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Economic Integration in the Asian Region: Harmonization of Law

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Introduction

"Economists say what needs to be done and it is up to the legal profession to figure out how to do it" - Former ASEAN Sec. Gen. Rodolfo C. Severino citing a maxim

Harmonization of laws, as a field of academic study, is normally viewed from a comparative law perspective wherein the purpose is to determine which country's legal rules offer or express the "better standard." This better standard will then be used as the basis for the harmonized rules. Comparative legal studies, however, assume that the points of comparison have already been established, that the areas and issues of law on which the laws of two countries differ have already been identified. Further, if the purpose of the comparison is to harmonize two or more countries' laws, then it also presupposes the identification of the rationale or justification for harmonization. Any attempt at harmonization-related comparative legal studies without clarifying these prior theoretical concerns would be, in a manner of speaking, putting the cart before the horse or, to use another metaphor, to undertake a journey without a road map.

After all, since harmonization is not a self-justifying undertaking, it becomes intelligible only after its purpose has been identified.[2] Without it, the comparison of the specific rules of different nations will lack direction and risks being a meandering academic endeavor. This caveat seems particularly relevant to the Association of Southeast Asian Nations or ASEAN[3] which is trying to integrate the economies of its members. However, as will be explained further below, there presently exists no literature dealing with these preliminary but very important tasks.

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[2] Martin Boodman, The Myth of Harmonization of Laws, 39 American Journal of Comparative Law 699, at p. 723.

[3] The ASEAN is composed of ten member countries: Malaysia, Myanmar, Singapore, Thailand, Brunei, Philippines, Indonesia, Vietnam, Laos, and Cambodia. It has a total population of about 500 million, a total area of 4.5 million square kilometers, a combined gross domestic product of US$737 billion, and a total trade of US$ 720 billion. See ASEAN Overview at http://www.aseansec.org/64.htmhttp://www.aseansec.org/64.htm visited May 27, 2003.

The purpose of this paper, therefore, is to fill the void by providing the standard or criteria by which the scope and depth of harmonization of laws in the ASEAN may be delineated. Primarily because the ASEAN has, since 1992, considered the economic integration of its members as a priority organizational goal, this paper intends to draw the justification and standards from the economic theories on integration, which were adopted for the situation of developing countries.

Whereas most legal writings on regional economic integration have dealt with the utility of the law in building the machinery for integration - that is, by establishing the institutions and processes as well as the legal framework for the abolition of barriers to regional economic interaction - less attention has been devoted to the possible utility of economic theories in establishing that legal framework.[5] This paper, proceeding on the assumption that the legal aspects of building a regional economy can benefit from the theories and principles underlying such economy, is therefore an attempt to minimize this imbalance.

For sure, this is not the first attempt to write about the need for legal harmonization in the region.[6] Prior works have been made on harmonization of patent laws[7], on environmental laws, and on competition laws.[8] All of these prior works have attempted to establish the case for legal harmonization in a specific area of law. However, as far as can be gleaned from the existing body of literature,[9] none of these attempted to explore the utility of regional economic integration theories as a normative argument for the harmonization

[5] As Prof. Trachman wrote, even the body of material dealing with European Union law has not substantially utilized economic literatures. See Joel P. Trachman, Institutions for International Economic Integration: The Theory of the Firm and the Theory of International Economic Organization: Toward Comparative Institutional Analysis," 17 Journal of International Law of Business 470, at p. 473.

[6] Some of the earlier works are that of Purificacion Valera-Quisumbing, "ASEAN Legal Cooperation: Quest and Challenge," 1 ASEAN Law & Society Journal 1; and Teuku Mohammad Radhie, "Harmonization of Laws: Issues and Prospects in ASEAN Law, Technology, and Development," 1 ASEAN Law & Society Journal 50. Note, however, that these were written long before the idea of economic integration had taken hold in the ASEAN - at a time when ASEAN heads of state agreed *not* to discuss integration. Hence, Valera-Quisumbing wrote about harmonization as a cohesion-building measure whereas Radhie wrote about harmonization as an aspect of economic cooperation and not integration. A much later example is the discussion on regional harmonization of laws given by Prof. Mochtar Kusuma-Atmadja at the Seminar on Legal Aspects of Regional Cooperation conducted by the Asian Development Bank on April 29, 1996 (a copy of Kusuma-Atmadja's presentation is available at http://www.adb.org/Documents/Conference/Seminar_Cooperation/coop2000.asp?p visited on July16, 2003). Again, however, this presentation merely discusses the process of harmonization and does not offer any non-normative argument for such harmonization based on theories of regional economic integration. A non-normative argument for harmonization maintains that harmonization per se of a certain area of law should be undertaken whereas a normative argument, besides stating the need for harmonization, identifies a standard or a norm superior to or better than those existing to which such existing standards must conform through harmonization (see David W. Leebron, Lying Down with Procrustes: An Analysis of Harmonization Claims, in Bhagwati and Hudec (eds.), Fair Trade and Harmonization [Cambridge, Massachusetts: MIT Press, 1996], Vol. 1, p. 43.)

[7] Christian H. Nguyen, "A Unitary ASEAN Patent Law in the Aftermath of TRIPs," 8 Pacific Rim Law & Policy Journal 453.

[8] Dr. Lawan Thanadsillapakul, "Competition Laws and Economic Integration in ASEAN", at http://members.tripod.com/asialaw/articles/lawancomp1.htm visited on June 25, 2003.

[9] One must also say that limited body of literature may be due to what has been observed as the minor role of the law in the development of the ASEAN - relegated merely to facilitating, on a minimalist level, ASEAN machinery. See *e.g.* Mary E. Hiscock, "Changing Patterns of Regional Law Making in Southeast Asia", 39 St. Louis Law Journal 933, p. 937.

of a specific field of law, particularly international economic law.[10] Considering that the ASEAN is increasingly assuming the status of an organization for economic integration, this omission is significant. Thus, this paper hopes to address this lacuna and be the first to use theories on economic integration as a justification and a standard for legal harmonization in the ASEAN while, at the same time, explore the utility of the law or, more specifically, the harmonization of laws to advance a specific economic objective (*i.e.*, economic integration).

Known for conducting its affairs with informality and dialogues rather than rigid rules, the ASEAN has never been described as a legalistic organization.[11] Established not by a treaty but by a mere declaration of its founders, it has been known for the minimalist role it has given the law in governing its affairs. It does not have the equivalent of a Rome Treaty which serves as the European Union's constitution. Neither does it have an ASEAN Court of Justice or an ASEAN Parliament and it is unlikely that it will do so in the near future.

Since 1992, however, there has been a marked erosion of the ASEAN's reluctance to permit the law to have a more substantial impact in its affairs. It has begun to integrate the economies of its members. Its members have concluded an increasing number of treaties and agreements.[12] It has likewise set up a dispute settlement mechanism not unlike that of the World Trade Organization.[13]

More relevant to this paper is the fact that the ASEAN has also begun to consider legal harmonization among its members in certain areas of law. For instance, at their Sixth Summit in Hanoi, Vietnam on December 16, 1998, the ASEAN Heads of State called for the creation of policy and legal environment to facilitate cross-border electronic commerce.[14] Thereafter, a feasibility study commissioned by the organization on a common regional strategy for electronic commerce recommended the establishment of a common legal framework in e-space and an Electronic Commerce Code of Practice by "end 2003."

[10] It is true that Thanadsillapakul, *supra* note 9, discussed the reinforcement function of regional ASEAN fair competition rules in regional integration. However, his discussion of the rationale for regional rules does not examine the implications of integration theories in providing a non-normative argument for harmonization.

[11] *The ASEAN Way and the Rule of Law*, an address given by Rodolfo Severino, ASEAN Secretary-General at the International Law Conference on ASEAN Legal Systems and Regional Integration, Asia-Europe Institute, Kuala Lumpur, Malaysia (September 3, 2001).

[12] The more important of these agreements include the Framework Agreement on Enhancing ASEAN Economic Cooperation (1992), Agreement on the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area (1992), Framework Agreement on Services (1995), ASEAN Framework Agreement on the Facilitation of Goods in Transit (1998) and Agreement on the ASEAN Investment Area (1998).

[13] Protocol on Dispute Settlement Mechanism (1996).

[14] ASEAN Heads of State, Hanoi Plan of Action, paragraph 2.8, at http://www.aseansec.org/summit/6th/prg_hpoa.htm, visited on July 10, 2003.

Regional Economic Integration

In order to make a case for the utility of the law in facilitating the attainment of the goals of economic integration, it becomes necessary to identify what those goals are from the point of view of economic theory.

Regional economic integration refers to the "amalgamation of separate economies into larger regions"[15] under the basic assumption that a "superior economic use of resources"[16] could be obtained thereby.[17] Just as any other economic activity, the ultimate objective of integration is an increase in welfare among the countries participating in the integration. Depending on the degree of integration sought, the amalgamation of the participating countries' national economies into one regional economy involves various schemes ranging from the removal of tariff and non-tariff barriers to the unification of economic policies. Thus, the classification of integration schemes is normally based on the degree and schemes thereof. For instance, Ali M. El-Agraa classifies them as follows:

> (i) Free trade areas where the member nations remove all trade [tariff and non-tariff] impediments among themselves but retain their freedom with regard to the determination of their policies vis-a-vis the outside world (the non-participants)...;
>
> (ii) Customs unions which are very similar to free trade areas except that member nations must conduct and pursue common external commercial relations, for instance, they must adopt common external tariffs (CETs) on imports from the non-participants...;

[15] Ali M. El-Agraa, The Theory and Measurement of International Economic Integration (London: Macmillan Press Ltd., 1989), p. 1. Note that El-Agraa refers to it as both a process and a state of affairs. (*Id.*)

[16] Thomas Heller and Jacques Pelkmans, The Federal Economy: Law and Economic Integration and the Positive State, in Mauro Cappelletti, Monica Seccombe, and Joseph Weiler (eds.), Integration Through Law (Berlin: Walter de Gruyter, 1986), Vol. 1, Book 1, p. 246.

[17] In his earlier work on the topic, Bela Balassa also defines "regional economic integration" as a process and a state of affairs - as a process, it encompasses measures designed to abolish discrimination between economic units belonging to different national states and, as a state of affairs, it can be represented by the absence of various forms of discrimination between national economies. See Bela Balassa, The Theory of Economic Integration (Homewood, Illinois: Richard D. Irwin, Inc., 1961), p.1. Balassa, however, is quick to qualify his definition with the implicit assumption that the removal or absence of trade barriers actually leads to greater economic intercourse, that is, actual economic integration. Where the removal of such barriers does not actually lead to greater economic interaction and interdependence, then there is no actual integration. Still another definition is that of Miroslav N. Jovanovic which refers to as a process by which countries merge into larger entities in order to increase the welfare of the nation or the group. See M.N. Jovanovic, General Introduction: Theory and Measurement, in Miroslav N. Jovanovic (ed.), International Economic Integration (London: Routledge, 1998), Vol. 1, p.1. These definitions, incidentally, do not necessarily contradict each other. Rather, these definitions merely give "the different sides of the same coin" - that of Jovanovic defines it by stating its ultimate objective, that of El-Agraa states in general how it is effected, and that of Balassa states in greater detail this process or state of affairs.

(iii) Common markets which are customs unions that also allow for free factor mobility across national member frontiers, i.e. capital, labor, enterprise should move unhindered between the participating countries ...;

(iv) Complete economic unions which are common markets that ask for complete unification of monetary and fiscal policies, i.e. a central authority is introduced to exercise control over these matters so that existing member nations effectively become regions of one nation; [and]

(v) Complete political integration where the participants literally become one nation, i.e. the central authority needed in not only controls monetary and fiscal policies but is also responsible to a central parliament with the sovereignty of a nation's government.[18]

As earlier mentioned, the ultimate objective of integration is an increase in welfare among the participating countries. Theoretically, there are two ways by which this increase in welfare can be achieved by integration: the first is a redistribution of income within and among the participating countries, and the second is the generation of increased income. In more specific terms, Ali M. El-Agraa enumerates the possible sources of gains from integration.

At the customs union and free trade area level, the possible sources of economic gain can be attributed to:

i. Enhanced efficiency in production made possible by increased specialization in accordance with the law of comparative advantage;

ii. Increased production levels due to better exploitation of economies of scale made possible by the increased size of the market;

iii. An improved international bargaining position, made possible by the larger size, leading to better terms of trade;

iv. Enforced changes in economic efficiency brought about by enhanced competition; and,

[18] Ali M. El-Agraa, *supra* note 13, at p. 2. The classifications offered by other scholars are basically the same as that of El-Agraa. That of Balassa, however, does not include complete political integration. For tabular representations of these classifications, see e.g. Miroslav N. Jovanovic, *supra* note 22, at p. 2, and Jacques Pelkmans, The Institutional Economics of European Integration, in Capelletti, Seccombe, Weiler (eds.), Integration Through Law (Berlin: Water de Gruyter, 1986), Vol. 1, p. 318, at pp. 332-333.

v. Changes affecting both the amount and quality of the factors of production due to technological advances.

Further sources of gain become possible at the common market or economic union level due to:

i. Factor mobility across the borders of member nations;

ii. The coordination of monetary and fiscal policies; and

iii. The goals of near full employment, higher rates of economic growth and better income distribution becoming unified targets.[19]

Although the theory of regional economic integration was first developed and adapted among developed countries, this has not prevented developing countries from using it. Indeed, a vast majority of existing integration arrangements involves developing countries.[20] This has raised questions - and a full-blown debate - about its relevance. One assessment is that integration among developing countries was often "a waste of time and resources".[21] An opposing view considers that "the body of theory developed for economic integration in the advanced world is even more appropriate" for developing countries.[22]

The classical or orthodox integration theory evaluates the effectiveness of integration, *i.e.*, removal of tariff and non-tariff barriers among the participating countries, in terms of its resource reallocation effects which, in turn, is determined by its Trade Creation (TC) and Trade Diversion (TD) effects.[23] TC occurs the substitution of a more expensive domestic product of a participating country with a cheaper product of another participating country. TD occurs through the substitution of a cheaper product of a non-participating country with that of a more expensive product of a participating country. If TC is greater than TD, integration is considered effective or beneficial.

[19] Ali M. El-Agraa, *supra* note 13, at p. 3

[20] For a survey of regional integration arrangements among developing countries, see R.J. Langhammer & U. Hiemenz, Regional Integration Schemes in Operation, in Miroslav N. Jovanovic (ed.), International Economic Integration, Vol. IV, p. 525. See also Ali M. El-Agraa et al., Economic Integration Worldwide (New York: St. Martin's Press, 1997).

[21] See, *e.g.*, M.N. Jovanovic, General Introduction: Theory and Measurement, in Miroslav N. Jovanovic (ed.), International Economic Integration (London: Routledge, 1998), Vol. 1, p. 11. This statement, however, may be viewed as a negative assessment of the inefficacious implementation of REI in several groupings rather than a belief in its theoretical inapplicability to developing countries.

[22] Ali M. El-Agraa, *supra* note 17, at p. 99.

[23] Another effect that may occur in a free trade area but not in a customs union is trade deflection which occurs when imports from a non-participant is deflected through a participating country which has the lowest tariff rates for the rest of the world. This problem, however, is addressed by establishing rules-of-origin among the participants, that is, the free trade area arrangements may only be invoked if the goods "originate" from a participating country.

Among developing countries, however, integration will always lead to more TD than by TC for several reasons.[24] The first reasong is that developing countries have a low level of resource utilization, which gives rise to the question of how can there be a beneficial reallocation of resources - and its assumed effect of more efficient utilization of resources - when the resources in question are not being utilized in the first place.[25] To put it simply, there is little or nothing to reallocate. The second reason is the lack of complementariness among their respective national economies.[26] Developing countries have essentially the same market structure and products, thus, they would be competing with one another for the same markets, instead of becoming inter-dependent. Besides the improbability of efficient resource reallocation, the substantial disparities in the level of development of the national economies of the participating countries would make it difficult to apportion the benefits of integration throughout the region[27] thereby negating mutuality of gains.

The use of the classical or orthodox method alone in the evaluation of gains from integration schemes among developing countries has been questioned. The orthodox theory rests on the premise that participation in integration is based on the need for free trade to reduce inefficiency in domestic industries.[28] Developing countries, however, proceed from a totally different need which is to address mainly the problem of lack of market size and its attendant problems, *e.g.*, economic underdevelopment, idle resources, market distortions, lack of infrastructure and technology, etc., commonly referred to as internal (scale) and external diseconomies.[29] Indeed, it has been pointed out that a major obstacle to the development of their industries is the insufficient size of their individual markets hence the need for integration to create a bigger one.[30] It has likewise been argued that, contrary to the example of integration among developed countries, TD may even be beneficial in integrating the economies of developing countries under certain conditions such as temporariness and transparency.[31]

Thus, a new neoclassical analysis of integration among developing countries was formulated, proceeding from an entirely different developmental viewpoint.[32] Under this approach, the integrated (*i.e.*, bigger) regional market is viewed as beneficial *per se* for its potential to bring about economies of scale

[24] On this subject, see *e.g.* R.J. Langhammer & U. Hiemenz, The Rationale of Regional Integration Schemes Among Developing Countries, M.N. Jovanovic, General Introduction: Theory and Measurement, and P. Robson, Theory of Integration in Developing Countries, in Miroslav N. Jovanovic (ed.), International Economic Integration (London: Routledge, 1998), Vol. 1, Ali M. El-Agraa, supra note 17, p. 90, and Innwon Park, Regional Integration Among the ASEAN Nations (Westport: Praeger, 1995), p. 2.

[25] See R.J. Langhammer & U. Hiemenz, *supra* note 21, at p. 418.

[26] Ali M. El-Agraa, *supra* note 21, at p. 89.

[27] Innwon Park, Regional Integration Among the ASEAN Nations (Westport: Praeger, 1995), p. 2.

[28] P. Robson, Theory of Integration in Developing Countries, in Miroslav N. Jovanovic (ed.), International Economic Integration (London: Routledge, 1998), Vol. 1, p. 391.

[29] *Id.*, p. 392. See also Ali M. El-Agraa, *supra* note 21, p. 98.

[30] Ali M. El-Agraa, *supra* note 21, pp. 90, 99.

[31] R.J. Langhammer & U. Hiemenz, *supra* note 21, at p. 417.

[32] P. Robson, *supra* note 25, at p. 392.

and external economies within and among the participating countries.[33] The theory is that the increased economic intercourse between firms and industries in the bigger regional market will bring about the optimal use of the region's resources (economies of scale) as well as provide opportunities for region-wide interdependence and distribution of know-how among these firms and industries (external economics).[34] As for the problem of apportioning benefits among countries that are in different stages of development, the neoclassical theory allows for remedial and concessionary measures (*e.g.*, delayed implementation of commitments to bring down tariff barriers) to ensure that those who are less developed in the group will not be left behind.[35]

Using the neoclassical theory, the potential economic and non-economic gains from integration between and among developing countries differ from the potential economic gains that developed countries derive from integration.[36] The potential gains for developing countries would be:[37]

a. Economic Benefits
   - Emergence of a regional market that could serve as a "training ground" for the region's industries in terms of quality control, marketing techniques and other ways to improve the competitiveness of the participating countries' products;
   - Achievement of economies of scale with the reduction of the cost of investment per unit of output arising from the enlargement of the market size;
   - Improvement in resource allocation for middle-income developing countries but not for countries with low level of resource utilization and industrialization;
   - Enhancement of industrialization by making the expansion of industries viable through the enlargement of the market size;
   - Reduction of costs involving long-term and capital intensive goods (it has been mentioned though that this is also possible in regional cooperation, i.e., it does not require an integration scheme to be effected) that could be achieved by the joint production of public goods; and
   - Protection against adverse developments in world markets.

[33] *Id.* See also Ali M. El-Agraa, *supra* note 21, at p. 98-99.

[34] *Id.*

[35] P. Robson, *supra* note 29,at p. 392.

[36] See discussion on page 14, *supra*.

[37] See the discussion of these benefits in R.J. Langhammer & U. Hiemenz, The Rationale of Regional Integration Schemes Among Developing Countries, in Miroslav N. Jovanovic (ed.), International Economic Integration (London: Routledge, 1998), Vol. 1, p. 420.

b. Non- Economic Benefits
   - Improvement of the bargaining power of participating countries through collective bargaining, vis-a-vis industrialized countries;
   - Building of a consensus on regional political and security issues; and,
   - Provision of a scapegoat for unpopular policy decisions.

In sum, the neoclassical analysis evaluates the viability of integration among developing countries not only in terms of resource allocation but also in terms of its contributions to their developmental objectives.

The ASEAN Integration Model[38]

Bearing in mind El-Agraa is classification of schemes for integration, the ASEAN integration model may be described as a free-trade area[39] coupled with the liberalization of movements of capital and services.[40] As far as may be culled from the preambles, substantive provisions of basic legal documents establishing the foregoing various schemes for integration, as well as the pronouncements of ASEAN officials, the economic principles and objectives underlying integration in Southeast Asia are discussed below.

To encourage investments and industrialization.[41] An undersized market does not allow much for an optimal utilization of the resources of developing countries, hence, the lack of investments. The increase in market

[38] For a detailed discussion of the various ASEAN integration schemes, see Paul J. Davidson, The Legal Framework for International Economic Relations: ASEAN and Canada (Singapore: Institute of Southeast Asian Studies, 1997), and Hans Cristoph Rieger, (Singapore: ASEAN Economic Research Unit. Institute of Southeast Asian Studies, 1991). See also various articles written by ASEAN officials, *e.g.* Rodolfo Severino, Regional Economic Integration: The Challenges Ahead, at http://www.aseansec.org/secgen/sg tcha.htm. Worapot Manupipatpong, ASEAN Economic Integration, at http://www.aseansec.org/secgen/articles/wm aecoi.htm.

[39] See Framework Agreement on Enhancing Economic Cooperation, better known as the Framework Agreement on the ASEAN Free Trade Area on, at http://www.aseansec.org/economic/afta/afta ag1.htm, visited on June 15, 2003; Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area, at http://www.aseansec.org/economic/afta/afta ag2.htm, visited on July 5, 2003; and, Framework Agreement on Services, at http://www.aseansec.org/newasean/menu.asp?action=4&content=5, visited on July 5, 2003.

[40] See Framework Agreement on the ASEAN Investments Area (AIA), at http://www.aseansec.org/newasean/menu.asp?action=4&content=5, visited last July 20, 2003.

[41] See Rodolfo C. Severino, Regional Economic Integration: The Challenges Ahead, at http://www.aseansec.org/secgen/sg tcha.htm, visited on July 21, 2003 ("ASEAN is seeking to increase its attractiveness to investments by integrating itself as a market for goods and services"); Rodolfo C. Severino, The ASEAN Free Trade Area: Moving Ahead on Regional Integration, at http://www.aseansec.org/secgen/sg mari.htm, visited last July 13, 2003 ("The way to attract investments was to move faster on creating a big, regional, integrated market, which investors, particularly in these times, generally prefer to small, national, fragmented economies"), ASEAN Heads of State, Statement on Bold Measures: Sixth ASEAN Summit, par. 1, at http://www.aseansec.org/economic/invest/sum bold.htm, visited on July 22, 2003 ("The financial and economic crisis has severely affected the ASEAN economies and business dynamism in the region. In order to regain business confidence, enhance economic recovery and promote growth, the

size is thus designed to encourage investments that could eventually lead to greater utilization of resources and industrialization.

To facilitate efficient regional reallocation of resources and regional division of labor.[42] Some industrial sectors are fairly more developed than others. Thus, for sectors which are still underdeveloped, integration would encourage utilization and industrialization as discussed earlier. On the other hand, for sectors that are already developed, integration would facilitate a division of labor once the strength of each sector is identified. Thus, insofar as the developed sectors are concerned, the bigger market established by integration can facilitate the efficient reallocation of resources on a regional, if not national, level.[43]

To provide an assured market of considerable size.[44] Integration is also intended to provide the ASEAN member states with a market bigger than their own respective individual markets, where their products and services can enjoy preference. The need for such a bigger, assured market is made more obvious by the deepening integration in regions that serve as their traditional export market: the European Union (EU) in Western Europe and the North America Free Trade Association (NAFTA) in North America. The risk of being excluded from these traditional markets necessitates an alternative market such as that offered by the ASEAN Free Trade Area.[45]

To achieve mutuality of gains.[46] Addressing the concern that the disparities in the levels of development of the member states may result in the failure of the less developed members to benefit from integration, the liberalization process will be gradual and suited to the capacity of these

ASEAN leaders are committed to the realization of the ASEAN Free Trade Area (AFTA). In addition, the leaders agreed on special incentives and privileges to attract foreign direct investment into the region. To enhance further economic integration of the region, the Leaders also agreed to further liberalise trade in services."), and Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area, Preamble, at http://www.aseansec.org/economic/afta/afta ag2.htm, visited on July 1, 2003 ("Convinced that preferential trading arrangements among ASEAN Member States will act as a stimulus to the strengthening of national and ASEAN economic resilience, and the development of national economies of Member States by expanding investment and production opportunities, trade, and foreign exchange earnings").

[42] Framework Agreement on Enhancing Economic Cooperation, Preamble and Article 2(B)(1), at http://www.aseansec.org/economic/afta/afta ag2.htm, visited on July 1, 2003 ("Noting... the importance of extending such policies to further open up their economies, given the comparative advantages and complementarity of their economies... Member States agree to increase investment and industrial linkages and complementarity by the adoption of new and innovative measures, as well as strengthening existing arrangement in the ASEAN");

[43] See, *supra*, note 35 and accompanying text.

[44] With the desire to boost intra-regional trade and in response to EU integration and the NAFTA, ASEAN agreed to reduce or eliminate tariffs on non-agricultural products within 15 years under a common effective preferential tariff (CEPT) scheme.

[45] Indeed, although it did not mention these two REIs by name, it is incontrovertible that the Framework Agreement on the Enhancing Economic Cooperation, *supra* note 39, was referring to these two in its preamble which states "conscious of the rapid and pervasive changes in the international political and economic landscape, as well as both challenges and opportunities yielded thereof, which need more cohesive and effective performance of intra-ASEAN economic cooperation."

[46] See ASEAN Foreign Ministers, Hanoi Declaration on Narrowing the Development Gap for Closer ASEAN Integration, at http://www.aseansec.org/print.asp?file-/amm/hanoi02.htm, visited on July 9, 2003.

members' economies.[47] This is to enable these less developed members to develop and restructure their economies for eventual active participation in the regional market.[48] Thus, for instance, they are given more time to open up their economies to other members' goods, services, and capital.[49]

One can see from the foregoing that the ASEAN model hews closer to the neoclassical theory of integration by fusing the resource reallocation justification of the orthodox analytical approach and the developmental (*i.e.*, higher resource utilization and industrialization) rationale of the neoclassical theory.[50] This fusion, in turn, is made possible because of one common essential element required by the two methods of analysis, *i.e.*, increase in market size. The bigger regional market serves the developmental objective of encouraging investments and promoting industrialization while, at the same time, fulfilling the more orthodox objective of efficient reallocation of resources and promoting complementariness of industries.[51]

Harking back to the Balassa qualification of the definition of integration,[52] one important caveat in all of these is that integration does not necessarily follow *a priori* from the removal of national trade barriers and the creation of a bigger, regional market. As often said, the proof of the pudding is in the eating. Thus, while liberalization may facilitate the process, integration only occurs when there is actual increase in economic interaction among the participating countries.

This is not to say that the AFTA has not resulted in greater intra-ASEAN trade. This paper does not dispute the empirical data that "within 5 years after the AFTA agreement was signed, the value of intra-ASEAN trade almost doubled, from less than US$44 billion to more than US$85 billion, from less than 21% to almost 25% of total trade."[53] However, what this paper submits is that intra-regional trade can be further enhanced through harmonization of laws.

[47] ASEAN Secretariat, Recent Developments in ASEAN Economic Integration, at http://www.aseansec.org/general/publication/as_ei.htm, visited on July 9, 2003.

[48] ASEAN Secretariat, Recent Developments in ASEAN Economic Integration, at http://www.aseansec.org/general/publication/as_ei.htm, visited on July 9, 2003.

[49] See ASEAN Heads of State, Statement on Bold Measures - 6th ASEAN Summit, at http://www.aseansec.org/economic/invest/sum_bold.htm, visited on July 11, 2003.

[50] Particularly that of the list of economic and non-economic motivations for developing countries' integration provided by Langhammer & U. Hiemenz, *supra* note 28. (Note that the mention of only four principles above does not mean that it is only to such extent that Langhammer & Hiemenz's theory have been adopted in the ASEAN integration model. Indeed, if we also look at the non-economic considerations mentioned by Langhammer & Hiemenz, it clearly appears that at least two of these have been adopted, *i.e.*, improving the collective bargaining power vis-a-vis industrialized countries and consensus building on regional political and security issues. As for the "scapegoat" theory, this does not appear to be a motivation for ASEAN. In fact, the 1997 ASEAN financial crisis that transpired five years after the establishment of the AFTA would have provided the governments of the member states a perfect "scapegoat". And yet, rather than blame it on "hollowing out" the level of integration, the Hanoi Action Program clearly resolved to increase the level and accelerate the process of integration.)

[51] Another reason already mentioned earlier is the fact that many of the member states have attained a higher degree of development than other developing countries thereby making possible, to a certain extent, the efficient reallocation of resources and industrial complementarity.

[52] See note 15, *supra*.

[53] Rodolfo C. Severino, Regional Economic Integration: The Challenges Ahead, at http://www.aseansec.org/secgen/sg_tcha.htm visited on June 24, 2003. See also Innwon Park, *supra* note 31, at p. 140-141. After noting the lack of serious study on the effects of ASEAN integration on the individual economies of the member states, Innwon Park conducted an empirical measurement thereof. The relevant portions of his findings are worth quoting:

> The empirical findings from the ASEAN CGE model analysis differed from the typical results, which usually have argued that regional trading cooperation among developing countries has not been successful in creating gains from trade for their members because these countries have tended to follow mutually competing domestic development strategies. . . [T]rade liberalization policy through use of tariff reduction among the ASEAN countries induced welfare improvement that was not negligible to the participating countries. . . For comparison, Deardorff and Stern (1986) estimated a 0.04% increase in welfare as percent of GDP for 17 developing countries as a result of a 26.4% reduction of tariff rate for all participating countries using their multi-country simulation model of the Tokyo Round Negotiation. They also estimated a 0.15% decrease in welfare level in Singapore as a result of the tariff reduction policy. To the contrary, we observed that the regional integration among the ASEAN nations by AFTA can result in welfare improvements in Indonesia by 0.6%, Malaysia by 1.6%, the Philippines by 0.7%, and Thailand by 1.3% as percent of national income using our linked ASEAN CGE model. Even though Singapore's welfare improvement was not significant, just a 0.1 increase, because Singapore has been already liberalized, Singapore also received improvement in its welfare level from AFTA.

Harmonization of Laws as an Element of Integration

It may be said that the law has two functions in the process of regional economic integration.[54] One is to establish the machinery for integration and the other is to establish the legal framework that will allow the regional market to function properly. The second function of the law, which is more relevant to this discussion, may consist of negative and positive integration measures.[55] Negative integration measures refer to the removal of barriers to the cross-border movement of trade and factors of production. Positive integration measures, on the other hand, involve the institution of other measures to enhance the efficiency of the market. The removal of tariffs and the consequent increase in regional trade do not necessarily dispense with positive integration measures.[56] The region may choose to adopt a more pro-active attitude towards the attainment of a dynamic regional market to sustain efficiency and competitiveness.

The distinction between negative and positive integration measures only shows that the removal of tariff and non-tariff barriers may not be enough to effectuate a functioning and dynamic regional market, primarily because of the presence of other physical and commercial barriers that have an equally restrictive effect on regional trade, among which are legal variances. Where legal divergences prevent the regional market from functioning as or approximating a unified economic unit, the ASEAN must be prepared to remove them.

[54] For an extensive and inter-disciplinary coverage of the function of law in regional economic integration, see the multi-volume Integration through Law series, *supra* note 24.

[55] Ali M. El-Agraa, *supra* note 21.

[56] As mentioned earlier, *supra* note 50 and accompanying text, AFTA and other schemes seem to have led to an increase in regional trade. Notwithstanding this success, however, the ASEAN also seem to recognize the necessity of reducing the effects of natural barriers on regional trade through a regional coordination of infrastructure projects in areas vital to regional trade, such as transportation and energy. See, e.g. ASEAN Plan of Action for Energy Cooperation, at http://www.aseansec.org/newasean/menu.asp?action=4&content=5, visited on July 16, 2003.

Theories of Legal Harmonization[57]

The need for harmonization of laws depends on whether such positive integration measure can address the different problems caused by legal divergence, namely, the cost of externalities, unnecessary transaction costs, and barriers to interdependence.[58]

Externalities. This basically means that the rules (or insufficiency or lack thereof) in one jurisdiction can lead to costs being imposed on other jurisdictions.[59] For instance, the anti-trust laws of a member-country meant to encourage free competition may be rendered ineffective by the failure of another member to enact similar laws. Large businesses in the country where there are no anti-trust laws, unwilling to face intra-regional competition and choosing to hide behind their country's lenient laws, may collude and apportion market shares among themselves to the disadvantage not only of the consumers in that country but also of the manufacturers and exporters in country with anti-trust laws. However, by adopting a uniform legislative and regulatory policy against combinations in restraint of trade, members of a regional grouping can effectively plug this legal loophole.

Transaction Costs. One unavoidable expense in conducting business in another jurisdiction is the cost of familiarization and compliance with the laws of that jurisdiction.[60] Further, parties who are subject to the rules of different jurisdictions may encounter during their negotiations the problem of deciding which jurisdiction's law should apply to their transaction.[61] This problem can prolong, even undermine, the negotiations and thereby increase the cost of doing business. The frequency at which these costs are incurred increases with the number of cross-border transactions, although it is possible that the cost of familiarization will diminish in the succeeding similar transactions. Different products standards, too, can lead to similar results. Forcing firms intending to market their products in the entire region to incur additional costs in ensuring their products' compliance with all the different standards, would be depriving them of the benefit of economies of scale. Harmonization of such standards and rules will diminish if not eliminate the need for this additional expense.

[57] Harmonization can be loosely the defined as making of regulatory requirements or governmental policies of different jurisdictions identical, or at least more similar. (David W. Leebron, Lying Down with Procrustes: An Analysis of Harmonization Claims, in Bhagwati and Hudec (eds.), Fair Trade and Harmonization (Cambridge, Massachusetts: MIT Press, 1996), Vol. 1, p. 43.)

[58] Eleanor M. Fox, Harmonization of Law and Procedures in a Globalized World: What, Why, and How, 60 Antitrust Law Journal 593.

[59] *Id.*, p. 594. See also David W. Leebron, *supra* note 55, at p. 54.

[60] As a legal adviser in a global business consulting firm, the author is well-acquainted with the costs incurred by investors in tailoring their business operations as well as cross-border transactions to the legal environment of a foreign country. See also Jenny Clift, UNCITRAL and the Goal of Harmonization of Law, at http://www.ilpf.org/confer/present 99/cliftpr.htm last visited on June 29, 2003, where the author echoes the view that harmonized rules "would clearly facilitate the commercial processes involved, saving time and cost in the process of negotiation".

[61] Jenny Clift, UNCITRAL and the Goal of Harmonization of Law, at http://www.ilpf.org/confer/present 99/cliftpr.htm last visited on June 29, 2003.

Interdependence. Interdependence among market actors in a region has a direct correlation with the frequency of their transactions. Unless such interdependence becomes a reality, it cannot be said that a region has an integrated economy. To achieve interdependence, it may be necessary to remove some, not all, forms of divergence on legal issues. This may be a continuing process considering that once a certain degree of integration is achieved, contradictions may arise between the regional market and the multiple divergent rules.

Why Regional Harmonization?

In terms of geographic scope, harmonization may be regional or global. Since some efforts at regional harmonization are directed at areas of law that are already the subject of similar global efforts, this raises another theoretical hurdle in justifying legal harmonization in ASEAN. The question thus posed is: would there be any difference in the rationale, scope, and degree between these regional and global harmonization as render regional harmonization necessary or preferable? A related question is: would not present efforts at global harmonization, assuming to be successful, satisfy the needs of the region?

The differences in rationale, scope, and degree between global and regional harmonization measures on efforts are reflected in the ASEAN's adoption of various schemes for economic integration out of which the region, compared with the world in general, can expect a higher degree of economic interdependence and greater commercial interaction across borders.[62] In other words, the expectation of a higher degree of international trade, both in value and volume, means that the ASEAN region, as opposed to the world in general, has more to gain from harmonization.[63] Conversely, to use Fox's analysis, without harmonization, the costs of non-harmonization (*i.e.*, cost of externalities, unnecessary transaction costs, and barriers to interdependence) is greater for the region than it is for the world.[64] This is particularly true with legal issues relating to electronic commerce because of its inherent capability for cross-border transactions. The more such transactions occur, the higher the cost of divergence would be.

[62] See Eleanor M. Fox, *supra* note 56, at p. 595, where it is suggested that where "a community of nations is being built, as it is in Europe, harmonization towards a single community standard will facilitate a more integrated community."

[63] In his assessment and criticism of those who argue for regulatory diversity, Jagdish Bhagwati mainly points out that the question should not be whether economic integration would be possible amidst diversity but whether the reduction of such diversity through harmonization will facilitate integration. The question is not whether it is possible for international trade to occur or even prosper without harmonization but whether such harmonization can lead to increased trade. Today, there is growing skepticism about the possibility of mutual gains from trade despite diversity. See Jagdish Bhagwati, The Demands to Reduce Domestic Diversity Among Trading Nations, in Bhagwati and Hudec (eds.), Fair Trade and Harmonization (Cambridge, Massachusetts: The MIT Press, 1996), Vol. 1, p. 30.

[64] Jenny Clift, *supra* note 59 ("In the case of the internet, the means of communication, by its very speed and the extent of its use in commerce, may increase the impact of differences between jurisdictions, potentially increasing the disadvantages of legal diversity.")

The issue on whether the region's needs may be satisfied by regional rather than global harmonization efforts ultimately involves a determination of the optimal geographical area for harmonization. According to Gote Hanson, the optimal geographical area for harmonization is not necessarily the entire globe.[65] In other words, even though global harmonization is already in progress there is still room for regional harmonization under certain conditions. These conditions, in turn, are determined by the impact and causative correlation between harmonization and the potential and actual flows of trade and factors of production within the region.[66] More specifically, countries in a given region that have existing successful foreign trade relations with each other, especially customs and free trade areas, "can be expected to gain the most by concluding harmonization agreements."[67]

The multilateral efforts at global harmonization may not be sufficient to address all the needs of the region for harmonization. The degrees of expected economic interdependence between among ASEAN members and the rest of the world may vary. This difference determines the scope and degree of harmonization required. The need for harmonization at the lower level of global economic integration may be less than that of the ASEAN, in terms of the number of legal issues and the depth of harmonization. Accordingly, although it can draw upon the processes and results of existing global efforts at harmonization, the ASEAN cannot expect these efforts to result in the settlement of all the issues and the depth to which these issues need to be harmonized in order to promote regional economic integration.

Determining the Scope and Depth of Harmonization

The justification for regional harmonization solves only one aspect of the theoretical issues in establishing a case for harmonization. There still remains the problem of determining its scope and depth, which requires the identification of a criteria for evaluation. Lest a standard or criteria is offered by which an ideal balance is struck between competing considerations, the scope and depth of harmonization risks being too broad or too narrow.

The competing consideration concerns, on one hand, the need to "localize" the law and respect the legislative prerogative of domestic institutions and, on the other, the need to harmonize the optimal policy area. The first consideration

[65] See Gote Hansson, Harmonization and International Trade (London: Routledge, 1990), p. 176. Gote Hansson seems to raise the possible dichotomy that harmonization which may improve global welfare in general may not necessarily improve the welfare of a region. Thus, he states that "it is possible that projects of harmonization that would be welfare-improving can, in the case of global harmonization, lower welfare if they cover a specific subset of countries."

[66] *Id.*

[67] *Id.*, p. 177. See also Eleanor M. Fox, *supra* note 56, at p. 595. According to Fox, "pressure for harmonization will be the most obvious when interdependence is at a very high level." Likewise, see Joel P. Trachman, *supra* note 3, at p. 495.

exerts a narrowing pressure on the scope and depth of harmonization while the other exerts pressure in the opposite direction.

Inclusion of unnecessary areas of law and legal issues risks reluctance of national governments to cede legislative prerogative, leading to difficulty in obtaining their consent to the harmonized rules.[68] The reluctance proceeds primarily from the belief that domestic laws reflect more faithfully local policy considerations, hence, are better suited to address local regulatory needs than regional legal frameworks. In this sense, locally drafted rules, as opposed to regional legal frameworks, are said to enjoy the advantage of localization of the law because of the assumption that the nation's cultural, economic, and political perspective were given ample attention in the law's preparation by the national legislature.[69] Therefore, in delineating the scope and depth of harmonization, ample consideration must be given to the degree to which areas of law and legal issues are rooted in the national psyche. The more it originates from national roots and the less involved it is in international public and private interactions, the less viable it is for harmonization. In this regard, it has been observed that "legal institutions may be more or less embedded in a nation's life, and therefore more or less transplantable from one legal system to anotherbut nevertheless, at one end of the spectrum law is so deeply embedded that transplantation is in effect impossible."[70]

Insufficient scope and depth may nevertheless lead to a failure to address the optimal policy area that requires harmonization, thereby resulting in inefficacious harmonization. The optimal policy consideration requires that all related issues must be dealt with.[71] Indeed, if harmonization were pursued in only a few rather than a substantial number of related areas and issues of law, several problems may arise. First, there is a risk that harmonization might not only fail to attain maximum gains but might not even be effective in the first place. Contradictions and inconsistencies might arise between related areas and issues of law due to the arbitrary delineation of the scope and depth of

[68] This is true for all nations, even for those belonging to a highly integrated regional arrangement such as the European Union. However, this is more true for the ASEAN as can be seen from its abhorrence of rigid and legalistic processes.

[69] See, *e.g.* Jenny Clift, *supra* note 59, and David W. Leebron, *supra* note 4, at p. 88. An argument similar to that which proceeds from the localization of the law is regulatory competition, which argues that differences in the laws and policies among nations constitute part of their respective comparative advantages. However, regulatory competition is criticized for giving rise to the risk of a "race to the bottom" between national regulatory regimes, *i.e.* regulatory competition among countries will induce them to outdo each other in adopting lenient and lax regulations in order to attract market participants for their respective jurisdictions.

[70] William Ewald, summarizing Otto Kahn-Freund's theory of legal transplant, cited in Dr. Loukas A. Mistelis, Regulatory Aspects: Globalization, Harmonization, Legal Transplants, and Law Reform - Some Fundamental Observations, 34 International Lawyer 1055, at p. 1065.

[71] David W. Leebron, *supra* note 5, at p. 49. The pertinent portion reads:

> One of the dangers of harmonization is the arbitrariness of the sectors in which harmonization is pursued, which creates a potential for economic distortion and welfare losses...efforts to harmonize certain rules and not others could provide an additional source of policy incoherence. One might expect that harmonization would be pursued across whatever policy area the arguments favoring harmonization support...but the decision to pursue harmonization is a political decision and entails a political process at the domestic as well as international level.

harmonization. Second, there is also the risk of policy incoherence which would undermine the validity of the call for harmonization.

Bearing in mind the need to strike a balance between the competing considerations of localization of the law and optimum policy area, this paper suggests the following guiding principles as criteria: (a) that the scope and depth of harmonization be confined to those areas of law that relate to cross-border transactions; and (b) that the underlying goal be to facilitate commercial and industrial interactions between and among the participants in the ASEAN regional market, with the end in view of promoting the economic integration of the member-states. Since this criteria confines the scope and depth of the harmonization to cross-border transactions, whatever objections that may be raised based on the localization argument is effectively addressed. This is because the argument that domestic rules are more appropriate for local situations carries little weight in transnational transactions. This is especially true for commercial dealings because of their non-cultural and apolitical nature. Further, by identifying the facilitation of commercial and industrial interactions and the promotion of regional economic integration as the purposes of harmonization, the optimum policy area is likewise effectively defined, thereby reducing the risk of an ineffectual harmonization due to insufficiency of scope and depth.

Using the above criteria, the scope and depth of the harmonization may be delineated basically by answering the following questions, *viz*:

- In what areas and concerning which legal issues would variance in the laws of the member states render cross-border commercial transactions[72] (in the ASEAN region) legally, technically, and economically unviable?
- In what areas of law and regarding which legal issues will harmonization promote the goals of regional economic integration in the ASEAN, *i.e.*, encouragement of investments and industrialization, facilitation of efficient regional reallocation of resources and regional division of labor, assured market of considerable size, and mutuality of gains)?
- When different areas and issues of law are being considered for harmonization, what would be their relative propensity in comparison to each other to promote the goals of integration?

It will not be possible, nor is it the intention, to provide in this paper a survey of all major areas of law and applying thereto the foregoing criteria. The major areas of law that may be found in functioning free market economies are constitutional law, contract law, criminal law, intellectual property law, taxation, consumer protection law, corporation law, competition law. In turn,

[72] Note that the cross-border commercial transactions referred to are those which facilitate the realization of regional market integration by removing costs related to distance, facilitating the creation and distribution of regional market information, matching of buyers and suppliers, facilitating regional interdependence in the supply chain, and facilitating region-wide marketing of products.

each one of these involves an infinite variety of legal issues. However, if only to show the utility of the criteria being offered, an illustrative application thereof is attempted in four major areas of law: constitutional law, tax law, consumer protection law, and criminal law. As the succeeding discussion will show, some will meet the criteria herein set forth while others will not. Further, as to those which do satisfy the criteria, the scope or depth of harmonization required may vary. The following illustration will also give an indication of how various areas of law that are ripe for harmonization may be prioritized in accordance with their respective impact on regional trade.

Constitutional Law.[73] Constitutions normally delineate the structure of the government, its powers, the rights of its citizens, etc. As a legal document, it is highly political and tailored specifically to reflect the distinct national qualities of a country. Since it is a highly political document, strong resistance to its amendment for the sake of regional conformity can be expected. Further, unless it contains specific provisions regarding the country's external economic relations, this field of law cannot be expected to have a substantial impact on regional trade. Thus, claims for harmonization in this area can be dismissed outright.

Taxation. Considering that the taxes that may be imposed on cross-border commerce transactions have a direct bearing on each country's economic viability, taxation is therefore a fertile area for harmonization. In addition, tax laws are politically and culturally neutral such that harmonization in this area has a lesser risk of offending national political and cultural sensitivities and peculiarities. Legal disharmony may put firms in different territorial boundaries in unequal positions thereby preventing convergence of prices throughout the region. For instance, some countries may tax sales of goods and services based on where the sale was conducted. Other countries may tax it based on which country the seller is residing. Thus, a seller residing in one country but concludes a sale in another member-country may end up being taxed twice for one single transaction.

Consumer Protection Laws. Consumers normally have an uncaring attitude toward the consumer protection laws of the country of origin of imported products. When a consumer buys an imported product, he does not ask the seller whether his rights as a consumer are protected under the laws of the country of origin. He only cares about the laws of his country, where he bought the product. However, there is one aspect of this field of law that may discourage intra-regional transactions should the variance be substantial. In the apportionment of liability between the exporter and importer in case of defective products, some countries may hold the importer/distributor directly

[73] The discussion of constitutional law is merely to facilitate the illustration of the application of the criteria. In practice, however, national constitutions per se are unviable areas for harmonization since these are deeply rooted in each nation's cultural and political psyche.

liable while others may hold him only subsidiarily liable. Such variance may encourage the flow of goods into the former countries more than the latter and contribute to an imbalance in the trade pattern. This aspect of consumer protection laws may therefore require harmonization.

Criminal Law. There is little need for harmonization in criminal law since cross-border transactions, whether regional or global, seem to thrive notwithstanding diversity in this area. The function that criminal law serves in commercial transactions is primarily to ensure the security and integrity of commercial transactions, be it domestic or cross-border. Thus, unless an ASEAN member country decriminalizes fraud in contracts (*e.g.*, forgery of signatures, falsification of documents), there is no reason to expect that regional commerce will be hampered by legal divergence in criminal law.

Summing up the above illustration, it would appear that tax laws would have the highest propensity to advance integration and is therefore a fertile area for harmonization. Consumer protection laws do not have such a high propensity but the illustration reveals at least one legal issue that may need to be harmonized. Constitutional and criminal laws have shown minimal justification for harmonization.

Conclusion

To make one final argument in support of regional harmonization of laws, perhaps one needs to draw an analogy from sports to show its necessity in attaining the goals of integration. Let us call this sport the Regional Market Game. To play this sport, three things are required: players, a playing field, and rules of the game. Thus, one may say that in the sport of Regional Market Game, the players are the industries and consumers, the economies of the member countries make up the playing field, and lastly, the laws provide the rules of the game. Obviously, the viability of the game requires that the rules must be consistent throughout the playing field. This, in its simplest form, states the case for regional harmonization of laws in the ASEAN.

This paper has shown that the problem of identifying the justification for harmonization will be resolved by treating it as an element of economic integration. It has also shown that meandering efforts at harmonization can be avoided and that such efforts can acquire coherence by limiting their scope to harmonizing those areas and issues that will promote the goals of integration.

However, this paper does not claim that it has addressed all the fundamental issues pertaining to the topic. For sure, important questions such as the methodology for harmonization (*e.g.*, whether to adopt regional rules via treaty thereby allowing no deviation, or whether to adopt a model law that may still be deviated from to suit the particular needs of each of the member countries) still remain. Nonetheless, it is hoped that by identifying the justification and the criteria for harmonization, this paper has laid the academic foundation for future studies in these other questions.

In closing, there is one last note that the author wishes to make about this paper. Whereas, understandably, majority of legal writings explore the role of law in facilitating regional economic integration, this paper explored the utility of economic theories in drafting a legal framework for such integration. By adopting the opposite analytical approach, it is hoped that this paper, aside from delving into the issues it set out to confront, was able to provide further evidence to the symbiotic relationship between economic and legal theories in advancing the process of economic integration.

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