meeting and the ASEAN Free Trade Area Council shall have supervising, coordinating and reviewing roles.¹⁴⁰ However, it does not specify what the ASEAN Secretariat would do to monitor, and what the ASEAN Economic Ministers Meeting and the ASEAN Free Trade Area Council would do to supervise. Similarly, the 2012 ASEAN Agreement on Customs gives the supervising authority on all aspects of the Agreement implementation to one body, the ASEAN Directors-General

137. See Misran Karmain, *Development of the ASEAN Socio-Cultural Community Scorecard* (ASCC Scorecard) (May 10, 2011), available at http://www.anamai.moph.go.th/download/Scan_ASCC.pdf (last visited Mar. 5, 2014).

138. *Id.*

139. ASEAN Secretariat, *Mid-Term Review of the ASEAN Socio-Cultural Community Blueprint* (2009-2015), available at [http://www.ascan.org/images/resources/2014/Apr/FA_Consolidated_Final_MTR_Report_FINAL-WEB\[1\].pdf](http://www.ascan.org/images/resources/2014/Apr/FA_Consolidated_Final_MTR_Report_FINAL-WEB[1].pdf) (last visited May 7, 2014).

140. 2009 ASEAN Trade in Goods Agreement, *supra* note 69, art. 90.

of Customs Meeting,¹⁴¹ and gives the monitoring authority to another body, the ASEAN Secretariat. Nonetheless, there are no further details on how the implementation of the Agreement shall be supervised and monitored.¹⁴² In a different case, the 2012 Protocol Six on Railways Border and Interchange Stations gives all relevant authorities (supervising, reviewing, coordinating and monitoring) to only one body (the ASEAN Senior Transport Officials Meeting),¹⁴³ but again, provides no instructions as to how the ASEAN Senior Transport Officials Meeting shall fulfil its job.

5. Capacity Building and Technical Assistance

No matter how detailed and well-designed they are, reporting and review mechanisms alone may not be able to ensure effective implementation of all ASEAN instruments when certain ASEAN Member States lack the capacity to implement the instruments to which they are parties. To address the issue of lack of capacity, ASEAN has adopted an “ASEAN minus X” formula to give less developed countries a grace period by allowing them to delay the implementation of certain instrument provisions. The ASEAN Charter provides that, with regard to the implementation of economic commitments, the “ASEAN minus X” formula may be applied where there is a consensus to do so.¹⁴⁴ Under the framework of the ASEAN Free Trade Area, for example, six ASEAN original members (Thailand, Indonesia, Malaysia, the Philippines, Singapore and Brunei) would go ahead with their Common Effective Preferential Tariff by 2003, while Cambodia, Laos, Myanmar and Vietnam are given more time (until 2015) to catch up with their tariff reduction measures. It should be noted, however, that this formula is only applicable to certain economic instruments.¹⁴⁵ In fact, there have been fewer instruments adopting this formula in recent years.¹⁴⁶

141. 2012 ASEAN Agreement on Customs, *supra* note 66.

142. *Id.*

143. 2012 Protocol Six on Railways Border and Interchange Stations, *supra* note 67, art. 7(1), (3).

144. ASEAN Charter, *supra* note 1, art. 21(2).

145. *Id.*

146. In August 2012, ASEAN Member States signed the Memorandum of Understanding among the Governments of the Participating Member States of the Association of Southeast Asian Nations (ASEAN) on the Second Pilot Project for the Implementation of a Regional Self-Certification System. Implementing the Memorandum of Understanding among the Governments of the Participating Member States of the Association of Southeast Asian Nations on the Second Pilot Project for the Implementation of a Regional Self-Certification System, Exec. Ord. 142, 142 O.G. s. 2013 (Oct. 14, 2013) (Phil.).

ASEAN Member States, especially Cambodia, Laos, Myanmar and Vietnam, need substantial assistance to strengthen their capacity for implementing ASEAN instruments. The ASEAN Secretariat also needs assistance to fulfil its monitoring responsibility, as well as to complete many other legal tasks it has been assigned under the ASEAN Charter. An examination of ASEAN instruments concluded in recent years, however, suggests that capacity-building assistance for ASEAN Member States has only been provided in a limited number of instruments. Furthermore, no instrument has specifically mentioned measures to strengthen the ASEAN Secretariat's monitoring capacity.

As stated in the 2007 ASEAN Economic Community Blueprint, for ASEAN to establish an economic community by 2015, different measures must be carried out to build and strengthen the individual and institutional capacity of regional governments so as to ensure the smooth implementation of economic and trade programs.¹⁴⁷ The Blueprint also emphasizes that the ASEAN Economic Community will have to address the development divide and accelerate the integration of Cambodia, Laos, Myanmar, and Vietnam through the Initiative for ASEAN Integration and other regional initiatives. Major areas of cooperation where capacity building activities need to be taken include the industry sector,¹⁴⁸ recognition of professional qualifications, closer consultation on macroeconomic and financial policies, trade financing measures, enhanced infrastructure and communications connectivity, development of electronic transactions through e-ASEAN, integrating industries across the region to promote regional sourcing, and the private sector.¹⁴⁹

The 2009 ASEAN Socio-Cultural Community Blueprint also has different provisions on capacity building. Capacity building is provided in labor management,¹⁵⁰ information and communication technology,¹⁵¹ civil service,¹⁵² poverty reduction,¹⁵³ health,¹⁵⁴ social justice and welfare,¹⁵⁵ the environment,¹⁵⁶ and cultural creativity, among others.¹⁵⁷

147. See 2007 ASEAN Economic Community Blueprint, *supra* note 53, para. 19.

148. *Id.* para. 73.

149. *Id.* para. 7.

150. 2009 ASEAN Socio-Cultural Community Blueprint, *supra* note 58, para. 12.

151. *Id.* para. 14.

152. *Id.* para. 17.

153. *Id.* para. 19.

154. *Id.* para. 22.

155. 2009 ASEAN Socio-Cultural Community Blueprint, *supra* note 58, 11, para. 27.

156. *Id.* para. 31.

157. *Id.* para. 14.

To ensure its effective implementation, the 2009 ASEAN Socio-Cultural Community Blueprint tasks relevant ASEAN sectoral bodies to identify and implement technical studies or training programs on issues, areas, or topics where capacity building supports are required and to establish appropriate capacity building programs to assist new Member States in enhancing the achievement of the ASEAN Socio-Cultural Community.¹⁵⁸

Similarly, the 2009 ASEAN Comprehensive Investment Agreement emphasizes the importance of according special and differential treatment to the newer ASEAN Member States through technical assistance to strengthen their capacity in relation to investment policies and promotion, including in areas such as human resource development and highlight commitments in areas of interest to the newer ASEAN Member States. It recognizes that commitments by each newer ASEAN Member State may be made in accordance with its individual stage of development.¹⁵⁹

6. Consultation

Consultation is a process where state parties come together to share implementation experience, promote understanding and awareness, discuss ways to overcome difficulties encountered in implementation, provide advice and assistance in the implementation process, and prevent disputes from arising. As this is a rather facilitative and non-confrontational process, it would be assumed to be an ASEAN popular measure to promote and ensure compliance. However, very few ASEAN instruments adopted since the ASEAN Charter actually have provisions on consultation.

From 2008 to 2010, ASEAN concluded four agreements on air services cooperation, namely the 2008 ASEAN Memorandum of Understanding on Cooperation relating to Aircraft Accident and Incident Investigation, the 2009 ASEAN Multilateral Agreement on the Full Liberalization of Air Freight Services, the 2009 ASEAN Multilateral Agreement on Air Services and the 2010 ASEAN Multilateral Agreement on the Full Liberalization of Passenger Air Services. These are among the few ASEAN instruments that have provisions on consultation as a way to promote compliance. The 2008 ASEAN Memorandum of Understanding on Cooperation relating to Aircraft Accident and Incident Investigation mentions very briefly that participating Parties will consult each other from time to time to ensure

158. *Id.* para. 17.

159. 2009 ASEAN Comprehensive Investment Agreement, *supra* note 73, art. 14.

the implementation of this Memorandum of Understanding.¹⁶⁰ Three other agreements on air services have an almost identical provision (Article 17) on consultation, according to which the aeronautical authorities of the Contracting Parties shall consult with one another from time to time with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of these Agreements.¹⁶¹ Unless otherwise agreed, such consultations shall begin at the earliest date possible, but no later than sixty days from the date the other contracting party or parties receive, through diplomatic or other appropriate channels, a written request, including an explanation of the issues to be raised. Once the consultations have been concluded, all the contracting parties as well as the ASEAN Secretary-General shall be notified of the results.¹⁶²

IV. CONCLUSION: THE WAY FORWARD

As reflected in the 2006 Report of the Eminent Persons Group, ASEAN does recognize that the real problem it faces is to ensure effective implementation and compliance with instruments that it has concluded.¹⁶³ It understands that non-compliance or delay in implementation may not only hinder regional cooperation and integration efforts, but also undermine its credibility and disrupt the process toward building a common community.¹⁶⁴ Initial steps to establish various mechanisms to promote the implementation of ASEAN instruments have been taken. First and foremost, the ASEAN Charter creates a division of work according to which the ASEAN Sectoral Ministerial Bodies have the responsibility to implement all ASEAN agreements,¹⁶⁵ the ASEAN Coordinating Council shall

160. 2008 ASEAN Memorandum of Understanding on Cooperation, *supra* note 159, art. 7.

161. See 2009 ASEAN Multilateral Agreement on Air Services, and the 2010 ASEAN Multilateral Agreement on the Full Liberalization of Passenger Air Services art. 16, available at <http://www.asean.org/communities/asean-economic-community/item/asean-multilateral-agreement-on-the-full-liberalisation-of-air-freight-services-manila-20-may-2009> (last visited Mar. 27, 2014); 2009 ASEAN Multilateral Agreement on Air Services art. 16, available at <http://www.asean.org/communities/asean-economic-community/item/asean-multilateral-agreement-on-air-services-manila-20-may-2009-2> (last visited Mar. 27, 2014); 2010 ASEAN Multilateral Agreement on the Full Liberalization of Passenger Air Services art. 16, available at <http://cil.nus.edu.sg/2010/2010-asean-multilateral-agreement-on-full-liberalisation-of-passenger-air-services/> (last visited Mar. 27, 2014).

162. *Id.*

163. EPG REPORT, *supra* note 15, para. 6.

164. *Id.* para. 44.

165. ASEAN Charter, *supra* note 1, art. 10(1).

coordinate the implementation,¹⁶⁶ and the ASEAN Secretary-General shall monitor the progress of implementation.¹⁶⁷ Various ASEAN instruments concluded in the post-Charter age have further detailed their expected forms of compliance mechanisms. Some ASEAN instruments have even established separate committees to monitor or facilitate implementation progress. Some have specific guidance on how implementation is reviewed and evaluated, by using, for example, the ASEAN Economic Community Scorecard and the ASEAN Socio-Cultural Community Scorecard.

Nevertheless, there is still a long way to go for ASEAN to have effective mechanisms that can ensure compliance as the Eminent Persons Group suggested. While the ASEAN Charter obliges ASEAN sectoral bodies to implement ASEAN instruments in general,¹⁶⁸ there is no provision regarding a similar obligation of ASEAN Member States. Although the ASEAN Charter authorizes the ASEAN Secretary-General to monitor the progress of implementation of all ASEAN instruments and decisions,¹⁶⁹ there are no guidelines or rules of procedure for the ASEAN Secretary-General and the ASEAN Secretariat to do their jobs. Among the instruments that have been concluded after the ASEAN Charter until October 2012, the majority do not have compliance monitoring provisions.

Under the instruments that do have compliance monitoring provisions, many issues remain, such as unclear institutional design, inconsistent procedures, overlapping authorities, lack of guidelines, and in many cases, an absence of stronger monitoring measures like review, verification or recommendations. Some instruments ask one specific body to monitor the implementation, while assigning another body to supervise and review the implementation.¹⁷⁰ Some give all responsibilities in terms of monitoring, supervising, supporting and facilitating to one single body, but do not clarify what those monitoring, overseeing and supervising functions imply.¹⁷¹ No instrument gives the

166. *Id.* art. 8(2)(b).

167. *Id.* art. 11(2)(b).

168. *Id.* art. 10(1)(b).

169. *Id.* art. 11(2)(b).

170. According to the 2009 ASEAN Trade in Goods Agreement, the supervising, coordinating and reviewing role belongs to the ASEAN Economic Ministers and the Senior Economic Officials' Meeting while the ASEAN Secretariat is assigned to monitor the progress in the implementation of the Agreement and assist the ASEAN Economic Ministers and the Senior Economic Officials' Meeting in supervising, coordinating and reviewing the implementation of the Agreement. See 2009 ASEAN Trade in Goods Agreement, *supra* note 69, art. 90(3).

171. Under the 2012 Protocol Six on Railways Border and Interchange Stations, for

monitoring bodies the power to make recommendations for specific ASEAN Member States to improve their implementation records. The ASEAN Secretariat is dependent on ASEAN Member States to provide compliance data; yet, not all ASEAN Member States are equally willing to share, or capable of sharing, relevant sufficient data. For ASEAN, compliance and reporting problems are also, at least partially, attributed to the lack of capacity. Some ASEAN Member States may have the resources that would enable them to comply and report on their compliance. Others, however, may fall short.

It is important, therefore, that ASEAN has guidelines, rules of procedure, or standard operating procedures for reporting and monitoring compliance with ASEAN instruments. Reporting procedures need to be clear and consistent, the implementing states and bodies need to submit reports to the monitoring bodies and not the other way around. Reporting frequency needs to be clarified, whether it is annual reporting for a number of instruments, biennial for some instruments, or on a five-year basis for other instruments. The monitoring bodies should have the right to request an ASEAN Member State to provide specific implementing information and that ASEAN Member State should be required to comply with that request. The monitoring bodies should also be mandated to make critical evaluations of state reports and make recommendations to improve implementation. Measurements and indicators used to evaluate compliance, where applicable, should be further developed. The ASEAN Coordinating Council and the ASEAN Community Councils should have a more active role. The agenda of the ASEAN Summit, the ASEAN Coordinating Council or the ASEAN Community Councils should include a regular item on examining the reports on the progress of implementation of ASEAN instruments. That way, ASEAN Member States will be under more pressure to take their commitments seriously. More efforts should also be made and specific measures should be worked out to strengthen the capacity of ASEAN Member States, especially Cambodia, Laos, Myanmar and Vietnam, to implement ASEAN instruments and decisions, as well as the capacity of the ASEAN Secretariat to provide administrative and technical support

example, the ASEAN Senior Transport Officials Meeting is the body responsible for the monitoring, review, coordination and supervision of all aspects relating to implementation of the Protocol. The 2009 ASEAN Comprehensive Investment Agreement gives the power to oversee, coordinate, review and facilitate the implementation of the Agreement to the ASEAN Investment Area Council. The 2009 ASEAN Trade in Goods Agreement assigns the ASEAN Free Trade Area Council to undertake supervision, coordination and review functions at the same time. *Id.* art. 90(3)(a); *see also* 2012 Protocol Six on Railways Border and Interchange Stations, *supra* note 67, art. 7(1); 2009 ASEAN Comprehensive Investment Agreement, *supra* note 73, art. 42(3)(b).

to various sectoral bodies that coordinate the implementation of ASEAN instruments and to assist in monitoring the compliance with an increasing number of ASEAN instruments and decisions.

For these recommendations to be realized, more political will is needed. ASEAN Member States need to recognize that it is in their own interest and the interest of the organization to take stronger actions to implement various cooperative instruments that they have concluded. A strengthened compliance monitoring system is a must if ASEAN wants to cultivate a culture of honoring and implementing commitments and reach the goal of building a rules-based community.