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Building a People-Oriented Community in ASEAN: Are we looking at a new beginning with the Charter?

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The Association of Southeast Asian Nations (ASEAN) formally ratified a new Charter with the submission in December 2008 of the instruments of ratification by the government of Indonesia. The Charter formalizes the establishment of an ASEAN Community – an objective whose origins can be traced to the ASEAN Vision 2020 which projected the eventual evolution of ASEAN into a “community of caring societies.” A key corollary point that is used to constantly describe the projected ASEAN Community is the idea of being people-oriented. This is a constant refrain in most of the major ASEAN documents that have emerged from the ASEAN Charter onwards, particularly the ASEAN Blueprints for a Political-Security Community and a Socio-Cultural Community. The significance of these Blueprints in particular lie in the action plans that are supposed to be expressions of how ASEAN intends make more concrete its pathway towards becoming a people-oriented community. But will they? What are the prospects of a people-oriented ASEAN community emerging? Can the Charter and the subsequent Roadmap for an ASEAN Community provide the enabling environment that can more fully support the establishment of a people-oriented community?

Fundamentally, this paper argues that ASEAN does provide the normative roadmap which could be the basis for establishing such a community. What is not clear in the Charter and even in the documents that follow is what kind of institutional arrangements will allow ASEAN to undertake action that will meaningfully move it towards becoming more people-oriented. It is the lack of institutional mechanisms (not to speak of a track record of not wanting to establish stronger regional institutions) that creates skepticism about ASEAN.

A People-Oriented ASEAN: The Normative Roadmap

The ASEAN Charter presents as one of its objectives the establishment of a people-oriented community. This is further elaborated upon in the ASEAN Political-Security Community Blueprint which describes this concept as a community in which “all sectors of society, regardless of gender, race, religion, language, or social and cultural background are encouraged to participate in, and benefit from, the process of ASEAN integration and community building.” It is further emphasized that in the context of this aspiration, ASEAN was to try very hard towards being able to promote and support gender mainstreaming, tolerance, respect for diversity and equality and mutual understanding. To a significant extent, the Charter and subsequent documents would formalize the normative foundations that constitute the basis for an ASEAN Community. This normative foundation lays out an ASEAN that is supposed to provide a more “rules-

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based environment” for what is projected to be more intensive intra-ASEAN economic, security and social cooperation.

The ASEAN Charter sets out very clearly a vision for ASEAN and, in fact, takes some important steps forward from previous declarations and statements of the association. In particular, it

1. commits ASEAN to the principles of democracy, the rule of law and good governance, and respect for and protection of human rights and fundamental freedoms;
2. commits ASEAN to the establishment of an ASEAN human rights body;
3. provides the legal basis for the establishment of bodies that will be responsible for coordinating the different areas of cooperation in conformity with the three pillars of the ASEAN Community, i.e. the ASEAN Economic Community (AEC), the ASEAN Security Community (ASC), and the ASEAN Socio-Cultural Community (ASCC); and
4. presents the idea that all Member States are obliged to take all necessary measures to effectively implement the provisions of the Charter and *comply* with all the obligations of membership.

The first two points are pertinent to the aspiration of a people-oriented ASEAN because they describe the normative environment that is supposed to facilitate the increased participation of the people which is so central to it. The third describes the instrumental mechanisms which constitute the basis of ASEAN activities that would promote a people-oriented association. It is the last point, however, that provides the element of uncertainty because of the lack of institutional mechanisms that would ensure compliance.

Since the ratification of the Charter, ASEAN has moved forward on the drafting of the Blueprints for the AEC, the ASCC, and what has become the ASEAN Political-Security Community (APSC). These instruments, together with the Initiative for ASEAN Integration, now constitute the Roadmap for the ASEAN Community. Their significance, especially the Blueprints for the APSC and the ASCC, lie in the action plans that are the bases for realizing the normative structures that are broadly presented in the Charter. People-orientedness is best seen in terms of two main areas: the normative concerns that supposedly illustrate ASEAN sensitivity to issues that concern the people – and which therefore should be the target of the collective action of the ASEAN states; and the action plans which promote greater involvement of the people in ASEAN.

Thus, in the APSC we find references to the need to strengthen democracy, the enhancement of good governance and rule of law, and the promotion and protection of human rights. There are also the injunctions that the ASEAN states have a shared responsibility for comprehensive security – a concept which sees security beyond the traditional context of military threats to include threats to personal and community welfare and well-being. The specific attribution to the need to address non-traditional security threats open up space for issues which are more in line with human security than

the still state-centric frame of comprehensive security. In the ASCC Blueprint, the injunction for all members of ASEAN to seriously pursue the successful achievement of MDGs at the soonest possible time cover a wide variety of concerns that point to a focus on welfare and social issues. The specific reference to MDGs make ASEAN goals on these issues more clear-cut.

On the action plans, the APSC promotes increased engagement between governments, academics, and civil society. Similarly, the ASCC makes reference to increased cooperation while emphasizing the involvement of civil society. There are references in one or both on:

1. workshops and/or track two (academic and think tank networks) events that would inform track one (government) processes;
2. training courses on topics such as democracy and good governance;
3. increasing the involvement of media in information dissemination and the promotion of issues of concern;
4. dialogues and partnerships involving governments, the private sector, civil society and other relevant publics;
5. establish multi-sectoral groupings involving government, NGOs and academics; and
6. develop capacities to deal with issues involving non-government, particularly civil society, groups and institutions.

These are, however, aspirational statements. Not surprisingly, the Charter and the different blueprints present ideas that project a positive image of what ASEAN would like to be. The question is whether ASEAN will live up to its self-projections. ASEAN has always been criticized for being long on rhetoric but short on action. This rhetoric-action gap has been a major reason for increasing skepticism or a continuing lack of interest (or even awareness) within ASEAN (especially from the principal audience for the idea of a people-oriented ASEAN – the people). ASEAN, however, has been moving positively in terms of increasing engagement with civil society groups and other non-government publics.

ASEAN has begun to institutionalize processes of engagement with civil society groups. In particular, the ASEAN People's Assembly (an initiative of the ASEAN Institutes for Strategic and International Studies for bringing government representatives and civil society groups together in a Track Two forum) and the Civil Society Conference (an initiative of the Malaysian government which has largely been taken up by the different member states who have chaired the ASEAN Standing Committee since 2005) have become platforms for discussing issues that concern the people of ASEAN. The significance of these platforms is the direct way by which the ideas discussed there are presented either to the ASEAN leaders or to senior officials.

More significantly, there is an emerging habit within ASEAN of direct consultations with interested publics on a number of issues. This has mostly been on the documents that constitute the Roadmap for an ASEAN Community. The drafting of the Charter, for instance, involved regular consultations with civil society groups and academics from the vision work done by the Eminent Persons Group, to the drafting work of the High Level

Task Force, to the different fora which were responsible for inputs to the different blueprints. The Philippine government, for instance, started the ASEAN Social Forum as a consultation mechanism for the ASCC Blueprint. The practice, however, has been uneven in its application. While there have been extensive sets of consultations in Indonesia, the Philippines, and Thailand, and less so in Cambodia, Laos, Malaysia and Singapore, it is almost non-existent in Brunei and Myanmar. The practice, however, is increasingly becoming a regular part of ASEAN processes.

ASEAN has also moved relatively fast on the drafting of the terms of reference for the ASEAN Human Rights Body. The High Level Panel responsible for drafting the TOR has already submitted the first draft of the TOR. Although that draft has been much criticized, it indicates that ASEAN would like to showcase it as an example of ASEAN's commitment to human rights. The test, however, is on what will substantively be contained in the TOR in terms of what the powers would be of such a body, and what its relationship will be with the ASEAN states.

The other side of the ledger on ASEAN's commitment to establishing a people-centered ASEAN, however, shows how much ASEAN itself has to do on issues concerning its members. There has been very little done regarding continuing political repression in Myanmar, as emphasized by the experience of Daw Aung San Suu Kyi, and the case of the Rohingyas. Cutting across the region is embedded political elite cynicism and opportunism which has allowed corruption, criminality, and lesser forms of political repression to prosper. More generally, there is still a lack of clear-cut cooperation on addressing the economic gaps within ASEAN.

The argument here is that it has been less than two years since the Charter was signed by the leaders and few months since its ratification. The Roadmap for an ASEAN Community has just been established. It is premature to make judgments. The problem is that the institutional mechanisms that would be responsible for making these normative aspirations a reality continue to be weak.

The Institutional Shortcomings

Two interrelated issue areas continue to make the skeptics on ASEAN skeptical. Both are largely institutional issues that make the idea of a people-centered ASEAN more of a continuing hope than a prospective reality.

Binding decisions. A rules-based environment emerges from both procedural and substantive aspects of decision-making. As noted at the start of this section, rules or decisions made must be clear to all and agreements reached must be made on the basis of good faith, i.e. that there is the intention to comply. The implication is that decisions are made to apply to all.

By and large, the binding nature of decisions made at the level of ASEAN had in the past been less of an issue because of the consensual process of ASEAN decision-making. Because a consensus approach meant that decisions could only be made on issue areas

where the member-states of ASEAN were largely in agreement, it had prevented sensitive concerns from becoming divisive issues and thereby contributed to ASEAN solidarity over the years. Due to its consensus approach to decision-making, however, ASEAN was also forced to accept language in its declarations that are largely aspirational rather than explicitly binding in nature. *The Economist* quoted a report from the Center for Strategic and International Studies, a U.S. think tank based in Washington, D.C., which stated that only 30% of ASEAN's agreements are ever implemented.² While questions can be raised about the percentages, it does reflect perceptions that ASEAN agreements and declarations are largely ceremonial in nature with very little substance behind them. An ASEAN senior official was actually quoted as saying that it was hoped that the ASEAN Charter "would also help put into place a system in which more ASEAN agreements would be effectively implemented and enforced long after the symbolic signing ceremonies."³

The Charter drafters decided to retain the consensual nature of ASEAN decision-making with all its limitations. To allow for flexibility, however, the drafters included an "ASEAN Minus X" formula but only for economic initiatives where the capacity to participate is not universal.⁴ This would, as one critic described it, allow "those not quite ready for prime time to opt out . . . [in order to] facilitate the achievement of ASEAN's more lofty economic goals . . . among those who are willing."⁵ While understandable in its practical intentions, it also shows how even in economic cooperation (which is supposed to be the showcase area of ASEAN cooperation), there are already expectations that ASEAN agreements are more likely to involve coalitions of the willing rather than being an "ASEAN agreement." In the economic arena, this will create moral hazard issues for ASEAN's less developed members, and no sense of urgency on the part of the more economically progressive members to consider measures that would help reduce the development gap between them and the other ASEAN members.

The extent to which decisions are binding, and the implied good faith behind them, also present continuing problems for ASEAN in relation to the case of Myanmar. The commitment to democracy and human rights that is part of the progressive aspects of the Charter only becomes meaningful if there is a serious intent to put into place mechanisms that will allow for the enforcement of human rights protection across the region. There is a provision in the Charter for the eventual establishment of a human rights body. Critics point out that without further details, "it is difficult to envision a 'human rights body' with any teeth or credibility."⁶ This point will be discussed further in a different section of this paper. What is of concern here is that the decision-making process in the Charter allows interested parties to create obstructions to the actual establishment of such a body, or, in the event that it is established, endowing such a body with any real influence and authority over human rights observance by countries in the region. Being questioned here

² See "Fifth from the right is the party pooper," *The Economist* (24-30 November 2007): 35.

³ Ralph Cossa and Brad Glosserman, "Multilateral Progress pending on Multiple Fronts," *Comparative Connections: A Quarterly E-Journal on East Asian Bi-lateral Relations* (October 2007): 6.

⁴ See Section 2 of Article 21 in Chapter VII of the Charter.

⁵ Ralph A. Cossa, "ASEAN Charter: One (Very) Small Step Forward," *PacNet* 48 (21 November 2007).

⁶ *Ibid.*

is the intention to take seriously obligations (especially on human rights) that the Charter imposes on the ASEAN member-states. One article noted that the leader of Myanmar had no qualms signing on to a document that would commit his government to human rights and democracy (and all that this implies for the survival of the military junta in Myanmar) because “the charter contains little more than waffle. It commits ASEAN’s leaders to nothing that matters.”⁷ This is a serious charge, but it has its basis in the procedural and substantive contents of the Charter’s provisions on decision-making.

Compliance and sanctions. The seriousness with which states take their obligations under the Charter seriously would have more credibility if there were very clear structures for ensuring compliance. Barry Desker, Dean of the S. Rajaratnam School of International Studies in Singapore, cited a specific example when he called for the suspension of Myanmar from ASEAN to give credence to the statement of the ASEAN Ministers against the military junta’s violent crackdown against demonstrators in Yangon and elsewhere in the country. He noted that ASEAN must adopt clear standards of behavior for its members and, more importantly, to agree on what will be its course of action if a member blatantly flouts its obligations.⁸

Considerations of ASEAN solidarity, however, have taken precedence over substantive concerns that may affect the credibility of ASEAN norms and values, and what the ASEAN Community stands for. Early in the process of the work of the High Level Task Force drafting the Charter, it was decided that provisions on discipline would be left out of the Charter to make the language less divisive.⁹ Instead, a provision was included that referred questions of discipline regarding cases of serious breach of the Charter or cases of non-compliance on provisions of agreements to the ASEAN Summit.¹⁰ This effectively gives the state involved a veto on what should be done to it. The Charter’s insistence on referring such matters to the ASEAN Summit, with its decision-making via consensus approach, negates the effect of the inclusion of even a weak reference to addressing non-compliance.

ASEAN and its continuing past: Prospects for Community Building

Overall, the key issues regarding the Charter and the degree to which it moves ASEAN forward in its aspiration to become a people-oriented community do not really present a picture of significant change over ASEAN in the past. To a large extent, ASEAN’s past is still its present. The two major issues that have concerned ASEAN in the past and which have formed major concerns for greater ASEAN integration have been Myanmar and reducing the development gap between the CLMV countries and the rest of ASEAN. Both issues are fraught with complications, and the ASEAN Charter does not really provide a way by which those complications can be lessened.

⁷ “Fifth from the right,” *op. cit.*, p. 35.

⁸ Desker, *op. cit.*

⁹ This was explained by Ambassador Manalo during her talk at the University of the Philippines on 6 September 2007.

¹⁰ See Section 4 of Article 20 in Chapter VII of the ASEAN Charter.

The case of Myanmar is perhaps the more disappointing of the two though in reality this is an issue where there are clearly no surprises. The disappointment comes from expectations that have emerged over time where Myanmar's ASEAN partners have shown indications of running out of patience with the Yangon regime's apparent prevarication over its stated commitments to enforcing a democracy roadmap. The overall effect has been that Myanmar has cost ASEAN quite an amount of social capital in its relations with its dialogue partners, especially Australia, the European Union, and the United States, not to speak of an increasingly active, organized and vocal regional civil society in Southeast Asia. The drafting of an ASEAN Charter was welcomed by many of those involved in and with ASEAN as an opportunity for ASEAN to establish the legal framework that would be the basis for pressuring the military junta in Myanmar into instituting domestic political reform. The result was certainly less than what was hoped for and points to continuing awkwardness within ASEAN (especially if the military junta acts more aggressively in limiting the influence of ASEAN over the issue of domestic political reform in Myanmar) and in its relationship with its dialogue partners. On the other hand, there is the real concern that an openly critical treatment of Myanmar by some of the ASEAN member-states could have the effect of dampening the enthusiasm of the other newer members of ASEAN. It is in this context that an active regional civil society would play an important role in pushing ASEAN community building along normative lines that are more in line with the stated commitments in the Charter to democracy and human rights.

The involvement of civil society groups in the work of the EPG and the High Level Task Force illustrates the changing nature of ASEAN community building. While ASEAN has always been predominantly an inter-governmental association, it is increasingly broadening its constituency. It was primarily due to this broadened constituency to which ASEAN owes the more progressive elements of the Charter. Article 14 of the Charter commits ASEAN to the establishment of an ASEAN human rights body.¹¹ The fact that there is such a commitment in the Charter can be directly attributed to the lobbying and networking that the Regional Working Group for a Human Rights Mechanism in Southeast Asia had engaged in since 1996. Critics of the Charter have pointed out that the provisions on the human rights body do not really give it teeth, and therefore is not really all that credible.¹² Again, the main fear is that some ASEAN member-states (Myanmar in particular) would block the actual establishment of such a body, or, failing that, would spare no effort to make the body that will emerge practically powerless to influence human rights policies around the region. This goes back to the ASEAN insistence on a consensus-based decision making process that the Charter reaffirms. At the same time, however, the presence of provisions for the establishment of a human rights body and the explicit commitment made by ASEAN to democracy and human rights protection actually gives advocates an opening for pushing for a quick resolution on the establishment of a regional human rights body, and even influencing the nature of that body and the extent of its authority. The inclusion of Article 14 in the Charter had much to do with the hard work of civil society groups using a provision in the 1993 Joint Declaration of the ASEAN Foreign Ministers promising to look into the establishment of

¹¹ See Article 14 in Chapter IV of the ASEAN Charter.

¹² See Cossa, "ASEAN Charter," *op. cit.*; and "Fifth from the right," *op. cit.*, p. 35.

a regional human rights mechanism. Using that experience as a model for civil society engagement with ASEAN on specific issues, networking activities and alliances with like-minded individuals and governments would pave the way for human rights advocates to be able to push for an early start to the establishment of a regional human rights body which will be effective in influencing the state of human rights protection in countries in ASEAN. This process will have great importance for community building in ASEAN, particularly in terms of broadening participation in regional affairs.

Broadening participation means a different thing altogether when looking at the key ASEAN objective of increasing economic integration. Here, the main concern is being able to reduce the development gap between the CLMV countries and the other members of ASEAN in order to facilitate their participation as full partners in the ASEAN Economic Community (AEC). Vietnam has made great strides in economic development, but Cambodia, Laos and Myanmar are nowhere near making inroads in the development gap between them and the other ASEAN states. Interestingly, it is in the area of economic cooperation that the Charter makes very little headway. This is, at one level, not all that surprising as ASEAN has already put into place important building blocks as the foundations for the continuing process of economic integration. These include agreements on the ASEAN Free Trade Area, the ASEAN Framework Agreement on Services, and the ASEAN Investment Area. The disappointment in the Charter on this area is the lack of provisions that specifically addressed the question of helping the CLMV countries in their endeavor to close the development gap.

The Charter contains as part of the purpose of ASEAN the commitment to alleviate poverty and narrow the development gap within ASEAN through mutual assistance and cooperation.¹³ This is a key concern because buying into the idea of an ASEAN Community must bring with it the sense of material benefits. On the other hand, participation in and gaining full benefit from the process of economic integration is premised on the possession of the capacity to be a full participant, i.e. a certain level of economic development must have been achieved by the participant states. For the CLMV countries, this would mean financial and technical assistance, transfer of technology, education and training facilities.¹⁴ There is, however, very little detail in the Charter on how these are specifically going to be addressed.

The Charter, though, affirms that economic progress for the rest of ASEAN should not be held hostage by the lack of capacity of the CLMV countries. This is the reason why a formula of “ASEAN Minus X” was introduced to allow for flexible participation in the implementation of economic commitments.¹⁵ This has less to do with recognizing the diversity of capacities within ASEAN as it is a product of a cold calculation not to hold back those who might be willing and capable to participate in these initiatives and therefore partake of the benefits accruing from them. The formula also does not have time specification or even the suggestion of a time limit as to how long before anyone in

¹³ See Section 6 of Article 1 in Chapter 1 of the ASEAN Charter.

¹⁴ Dennis Hew, “Towards an ASEAN Charter: Regional Economic Integration,” in Severino, comp. *Framing the ASEAN Charter*, *op. cit.*, p. 36.

¹⁵ See Section 2 of Article 21 in Chapter VII of the ASEAN Charter.

the X side of the formula must be expected to participate. It therefore creates the possibility of a moral hazard wherein the CLMV countries may not try very hard to catch up on economic commitments especially if they are going to be subject to the stricter non-compliance standards that the ASEAN economic agreements contain. It is also illustrative of the lack of substantive concern that the more advanced countries in ASEAN have for the plight of the CLMV countries. Overall, the formula may only contribute to the deepening of the gap between the CLMV countries and the other ASEAN member-states unless there is an explicit expectation of a time limit as to when the CLMV countries can be expected to be full participants in economic initiatives. This continued institutionalization of the different tiers of the ASEAN member-states will reflect on how ASEAN's dialogue partners, especially its economic partners, will deal with the ASEAN Community – less a community or economic bloc and more as ten separate markets.

The prospects, therefore, for ASEAN are really no different from before the introduction of the ASEAN Charter. To a large extent, it is just a codification of existing documents. It does have its more progressive aspects and actually changes ASEAN norms (particularly on commitments to human rights) from before, but it is still held back by the embedded norms of strict interpretations of the principle of non-interference, and the affirmation of consensus-based decision making processes. The decision to champion ASEAN solidarity over substantive and normative progress has resulted in less than the rules-based regionalism that was bandied about prior to the submission of the final draft of the Charter. The Charter is supposed to be ASEAN's framework and guide post for the future. If ASEAN's past is still its present, must it also be its future?