

SECTION: Review - Others
LENGTH: 1359 words
HEADLINE: Challenges for an Asean Charter
BYLINE: Amitav Acharya , FOR THE STRAITS TIMES

THE forthcoming Asean summit in Kuala Lumpur in December is likely to appoint an Eminent Persons' 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, the Asean Economic Community and the Asean Socio-Cultural Community. Does the charter mark a defining moment, or a new beginning for Asean?

The United Nations and most regional organisations - including the Organisation of American States, the African Union (formerly the Organisation 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 Organisation for Security and Cooperation in Europe adopted its Charter for European Security in 1999, presumably because until then it had functioned as a conference rather than as an organisation 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 March 25, 1957, and amended subsequently, contains 248 articles, compared to 111 articles for the UN Charter.

The EU has now gone furthest of any regional grouping in legalising itself by drafting a Constitution, although its ratification has been stalled.

The North Atlantic Treaty signed in Washington DC on April 4, 1949, is also known as the Nato Charter. (This is not to be confused with the Atlantic Charter of August 1941 signed by then-US president Franklin Roosevelt and British prime minister Winston Churchill that outlined the principles for a post-war global order.)

Why have 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 South-east Asia) in 1976. 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 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 EU in December 2000.

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 South-east 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 as counter-terrorism. But this broadening has taken place without the significant strengthening of Asean's institutions. Now is the time 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'.

Asean had, 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 the grouping.

What are the implications of a charter?

At the Cebu meeting of Asean foreign ministers last April, a Philippine official stated that having a charter would mean that 'whatever agreement Asean will make will have a binding effect'. But caution is warranted over how far such EU-style institutionalisation would go in Asean.

As Singapore's Foreign Minister George Yeo put it then, 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 it 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 37th Asean Ministerial Meeting (AMM) in Jakarta in June last year did mention the 'promotion and protection of human rights' as one of the objectives of the charter, along with 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 huge dilution of the group'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 37th 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 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 later, 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'.

The writer is deputy director and head of research at the Institute of Defence and Strategic Studies, Nanyang Technological University. He is the author of *Constructing A Security Community In South-east Asia: Asean And The Problem Of Regional Order*.

LOAD-DATE: October 23, 2005