

ASEAN: time to decide

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2008 will be a time for choice for the members of ASEAN. They must decide on whether or not to ratify the ASEAN Charter that was adopted at the Thirteenth ASEAN Summit in November 2007. It is generally hoped that all members will ratify the document by the time the Fourteenth ASEAN Summit convenes in Bangkok later this year.

This is by no means a certainty. Philippine president Gloria Arroyo has clearly stated that her Congress will find difficulty in ratifying the Charter if Myanmar does not honour the principles of democracy and human rights contained in the Charter.

Significant levels of opposition and criticism among civil society groups also exist in Indonesia, Thailand and Malaysia. In Indonesia there is a strong initiative to dissuade its Parliament from ratifying the Charter. Dissatisfaction has also been voiced in Singapore.

The Charter is criticised on several grounds.

The drafting exercise began with great fanfare. The Eminent Persons Group and the people they consulted – including ASEAN-ISIS, of which ISIS Malaysia is a member – were urged to be “bold and visionary”. The Group as well as the High Level Task Force made study trips to Europe.

The Charter that was eventually adopted by the ASEAN governments however was a huge letdown. It was seen as little more than a compendium of existing principles and agreements already developed and in force in the last four decades. It was certainly not the epoch-making, “bold and visionary” document that those consulted had come to expect.

The Charter is also criticised for lacking effective sanctions against non-compliance, especially with regard to adherence to “the rule of law, good governance, the principles of democracy and constitutional government”. All the Charter provides for is referral to the ASEAN Summit for decision.

In this regard, the Charter also could not have come at a worse time – soon after the brutal crackdown on defenceless monks in Myanmar last September. The idea of other governments in the region inking the same Charter with a regime that was the living repudiation of one of the basic principles of the Charter was unthinkable for many.

The lack of substance regarding the provision for an “ASEAN human rights body” is attacked as another weakness.

Other issues raised include the strong reiteration of the principle of non-interference at a time when, aided by a globalised media, humanitarian concerns transcend borders. Again, the Myanmar issue highlighted the problem.

ASEAN is therefore facing a major challenge with regard to the ratification of the Charter. It takes non-ratification by just one country, in this case probably either the Philippines or Indonesia, or by both, to block the Charter from coming into effect.

A charter-less ASEAN would not be a disaster. It can continue to function as usual on the back of its many declarations, treaties and concords.

Sans the Charter however ASEAN would lack legal personality. It would also be denied the many other important benefits and improvements to regional cooperation contained in the Charter's provisions. ASEAN would limp along minus the strongly enhanced organisational and institutional structure that the Charter provides for in order to implement the comprehensive community-building agenda that Bali Concord II envisages.

ASEAN will also be a much less "rules-based" organisation. Rhetoric and grand pronouncements with modest implementation will remain a distinguishing feature of ASEAN. Only 30 percent of ASEAN's agreements are estimated to have been implemented.

In short, ASEAN will be even less capable of responding to the immediate challenges that confront it, not to mention the challenges to come as the century unfolds.

It is of critical importance therefore that all members ratify the Charter expeditiously, before the next ASEAN Summit.

The issues that have been raised need to be clarified. Critics need to be persuaded. Political elites, especially those in decision-making positions such as in parliaments, must be convinced. The Philippines and Indonesia merit priority.

In this regard, we must perhaps confront some fundamental though inconvenient truths. The Charter could never have been but a consensus document. All ten ASEAN countries had to agree to it. Four out of the ten ASEAN members do not have democratic systems. In at least two other countries coups have recently occurred or are at risk of occurring.

This kind of situation does not lend itself to the crafting of a charter with standards of democracy and human rights that are rigidly enforceable. All that can be done is to push the envelope as much as possible. To expect otherwise would be naïve.

In this regard, it is to be noted that while the principle of non-intervention is clearly embedded in the Charter (as it is in the United Nations Charter and every other instrument of this nature), issues like Myanmar can and will continue to be vigorously addressed not only at Summit level but also at foreign ministers' level, not to mention other venues such as the ASEAN Regional Forum.

Though it has not occurred yet, it is not unthinkable that more precipitate action is agreed upon against members guilty of gross breaches or non-compliance of the Charter, as provided for under Article 20.

Individual members that feel very strongly about issues like Myanmar can also act outside ASEAN if they so wish. This includes imposing any sanctions they feel compelled to.

Much can be done outside the circles of government too.

When the relevant national authorities consider ratification, they will of course keep in mind that fundamental though issues of democracy and human rights are, ASEAN is also for many other things of vital interest to all.

It exists to order relations in the region, promote peace and stability, facilitate trade and investment, and cooperate in advancing human development. ASEAN also provides collective voice and empowerment to otherwise weak states, and enables them to engage in the international arena with greater confidence and assurance.

No doubt member states will also be conscious of the fact that important though ASEAN is for individual and collective well-being, it is the things that are done at home for their own people that are for more critical to making a difference.

And this includes improving human dignity through having jobs for our people, ensuring decent standards of living and ridding our societies of corruption.

Those that desire a charter with more "teeth" need not lose enthusiasm. The Charter can be reviewed five years after entering into force. The Summit can call for a review even earlier.

In a sense, our work has just begun.

(The writer is Chairman and CEO ISIS Malaysia. The views are his own).