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ASEAN AFTER THE ASEAN CHARTER: PRIORITIES AND PROSPECTS FOR A PEOPLE-CENTRED ASEAN

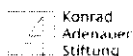
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ASEAN AFTER THE ASEAN CHARTER:
Priorities and Prospects for a People-Centred ASEAN
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Before the Charter

The Association of Southeast Asian Nations (ASEAN) has operated without a formal charter for over 40 years. ASEAN has preferred to manage its affairs with a minimum of formality, with few legally binding arrangements, and with relatively weak regional institutions. ASEAN's founding document was a two-page Declaration. It had no criteria for membership other than location in Southeast Asia and adherence to some general principles of international behaviour. Most ASEAN agreements, even those that are technically binding, have been dependent on the voluntary compliance of member-states. There are no mechanisms for calling member-states to account in case of non-compliance with binding agreements.

The great diversity of the countries of Southeast Asia, their widely different historical legacies, their divergent strategic outlooks, the diverse compositions of their populations, the uneasy nature of some of the relations, and the lack of a regional identity among their peoples have led ASEAN governments to prefer informal processes, weak regional institutions, and decisions by consensus.

This has reassured the ASEAN members, even as they build confidence among themselves, that their national sovereignty, would not be threatened by their neighbours. They have gained the confidence that decisions would not be imposed on them by a combination of neighbours or through a strong supranational institution.

Over most of ASEAN's existence, this loose, informal arrangement has served the association and its members well. The "**ASEAN Way**" and the association's very existence have enabled ASEAN to keep the peace among its members, promote regional stability and play a constructive role in the world out of proportion to its military might or economic heft. The bilateral disputes have been managed and contained, some settled by legal or diplomatic means, in non-violent ways.

Nevertheless, certain norms of inter-state behaviour have evolved over the years. Common economic purposes have been pursued through closer cooperation and moves towards regional economic integration. Relationships formed and cooperative practices developed have helped ASEAN countries, working together, deal with common regional problems like trans-boundary pollution, transnational crime and communicable diseases.

On this basis, links have been developed among non-governmental organizations, industry groups, professional associations, and cultural and educational institutions across the region. At the same time, ASEAN has remained open to the rest of the world and is closely engaged with the world's leading powers.

Over the years, ASEAN has entered into agreements that are technically binding on its members. The Treaty of Amity and Cooperation in Southeast Asia lays down certain principles governing the behaviour of states-parties with respect to other states and establishes procedures for facilitating the peaceful settlement of disputes.

The Southeast Asia Nuclear Weapons- Free Zone treaty commits the parties not to *"develop, manufacture or otherwise acquire, possess or have control over nuclear weapons; ... station or transport nuclear weapons by any means; or ... test or use nuclear weapons"* in the treaty's area of coverage or allow others to do any of these things.

The agreement on the ASEAN Free Trade Area obligates ASEAN members to bring down and remove tariff and non-tariff barriers to trade. ASEAN has separate agreements committing its members to the sector-by-sector liberalization of trade in services, the harmonization of product standards, mutual recognition arrangements, and the free flow of intra-ASEAN investments.

ASEAN has concluded agreements on air cargo and on the facilitation of goods in transit, and it has one on multimodal transport ready to be signed. ASEAN's heads of government themselves signed an agreement on tourism, pledging their countries to take certain specific cooperative measures for developing and promoting tourism in the region. Thus, by these means, ASEAN has gained recognition as a regional entity and has, to a rising degree, acted as one.

However, although some of its agreements are technically binding, ASEAN had no central institutions to uphold compliance with them. It had nobody to call a member-state to account for non-compliance with the agreements. ASEAN had no credible mechanisms for settling disputes in an objective and binding manner. A mechanism approved by ASEAN's leaders in 2003 (the EDSM) would cover only economic agreements.

For lack of explicit legally binding provisions in most of its agreements, with no effective compliance mechanisms or credible dispute-settlement systems, ASEAN often did not carry out measures already agreed on to integrate the regional economy or deal with transnational problems. Because it did not have the mandate to do so, the ASEAN Secretariat could not call for compliance with ASEAN agreements, or initiate arrangements or other actions to advance ASEAN's purposes.

Externally, ASEAN lacked a central authority to speak on the association's behalf and conclude agreements and otherwise conduct relations with other organizations and states. ASEAN did not have juridical personality or legal standing under international law. The lack of all this is a principal reason why ASEAN is slow not only in arriving at agreements but also in carrying them out.

But the trends towards globalization and towards regionalism in many parts of the world, as well as the rise of China and India required ASEAN to move towards closer cohesion and more rapid responses to these trends. So does the emergence of trans-boundary challenges in the form of threats to the environment, transnational crime, international terrorism, communicable diseases, and so on.

Why have an ASEAN Charter?

For all this, what ASEAN needed was a charter, that would establish the association as a juridical personality and a legal entity. It would make clear the ASEAN's objectives. The charter would enshrine the values and principles to which the association's members adhere and which, in a real sense, define its very nature. The charter would envision the arrangements for the further integration of the regional economy and define the institutions, mechanisms and processes for dealing with transnational problems. It would establish the organs of the association and delineate their respective functions, responsibilities, rights and limitations, the relationships among the organs, and their decision-making processes. Among these organs would be an objective and credible dispute-settlement mechanism. The charter would mark out the relationship between the association and the member-states. It would specify the ways for the charter to take effect and when. It would lay down rules for amendments to be made.

Developing the ASEAN Charter

ASEAN had, on some occasions, expressed its members' adherence to certain common values and principles but these had not been embodied in a single authoritative document. Without a comprehensive set of values and principles explicitly adopted, ASEAN could not call its members to account for acts that have adverse impacts on fellow-members or on the region as a whole nor could ASEAN credibly set the direction in which it is headed.

The identification of common values and principles serves to define a region's image of itself. It helps to cultivate a deeper sense of regional identity among its people. At the same time, practical steps have to be taken to promote such an identity, particularly in order for the common values and principles to take stronger hold.

The intention to draft the Charter had been formally tabled at the 11th ASEAN Summit in 2005 in Kuala Lumpur. Pursuant to the commitment to work towards an ASEAN Charter, the ASEAN Leaders established the Eminent Person Group (EPG) on the ASEAN Charter, mandated to examine and give recommendations on the directions and nature of the ASEAN Charter relevant to the ASEAN Community. At the 12th ASEAN Summit in Cebu, the Leaders endorsed the Report of the EPG and directed a High Level Task Force (HLTF) to complete the drafting of the Charter in time for the 13th ASEAN Summit in Singapore in November 2007. The task force held 13 meetings during 2007. Some of their proposals include the removal of non-interference policy that is central to the regional group since its formation in the 1960s, and to set up a human rights body.

Overall, the ASEAN Leaders agreed that the ASEAN Charter should:

- Provide ASEAN with greater relevance as a credible, cohesive and economically competitive institution.
- Serve to provide an enhanced institutional framework and a legal personality to support the realisation of ASEAN's goals and objectives.

- Codify ASEAN norms, rules and objectives and reaffirm that instruments adopted before the establishment of the ASEAN Charter apply and be legally binding where appropriate.
- Reaffirm principles and goals contained in ASEAN's agreements, and principles of inter-State relations in the UN Charter and international law.
- Allow the Secretary-General and the ASEAN Secretariat to be given greater mandate and more resources.
- Look into new ways to mobilise ASEAN's resources.
- Transform the loosely arranged ASEAN Summit into an ASEAN Council.
- Allow for more effective decision-making and provide effective measures and dispute settlement mechanisms to ensure compliance and implementation.

The EPG recommended that these principles and objectives be reflected in the Charter which broadly cover the following areas: -

- Promotion of ASEAN's peace and stability through the active strengthening of democratic values, good governance, rejection of unconstitutional and undemocratic changes of government, the rule of law including international humanitarian law, and respect for human rights and fundamental freedoms.
- Promotion of ASEAN's prosperity and resilience through closer cooperation and integration namely the ASEAN Economic Community, Single Market, greater economic linkages, regional connectivity and narrowing the development gap.
- Promotion of ASEAN's timely and effective responses to non-traditional and transboundary challenges and crises through mutual assistance or regional and international cooperation. ASEAN may need to calibrate the traditional policy of non-intervention in areas where the common interest dictates closer cooperation.
- Promotion of an ASEAN identity through greater awareness of ASEAN's cultural heritage, investment in learning, empowering the lives of the people and communities and engagement with civil society.
- Expressing the resolve to realise an ASEAN Community and ultimately an ASEAN Union.

The Charter was adopted at the 13th ASEAN Summit in November 2007 and came into force on 15 December 2008, when the members of ASEAN met in Jakarta to launch the charter. Accordingly, the charter turned ASEAN into a legal entity and aimed to create a single free-trade area for the region encompassing 500 million people. In summary, the charter's aims included:

1. Respect for the independence, sovereignty and territorial integrity of member states
2. Peaceful settlement of disputes
3. Non-interference in member states' internal affairs
4. Right to live without external interference

Towards an ASEAN Community

Regional integration in ASEAN is accelerating and expanding far beyond that envisaged in the ASEAN Declaration of 1967. ASEAN economies are growing and are now more inter-linked. This broader scope of cooperation entails the need for greater political commitment to realise the vision of an ASEAN Community. The EPG recommended that:

- ASEAN Leaders should meet more often to give greater political impetus to ASEAN's community building. The ASEAN Summit should meet at least twice a year.
- Formation of three Ministerial-level Councils reporting to ASEAN Leaders to oversee the three key aspects of building an ASEAN Community (political-security, economic, and socio-cultural) and resolve many of the issues requiring inter-sectoral coordination.

The key to ASEAN's future is being competitive, growing the overall size of the economic pie and leveraging on various opportunities for win-win cooperation with ASEAN's Dialogue Partners and friends. To ensure that ASEAN can grow collectively, the development gap must not be left unaddressed, as this could adversely affect ASEAN's ability to achieve its goals. To do all this and to build an ASEAN Community requires substantial resources. While ASEAN faces certain resource constraints, it will be necessary to review ASEAN's budget to see how best it can support the new demands.

ASEAN's problem is not one of lack of vision, ideas, or action plans. The problem is one of ensuring compliance and effective implementation. ASEAN must have a culture of commitment to honour and implement decisions, agreements and timelines. The EPG recommended:

- Dispute Settlement Mechanisms (DSM) be established in all fields of ASEAN cooperation which should include compliance monitoring, advisory, consultation as well as enforcement mechanisms.
- The ASEAN Secretariat be entrusted with monitoring compliance with ASEAN agreements and action plans, with the Secretary-General of ASEAN reporting its findings to the ASEAN Council and the Community Councils on regular basis.

ASEAN should have the power to take measures to redress cases of serious breach of ASEAN's objectives, major principles, and commitments to important agreements. Failure to comply with decisions of the dispute settlement mechanisms should be referred to the ASEAN Council.

Towards a People-Oriented ASEAN

ASEAN needed to shed its image of being an elitist organisation comprising exclusively diplomats and government officials. More should be done to strengthen people-to-people ties among ASEAN Member States, and to develop channels to consult ASEAN institutions, Parliamentarians in ASEAN Member States (AIPA) and the people of ASEAN in all sectors of society. Their inputs can help strengthen

cultural awareness, forge closer common ASEAN identity, and improve human social development in ASEAN. In this regard, the EPG recommended: -

- Cultivate ASEAN as a **people-centred organisation** and to strengthen the sense of ownership and belonging among its people, including enhancing the participation of and interaction among Parliamentarians in ASEAN Member States (AIPA), representatives of the civil society organisations, the private business sector, human rights groups, academic institutions and other stakeholders in ASEAN.
- The Principal Organs of ASEAN shall undertake regular consultations with all of the parties mentioned above through appropriate channels.
- Strong political will is necessary if ASEAN is to succeed. ASEAN Member States must make conscious efforts to promote the benefits of closer regional integration as well as accord higher national priority to ASEAN in their domestic agendas.

Questions

1. **With the ratification of the ASEAN Charter, what are the opportunities and priorities towards fulfilling the Charter's pledge of promoting a "people-oriented ASEAN"?**

In ASEAN's case, the association's priorities are stated in some ASEAN documents, which include:-

- The well-being of the member-countries' peoples and the protection of their rights;
- The maintenance of regional peace and stability;
- The integration of the regional economy for its growth and competitiveness;
- The narrowing of the development gap among ASEAN countries;
- The reduction of poverty within ASEAN countries;
- The conservation and protection of the region's environment for sustainable development;
- Cooperation in dealing as a region with transnational regional problems;
- The advancement of the common values that the region's peoples hold in common;
- The cultivation of a sense of regional identity among the region's peoples;
- The promotion of Southeast Asian and ASEAN studies;
- The development or establishment of effective regional institutions for advancing the above objectives.

As for opportunities, the Charter provides for:

- a. **Integration and Greater Institutional Development**

Regional economic integration is one of the vital objectives of ASEAN. It is also important to note that deeper economic integration in ASEAN cannot be successfully achieved without the establishment of a stronger institutional structure with a better enforcement mechanism. Thus, with the Charter in place, coordination among existing institutions is streamlined, strengthened and enhanced. Additionally,

enforcement mechanisms are better designed in order to facilitate and expedite economic integration. In this regard, the European experience is worth noting; in Europe, institutional development started at an early stage of economic integration. In ASEAN's case, building relevant institutions to expedite regional economic integration is long overdue.

The charter would define the principal stages towards the establishment of the common market. The first would be the full implementation of AFTA and the other ASEAN economic agreements already arrived at.

The second would be not only the removal of all barriers to trade among ASEAN's members but also the establishment of a common set of external tariffs on imports into ASEAN from outside ASEAN, that is, a customs union. This would require the negotiation of trade agreements, in multilateral settings or with individual countries and groups of countries, by an ASEAN official on behalf of the association as a whole.

The final stage, that of an ASEAN Economic Region or common market, would entail the tight coordination of policies that affect trade, investments and the macro-economy, which would, in turn, require a strong central authority to administer and monitor the process of coordination.

ASEAN still maintains a loose institutional structure although there has been a strengthening of its institutions in recent years. ASEAN does not operate on the overriding principle of using a formal, detailed, and binding institutional structure to prepare, enact, coordinate, and execute policies for economic integration. The "ASEAN Way" of dialogue is still very much entrenched: i.e., *musyawarah* (discussion and consultation), and *mufakat* (consensus). But with the Charter, ASEAN would be more rules-based.

b. More Effective Decision-making

ASEAN's consensus style of decision making has served ASEAN well and should be preserved as the guiding principle. Consensus should aid, but not impede, ASEAN's cohesion and effectiveness. As the range of activities within ASEAN increases, ASEAN should consider alternative and flexible decision-making mechanisms. The EPG had recommended: -

- Decision-making by consultation and consensus should be retained for all sensitive important decisions. However, if consensus cannot be achieved, decisions may be taken through voting, subject to rules of procedure determined by the ASEAN Council.
- The flexible application of "ASEAN minus X" or "2 plus X" formula may be applied, subject to the discretion of the relevant ASEAN Community Councils.

c. Hands-on leadership

The Charter calls for ASEAN summits to be held twice a year. One of these meetings is to be devoted entirely to intra-Asean matters, which will enable the heads of state or government to take hands-on and focused leadership of regional affairs. The

summit is also explicitly charged with making decisions on important matters, particularly in cases where consensus cannot be reached.

A committee of permanent representatives is also set-up to take over supervision and decision-making from the ASEAN Standing Committee. The committee of permanent representatives based in Jakarta, would ensure that supervision should be closer, management easier and decision-making faster.

The Charter also makes explicit the Secretary-General's responsibility to 'facilitate and monitor progress in the implementation of Asean agreements and decisions'. It calls for the establishment of dispute-settlement mechanisms in cases where the agreement concerned does not provide for one. The Sec-Gen would monitor compliance with the decisions of the dispute-settlement mechanisms. This is what it means when we say the Charter is intended to make ASEAN more rules-based i.e. strengthening the mechanisms for compliance and improving the likelihood of compliance. What the Charter banks on is the further cultivation of a culture of compliance with ASEAN agreements and decisions. The development of such a culture would, in turn, depend on two things. One would be the sharper consciousness of the identity of the national interest with those agreements and decisions. The other would be the domestic reforms required for the implementation of ASEAN agreements.

2. How can human security be mainstreamed and prioritized in the process of ASEAN integration?

Establishment of a human rights body

The Charter expresses ASEAN's intention to set up a human rights body. But with its terms of reference still a work in progress, the mandate, composition or authority of this body is not known to the public. No judicial arm or enforcement mechanism is envisioned. ASEAN is not about mutual accusation or the legal enforcement of commitments. As of now, the human rights body could promote the exchange of best practices and help to build capacity in ASEAN countries for the promotion and protection of human rights.

It could expand and make more specific the regional definition of human rights. It could do so perhaps on the basis of the statement on human rights in the Joint Communique of the 1993 ASEAN Ministerial Meeting. ASEAN's approach to human rights has been step by step, sector by sector. For example, it has taken, at different times, collective positions on the worst forms of child labour, violence against women and the rights of migrant workers. The human rights body could monitor compliance with these commitments and initiate similar consensus on others. The and media and NGOs might not be satisfied with the pace. But in a regional group as diverse as ASEAN, it is the most efficacious way of proceeding on this issue at the moment. Currently, the High Level Panel (HLP) on the Establishment of an ASEAN Human Rights Body had met several times and it is expected that an establishment of this Human Rights Body would be announced at the 15th ASEAN Summit later this year.

3. What are the challenges of centering people in ASEAN integration? How can these be overcome?

Regional identity vs. National identity

The ASEAN regional identity is still weak. This may be partly due to the fact that "national identity" is stronger than "regional identity" in ASEAN. Southeast Asia was only a geographical region rather than a socio-political, economic and cultural region. ASEAN is one of the most diverse areas in the world; it is multi-ethnic, multi-lingual and multi-religious. Economically, with the exception of Singapore, ASEAN countries are mostly "underdeveloped". Due to different ideologies and historical experiences, ASEAN countries were unable to establish close ties until in the 1990s.

The leaders of the Southeast Asian states have been aware that their peoples do not know much about each other. Therefore in the Bangkok Declaration in 1967, when ASEAN was first established, a clause was inserted that one of the purposes and aims of ASEAN was "to promote Southeast Asian Studies". In other words, through the promotion of Southeast Asian Studies or "ASEAN Studies", member-states would be able to understand each other and promote closer cooperation.

After several decades, due to the change in the external environment and within the ASEAN countries themselves, there was a common desire to foster an ASEAN community rather than just promoting "closer cooperation". "Integration", not "cooperation", has become the final goal of the ASEAN states.

ASEAN would like to become an economic community, a security community and a socio-cultural community. In short, a regional community rather than national communities. Nevertheless, national identity in ASEAN is still strong. When there is a conflict of "national identity" and "regional identity", national identity (national interest) often, if not always, prevails. When this happens, it jeopardizes the cooperation and integration of ASEAN states into a regional entity. There is a danger of hindering the integration process.

It should be noted that ASEAN was an élite organization rather than a people's organization. In other words, ASEAN was popular among the élites of Southeast Asian countries, but has not been widely understood by the man in the street. Élite-mass integration in the ASEAN context is therefore needed; one way of creating this integration is to promote an ASEAN regional identity.

A regional identity refers to a collective identity, or supra-national identity. Usually it can be divided into symbolic/institutional and value identities. The former is concrete while the latter is abstract. It is not easy to define the ASEAN (regional) identity, as the countries in the region are so diverse. Three major world religions, i.e. Islam, Christianity and Buddhism are found in the ASEAN states. Major and minor languages as well as various races are present. Countries are at different stages of economic development. Even political ideologies are not always in conformity. Therefore extreme diversity is the major characteristic of ASEAN, but if diversity is

overstressed, there will not be a "common" identity but a "diverse" identity. Therefore, to promote an ASEAN regional identity means to promote "unity in diversity". This is to guarantee regional integration and prevent regional disintegration.

At the moment, there exists an ASEAN regional symbol and an institution: these are the ASEAN Logo and ASEAN Secretariat. These two concrete properties of ASEAN should be popularized in all ASEAN countries through educational institutions at all levels.

There are four other "symbols" of ASEAN regionalism which should be promoted:

- The establishment of an ASEAN Studies Centre,
- An ASEAN College/University,
- Celebration of ASEAN's birthday (to be called the ASEAN Day) as a common holiday for all ASEAN states.
- Furthermore, the Southeast Asian Games (SEA Games) should be called the "ASEAN Games" in order to enhance people's awareness of the presence of ASEAN.

Common Values/Norms

Common ASEAN values or ASEAN Shared Values are present in the ASEAN states. Some of these values are weak and hence should be promoted. These values/norms include consensus, mutual respect, non-interference, peaceful settlement of disputes, renunciation of the use of force, protection of human rights, and promotion of social justice.

Adoption of the Community Blueprints

As agreed in the Charter, ASEAN cooperation shall be categorised into three main areas: Political Security, Economic and Socio-cultural. Each area would be headed by its respective Community Council, which will act as a body set up to attend to interests in the region and organize community activities. These Councils would also monitor cooperation and ensure that Member States follow through with activities outlined under their respective action plans. The ASEAN Economic Community Blueprint was adopted at the November 2007 Summit, while the ASEAN Leaders in March 2009 adopted the ASEAN Political-Security Community (APSC), and ASEAN Socio-Cultural Community (ASCC) Blueprints, as part of ASEAN's roadmaps to achieve the ASEAN Community.

The ASCC envisages the following characteristics:

- Human Development;
- Social Welfare and Protection;
- Social Justice and Rights;
- Ensuring the Environmental Sustainability;
- Building the ASEAN Identity; and
- Narrowing the Development Gap.