

The South Asian Association for Regional Cooperation (SAARC): Strengthening Institutional Mechanisms

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**The South Asian Association for Regional Cooperation (SAARC):
Strengthening Institutional Mechanisms**

**OBJECTIVES AND PRINCIPLES UNDER SAARC CHARTER:
WEAKNESSES AND STRENGTHS FROM THE VANTAGE POINT OF
INTERNATIONAL LAW**

Promoting peace, stability, amity and progress in the ‘South Asian Region’ is what is spectacularly emphasized by the preamble of the SAARC Charter as a fundamental goal of SAARC as a regional cooperation body of the South Asian countries. Article 2 of the Charter enshrines into a set of guiding principles that embody the *modus operandi* of the SAARC as a regional body in order to materialize the objectives enumerated under Article 1. These guiding principles, categorically and purposefully drawn from the principles of the United Nations Charter, unequivocally require the member States (1) to extend cooperation among members with respect to the principles of sovereign equality, territorial integrity, political independence and noninterference in each other’s affairs ; (2) to understand that the cooperation within the scope of the Charter is not a substitute of bilateral and multilateral cooperation; and (3) to ensure that the cooperation within the Charter’s scope is carried out in consistent with bilateral and multilateral obligations. From the vantage of international law, the scope of these principles can be elucidated as outlined below.

**SAARC GUIDING PRINCIPLES AND INTERNATIONAL LAW:
THE INTERPRETATION OF THE GUIDING PRINCIPLES, IN
ACCORDANCE WITH PRINCIPLES OF INTERNATIONAL LAW,
REQUIRES US TO INFER THE FOLLOWING IMPLICATIONS:**

- a. The interpretation of Article 2(1) plainly establishes that SAARC, as an association of sovereign States for regional cooperation, is guided by the spirit of the customary international law as articulated by the Montevideo Convention, 1933², which meticulously recognizes the principle that every State is independent under international law and as such able to exercise its right to sovereign equality unhindered. The Convention makes it clear that each State is competent solely by virtue of its competency to exercise its sovereign power by being ‘a person’ under international law, but not by its physical capacity to assert power. Hence, according to the Convention, every States are competent to choose their political, economic, and administrative system independent. ³The principles enshrined into the onvention represent the principles of ‘customary international laws’, and as such they are mandatory for States to comply with in the matter of their mutual relations. No agreement between States, thus, can accept such an interpretation of principles of international law that limits the ‘sovereign status of any State’. The principle of sovereign equality of State is absolute in meaning an application irrespective of the size in territory, the strength of military capacity, the political and economic system pursued and the economic development standard achieved.

². Article 4 of the Montevideo Convention on Rights and Duties of States, 1933, in unequivocal terms states that ‘States are juridically equal, enjoy the same rights, and have equal capacity in their exercises.

³. For more elucidation see, Article 8 of the Montevideo Convention, 1933

The General Assembly Resolution, 2131,⁴ in addition to the Montevideo Convention, reinforces the principle of sovereign equality and independence. The resolution, with reference to the Resolution 1514 on States' Inalienable Right to Complete Freedom, declares in unequivocal terms that States can freely choose or determine their political status and freely pursue their economic, social and cultural development. The plain meaning of the assertion is that (a) no State can engage in interference against other by dictating or suggesting the terms of references in matters of political or others affairs. The internal affairs of every State are thus fully protected from other's interference. Further, the UN Charter, under Article 2, guarantees similar freedom to member States.⁵

The principle of non-interference under Article 2(1) of the SAARC Charter is a conscious or deliberate reiteration and reaffirmation of the principles of non-interference under Montevideo Convention, UN Resolution 2131 and Article 2(4) of the UN Charter. Being a member of a regional association cannot or should not, therefore, be regarded as a state of derogation or abrogation of 'the principle of sovereign equality or political independence. Instead, the concept of regional association under international law is based on the principle of 'absence of sovereign or political superiority of any member of the regional body'. To respect and protect the independence of one associate from many intrusion by another associate is materialized under international law jurisprudence through the concept of 'artificial personality' of association. International law constructs an 'independent legal personality' to the body different to that of each constituent member. Such personality is not a collectivization of the independent personality of the constituent members either. The concept of legal personality of the regional body of constituting members helps us to conclude that a 'regional association of States is not merely a grouping or conglomeration of States or a *system of States*', it is rather an independent person without affecting the sovereign independence of the associate members. The SAARC, as a regional body of sovereign States, cannot be an exception to this principle of international law. It is therefore arguable that the SAARC, as the regional body of the South Asian countries, must be treated as an 'international legal person' if it has to grow as the 'community of the South Asian countries'. The Charter of SAARC, in order to transform SAARC into a community of South Asian countries, ought to be unequivocally plain in its expression to recognize the following two principles:

- (i) The principle of sovereign equality of SAARC members is fully recognized and respected. The Charter, under Article 1(1), is plain enough to recognize and respect the sovereign equality of every member.
- (ii) The Charter is, however, is not only silent but also reluctant to recognize the independent 'legal personality' to the SAARC as a regional association of South Asian countries.

As a matter of fact, the Charter fails in its objective to establish SAARC as a community of the South Asian countries, and, as such, suffers from weakness in achieving the goals and necessities of desirable integration of the region for addressing common problems and challenges of poverty alleviation, absence of trade expansion and socio-economic and cultural integration of the people in the region.

⁴. General Assembly Resolution on Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Sovereignty, 2131 (XX), 21 December, 1965.

⁵. Article 2(4) of the United Nations Charter provides: "All members shall refrain in their international relations from the threat or use of force against the territorial integration or political independence of any State or in any other manner inconsistent with the purpose of the United Nations".

- b. Article 2(2) of the SAARC Charter declares that the cooperation among members States is not a substitute of the right of members to engage in bilateral and multilateral arrangements; it is rather a complement to bilateral or multilateral arrangement between or among member States. The scope of the SAARC as a forum of the South Asian countries to address their bilateral or multilateral issues of concern or dispute is limited, if not absent. This state of SAARC, as an outcome of the limited scope in the Charter to let the SAARC grow as a forum to settle problems and concerns between members, seems inconsistent to the prevailing international law jurisprudence. The bilateral arrangement, according to the Vienna Convention on Law of Treaties, 1969, under Article 5, cannot be contrary to the multilateral treaty that creates an international organization implying that every Member State of the regional or international association is to abide by the rules agreed upon. This obligation arises when the treaty creating the association becomes ratified. The Charter of SAARC is ratified by all member States, thereby consenting to recognize it as an association rather than a *system of States*. According to this provision, members of SAARC cannot offer higher states to a bilateral arrangement between them to supersede the legitimacy of the Charter as a multilateral or international instrument. It implies that the member States agreeing to enshrine into the provision of the Article 2(2) in the Charter have declined to give SAARC a status of the community of the States or the independent legal personality.
- c. Most importantly, the principle enshrined into Article 2(3) prohibits any cooperation between members within the SAARC framework to engender a contrary situation to the bilateral and multilateral obligations between members States. This provision reduces SAARC into a *system of States*, and thus refusing to grant SAARC a status of '*community of States*' with independent international legal personality.

The principles adopted by Article 2, sub-article 2 and 3 in particular, lead us to infer the following position concerning legal status of SAARC:

- a. SAARC has been established essentially as an inter-governmental organization rather than a mechanism to address and manage conflicts among the members, thus ignoring the principle that the management of conflicts among members is a precondition for 'peace and development' in the region. The presence of regional conflicts in several parts of the world has very clearly shown that members of the region have feuds to address.⁶The concept of regional association has emerged as a tool of addressing such conflicts and fostering cooperation among associates. Some of these organizations enjoy broader independence and autonomy in matter of decision making and functions, whereas others such as ASEAN and SAARC are more inter-governmental platforms in nature, and such notion of organization often reduces their ability to address and manage intra-regional conflicts.⁷ Specifically, SAARC has not yet been able to take off to prove itself as 'viable regional personality'. Article 2 (2) and (3) of the Charter, as discussed above, pose hurdle for the SAARC to evolve it as a regional body able enough to address and manage conflicts in the region.
- b. SAARC is being treated as a 'network association' with its status as a tool of facilitating the general 'mutual economic, social and cultural' cooperation among associates.⁸The 'bilateral and multilateral'

⁶. Kripa Sridharan, 'Regional Organizations and Conflict Management: Comparing ASEAN and SAARC', Crisis States Working Papers Series No. 2, 2008, Destin Development Studies Institute, p.1.

⁷. Ibid

⁸. This assertion is validated by objectives listed under Article 1 of the SAARC Charter. They are: to promote welfare of the peoples of the South Asia and to improve their quality of life; to accelerate economic growth, social progress,

engagement among members is not only emphasized but also given precedence, though not directly and explicitly. The objectives inserted into Article 1 of the Charter are general and abstract. The crux or essence of Article 1 is articulated by its Section (e), according to which the prime objective of the Association is to promote collaboration and assistance in the fields of economic, social, cultural, technical and scientific fields. This being the core of all objectives limits the scope of SAARC as the community of South Asian countries.

- c. The preference for bilateral and multilateral cooperation, out of the scope of association, severely limits the scope of the SAARC' as the community of the South Asian countries. The scope of Article 2(2) limits SAARC as a regional legal instrument to enhance the bilateral or multilateral socio-economic and cultural interactions between two or more States associated in the platform of SAARC.
- d. The principle under Article 2(3) implicitly expresses a 'fear or concern' regarding possibility of SAARC emerging as the platform of interactions in intra-regional issues. It implicitly prohibits any collective efforts or cooperation that tends to surpass the 'bilateral or multilateral' engagements or interactions. This principle is an outcome of reluctance member States to evolve the SAARC as a regional organization with its own legal personality. This is why SAARC is left to languish as a passive institution unable to integrate the region for expansion of trade addressing problems that are crippling the region to emerge out.

As it is seen from the discussion above, the principles adopted by the SAARC Charter for its *modus operandi* are not only conservative to render its objectives materialized pragmatically but also obstructive to transform the body into the community of the South Asian countries. Exaggerated suspicion, a kind of paranoia and reluctance to engage in dependable interactions, is implicit in principles enshrined into Article 2 (2) and (3). It is also a reason to eschew formal mechanisms for conflict management.⁹ Considering from the perspective of the objectives and principles adopted by the Charter, it can be argued that the goal of creating SAARC as a forum for collective regional will is less emphasized which prevents SAARC to take off high to achieve the goal of regional integration and cooperation among members to address the looming problems.

INSTITUTIONAL STRUCTURE OF SAARC: PERFORMANCE AND SUCCESSES, AND PEOPLE'S EXPECTATIONS:

As outlined by the Charter, the institutional structure of SAARC includes the following bodies, organizations or constituents as its institutional structure:

and cultural development in the region and to provide all individuals the opportunity to live in dignity and to realize their full potentials: to promote and strengthen collective self-reliance among the countries of South Asia; to contribute to mutual trust, understanding and appreciation of one another's problem; to promote active collaboration and mutual assistance in the economic, social, technical and scientific fields; to strengthen cooperation with other developing countries; to strengthen cooperation among themselves in international forums on matters of common interests; and to cooperate with international and regional organizations with similar aims and purposes.

⁹. See, Syeda Sana Rahman, 'Same but Different'? Comparing the ASEAN and SAARC Frameworks', 2011 (ISAS Working Paper, No. 123), Institute South Asian Studies, National University of Singapore, p.3.

- a. The ‘Summit of the Heads of State or Government’ is the apex body of SAARC, which, under Article 3 of the Charter, is to meet once a year or more often as and when considered necessary by the Member States. This rule is, however, not followed as mandatory obligation. SAARC summit so far has been able to organize 19 summits, which shows its gross failure to materialize the commitments under the Charter. The serious blow is meted out in 2016, when the summit scheduled to be held in Pakistan is postponed for uncertain period.
- b. The ‘Council of Ministers’ consisting of Foreign Ministers of the Member States, under Article 4 (1), is the most crucial body for formulating policies of the association. As required by Article 4 (2), the Council’s meeting is to be held twice a year, which is also not observed as required by the Charter. The failure to hold summit automatically affects the Council’s meeting in the given institutional structure under the Charter.
- c. The ‘Standing Committee,’ under Article 5 (1), is a main executive organ of SAARC, which consists of foreign secretaries of the Member States. The Standing Committee is entrusted with the function of carrying out overall monitoring works and coordination of programs of cooperation, approving projects and programs and modalities of their financing, determining inter-priorities, mobilization of regional or external resources and identifying new areas of cooperation based on appropriate studies.
- d. The ‘Technical Committees,’ under Article 6, are agencies or actors responsible for implementation, coordination and monitoring of the programs in their respective jurisdictions.
- e. The Charter, under Article 8, establishes a “Secretariat of Association” without enumeration of its functions, powers and responsibilities. Since the Charter does not outline the powers, functions and responsibilities, the effectiveness and efficiency of the Secretariat is not only largely overshadowed but also undermined by Charter itself. Strikingly enough, the Charter even fails to mention about the process regarding appointment, and power and responsibilities the Secretary General.

PERFORMANCE AND SUCCESS:

Let us begin positively assessing about some of the core successes in the outset. Amidst number of challenges and problems, it is important that SAARC is in existence for over three decades, and is able to be recognized as a regional body internationally.¹⁰ It is not unfair to argue that SAARC has been developed itself, since its establishment in 1985, into a fairly comprehensive institution with most institutional infrastructure required for the existence of a regional body. One of the core achievements of SAARC is that the principle of sovereign equality and political independence of countries of South Asia is firmly articulated by the Charter. SAARC being a regional body, under its preamble and article 2, the relationship and cooperation between members is driven by the principle of sovereign equality and political independence of each member. The principle of non-interference is guaranteed by the Charter, thus legally ending, at least in principle, the fear of hegemony of any member against other. Looking from the vantage point of international law, the commitment of each member, through the Charter, to respect each other's sovereign equality and political independence is the most crucial outcome or success of SAARC.

Another equally optimistic aspect of SAARC is that it has shown potential of being emerged as a forum for dialogue and negotiations concerning cooperation in economic growth of the region.¹¹ The harm preventive and reduction diplomacy is another area of dialogue and negotiations.¹² While this potential

¹⁰ . Iftekhharuzzaman, ‘SAARC: Not yet A Community’ in Iftekhharuzzaman (ed.) *Regional Economic Trend and South Asian Security*. 1997, Dhaka, University Press, pp.1133-136.

¹¹ . A Rahman, *Imperatives for Regional Cooperation in South Asia: Creating an Environment for Sharing Expenditure of Knowledge-based development*: New Delhi, Sage Publications, 2000, p.19.

¹² . Ibid

is still far from being exploited efficiently and meaningfully, the prospect of SAARC to push the member States for increased communication, dialogue and integration has substantially been increased. It can be argued that, by addressing the problem of institutional bottleneck and passive political will, SAARC may emerge as a viable regional body in future.

Other core areas of success are associated with increased dialogue and agreement to formulate strategies and mechanisms to cooperate in the field of poverty alleviation and intra-regional trade under the banner of SAFTA. These issues are increasingly taking momentum in the cooperation agenda in the past some years. With increased dialogue and negotiations, the South Asian countries have, though varying pace and content, agreed to liberalize their economy and trade. Within the spirit of regional cooperation, Nepal, Bhutan and India have signed the 'Motor Vehicle Agreement' in 2015. SAARC Framework Agreement for Energy Cooperation (Electricity), 2014, is another milestone. Similarly, the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution and SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia are equally important regional instruments to integrate the South Asian countries in matters of preventing trafficking in persons and exploitation of child prostitution. On matters of social cooperation, the period after 11th Summit had generated some hopes of revitalization of SAARC. The accelerated economic cooperation, the social sector development, the prevention of terrorism, the people to people contact, etc. were crucial areas in which the summit succeeded in making important decisions.¹³ The preparation of Regional Poverty Profile was another important initiative. The Council of Ministers was entrusted with responsibility to fully activate the existing three tier-mechanisms for poverty alleviation.¹⁴ The 11th Summit also agreed to reconstitute an 'Independent Commission on Poverty' and conduct an independent assessment of the poverty situation in the region, thus bringing the situation to the visible notice of the people. A voluntary fund for rehabilitating and reintegrating the victims of trafficking would be established on the basis of regional taskforce with contribution from member states and other donors.¹⁵ The summit was momentous for its decision to take necessary steps for an early finalization of the '*Social Charter*' covering the important areas of poverty alleviation, population stabilization, empowerment of women, youth mobilization and human resource development, promotion of health and nutrition, and protection of children.¹⁶ All these efforts emphasized 'people's welfare and connectivity' in the region. However, the achievements made in these regards were slow as the activities were passive and enthusiasm was poor. None of these activities and programs has made any visible impact on matter of strengthening cooperation and integration process in South Asia.¹⁷ As a matter of fact, the function of SAARC is described by some literature as 'suffocatingly slow'. It has sometime been criticized as a '*magnificent paper tiger*', 'political white elephant', '*talk shop of no consequence*', '*a regional past time*', '*a club of tongues*', '*bureaucratic den*' and so on.¹⁸

PEOPLE'S EXPECTATIONS:

On December 2016, SAARC will be celebrating its 31 anniversary, but as in the past there is no jubilation on the streets of the capitals of the member States. It is, indeed, painful to recall the high expectations that were raised during the discussion and inauguration of SAARC; those expectations and hopes are, however, not translated into reality. The situation of millions of people in South Asia is

¹³ . See, "Report on Nepal's Foreign Affairs" (2002-2003), Institute of Foreign Affairs, Kathmandu, p.115.

¹⁴ . Ibid

¹⁵ . Id

¹⁶ . Id

¹⁷ . Mahendra P. Lama, 'SAARC Programs and Activities-Assessment, Monitoring and Evaluation', in Sadiq Ahmed et.al (ed.) *Promoting Economic Cooperation in South Asia: Beyond SAFTA*, (The World Bank), 2010, Sage Publications, p.403.

¹⁸ . Ibid at 404.

unchanged; they are languishing in grotesque poverty. Millions of people in the region are forced to live without two times food. Millions of children still have no access to education, and millions of children still die before they reach the age of five years. The impact of poverty upon women is abominable; it can be argued that the poverty in South Asia is feminized.

The state of failure in governance in all SAARC members is massive and frustrating. The politics is being increasingly criminalized, and the political instability consistently pose a hurdle in smooth economic growth in the region. The corruption in all level of government and in all institutions is frightening frustratingly rampant. The gap between economic growth and poverty reduction is widening. The poor people are being poorer and rich are getting larger benefits of the current macro-economic growth. Over 50 percent of the GDP in all member countries are extorted by ten percent of the elite population, thus creating systematic institutional discriminatory societies in the region.

Most painfully, the region has not yet stopped fretting from members themselves.¹⁹ The deep rooted suspicions and distrust among member States continue to influence the life of people; no discernible change is felt in the existing conflicts among member States. These conflicts range from strategic and boundary disputes, water-resource management and migration issues, trade and transit problems to ethno-nationalist tensions.²⁰ The protracted Indo-Pak feud has topped all these other problems. These conflicts are instigating proliferation of weapons, including mass destructive nuclear warheads; India and Pakistan are nuclear powers in the region now. In an era of inseparable linkage and connectivity as well as massive globalization, the South Asian people are obligated to live in an imposed state of isolation. The perceived threat of security among member States, between India and Pakistan in particular, is snatching lager chunk of resources for militarization and arms building. Approximately, each year fifty billion US dollar is consumed by the militarization and arms building competition only between India and Pakistan, this could otherwise be helpful to rescue the entire poor population in the region from its most disadvantageous state of life.

The South Asian people's hope of emerging as a closely-knitted community is not yet fulfilled; it has rather been shattered, and the people are betrayed by the political and bureaucratic elites of the South Asian countries. The growth of SAARC, as a platform to 'connect people' in their wider sphere of socio-economic connectivity is ostensibly prevented. The promises made regarding the betterment in the lives of people, the amicable relations among States and increased integration of the region by its architects are left unfulfilled. As Iftekhharuzzman, a Bangladeshi Academician, argues with utter dismay, SAARC has become more of an occasional talking shop for officials and ruling elites.²¹ This view of him about SAARC in 2002 has hardly been changed even today. SAARC's failure to take concern about many unwanted events is dismaying. Bangladesh suffered seriously from natural disaster caused by relentless change in environment and constant political turmoil. The effort of SAARC in this regard was almost absent. Sri-Lanka underwent through a bloody insurgency for over a period of two decades, but SAARC played no role at all to rescue Sri- Lanka from this bloody insurgency. Nepal got embroiled

¹⁹ . The countries in South Asia have history existing in a state of mutual suspicion since India and Pakistan gained independence in 1947. As pointed out by Syeda Sana Rahman, a Research Associate at ISAS, apart from the enduring Kashmir dispute between two, India also has had long running disputes over water sharing, border problems, illegal immigrants and other issues with neighboring countries like Bangladesh, Nepal and Sri-Lanka. Additionally, Bangladesh and Pakistan are still on loggerhead over the issue of 1971 civil war issues, including torture and genocide of Bengali people. Nepal and Bhutan had long wrangling on issues of refuge, and Nepal and India have issues of border and other issues to settle. These issues are sources of mutual suspicion with each other. See, Syeda Sana Rahman, *Supranote8* at 2.

²⁰ . *Supranote5* at 8.

²¹ . Iftekhharuzzman, 'Reforming SAARC: In Spite of Governments' in A Afroze (ed.) *Regional Cooperation in South Asia: New Dimension and Perspectives*: Dhaka, BIISS, 2002, p.19.

into a bloody insurgency followed an acute political transition for more than two decades. SAARC was never in the scene to contribute in rescuing Nepal from the bloody insurgency. Maldives's democracy suffered from series of *coup d'états*. In the meantime, as a matter of great pain, India and Pakistan acquired a status of Nuclear power; SAARC, as an institution, stayed passive and idle despite all these unbecoming events were dangerously affecting the lives of people and threatened the peace and prosperity of the region at large.

SAARC'S INSTITUTIONAL DEFICIENCIES AND CHALLENGES

The failure to stir the South Asian countries to emerge as a regional 'community' is the most grotesque failure of SAARC, and this failure can be attributed to its institutional deficiencies, though the lacking of political will in the ruling elites of the South Asian countries is not a trivial problem blocking the success. It is arguable with certainty that every effect is produced by a cause or a set of causes. The failure of the South Asian countries to emerge as a regional community—the South Asian personality with a collective regional will—is a result of notional weaknesses creeping into the Charter itself. The institutional structure, the Secretariat in principal, is equally responsible for preventing SAARC to emerge as a community. The institutional deficiencies creeping into the structure, on the other hand, are caused, *inter alia*, by the following historical and political realities of the South Asia.

- a. The fear among smaller SAARC members concerning India's dominant trade and political presence is a reality of the South Asia.²² While the fear of smaller countries is largely perceived on, but the Indian attitude in its foreign policy towards its neighbor is by no means fair. The British colonial legacy of meddling in others internal affairs continues even in the contemporary foreign policy of India. India's dominant presence is not only source of perceived threat to the smaller members but also a cause of meddling in the internal affairs of the smaller members.
- b. Other regional blocs such as ASEAN, which is, as pointed out by Michael Leifer, best understood as an institutionalized expression of 'cooperative security' that relies on 'suasion to adhere and to be accountable to international norms'.²³ But SAARC could not emerge as a community. ASEAN plays some kind of role in the prevention and management of conflicts in the region. Self-restraint, de-escalation and non-threatening behaviors have been main ingredients of conflict management approaches adopted by ASEAN.²⁴ While ASEAN, too, is still conservative in having a full-fledged institutionalized formal mechanism of conflict management,²⁵ the techniques of avoiding conflicts are in vogue. ASEAN, unlike SAARC, is engaged in management of conflict, though informally. The ASEAN's preferred mode of operation is to rely on 'informal means and deal with differences at the bilateral level.' This is not the same with SAARC. SAARC, by its Charter itself, has effectively been prevented from resorting to any means of conflict management and settlement, formally or informally. The provision of the Charter, under Article 10 (2), requires all decisions to be carried out based on unanimity, and, as such, the Charter expressly excludes bilateral contentious issues from the ambit of SAARC's dealings.

²² . P.R. Chari, 'National Security and Regional Cooperation: The Case of South Asia,' in Iftekhharuzzaman (ed.) *Regional Economic Trend and South Asian Security*. 1997, Dhaka, University Pres. P.

²³ . Chin Kin Wah and Leo Suryadinata, (ed.) 2005. Michael Leifer Selected Works on Southeast Asia, Singapore; ISEAS, p.122.

²⁴ . *Supranote*5 at 11.

²⁵ . Kay Moller, 'Cambodia and Burma: ASEAN Way Ends Here', *Asian Survey* 28 (12):1087-1104.

- c. SAARC has played no role at all in managing conflicts in the region.²⁶The persistent rift between India and Pakistan is one of the causes to prevent SAARC as a conflict resolution platform. Absence of such role played by SAARC makes smaller countries to fret with dominant economy and politics of India. SAARC could evolve this role to address this problem and contribute to achieve greater integration of the region. It could be best for India and for all smaller members either. However, India's continuous disinterest and disinclination to take up the pro-active leadership role making SAARC as a viable regional community pushed it miserably behind in making the goals addressed. Thus, restructuring of SAARC with adequate power and role to play in economic development and peace building is inevitable, but the same is not possible without constructive engagement of India making the body a viable platform.
- d. The perception in the region that India fears from a possibility of 'unity of smaller SAARC countries' led by Pakistan exists deeply.²⁷This is, however, nothing other than a classical Indian diplomatic psyche, which is being dragged on even today. The India psyche that the smaller members may club up against Indian interest under leadership of Pakistan represents nothing but a fact of absence of courage on the part of India to deal the issue pragmatically and prudently. As a dominant constituent of the SAARC, India has to develop its capacity and courage to face the challenges and build a better situation in the region to facilitate the greater integration and connectivity. The world has changed diametrically, and India has changed too. As a matter of fact, the reality of today demands India to come out of the hibernation of the classical diplomatic psyche and perceived paranoia. SAARC recognizes, realizes and expects the leading role of India to transform the region into a 'vibrant community' with largest youth population, immense water resources, unbelievably huge mineral and gasoline resources, and, most importantly, the most ancient culture and civilization. However, India seems not encouraged to play active role in growth of SAARC as a viable community.²⁸ India's disenchantment with SAARC continues to this date.²⁹At least, India seems unprepared to make change in the Charter and let SAARC grow as a community with its own personality, including conflict management role as one of its important function.³⁰The culture of suspicion and doubt is implicitly reflected on core principles of SAARC under Article 2 of the Charter, which unequivocally places regional cooperation as secondary in priority to the bilateral or multilateral arrangement of the member countries.
- e. There is another perception equally deeper that Pakistan wants to inhibit the progress of SAARC because it fears that India with its dominant economic and political role in the region may have the key of the association. Pakistan seems to believe that unless political issues are resolved, it would be

²⁶ . *Supranote5* at 10.

²⁷ . Nihal Rodrigo says, "SAARC was established as late as 1985, compared to other regional organizations such as European Union (established in 1957); the African Union (1963); the Association of Southeast Asian Nations (1967). I recall an aspect of a conversation in 1960s between the then Indian Prime Minister Indira Gandhi and a United Nations' Official who enquired why India had reservations about the establishment of a South Asian Union/Association. She had responded that any South Asian association may give opportunities for India's neighbors "to gang up against India". The official censored his personal view that he detected regional concerns of that India also may "bang down against her neighbors". See, Nihal Rodrigo, "The 17th SAARC Summit in Addu City, Maldives in Tomislav Delinic and Nishchal N. Pandey (eds.) *SAARC: Towards Meaningful Cooperation*, 2012, Center for South Asian Studies and Konrad Adenauer Stiftung, Kathmandu, Nepal, p.15.

²⁸ . For detail See, J.N. Dixit, *My South Bloc Years*, 1996, New Delhi: USB Publishers, p.383. Also See, S.D. Muni, 'Post Cold War Regionalism in Asia: With Special Reference to the SAARC Region', 1996, *VRF Series* 258, Tokyo: Institute of Developing, p.54.

²⁹ . *Supranote5* at 14.

³⁰ . *Ibid* at 10

impossible to materialize the sphere of economic cooperation. This notion too has contributed to deepening the impasse.³¹The smaller countries due to this critical situation are ambivalent to determine their role precisely; they are virtually caught up between these two unbecoming perceptions of two dominant members. The underlying reason behind failure of emerging SAARC as a collective personality can easily be seen; SAARC in this perspective merely constitutes a *system of States* with little or no commitment to grow regional norms of relations. India as a pivotal regional power could lead SAARC to materialize its goals but it, as argued by a Singaporean academician Kripa Siridharan, is unable and unwilling to do so. She argues that India avers that positive regionalism should be animated by a spirit of give and take.³²This notion of India can be seen as one of the hurdle in growth of regional personality of SAARC.³³In 31 years of its existence, SAARC has been able to organize only 19 summits of the heads of States and Governments, thus failing to give assurance to the people about deeper and greater integration of the region.

CONCLUSIONS AND RECOMMENDATIONS

The institutional deficiencies are adequately crept into the Statute of the SAARC itself. As it has been plainly seen from objectives under article 1, SAARC, as an institution, is not envisaged to provide a forum for 'building a collective regional will and personality'. SAARC has not been considered as a regional institution to act as an alternative mechanism for management and resolution of conflicts and problems looming in the region; it is, instead, envisaged to be a complement to the bilateral and multilateral socio-economic cooperation arrangements of the member States. Article 2 of the Charter presents a serious hurdle for SAARC to emerge as a 'regional personality'. The Charter under Article 2 meticulously inhibits the idea of 'SAARC' as a community with its independent personality. As a matter of fact, no institutional deficiencies of SAARC can be properly addressed without removing these inhibitions creeping the Charter under its Article 2, 3 and 10. The reformulation of prevailing provisions under Article 1 and 2, in order to enable SAARC to grow as a community with distinct 'international personality', is thus a primary step to be taken for its strengthening. Along with this improvement, the following mechanisms are required to be undertaken:

- a. SAARC is thirty three years old now. However, its emergence as a community seems still far away. The Charter is restrictive; the meetings of the leaders are less enthusiastic; and the institution is virtually administered by bureaucrats of the member States. Willingness to integrate the region for the greater common goods of all requires management of the feuds or conflicts among members properly done. India seems to be unwilling to expand potentials of the association and Pakistan, another dominant member, seems to be pessimistic regarding viability of SAARC to grow as a regional community. Smaller countries are caught between arguments of these two powers, and they

³¹ . President Mushrraf's Speech to SAARC leaders in 2004. He said, "SAARC will never achieve its full potential unless the disputes and tensions that draw us apart are resolved peacefully". See, The News International, January 5, 2005.

³² . *Supranote* 5 at 20.

³³ . Former Foreign Secretary of India Shayam Sharan in 2005 outlined the Indian position regarding "South Asian regionalism". He emphasized that economic road to cooperation was the best option given irresponsible political and security perceptions within the region. He categorically said, "Through cross-border economic linkages India wanted to reduce the level of mistrust, but this could not be done if SAARC was used by its neighbors 'as a vehicle primarily to countervail India or to seek to limit its room for maneuver. India perceives its neighbors to be less than forthcoming in their efforts to strengthen regionalism and is therefore reluctant to lead SAARC". See, Shyam Saran, 'India and Its Neighbors', speech given at the Indian International Center, at <http://mea.gov.in/speech/2005/02/14ss01.htm>

are unable to break this impasse. This situation needs to be addressed anyway. It is, therefore, a high time to consider necessity for rebooting SAARC. Nepal, a neutral and less untrusted member, could play a vital role in bridging the gap between India and Pakistan. However, the failure of the Government of Nepal to hammer out a solution for convening the Summit in 2016 was costly. The Prime Minister of Nepal, in his capacity of the Chair, could negotiate with India and Pakistan to shift the venue of Summit one more time in Nepal and thus could save it from its present dormant situation. Nepal's Prime Minister's idleness, however, caused a loss of chance. This situation could also positively be exploited by Nepal to present its crucial role in mitigating the tension in the region. This chance was also not utilized either.

It is now widely realized that the restrictive Charter and weaker institutional machinery, besides the South Asian culture of suspicion and distrust, are preventing SAARC from taking meaningful and pro-active measures to prevent and manage conflicts among members. In this similar situation, ASEAN was pushed by people for having a charter that would provide for dispute settlement mechanism and the accountability for non-compliance of the recommendations.³⁴ ASEAN successfully embarked into this situation, and succeeded in building a better prospect for it as a viable regional body. It is now right time for the SAARC intellectuals and academicians to unleash vibrant debate in the line of having a mechanism within SAARC framework for dispute settlement purpose in the line as provided by the European Union and Inter-American Organization. For this purpose, the SAARC Charter requires to be revisited and amended suitably to accommodate such mechanisms. It would be advisable to follow the track of ASEAN³⁵ in this regard by pushing a debate in the leaders' summit and in the meeting of council of ministers to set up an 'Expert Taskforce' to suggest appropriate amendments in the Charter. Without a powerful jerk and emphatic push to achieve closer integration, the South Asian region as a community will remain just a myth. The non-dominant smaller members within SAARC, therefore, must work hard to build a trust between them and India and between them and Pakistan.

- b. The Charter evidently fails to recognize and grant independent legal status to the SAARC Secretariat. It even fails to spell out the functions, responsibilities and powers of the Secretariat. The Secretariat's role is simply limited to general clerical works. In absence of independent status, the Secretariat is bound to be ineffective and bureaucratic in nature. Since the Secretariat is not a decision making body within the present structure of SAARC, its effectiveness is contingent upon the decisions of the SAARC Council and the Standing Committee, which, in turn, are activated by summit meeting of the Heads of State and Government. Since summit meetings are delayed and lack of enthusiasm prevails, the Secretariat is bound to languish.
- c. Equally important deficiency of the Secretariat is its bureaucratic hassles and unlimited paperwork. It is being run by a small group of insignificant bureaucrats of the member States. They are loyal to

³⁴ . To revitalize ASEAN and lead it to a community, some ASEAN leaders pressed an idea of having a 'functioning dispute-settlement mechanism. To prepare a charter for such mechanism, an "Eminent Persons' Group (EPG) was created, which was adopted in November 2007. This Charter will come into force once it is ratified by member States. While the process is difficult and there are number of blocks on roads to achieve it, ASEAN has move ahead towards the direction of becoming a 'community'.

³⁵ . ASEAN is gradually emerging as a regional community to prevent and manage conflicts among members. ASEAN did not decline to engage itself into settlements of bilateral disputes, though using informal mechanism. Position of ASEAN solidified as a successful regional organization when the ASEAN countries successfully pressured Vietnam to reverse its 1978 invasion of Cambodia during the third Indo-China War (For detail, See, Ibid 8 at 6. The ASEAN decision to defer Cambodia's entry into it clearly challenged the former ideal of domestic non-interference (See, David B.H. Denoon and Evelyn Colbert, 'Challenges for the Association of Southeast Asians Nations (ASEAN), *Pacific Affairs*, Vol.71, No.4. (1998-99), p.511).

their respective State and are less concerned about effectiveness of the institution. Their decisions and works are influenced by their bosses in their respective countries. The Secretariat, in this perspective, has neither its independent will nor owes any accountability; the mandate of the secretariat is too constricted. The reform of the Secretariat, by entrusting it with independent power to implement decisions taken by the summit of the heads of State and Government, is thus urgent, and, to this effect, the amendment of article 8 of the Charter is not only advisable but indispensable. The amendment, *inter alia*, must have a provision of appointment of the Secretary General based on region-wide competence for a fixed period of tenure, and he/she should function as a chief executive officer of the institution. The status of the Secretariat must necessarily be alleviated to the permanent executive body of the institution. In addition, it is not only advisable, but also inevitable, that the Secretariat be extended and enabled enough to integrate civil society and academics, embodying researchers and professionals. Inclusion and integration of civil society will enhance the overall structure of SAARC and simplify and gear up the implementation of agreements.³⁶ The SAARC Secretariat must be strengthened also as an 'archive of SAARC institutional memory and research center'. At this juncture, the following suggestions of Dipanker Banerjee, a retired Major General of Indian Army, are worth considering: (i) the Secretary General must have a rank of a senior minister; (ii) the Secretariat must be enlarged with clarity of functional responsibilities to the department chief; and (iii) ASEAN Secretariat, which is headed by a Secretary General, has a strength of 200 staff with two deputy Secretary General, can be a model for study.³⁷

- d. The modality of unanimous decision making approach adopted by the Charter is another hurdle in growth of SAARC as a viable regional body with 'status of the South Asian Community' and the South Asian regional personality under international law. The system of consensus decision making even for trifle matters must be removed.
- e. Lack of access to civil society in decision making process of SAARC is another crucial problem. Like other regional bodies, the Charter of SAARC provides no right to people or citizens of the member States to make complaints against their government. The massive failures of the governance in the South Asian countries thus always go unaccounted for. This absence of mechanism for people's complaints against their authorities has reduced SAARC into a talking shop of government officials and political elites. The Charter again is a hurdle to make SAARC as a viable institution of the people of South Asia.
- f. The establishment of the SAARC Chapter in each country with responsibility to implement and follow up of the activities in the given country is equally important improvement necessary to create its viable role. The national chapter may include civil society members and academicians in larger volume to facilitate inter member connectivity at the grassroots level. The true integration of SAARC depends upon increased communication and interactions among the people of SAARC. The educational and cultural connectivity people is the most urgent need of SAARC for its larger integration. The engagement of the SAARC academicians and intellectuals is also urgent to dispel the academic hegemony of the developed countries. The SAARC education system must pay larger attention towards its episteme, which is being rapidly destroyed by the transplantation of knowledge,

³⁶ . Dipanker Banerjee (Retired Maj.Gen.), Keynote Speech to a regional conference (March 12-13, 2012) at Kathmandu. Published in Tomislav Delinic and Nishchal N. Pandey (eds.) *SAARC: Towards Meaningful Cooperation*, 2012, Center for South Asian Studies and Konrad Adenauer Stiftung, Kathmandu, Nepal.

³⁷ . *Ibid*

particularly the transplantation of social science which fails to pay regard to the historical indigenous values of the region.

Institution's growth is an organic process, to a larger extent. ASEAN has clearly shown this tendency over the last two decades. In 2003, the ASEAN leaders signed the 'Declaration of ASEAN Concord II, and, accordingly, ASEAN endorsed the creation of an ASEAN Community, including ASEAN Security Community with a view of achieving political and security cooperation to a higher level'.³⁸In 2007, ASEAN adopted the ASEAN Charter and introduced a rule-based and people-oriented system within the organization.³⁹ This effort transformed ASEAN from a society of States into a legal person. In 2010, the ASEAN Summit signed the Protocol to the ASEAN Charter on Dispute Settlement Mechanisms. To compare, SAARC is nothing more than a *system of States*; it neither has its ruled-based and people-oriented system nor has any independent personality. Hence, SAARC is nothing more than a *system of States* to 'meet and talk, and work for their convenience required by self-interest of socio-economic benefits'.⁴⁰ The major issue of SAARC's reform or improvement is, therefore, to transform it into a legal person with its own 'will, power and functional independence'.⁴¹

The expansion of bilateral trade and economic activities constitute a driving force for the amelioration of the 'existing passive state of SAARC'. The expansion of trade among SAARC member States requires 'the implementation of the principle of 'Most Favored Nation'. Indo-Pak policies of having limited trade between them are holding the economic development of the region into hostage of their politics. While India granted Pakistan a status of MFN in 1996, it maintains 'an array of hidden barriers'. Pakistan denied granting MFN status to India.⁴² It is, therefore, necessary to break such negative attitudes by solidarity of the people of SAARC. The concept of people's SAARC and integration of civil society into the Secretariat are crucial ideas to achieve the goal of integration. The institution of SAARC therefore must cease to be a fiefdom of bureaucrats and politicians. A thin light of hope in this regard is generated by the establishment of the South Asian (SAARC) University. This can be taken as prelude to 'bring intellectuals and young people' together to think alternatively about enhancing the concept of viable South Asian community. The SAARC University has a provision for establishment of regional campuses in all member countries. Expediting to establish such regional campuses will gear up the process of academic and educational integration of the region. This development has to be followed by the urge to establish SAARC Human Rights Commission and the conflict management and negotiation mechanism within the SAARC Secretariat. These goals are difficult to meet within shorter period of time, but they are not impossible to achieve one day, and thereby transform SAARC into 'South Asian Community'.

³⁸ . "Declaration of ASEAN Concord II (7 October, 2003).

³⁹ . "The ASEAN Charter", available at <http://www.asean.org/Publications/ASEAN-Charter.pdf>

⁴⁰ . SAARC emerged as a vehicle to foster economic and social/cultural cooperation among the countries of South Asia. The idea or concept formalizing such an association lacked 'thought of evolving it as a community with its legal personality. It was the reason behind rendering the association crippled by the principle of 'unanimity in decision' making. Moreover, the idea of keeping the bilateral and contentious issues out of the agenda was prompted by the same concept. See, Md. Nuuzzaman, 'SAARC and Sub-Regional Cooperation: Domestic Politics and Foreign Policies in South Asia', *Contemporary South Asia*, Vol.8, No.3 (1999), pp.311-322.

⁴¹ . For detail See, *Supranote8* at 9

⁴² . MuhhammadNajeeb, 'MFN Eludes India, Pak Inc.Cries Foul', *the Economic Times* (09 September, 2003).