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IS THE ASEAN CHARTER NECESSARY?

Barry Desker

17 July 2008

As the annual ASEAN foreign ministers meeting convenes starting this week (July 17-24), one key issue expected to come under the spotlight is the ASEAN Charter. Has the Charter lived up to expectations since its adoption in Singapore last year?

ASEAN's achievements have led many analysts of the grouping to praise the ASEAN Charter adopted by the region's Heads of Government at their annual summit in Singapore on 20 November 2007. Secretary-General Surin Pitsuwan is confident that the landmark charter aimed at giving ASEAN a legal framework was likely to be fully ratified next month. Brunei, Cambodia, Laos, Malaysia, Singapore and Vietnam have so far ratified the charter, while Indonesia, Myanmar, the Philippines, and Thailand are in the process of doing so.

The Charter is significant as it provides ASEAN with a legal framework after forty years of gradual institutionalisation. It establishes a set of rules and the new structures should strengthen the bloc's institutions through the formal role accorded to the ASEAN Summits as well as the establishment of ASEAN Communities comprising the ASEAN Security Community, ASEAN Economic Community and ASEAN Socio-Cultural Community.

The ASEAN Charter is a positive development; it moves ASEAN ahead. But it is a disappointment. ASEAN was at a crossroads, but with the adoption of the ASEAN Charter, the 10-member grouping decided to codify existing norms and maintain its historical identity as an inter-governmental organisation. ASEAN did less than it could have done. In fact in some areas, ASEAN had even gone backwards.

The question arises whether ASEAN needed a charter or whether its energies would have been better spent on increasing functional cooperation among its members.

Myanmar's role in ASEAN

Even if it is believed that ASEAN institutionalisation would be strengthened by the creation of a legal entity, the participation of Myanmar in the adoption of the ASEAN Charter has undermined this effort.

The September 2007 crackdown on demonstrators by the Myanmar junta and its tardy response to the May 2008 Cyclone Nargis fiasco highlighted the negative impact of Myanmar's behaviour on perceptions of ASEAN.

However, Myanmar's continuing presence in ASEAN's chambers ensures that the traditional emphasis on non-interference and the sovereignty of states will be upheld by ASEAN. Within ASEAN, Myanmar also benefits from an informal coalition of the newer members – Myanmar, Vietnam, Cambodia and Laos – which continue to emphasise these principles.

The ASEAN Way of the lowest common denominator

The decision to adopt the “ASEAN Way”, which prioritises agreement by consensus and the adoption of the lowest common denominator, undercut the forward-looking approach taken by the Eminent Persons Group (EPG) appointed by the ASEAN leaders, who took a bold and visionary approach to strengthen ASEAN. Although it is claimed that ASEAN will increasingly be a rules-based organisation, there is no assurance that ASEAN compliance with its rules will be any better than its practice during the preceding forty years when only 30% of ASEAN agreements were implemented.

A second issue of concern is that despite a series of three meetings before the 2007 ASEAN Summit, no agreement was reached on the terms of reference for an ASEAN human rights body, even though there is a provision to establish such a body in the Charter. It is likely that the terms of reference which will be adopted at the annual ASEAN Foreign Ministers Meeting, which starts this week (July 17-24) will result in “a body which, while lacking in teeth, will at least have a tongue, and a tongue will have its uses”, to quote the Foreign Minister of Singapore George Yeo.

The third deficiency of the Charter is the most critical.

Previously, ASEAN economic ministers had adopted the practice of allowing member states to agree on economic liberalisation agreements on the basis of the “10 minus x principle” or ‘2 plus x’. This allowed those members that wished to embark on cooperative initiatives at a pace faster than the rest of the grouping to proceed. However, in the new Charter, the “ASEAN minus-x formula” and other formulae for flexible participation only operate when there is a consensus to do so. This is a retrograde step because it gives each member a veto on new initiatives or new directions for regional cooperation.

One note-worthy development is the decision to formalise the role of the ASEAN Summit, which shall be the supreme policy-making body of ASEAN and shall meet twice a year. The Charter also provides for an ASEAN Coordinating Council comprising the foreign ministers which shall meet twice a year. This provision was not part of the EPG Report which envisaged the three ministers handling security, economic and socio-cultural issues reporting directly to the ASEAN Summit. It is likely that this decision reflected the wishes of foreign ministry policy-makers who sought to claw back the authority to decide the future direction of ASEAN.

The emphasis on bureaucratic dominance of the ASEAN machinery is also seen in the lack of oversight and governance by elected representatives of ASEAN states. Instead of empowering the ASEAN Inter-Parliamentary Assembly (AIPA), the ASEAN Charter has given no formal role for it.

The Charter provides for the appointment of two additional Deputy Secretaries-General openly recruited based on merit. However, no additional budget was provided. In fact, each member state makes an equal contribution pegged on the scale for the lowest contributor. The result is that it will be very difficult to build an effective secretariat and to recruit staff on a globally competitive basis.

ASEAN: A diplomatic community

What does the long process of consultations leading to the adoption of the ASEAN Charter and the resulting document that falls short of some expectations tell us about ASEAN?

The outcome demonstrates that ASEAN remains a diplomatic community. It has been very effective in preventing inter-state war in Southeast Asia and increasing mutual confidence among the governments of the region. The significance of this should not be under-estimated. During the Cold War, the ASEAN region was a cockpit of conflict. There were fears of falling dominos from the Vietnam War and later, the possibility of the conflict in Cambodia spilling-over into the region. By contrast, the risk of inter-state war in Southeast Asia has declined today.

ASEAN's conservative approach results from its practice of consensual decision-making. It is unlikely that ASEAN will move in the direction of the people-centred organisation envisaged in the EPG Report. Like the European Union (EU), there is a basic difficulty in reaching out to the peoples within the ASEAN states, even while policy-makers act on behalf of "the people". Interestingly, however, unlike the EU, if the governments of Southeast Asia had held referendums on the adoption of the ASEAN Charter, the likelihood is that there would be strong popular support for Charter ratification.

Trust in political leadership and support for foreign policy initiatives undertaken by their respective governments continues to characterise political debate in Southeast Asia. This is so even as the region's governments are reluctant to allow public or civil society decision-making on ASEAN issues.

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