



ASEAN Charter: One (Very) Small Step Forward by Ralph A. Cossa

The Association of Southeast Asia Nations (ASEAN) has, in commemoration of its 40th anniversary, adopted its first formal Charter, thus conferring “legal personality” upon this intergovernmental organization, complete with its own flag, emblem, anthem (to be written), and motto: One Vision, One Identity, One Community. Now it is time to choose an official flower and an ASEAN bird. Might I suggest the shrinking violet and the ostrich, in keeping with ASEAN’s continuing tendencies to shrink away from dealing with sensitive issues while burying its head in the sand and pretending that regional problems will somehow go away?

These tendencies were clearly in evidence at this week’s ASEAN Summit in Singapore, when the “landmark” Charter was adopted. The Singaporean hosts had invited UN Special Envoy Ibrahim Gambari to address the assembled leaders to discuss his mission to Myanmar (a.k.a. Burma), but he had to be disinvited after several members objected: “We don’t want to come across as being too confrontational in a situation like this,” said outgoing ASEAN Secretary General Ong Keng Yong. Talk about censuring the ruling junta for its horrific crackdown on peaceful demonstrators earlier this fall was quickly set aside in keeping with its principle of “non-interference in the internal affairs of ASEAN Member States,” as embodied in the new Charter, along with a redundant principle calling for “respect for the right of every Member State to lead its national existence free from external interference, subversion, or coercion,” in case anyone missed the first point.

On the plus side, the Charter also calls for “respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice,” and, over the earlier objection of several members (including Myanmar), calls for the establishment of an “ASEAN human rights body” (which will operate in accordance with terms of reference yet to be determined). Since, “as a basic principle, decision-making in ASEAN shall be based on consultation and consensus,” it is difficult to envision a “human rights body” with any teeth or credibility, however.

It did not have to be this way. When the first draft of the ASEAN Charter was prepared by ASEAN’s Eminent Persons Group (EPG), it reportedly called for stronger enforcement mechanisms, including sanctions (including expulsion from ASEAN) for those violating the Charter. Instead, “in the case of a serious breach of the Charter or non-compliance, the matter shall be referred to the ASEAN Summit for decision,” where the rules of consensus normally apply. The Charter does indicate that, “when consensus cannot be achieved, the ASEAN Summit may decide how a specific decision can be made,” but without any reference to how such a decision

could, in fact, be made. This is a significant watering down of the EPG recommendation that ASEAN relax its style of decision making by adopting an “ASEAN Minus X” formula that would allow decisions to be reached without full consensus.

Instead, the Charter institutes an “ASEAN Minus X” formula (without specifying what constitutes “X”) only as an escape clause, allowing for “flexible participation” when it comes to the implementation of economic commitments, “when there is a consensus to do so.” Theoretically, by allowing those not quite ready for prime time to opt out, this could facilitate the achievement of ASEAN’s more lofty economic goals – an economically integrated single market and production base with the free flow of goods, services, and investment and facilitated movement of businessmen, labor, and capital – among those who are willing, but this remains to be seen.

The failure to adopt an “ASEAN Minus X” approach to decision-making also makes it essential that all ASEAN members ratify the Charter before it can enter into force. This could be problematic, as the one proud bird among the ostriches, Philippine President Gloria Macapagal-Arroyo, made clear at the informal heads of state dinner, when she announced (in a statement also released to the press) that “the expectation of the Philippines is that if Myanmar signs the Charter, it is committed to returning to the path of democracy and release of Aung San Suu Kyi.” Calling for “the full protection of human rights within ASEAN,” President Arroyo warned that the Philippine Congress “would have extreme difficulty” in ratifying the Charter absent some progress along the path toward democracy, including the release of Daw Suu Kyi.

Unfortunately, Manila’s stance is the exception rather than the rule. Most ASEAN members are proclaiming, with obvious sighs of relief, that the situation in Myanmar has “returned to normal,” as if the junta’s definition of that term – a totalitarian police state without freedom of expression, movement, due process, or even access to the internet – should be tolerated, much less a cause for celebration. True, they are no longer shooting unarmed monks, but only because the monks now gather outside their monasteries only at their own risk (and are presumably being closely monitored even within their hallowed halls).

Whenever ASEAN officials are challenged to respond to the growing embarrassment that Myanmar represents, they quickly respond that it would be “counterproductive” to expel Myanmar from the club, as if there was no middle ground between the earlier (and most welcomed) ASEAN expression of “revulsion” at the time of the shootings and total banishment. How about temporary suspension? How about measures by individual ASEAN states to “temporarily” halt or

defer interaction with Myanmar until they can obtain “further clarification” of what steps it plans to take to live up to all the principles embodied in the Charter? How about more ASEAN heads of state echoing President Arroyo’s bold statement?

The failure to adequately address this situation will have a negative impact on steadily improving U.S.-ASEAN relations as well. As U.S. trade negotiator Susan Schwab noted during her working lunch in Singapore with assembled ASEAN trade officials, “the reputation and credibility of ASEAN as an organization has been called into question because of the situation in Burma.” More to the point, she noted that “it is impossible to imagine an FTA [free trade agreement between the U.S. and ASEAN] in the near term under the current political circumstances.”

Many of us were hoping that the Charter would signify ASEAN’s coming of age. Instead, it appears to break no new ground. By merely codifying existing norms, it is the same old wine in the same old bottle, unless and until ASEAN members, individually and collectively, demonstrate a willingness to stand behind the lofty principles they proclaim. Myanmar presents the first test, one that ASEAN appears intent on flunking.

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