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Analysis

Finally, a Charter for ASEAN

Hadi Soesastro*

The Association of Southeast Asian Nations (ASEAN) was established in August 1967 on a two-page document, the Bangkok Declaration, which contained general principles for regional cooperation and international behavior. It has since evolved into the prime regional institution in Southeast Asia and the wider East Asian region. ASEAN has come a long way. It has contributed to regional peace and stability, and has promoted economic cooperation towards regional economic integration. This has been achieved through the "ASEAN way" of informal processes, weak institutions and decisions by consensus in the spirit of togetherness and mutual respect.

ASEAN has entered into a number of agreements that are technically binding on its members. The Treaty of Amity and Cooperation (TAC) lays down the principles governing the relations between states and sets out the procedures for facilitating the peaceful settlement of disputes. ASEAN members have also made nuclear weapons commitments under the Southeast Asia Nuclear Weapons-Free Zone treaty.

In 1992, when ASEAN had only six members, it agreed to form an ASEAN Free Trade Area (AFTA) to lower both tariff and non-tariff barriers to trade. When Vietnam (1994), Laos and Myanmar (1997) and Cambodia (1999) joined ASEAN they had to accede to AFTA and other

existing agreements. ASEAN has separate agreements that commit its member-states to liberalization of trade in services, promotion of intra-ASEAN investments, protection of intellectual property rights, harmonization of product standards, mutual recognition arrangements, and promotion of tourism. It has also concluded agreements on air cargo and the facilitation of goods in transit as well as on transboundary haze pollution. Although the role of the ASEAN Secretariat was strengthened in 1992, ASEAN still does not have a central institution to call member-states to account for non-compliance with these agreements.

Agreements on transnational problems and regional economic integration have not been implemented due to the absence of explicit legally binding provisions. ASEAN also lacks a central authority to speak on its behalf, conclude agreements or conduct relations with other organizations and states. All external party agreements are signed by the ten member-states. ASEAN does not have juridical personality or legal standing under international law.

In 2003, ASEAN members made a historical decision to create an ASEAN Community by 2020. The ASEAN Community is to be built on three pillars, an ASEAN Security Community (ASC), an ASEAN Economic Community (AEC), and an ASEAN Socio-Cultural Community (ASCC). This is an ambitious project. The ASEAN Economic Community, for instance, aims to create a single market where there is a free flow of goods, services and investment and freer flow of capital. Recently, ASEAN Economic Ministers proposed to accelerate its completion to 2015.

Paper of the Month

The paper of the month for October is **The Effect of Labour Market Institutions on FDI Flows** authored by Dr Chang-Soo Lee

Upcoming Events

Australian Launch of The East Asian Bureau of Economic Research

by the Hon Peter Costello, Treasurer

Date: 17 October 2006

Advancing East Asian Economic Integration: Micro Economic Foundations of Economic Performance in East Asia

Date: 23-24 November 2006

Location: Manila

Hosted by: The Philippines Institute for Development Studies, Philippines, and The Australian National University, Canberra

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The decision to create an ASEAN Community was again enshrined in a Declaration and not a Treaty. There is great doubt that deepening of ASEAN integration can be achieved without transforming the way ASEAN is managed. Indeed, in December 2005 ASEAN leaders decided that it was time for ASEAN to have a formal charter as a basis of cooperation. This charter should not be seen merely as an exercise in consolidating ASEAN's achievements, but for undertaking the necessary changes to adapt to the trends of globalization and regionalism in many parts of the world as well as the rise of China and India. The charter must also develop closer cohesion between members to effectively address the emergence of trans-boundary challenges and new security issues such as transnational crime, communicable diseases, and international terrorism.

A charter would establish ASEAN as a juridical personality and a legal entity. It would clearly define the objectives and enshrine the values adhered to by its members. It would envision the arrangements for further regional integration and define the institutions, mechanisms and processes for dealing with transnational problems. The ASEAN Charter would establish the organs of the association and clearly delineate their respective functions and responsibilities, rights and limitations, the relationships among the organs, and their decision-making processes. It would mark out the relationship between the association and its member-states.

An Eminent Persons Group (EPG) has been established to make recommendations on framing the ASEAN Charter. The EPG has met several times and solicited views from various stakeholders. It will present its recommendations to the ASEAN Summit in December 2006 in Cebu, the Philippines. ASEAN leaders will next assign the task of drafting the charter to a high-level taskforce of officials. The hope is that this draft will be ready for adoption by leaders at the 2007 Summit, marking the 40th anniversary of ASEAN.

It is still unclear what the ASEAN Charter will look like. The nine months or so given to the EPG may not be sufficient to develop a common understanding amongst the ten diverse members of ASEAN about the very essence of having a charter. For some members, its main purpose will be to give ASEAN juridical personality and they will be content with a charter that simply codifies existing agreements. Several others have a clear view of the need to be more forward looking and open to new ideas so that it can facilitate the transformation of the Association towards the ASEAN Community. As such, it should be people-centric rather than state-centric. ASEAN must aim at producing a charter as envisioned by the latter group. There is a danger that in the process of drafting, the objective of having a charter will be greatly compromised and watered down. If that happens, its purpose will be defeated and ASEAN will end up losing its effectiveness, relevance, and credibility.

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