



# IDSS COMMENTARIES (71/2005)

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## Issues for an ASEAN Charter

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THE forthcoming ASEAN summit in Kuala Lumpur in December 2005 is likely to appoint an Eminent Person's Group (EPG) to guide the development of an ASEAN Charter. The Charter is intended as a step towards the establishment of an ASEAN Community by 2020 founded on three pillars – the ASEAN Security Community (ASC), ASEAN Economic Community (AEC) and ASEAN Socio-Cultural Community (ASCC). Does the Charter mark a defining moment, or a new beginning for ASEAN?

The United Nations and most regional organisations, including the Organization of American States, the African Union (formerly the Organization for African Unity), the League of Arab States, and the Gulf Cooperation Council, began life with a Charter. Others adopted them at a later stage of their evolution. For example, the Organization for Security and Cooperation in Europe (OSCE) adopted its Charter for European Security in November 1999, presumably because until then it had functioned as a Conference rather than as an organization per se.

Sometimes, the founding treaty of an international organisation can serve as its charter. The European Union did not have a formal charter from the outset, although its founding Treaty of Rome signed on 25 March 1957 and amended subsequently, contains -- not including the protocols -- 248 articles, compared to 111 articles for the UN Charter. The EU has now gone furthest of any regional organisation in legalising itself by drafting a constitution, although its ratification has stalled. The North Atlantic Treaty signed in Washington DC on 4 April 1949 is also known as the NATO Charter. (This is not to be confused with the Atlantic Charter of August 1941 signed by US President Franklin D. Roosevelt and British Prime Minister Winston Churchill that outlined their vision and principles for a post-war international order.).

### Why an ASEAN Charter now?

ASEAN began life with a Declaration (The Bangkok Declaration) in 1967 and later a Treaty (Treaty of Amity and Cooperation in Southeast Asia) in 1976, rather than a Charter per se. This is in keeping with its well-known penchant for avoiding legalism and hard institutionalism. Why does it need a Charter now?

A charter is a document that outlines a corporate body's principles, functions, and organisational structure. There are three main elements in the charters of regional organisations: a statement of purposes, the basic principles of the organisation and its institutions. Other elements include membership criteria and the rights and duties of member states. Sometimes, regional groupings issue special charters to cover new issue areas. An example is the OAS' Inter-American Democratic Charter adopted in 2001 to outline procedures for safeguarding democracy in the Americas. Similarly, the EU's Council

proclaimed a Charter of the Fundamental Rights of the European Union in December 2000, which was later incorporated as the second part of the draft European Constitution.

Looking at the rationale for an ASEAN charter, the most important considerations seem to be the deepening and legalisation of ASEAN. Since the end of the Cold War, ASEAN has grown extensively. Its membership has expanded to include all 10 nations of Southeast Asia, fulfilling the original vision of its founding fathers to unite the region. New areas of cooperation have also been incorporated such as environmental and financial issues as well counter-terrorism. But this broadening has taken place without the significant strengthening of ASEAN's institutions. Now is the time for ASEAN to change that.

Last August, Malaysian Prime Minister Abdullah Badawi hinted at two possible motivations for having an ASEAN Charter. The first is to create an international legal personality for ASEAN. The other is to provide "the legal framework for incorporating ASEAN decisions, treaties and conventions into the national legislation of member countries". The latter will be an especially critical innovation. ASEAN has in the past undertaken collective dealing and bargaining with external countries, but a common framework for applying ASEAN decisions to the national level, if realised, will be a significant step towards legalising and deepening ASEAN.

### **Implications of the Charter**

At the Cebu meeting of ASEAN Foreign Ministers last April, a Philippine foreign ministry official stated that having a charter would mean "whatever agreement ASEAN will make will have a binding effect". But caution is warranted over how far such EU-style institutionalization would go in ASEAN. As George Yeo, the Foreign Minister of Singapore put it, while there is much that ASEAN can learn from the EU, it is doubtful if "ASEAN integration will ever reach even half the level of integration in Europe today". One reason why international organisations prefer the term charter to constitution is that the former usually does not connote the legal force of the latter.

Nor does having a charter necessarily ensure greater effectiveness of international organisations. Many of the regional organisations mentioned above are not necessarily more successful in containing regional conflicts or promoting economic integration than the hitherto charter-less ASEAN.

Whether the ASEAN Charter will have a binding effect or not might well depend on what sort of issue areas it is designed to cover. It is one thing to use the Charter to create greater legal and institutional clout for ASEAN in functional areas such as economic integration. It will be less easy for ASEAN to develop binding regional provisions covering sensitive issue areas such as human rights or democracy promotion. Here, ASEAN does face an important challenge.

The Joint Communique of the 37<sup>th</sup> ASEAN Ministerial Meeting (AMM) in Jakarta in June 2004 did mention the "promotion and protection of human rights" as one of the objectives of the charter, alongside other goals such as the "establishment of effective and efficient institutional framework for ASEAN". Negotiating binding principles and provisions for the "promotion and protection of human rights" will be a difficult challenge for the EPG, if it decides to pursue this objective.

It is also important to bear in mind that an ASEAN charter would not necessarily lead to a significant dilution of ASEAN's non-interference doctrine, as some might expect or even hope for. In fact, the opposite could happen, considering that one of the Charter's goals, according to the 37<sup>th</sup> AMM, is to "reaffirm ASEAN's principles", among which is the "respect for each other's sovereignty".

To the extent that charters are meant to enshrine the operating principles of an organisation, there has to be prior political agreement on to what extent and under what conditions non-interference could be relaxed. In this context, the EPG needs to examine carefully the relevance of ideas such as "flexible engagement" and "enhanced interaction". The EPG should also explore new modalities for collective action to cope with issues that fall under the domestic jurisdiction of member states.

Another task facing the EPG concerns the relationship between the proposed Charter and ASEAN's existing treaties and conventions. Will the Charter simply be an amalgamation of existing instruments or will it break important new ground, in sensitive areas such as conflict-resolution? It is also important that the ASEAN Charter specifies realistic guidelines that might encourage the actual usage by members of extant mechanisms such as the High Council or the more recently adopted Troika meant to trouble-shoot emerging problems within the grouping.

The EPG also faces the challenge of striking a balance between those who would like to use the opportunity afforded by the Charter to pursue an ambitious agenda of legalisation and institutionalisation and those who want to tread more conservatively. For example, Malaysian Prime Minister Abdullah had stated in August that the proposed ASEAN charter "need not be an overly ambitious project". But subsequently, Singapore's Prime Minister Lee Hsien Loong described the objective of the ASEAN charter as being to "set a clear and ambitious long-term direction for ASEAN".

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