



Counterpoint Southeast Asia

A publication of the Centre on Asia and Globalisation



Image Credit: Getty Images/ebenjasurwan

Should the ASEAN Charter be revised?

By Yongwook Ryu

Serious discussions within ASEAN for a charter started in the early 2000s—cemented in the **2004 Vientiane Action Programme**—even though the idea seems to have **originated** in 1974. The key cause for this was the proliferation of ASEAN-centred mechanisms since the mid-1990s but there was a **lack of policy coordination** among them, as Malaysia acknowledged. Following the **work** of the Eminent Persons Group tasked with drafting the document and extensive consultations, a charter giving ASEAN a formal legal personality materialised in 2007.

The reception to the Charter was a mixed bag; both optimism and criticism co-existed. But since then, as new

 Lee Kuan Yew
School of Public Policy

 CENTRE ON ASIA
AND GLOBALISATION

globalising Good
HONG SIEW CHING Speaker & Seminar Series

Counterpoint Southeast Asia is published regularly by the Centre on Asia and Globalisation at the National University of Singapore's Lee Kuan Yew School of Public Policy. It seeks to answer major questions of strategic significance for Southeast Asia by bringing in diverse voices from around the region. Each issue will tackle one question from three different perspectives.

Centre on Asia and Globalisation

+65 6516 7118

cag@nus.edu.sg

469A Bukit Timah Road, Tower Block 10,

Singapore 259770

<https://lkyspp.nus.edu.sg/cag>

cont'd p2

regional challenges—from the Myanmar crisis to the US-China strategic competition—continue to polarise the region, some argue that the Charter is perhaps due for a review and even revision.

To address this question, the Centre on Asia and Globalisation (CAG) invited three Southeast Asian analysts to debate this question. They presented their arguments in a webinar on November 25, 2022 (view the [video](#) here). Collectively, while the arguments reflect some of the optimisms and criticisms we have seen since 2007, there are crucial aspects worth noting on whether the Charter needs to be revised.

Sharon Seah, Senior Fellow at the ISEAS Yusof-Ishak Institute, argues that ASEAN’s decision-making approach based on consultation and consensus (codified in Article 20) has made the organisation slow, dysfunctional, and ineffective. This problem has been vividly shown in the current political impasse in Myanmar where ASEAN has been unable to make any meaningful progress.

The crisis, of course, exposes more than just ASEAN’s inefficient decision-making—it also shows the deep disagreement within the group itself. Some members strongly argue that the military must be kept as part of political reconciliation out of necessity. Others believe that the military should be excluded as they have committed war crimes. And yet others still have a more benign and sympathetic understanding of Myanmar’s military government.

This crisis underscores how difficult it is to create a genuine community when the constituting members do not share fundamental political values and practices. **Randy Nandyatama**, Assistant Professor at Gadjah Mada University, goes one step further and argues, “with the lingering style of producing declarations and giving no clear and detailed framework, ASEAN has often struggled to provide meaningful help to its member states facing immediate crises”. As such, he recommends that the Charter be revised; specifically, to strengthen the ASEAN Secretariat and give it more implementation power. He believes that “with an enhanced secretariat, ASEAN can be more agile in responding to increasingly complex challenges and providing a clear mechanism for delivering tangible results”.

Sharon’s advice is perhaps more balanced in this regard. While she views that a Charter revision will not be a panacea, she encourages a rethink of the decision-making and implementation rules in such a way to make the organisation more people-oriented. She further suggests the need to “give more voice to ASEAN’s elected representatives in the decision-making process, strengthening the ASEAN Inter-Government Commission on Human Rights, and establish dispute settlement mechanisms in all fields of ASEAN cooperation”.

Imelda Deinla, Associate Professor at the Ateneo School of Government, on the other hand, thinks that the Charter is not the main reason why ASEAN is often ineffective. She argues instead that, “what needs to change are

the habits and practices in ASEAN. Informal rules and institutions, while giving flexibility and due consideration to the diversity among members, could also be frustrating the growth of ASEAN and its institutions”. She sees the fundamental problem as about the lack of political consensus and will to strengthen the organisation’s capacity, improve compliance with existing agreements and obligations, and to punish breaches of the Charter.

This reflects what has been one of the biggest disappointments about the Charter. Those who worked on the Charter had hoped to take ASEAN from the political realm to the legal one, but ASEAN has remained political in a post-Charter world. Ironically, what is needed is a political will to make the group more legal and rules-based, which will remain unlikely until there is a greater degree of shared values, practices, and collective identity. All of these are under great strain today due to both internal (for example, Myanmar) and external (for example, US-China rivalry) factors.

To end on an optimistic note, initiatives to boost ASEAN’s institutional development historically came when there was a perception that ASEAN is irrelevant. ASEAN is yet again facing such a juncture, and one only hopes that its leaders can assemble their collective wisdom to reinvent ASEAN to realise the fundamental vision of a peaceful and prosperous regional community with shared values and a collective identity.

Yongwook Ryu is an Assistant Professor and a faculty associate with the Centre on Asia and Globalisation at the Lee Kuan Yew School of Public Policy, NUS.

The ASEAN Charter is not holy scripture

By Randy W. Nandyatama

ASEAN should consider revising its Charter, particularly as it relates to regional compliance mechanisms and the ASEAN Secretariat, to maintain its relevance and credibility.

ASEAN has continued to develop its institutional structure despite, or perhaps because of, its rather minimalist origin as a regional organisation. The 2007 ASEAN Charter is key evidence in this regard. The trajectory was, of course, neither linear nor automatic. Two distinct patterns of ASEAN's institutional development are worth noting.

First, ASEAN reformist impulses and policies often correspond to the need to tackle a regional crisis, including over the group's legitimacy. The drive behind the ASEAN community and the subsequent Charter, for instance, **grew from the perception that ASEAN was irrelevant in responding the 1997 Asian financial crisis.** ASEAN's subsequent modernisation plans to build a regional community through the Bali Concord II and a legal personality through the Charter largely came out of the post-crisis environment.

Second, ASEAN tends to progress along with **the regional doxa—the dominant system of**



Image Credit: flickr/ME.Aphotogallery

meaning historically augmented into regional mechanisms, policies, and interactions, namely non-interference, consensus, pacifistic approach to regional problems, and incrementalism. In other words, ASEAN's institutional development cannot be fundamentally detached from regional norms and practices. The Charter, while signalling a far-reaching regional framework transformation, was accepted by the member states because it allowed them to maintain their autonomy, as shown by the absence of non-compliance mechanisms in the document.

But as the ASEAN-anchored regional architecture is under severe strain by internal and external challenges, particularly the US-China tension and the violence in Myanmar, the group should consider two important points.

First, ASEAN has a reputational problem.

The group always emphasised its ‘brand’ as one of the most successful regional institutions through its ability to convene inclusive regional forums to keep the peace. This brand is in jeopardy today as it remains unable to address the Myanmar crisis and as regional countries look to non-ASEAN options like AUKUS and the Quad. Former Indonesian foreign minister Marty Natalegawa clearly argues that **“developments in Myanmar no longer simply constitute a litmus test for ASEAN, but an existential threat”** to its centrality. Analysts argue that AUKUS **“brings new risks that threaten to further marginalize”** the group.

Second, ASEAN has some catching up to do in terms of addressing non-traditional security challenges. With the lingering style of producing declarations without clear and detailed plans and resources, ASEAN has struggled to meaningfully help its member under crises. During the pandemic, for example, ASEAN has created the COVID-19 Response Fund and the ASEAN Centre on Public Health Emergencies and Emerging Diseases. However, the process of getting there took too much time, and they ultimately could not deliver tangible results. Analysts noted that the Response Fund **“doesn’t have comprehensive guidelines, which means states are unable to draw from it promptly when making policy decisions”**. At the end of the day, just like in the early days of the Asian financial crisis, every member must find a way to stand on its own feet.

ASEAN, therefore, need to reconsider parts of

its Charter, particularly in recalibrating its regional *doxa* and improving its institutional design.

One of the most important areas in need of serious improvement is the role of the ASEAN Secretariat. The current provisions only cover the Secretariat’s personnel and budgetary management more broadly. All policy ideas come from the member states, with the Secretary-General often playing the secretary role than the general, as is often joked about in regional capitals. What we need instead is a stronger, more inclusive, and empowered Secretariat capable of proposing, managing, and implementing policies and engaging and involving the wider public.

With an enhanced Secretariat, ASEAN can be more agile in responding to complex challenges and provide a clear mechanism to deliver tangible results. For instance, the Secretariat can both promote a common foreign and security policy and help coordinate its implementation. Likewise, regional bodies can also have a bigger role in implementing ASEAN policies through their ability to formulate derivative guidelines and engage with relevant stakeholders, especially in facing pressing challenges like atrocities prevention and climate crisis.

Second, ASEAN should consider better incentive and disincentive mechanisms for member states and dialogue partners to respect and comply with existing rules and policies. The current Charter only highlights the role of the Secretary-General and the

Secretariat in identifying and reporting problems to the ASEAN Summit. ASEAN still lacks the capacity to provide clear carrots and sticks.

Therefore, it is essential to increase ASEAN's financial capability and strengthen its rule compliance mechanisms, including considering sanctions regime for serious breaches of the Charter for example. While membership expulsion might be a sensitive topic given what is happening in Myanmar, ASEAN needs to consider various forms of punitive mechanisms and scenarios in the future. Moreover, a Charter that can equip the organisation to provide financial stimulus and development projects can be a valuable toolkit for building a stronger set of credibility and compliance mechanisms.

After fifteen years, it is high time for ASEAN to review and reflect on its Charter. Realising that the Charter is not a holy scripture is an essential first step. ASEAN should be more agile in navigating the increasingly complex and competitive political terrain.

Randy W. Nandyatama is an Assistant Professor and Secretary of the Department of International Relations, Gadjah Mada University, Indonesia. He can be reached at randy.wirasta@ugm.ac.id and via twitter [@randy_wn](https://twitter.com/randy_wn).

If the Charter ain't broke, why fix it?

By Sharon Seah

Revising the ASEAN Charter will not be a panacea to regional problems, but options to make its implementation more people-centric should be considered.

Will a revision of the ASEAN Charter help strengthen or unravel its already fragile unity against geopolitical shocks? This question has become more pertinent as the organisation finds itself in the middle of a maelstrom of deeply disturbing geopolitical developments. These include the persistent Sino-US rivalry, threats of regional instability over the Taiwan Straits and the South China Sea, the proliferation of new security groupings, and the growing political and humanitarian crisis of a troubled fellow member Myanmar.

The violent crisis in Myanmar should have triggered some soul-searching within the bloc. ASEAN's efforts thus far to bring multiple stakeholders together and deliver much-needed humanitarian aid have failed but ASEAN leaders have decided to **soldier on**. ASEAN should have in its drawer even sharper tools to unpick at the stalemate than when it was Charter-less fifteen years ago. Yet it has failed to utilise the Charter because at the core of ASEAN's problems is the absence

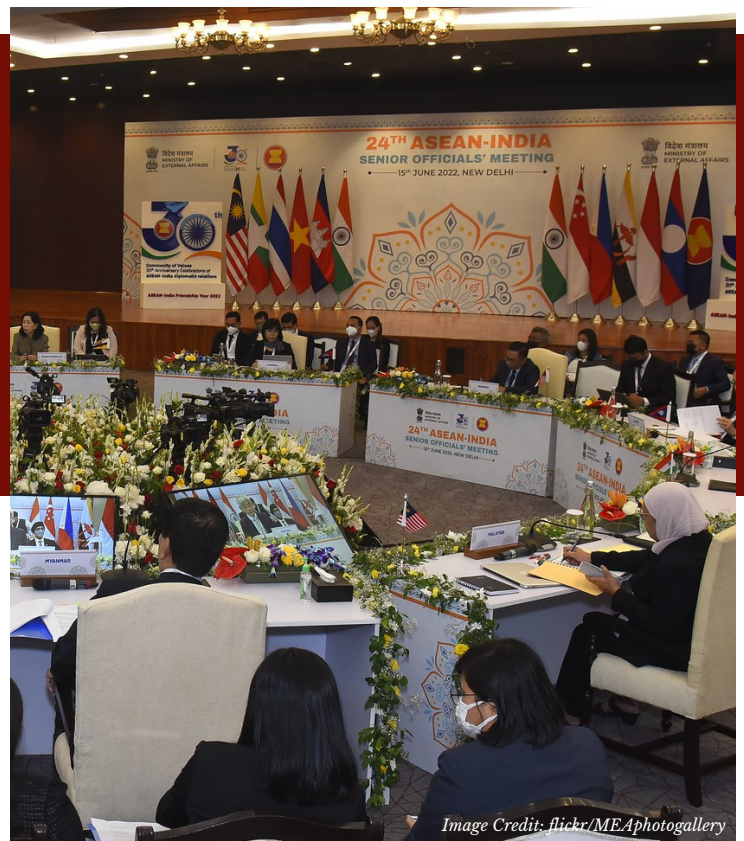


Image Credit: flickr/MEPhotogallery

of unity which promises to be even more challenging with the potential admission of a **new member**.

The Charter established ASEAN's legal personality, codified ASEAN norms, rules, and values, and gave the grouping institutional form and structure when it came into force in 2008. As the late former ASEAN Secretary-General Rodolfo Severino noted, the Charter is "a commitment for us to become a rules-based community. It is time for us, especially the weaker countries among us, to be ruled by law *rather than by political whim, national interest, or military power*". Members are thus legally bound to observe Charter provisions.

Article 50 of the Charter states that the document may be reviewed five years after its entry into force, or as otherwise determined by the ASEAN Summit. The **original** suggestion to review it *every* five years was

dropped. Hence, the only window to review the Charter would have been in 2013. At the five-year mark, Singapore circulated a **non-paper** on proposals to review ASEAN institutions. This led to the establishment of a **High-Level Task Force (HLTF)** to enhance the efficiency and procedural coherence of ASEAN institutions and activities. This was to enable ASEAN to respond more effectively to the changing dynamics of the region. It identified several areas for review: (1) a common voice to engage external powers; (2) dispute settlement mechanisms; (3) the publicity of human rights work; and (4) the scope of the Committee of Permanent Representatives.

There is reason to believe that there was serious intent to revise parts of the Charter. The **2017 Philippines Chairmanship Statement** noted that ASEAN was considering “factual updates and revisions of certain articles of the ASEAN Charter”. But under Vietnam’s chairmanship in 2020, this morphed into tasking the Secretariat to produce a scoping report of the review of the Charter’s implementation over ASEAN organs’ operations and the application of the rules and procedures that govern ASEAN’s daily activities.

How did an update of the Charter become a review of its implementation? To long-time observers of ASEAN, this is not surprising. Intentions often get diluted, and texts get mis/re-interpreted all the time. **Death by committee** remains one of the favoured tactics of bureaucrats.

Is the Charter fit-for-purpose then to meet rapidly changing geopolitical challenges? Is the consultation and consensus principle standing in the way of ASEAN integration?

The divisions over Myanmar underscore a need to **revamp** the Charter with respect to the ASEAN consensus-based decision-making principle (codified in Article 20). Some argue this needs to be reviewed as it is hampering ASEAN’s ability to move together with one voice. There have been, among many others, suggestions for a voting mechanism on critical issues in which no consensus can be taken, for example, the use of the ASEAN minus X formula, or the revival of an ASEAN Troika.

However, some member states worry that not all will have equal say in such a review and that non-consensus decision-making could lead to more harm than good. ASEAN’s aversion to revising any part of the Charter is ultimately about the fear that it would lead to fragmentation of its fragile cohesion.

But as far as ASEAN’s response to Myanmar is concerned, the cherished non-interference principle has already been stretched. In its dictates to Myanmar to “show progress”, ASEAN took an unprecedented step of disallowing political representation at the Foreign Affairs track and Summit level meetings. The military junta protested at this perceived interference. But the **commitment to constitutional government** in the Charter means that ASEAN is against coups and other unconstitutional changes of government. One

suspects that ASEAN's inherent discomfort has to do with the breach of pre-emptory norms such as the disproportionate and excessive use of force. This could also be indicative of ASEAN's slow evolution to a rules-based community, one ruled by law.

Arguably then, a revision of the Charter will not be a panacea to its problems. If one were to read accounts of how the Charter came to be, the Charter is itself a consensus document with inherently contradictory principles (e.g., protection of human rights vs non-interference).

However, could a rethink of how to implement Charter decisions in a way that would make ASEAN more people-centric be worth considering? This could be done, for example, by giving more voice to ASEAN's elected representatives, by strengthening the mandate of the ASEAN Inter-Governmental Commission on Human Rights, by establishing dispute settlement mechanisms in "all fields of ASEAN cooperation", or by having a Secretary-General "who will serve with the confidence and at the pleasure of ~~the~~ *the people of ASEAN*". Are these options too much to ask for?

Sharon Seah is Senior Fellow and Coordinator of the ASEAN Studies Centre at the ISEAS-Yusof Ishak Institute. She tweets @Sharon Seah.

The ASEAN Charter does not hinder decisive actions

By Imelda Deinla

The ASEAN Charter in its current form does not hinder ASEAN to act, and for it to act decisively. What needs to change are the habits and practices in ASEAN.

ASEAN faces daunting problems, from the continuing health impact of COVID-19, economic recession and unemployment, to increasing socio-economic disparity and great power rivalry. More than ever, ASEAN needs to step up its game—or lose its credibility and centrality. As a central instrument to address this challenge, should the ASEAN Charter be revised after fifteen years?

Constitutions are not tinkered lightly; they provide stability to its intended subjects and objects. They are also products of tedious deliberations and contestations. The Charter is thus a product of complicated political bargains and accommodation given the huge diversity and disparity in economic and political developments among member states. Constitutions, however, are not static; they can be interpreted and reinterpreted as practices and conditions change.

That no one is left behind has become a central tenet in designing ASEAN's



compliance regime. Like domestic constitutions, the Charter embodies the legal, political, and social conditions and aspirations of member states. It also expresses the vital interests of the region's elites, the fundamental actors in ASEAN regionalism. This is precisely the reason why initiatives to review the Charter after its fifth year have faltered or met with caution.

At the heart of ASEAN's malaise is that it remains a state-centred entity, with little constraints on sovereign discretion. The Charter, while intending to foster a rules-based regime, is still subsumed to a higher order, the will of member states. This makes decision making, compliance, and enforcement of commitments dependent on respect for sovereignty and the process of consultation and consensus.

This is perhaps why we see that ASEAN is not

yet a fully integrated community based on the blueprints and timelines. Economic cooperation has advanced, and ASEAN defied the pandemic trends in attracting foreign investments. But it remains unclear if intra-regional trade has deepened. There is greater awareness of ASEAN by the public, but only less than a third knows about its work and the community pillars.

Recently, there is widespread perception that ASEAN is not doing enough to stem the tide of the humanitarian tragedy in Myanmar. Despite its achievements, ASEAN is still widely regarded even among its peoples as “slow and ineffective in dealing with fluid developments” and becoming embroiled in great power rivalry.

Rather than simply a Charter legal problem, however, ASEAN’s challenges are largely political. The Charter can only provide the broad framework on how and when to respond to salient concerns. It cannot guarantee that members will act in the first place, or act pursuant to the rules. Nor can the Charter anticipate all possible issues that could arise.

That said, the Charter is a complete document from a constitutional standpoint. ASEAN is not fundamentally different from other international instruments that prescribe rights and obligations of signatory states. International agreements are after all ‘weak’ by nature owing to their low institutionalization and weak enforcement.

But the Charter provides a framework to

overcome compliance deficits. The provision of different modes of dispute resolution mechanisms—the ASEAN Enhanced Dispute Settlement Mechanism, ASEAN Summit, Treaty of Amity and Cooperation (TAC), good offices of the Secretary-General, and instrument-specific mode of dispute settlement—was meant to offer parties a variety of avenues to deal with unresolved issues or disputes.

To date, most of these mechanisms are under-utilised. The High Council under the TAC, for example, has not been “activated” or established since it was stipulated in 1976. This means that the ASEAN Summit, operating on consensus decision-making, controls the resolution (or non-resolution) of contentious matters with regional implications.

Only when private entities and individuals are increasingly affected by ASEAN rules and increase their confidence in regional mechanisms that might spur usage—and pressure governments. Until such time, the ASEAN Charter in its current form does not hinder ASEAN to act, and for it to act decisively.

Strengthening of ASEAN institutions, such as the capacity of the Secretariat and the Committee on Permanent Representatives, are matters that can be decided at the political level without changing the Charter. Greater compliance of economic obligations can be facilitated by providing binding and non-binding coercive sanctions in specific agreements. Enhancing the mandate of the

human rights body, the AICHR, needs amendment only of its term of reference to give it protection function.

To deal with serious breaches of Charter, ASEAN might consider establishing the High Council of the TAC, on an *ad hoc* basis, to give timely and considered advice to the Summit. A protocol can be made to specify instances of serious breaches to the Charter, as well as various modes or levels of dispute resolution to particular incidents. An early warning system might be constituted to enable ASEAN to monitor early signs of conflict and provide appropriate responses to avert escalation into humanitarian disaster and widespread violence.

The ASEAN Charter need not be burdened with these details. What needs to change are the habits and practices in ASEAN. Informal rules and institutions, while giving flexibility and due consideration to the diversity among members, could also be frustrating the growth of ASEAN and its institutions. To instil confidence in ASEAN's institutions, ASEAN leaders should allow them more autonomy and decision.

Imelda Deinla is an Associate Professor at the Ateneo School of Government. She can be reached at ideinla@ateneo.edu and via twitter [@DeinlaImelda](https://twitter.com/DeinlaImelda).

THE CENTRE ON ASIA AND GLOBALISATION

The Centre on Asia and Globalisation is a research centre at the Lee Kuan Yew School of Public Policy, National University of Singapore. It conducts in-depth research on developments in the Asia-Pacific and beyond, and aims to provide academics, decision-makers, and the general public with objective analysis on issues of regional and global significance. The Centre's motto "Objective Research with Impact" reflects its commitment towards ensuring that its analysis informs policy and decision makers in and about Asia.

OTHER CAG PUBLICATIONS

- *Fit for Purpose: Can Southeast Asian Minilateralism Deter?* by Evan Laksmana (Asia Policy 17(4) (October 2022): 35-42)
- *Hatta and Indonesia's Independent and Active Foreign Policy: Retrospect and Prospect* by Evan A. Laksmana and Lina A. Alexandra (Jakarta: CSIS Indonesia, 2022)
- *Failure to launch? Indonesia against China's Grey Zone Tactics* by Evan Laksmana (IDSS Paper No.37)
- *Remodelling Indonesia's Maritime Law Enforcement Architecture: Theoretical and Policy Considerations* by Evan Laksmana (Contemporary Southeast Asia 44(1), 2022)
- *Charting Their Own Course: How Indonesians See the World* by Ben Bland, Evan Laksmana and Natasha Kassam (Lowy Institute, 2022)
- *India-Australia-Indonesia Maritime Partnership: Shared Challenges, Compelling Opportunities* by Premesha Saha, Natalie Sambhi, and Evan Laksmana (ORF, 2022)
- *A Fragile Fulcrum: Indonesia-U.S. Military Relations in the Age of Great-Power Competition* by Evan Laksmana (Asia Policy 16(4), October 2021)



Compiled and sent to you by Centre on Asia and Globalisation
and the Lee Kuan Yew School of Public Policy, National University of Singapore

Counterpoint Southeast Asia is supported by the Hong Siew Ching Speaker & Seminar Series.

Feedback or comment?

Contact our Editor: Evan Laksmana (Senior Research Fellow) laksmana@nus.edu.sg

Subscribe