

ASEAN's Ambition

Amitav Acharya

As ASEAN prepares to celebrate its 40th anniversary, it faces a crucial test that could fundamentally change it has worked for the past decades.

ASEAN's founding fathers, mindful of their newly gained independence from Western colonialism, created an informal club of nations. It operated by consensus and avoided legalistic procedures and binding decisions. Members could not be penalized if they refused to honour agreements.

This could all change now if the recommendations submitted late last year by the group of Eminent Persons are incorporated into an ASEAN Charter. These recommendations include:

Strengthening ASEAN's organizational structure and capacity. The ASEAN Secretary-General should have ministerial rank, with the authority to sign agreements on behalf of ASEAN in non-sensitive areas and represent ASEAN in the UN (where ASEAN has observer status). There will be four (instead of the current two) deputy secretary-generals, and a professional staff, an ASEAN Institute to provide research and analytic capacity. The ASEAN heads of government meeting will be turned into an ASEAN Council, and will meet twice a year. Each of ASEAN's three communities: economic, security and socio-cultural, will have their own councils.

Decision-making by majority voting: ASEAN should depart from the consensus principle if necessary, in non-sensitive areas (meaning excluding security and foreign policy issues). It can go for majority voting, either a simple majority or 2/3rd or 3/4ths majority. ASEAN could use "ASEAN minus x" and "2 plus x" formulas to undertake cooperation if consensus cannot be reached over a particular issue.

Compliance through sanctions: compliance with ASEAN's objectives, principles, decisions, agreements, and timetables, should be monitored. Members found to be in "serious breach" of them will be taken to task. They may be deprived of their membership rights and privileges, or, in extraordinary circumstances, may even be expelled.

Dispute-settlement: There should be dispute settlement mechanisms in all areas of cooperation, especially economic and political areas. Currently, the ASEAN Free Trade Area has its dispute settlement mechanism, and ASEAN's Treaty of Amity and Cooperation (1976) provides for a High Council to deal with disputes in political and security fields, although it has never been used.

The Report also articulates a long-term vision which goes beyond the notion of an ASEAN Community. It calls for an ASEAN Union.

These recommendations are of far-reaching significance. They have the potential to make ASEAN more effective in face of new transnational dangers, such as terrorism, financial crisis, natural calamities, and epidemics which defy national boundaries and unilateral remedies.

But there are a number of barriers before ASEAN can reach such a stage.

Much depends on how many of these more radical recommendations will be actually incorporated into the ASEAN Charter by the intergovernmental panel which is drafting the actual ASEAN Charter. It is quite possible that some of them could be dropped or diluted.

Second, and concerning dispute-settlement, will member states take their disputes to ASEAN when there are global bodies, like the International Court of Justice, available? It depends on whether members see the ASEAN dispute-settlement mechanism to be an impartial and professional body. I suggest that the committee drafting the Charter should use language that urges members to seriously consider taking their disputes to the relevant ASEAN mechanism first before going to world bodies. This will be consistent with the relationship between the UN and regional organizations, which makes regional organizations as the first port of call on local breaches of peace and security before they are referred to the Security Council.

On the use of punitive measures for noncompliance with ASEAN principles or agreements, decisions on such matters are left to be left the ASEAN Council. But will the Council act to enforce compliance by suspending a member, especially when such decisions can only be taken by consensus rather than majority vote? On such matters, the Council is likely to act as a political, not legal body. ASEAN members have worked hard to keep their interactions non-adversarial and non-threatening. It will not be easy to change this to a culture of compliance through sanctions.

The EPG report lists a number of objectives and principles for ASEAN to be incorporated into the Charter. These are too many: 19 objectives and 23 principles. Many are vague, and overlapping. Presumably this is an extended menu, not all could find their way into the actual Charter. In the latter, fewer objectives/principles should be mentioned, with greater clarity and specificity about them.

The EPG report calls on ASEAN members to “calibrate” the noninterference doctrine to deal with problems “where common interest dictates closer cooperation.” What would this mean in practice? There will always be members who would forbid outside interference, even help, on matters where national security or pride is at stake (such as the haze issue for Indonesia). The Charter could give more legitimacy to the EPG’s call for calibrated noninterference by expressing it through the principles and objectives of ASEAN. A legitimizing formula, such as “the decision to give up sovereignty as an exercise of sovereignty” is called for. Moreover, ASEAN needs to create specific institutions that will have the mandate to act supranationally and thereby give concrete expression to the desire for recessed noninterference, like a regional peacekeeping force,

regional disaster assistance mechanism, regional human rights body, a regional fire brigade, etc. Otherwise, this objective will remain politically controversial. Reaching agreement on whether and what conditions noninterference should be relaxed will not be easy.

The EPG Report mentions promotion of human rights and human security and respect for international humanitarian law among the goals and functions of ASEAN. This is very worthwhile and represents an advance on the more state-centric conceptions of security found in the founding documents of ASEAN. The challenge once again is whether these normative aspirations will be actually held in practice and whether institutions are created to monitor violations and encourage of these principles by member states. Will the call for respect for human rights and upholding of democratic values, as well as involving civil society organizations in ASEAN decisions (to create a “peoples’ ASEAN) be upheld in practice when several members do not have democratic political systems?

As the EPG Report puts it, “ASEAN’s problem is not one of lack of vision, ideas, and action plans. The real problem is one of ensuring compliance, and effective implementation of decision.” The EPG Report proves that ASEAN is indeed not short of ideas and vision. The main challenge for ASEAN now is to ensure that these visions are implemented and the rules and procedures of the new ASEAN complied with.