

## **Briefing Memo**

### **ASEAN Charter as a Basis for Community Building**

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In 2007, the year of the 40th anniversary of its founding in 1967, the Association of Southeast Asian Nations (ASEAN) bestowed on its organization the status of a legal entity and established a charter (ASEAN Charter) articulating its goals and principles. The process of the charter's establishment dates back to 2004 when the foreign ministers of ASEAN's member countries agreed at the ASEAN Foreign Ministers' Meeting in June to establish a charter. At the ministerial meeting in July 2005, it was agreed that an Eminent Persons Group (EPG) would be set up to provide advice on the content to be included in the charter. The EPG subsequently held a number of talks to discuss the provisions the charter should include and submitted the "Report on the Eminent Persons Group Report on the ASEAN Charter" (EPG Report) at the ASEAN Summit in Cebu in the Philippines in January 2007. After approving the EPG Report at this summit, the ASEAN heads of state set up a special committee to draft the charter. Later in the year, at the ASEAN Summit in Singapore on November 20, 2007, the committee presented its draft. This draft was formally established as the ASEAN Charter with its signing by the member heads of state at this summit. The member countries are currently engaged in ratification procedures in their respective countries. On January 7, 2008, Singapore, the current chair, became the first member country to ratify the charter.

Former ASEAN Secretary-General Rodolfo Severino cites two significant changes in the environment in Southeast Asia as the background leading up to the establishment of the charter. The first is the advancing economic globalization accompanied by the rise of China and India which have achieved remarkable economic growth and the second is the increasing seriousness of non-traditional threats from the perspective of security such as environmental problems, transnational crimes, international terrorism, and infectious diseases. To respond to these changes in the international environment, ASEAN aims to create a more effective, dynamic and integrated organization in economic, political and social areas by promoting the formation of a regional community. The purpose of the charter is to provide a foundation for this community.

The EPG Report, which was the first stage in the process of establishing a charter, consists of three parts. The third part gives recommendations as to what should be included in the ASEAN Charter. In this section the EPG recommended that the main principles of ASEAN be re-examined. To begin with, it recommended the introduction of sanctions provisions through a review of the principle of

non-interference in internal affairs. Chapter III of Part III recommends provisions relating to qualifications of member countries and it is here that the EPG calls for consideration of the temporary suspension of rights and privileges of a member country that commits a serious breach of the objectives, principles, commitments, standards, or values stated in ASEAN declarations, agreements, or accords.

At the background of these discussions was the problem of Myanmar (for details on the relationship between the Myanmar problem and the process of establishing the ASEAN Charter, see “The Myanmar Situation and ASEAN” by Yoshihide Matsuura, NIDS Briefing Memo). Democratic processes in that country were making little headway under the country’s military regime, and Europe and the United States continued to level strong criticism at the country over specific cases of the suppression of human rights. The groundswell of criticism of Myanmar’s military regime reached the stage where it threatened to have an impact on the international credibility of ASEAN, of which Myanmar is a member country. Therefore, the EPG Report suggested that the principle of non-interference be revised to indicate that ASEAN would put pressure on countries to resolve their internal problems and would place sanctions on those countries that failed to do so.

In addition to a review of the principle of non-interference, the EPG Report also re-examined decision making based on consensus. Part III, Chapter V of the EPG Report presents new proposals for decision-making processes. While it recommends that decision making as a general rule be based on discussion and consensus, particularly where delicate issues such as security and foreign affairs are concerned, it recommends that when a consensus cannot be reached on other issues, decisions be made through voting by a simple majority, a two-thirds majority or a three-fourths majority.

However, the ambitious proposals of the EPG Report were subsequently watered down by degrees. In an interview with the *Yomiuri Shimbun*, former Indonesian Foreign Minister Ali Alatas, one of the members of the EPG, claimed that while he supported the introduction of provisions for sanctions and a majority voting system, the ultimate goal of ASEAN, unlike the goal of the European Union to achieve political integration, was to achieve market integration in economic areas. On March 2, 2007 at an informal ministerial meeting held in Siem Reap in Cambodia talks were held on the charter draft. At the meeting former Undersecretary of Foreign Affairs Rosario Manalo, who represented the Philippines on the subcommittee drafting the charter, made it clear that the member countries had agreed to hold off on the introduction of sanctions provisions. It also seems that agreement was not reached on a method for decision making. The representative of Vietnam, Deputy Prime Minister and Foreign Minister Pham Gia Khiem, expressed the view that the charter should particularly stress the principles of non-interference and consensus as being the keys to ASEAN’s success.

At the ASEAN Foreign Ministers' Meeting held in Manila on July 29-30, 2007, discussion on the charter's provisions for decision making and sanctions continued but the members failed to reach an agreement at this meeting and put off making a decision until the November ASEAN Summit. Despite the prevailing adversity to the introduction of new systems, there was still a strong view that sanctions based on the reliable execution of rapid decision making and agreement were necessary to enhance ASEAN's credibility as an organization. On August 24 then Secretary-General Ong Keng Yong affirmed at the ASEAN Economic Ministers' Meeting in Manila that provisions for imposing sanctions on member countries that acted in breach of items agreed on in economic areas would be introduced.

The EPG Report also stated the need for ASEAN to rid itself of its image as an elite organization made up exclusively of diplomats and other government-related persons to become a true community representing the people of the member countries. Therefore, as part of efforts to promote the formation of an identity as an ASEAN region, a decision was made to listen to the views of people across a wide spectrum including people from the corporate world, scholars, representatives of human rights protection groups and the general public in drawing up the charter draft. However, the actual drawing up of the draft was undertaken by a special committee behind closed doors, and it is not clear whether the views of the general population were adequately reflected in the draft. In this regard, there has also been a degree of criticism of ASEAN as an organization which has failed to shake its "elite community" image.

In September 2007, amid gathering international criticism of Myanmar's military administration's use of force in breaking up the demonstration of Buddhist monks and citizens demanding democracy, attention was focused on the decision ASEAN would make in the handling of the principle of non-interference. However, the ASEAN heads of state including from Myanmar decided to give precedence to establishing a charter that countries could agree on at present and so the adopted charter maintained ASEAN's long-held principles. On November 20, 2007 the member countries placed their signatures on the ASEAN Charter at the Singapore Summit.

The charter consists of a preamble and 13 chapters with 55 provisions altogether. The preamble calls upon the ASEAN member countries to respect the fundamental importance of the sovereignty of countries, non-interference and consensus, and to adhere to the principles of democracy, the rule of law and good governance, and human rights. It also states the commitment of the ASEAN member countries to establishing a legal and systematic framework through the charter as they form a cohesive ASEAN community comprising security, economic, and socio-cultural communities.

Chapter I states the purposes and principles of ASEAN. In addition to purposes in economic areas

such as creating a single regional market and production base and alleviating poverty and narrowing the development gap within ASEAN, the chapter also states ASEAN's purposes in political areas such as its commitment to maintaining a proactive, core role in the region as the primary driving force in promoting regional strength, democracy and human rights, and foreign relations. In the area of security it not only calls for a commitment to maintaining peace and security and to preserving Southeast Asia as a nuclear weapons-free zone but also calls for comprehensive security in non-traditional areas such as the environment and resources. As principles for pursuing these objectives, it cites respect for sovereignty, the peaceful resolution of disputes, non-interference, and promotion of consultation among countries.

Chapter II of the charter provides for the granting of ASEAN's juridical status as a multinational governmental organization and Chapter III sets down provisions for member countries. A point worth noting in this chapter is the provision for non-compliance. After stating that member countries will observe all obligations as member countries and establish the necessary procedures for executing these as stated earlier, it goes on to state that serious breaches of the charter or failure to comply with it will be referred to the ASEAN Summit which will determine how the matter should be dealt with (Article 5). Although no specific provisions for imposing sanctions against an offending member country are included in the charter, Article 5 indicates that it is not impossible to demand that member countries comply with provisions of the ASEAN Charter or decisions of the regional community, or to implement some form of measures against member countries that breach these. Chapters IV through VI provide for ASEAN organs, establish the ASEAN Summit as the supreme policy-making body of ASEAN (Article 7), and grant the Secretary-General of ASEAN the authority to monitor the implementation of ASEAN agreements and decisions (Article 11).

Chapter VII provides details of the decision-making processes of ASEAN. Article 20-1 states that as a basic principle, decision making in ASEAN will be based on consultation and consensus. Article 20-2 goes on to state that where consensus cannot be achieved, the ASEAN Summit may decide how a specific decision can be made. Furthermore, Article 21-2 clearly states that flexible methods including the ASEAN Minus X formula may be applied in the implementation of economic commitments where there is a consensus to do so. While the existing principle of decision making based on consensus has been basically maintained, it is hoped that flexible, prompt decisions can be reached in areas where there is potential for reaching agreement on economic policies. Provisions for the settlement of disputes in Chapter VIII state that disputing countries may make a request to the ASEAN Chair or Secretary-General to arbitrate on their behalf through good offices, conciliation, or mediation with a view to arriving at a peaceful resolution of disputes (Article 23-2). It is also possible to establish appropriate dispute settlement mechanisms to resolve disputes, and to refer unresolved disputes to the ASEAN Summit as a last resort (Articles 25-26).

In the above ways the ASEAN Charter reconfirmed and clarified the underlying principles of conduct that it had accumulated through ASEAN's experience. At the same time, it incorporated new provisions to contribute to the formation of a more cohesive community of states. In the past, ASEAN often received criticism for its lack of unity or delay in practicing it. However, while the new charter put off making sweeping changes to existing principles, a strengthening of the organization with the ASEAN Summit at the core can be recognized as a departure from the past. Singapore, as the ASEAN chair, wasted no time in ratifying the charter. In February, Brunei, Malaysia and Laos completed ratification procedures, with Vietnam and Cambodia following suit in March and April, respectively. Nevertheless, as of the ASEAN Summit in Singapore, where the signing of the charter took place, the Philippines clearly expressed its intention to refrain from ratifying the charter until conditions in Myanmar improved. In Indonesia's Parliament views over ratification are divided into two, and the prospects for the future remain unclear. The challenge of getting all members to smoothly complete ratification and bring the charter into force itself is calling into question ASEAN's effectiveness as a regional organization.

#### References

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