

Response to Barry Desker's Criticism Of Asean Charter
Not perfect but charter is good start on road to regional progress

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Mr Barry Desker wrote in these pages on July 18 (Where the Asean Charter comes up short, *The Straits Times*, click [here](#) for article) that he was disappointed with the Asean Charter.

First, he says it merely codifies existing norms. This is incorrect because the charter includes many new principles and objectives, such as the promotion and protection of human rights and fundamental freedoms, the support for constitutional government, sustainable development, international law, international humanitarian law, et cetera.

Second, Mr Desker says Asean remains an inter-governmental organisation. Asean can only become a supra-national one when member states are prepared, like the European Union, to pool their sovereignty in specific sectors. It is too early in Asean's evolution for this to happen.

Third, Mr Desker alleges that Myanmar's participation in the drafting of the Asean Charter undermined that effort. I represented Singapore in the High-Level Task Force (HLTF) and can truthfully say this was not the case.

My colleague from Myanmar played a constructive role in drafting the charter and was not the most difficult colleague I had to deal with.

Fourth, Mr Desker is on record as urging that Myanmar's Asean membership be suspended. I disagree.

If Myanmar were not a member, would Asean have succeeded at a special meeting of its foreign ministers on May 19 to persuade it to accept foreign assistance for the victims of Cyclone Nargis? Would Myanmar have agreed for Asean and the United Nations to co-chair a pledging conference in Yangon on May 25 and send a joint Asean-UN assessment mission to the Irrawaddy delta?

Fifth, Mr Desker wrongly equates consensus with adopting the lowest common denominator. In the true spirit of consensus-making, the majority seeks to accommodate the minority and the minority seeks to align itself with the majority. This is how the UN, World Trade

Organisation (WTO) and Asean practise consensus as the primary method of decision-making.

Mr Desker is also wrong when he says that Asean's ambition to be a more rules-based organisation is incompatible with consensus as its preferred method of decision-making. The WTO makes all its decisions by consensus, yet is unquestionably a rules-based organisation.

Sixth, Mr Desker asserts that there is no assurance that, under the charter, Asean will have a better record of complying with its agreements and obligations.

The assurance lies in the fact that the secretary-general is empowered to monitor compliance and report non-compliance to the summit. The other assurance is that the charter will establish a system of mandatory dispute settlement.

Seventh, Mr Desker criticises the failure of the charter to spell out the terms of reference of the Asean Human Rights Body. The HLTF did try to draft the terms of reference but ran out of time.

The current Asean Ministerial Meeting has established a new body, the High Level Panel (HLP), to complete the job. Since the HLP has just begun its work we should refrain from prejudging the outcome of its challenging task.

Eighth, the charter has enshrined the principle of Asean minus 'x' for economic agreements. This means it is possible, for example, for Thailand to opt out of signing the Asean-ROK (Republic of Korea) Free Trade Agreement while not blocking the other nine members from doing so.

Asean is understandably cautious about extending the Asean minus 'x' principle to other areas such as political and security agreements. In these sensitive areas, Asean can deviate from the principle of consensus if there is agreement to do so.

I do not regard this as a 'retrograde step'. Maintaining the unity of the Asean family is paramount. We must continue to make progress but we must do so at a pace comfortable for all members of the family.

Ninth, Mr Desker misunderstands the purpose of the Co-ordinating Council. It is, not as he claims, an attempt by the foreign ministers and their bureaucracies to 'claw back the authority to decide Asean's future directions'. The authority to decide Asean's future lies with our leaders.

The only purpose of the Co-ordinating Council is administrative. It is to assist the summit, which will meet twice a year, with all the preparatory work.

Tenth, Mr Desker is unhappy that the charter has not empowered the Inter-Parliamentary Association. But not all member states have national parliaments, so until they do, no inter-parliamentary association can claim to speak for the peoples of the 10 member countries.

Also, until the member states have agreed to pool their sovereignty, what would an Asean Parliament do? I share Mr Desker's dream that one day Asean will have its own Parliament.

Eleventh, Mr Desker notes that although the charter creates two additional posts of deputy secretaries-general, the budget of the Asean Secretariat, standing at less than US\$10 million (S\$14 million) a year, is wholly inadequate. I agree.

He is also critical of the current practice of equal contributions from the 10 member states.

Mr Desker does not propose how we can increase the secretariat's budget in ways acceptable to all member- states.

Twelfth, I am not sure why Mr Desker is certain that Asean is unlikely to move towards a people-centred organisation. In drafting the charter, we acknowledged the important ideas and contributions of the private sector, academia, media, civil society and our young people.

The charter requires our leaders and officials to consult them and to take their inputs into account in our policy-making.

The charter is not perfect but it is a good one. Let us not make the best the enemy of the good. With the charter and the economic blueprint, we have the possibility to construct a new Asean which we can all be proud of.

The writer chaired the Asean Charter High-Level Task Force.

Mr Barry Desker's response to this essay can be found [here](#).