

Key Issues for Policy:

- Change ASEAN's decision-making mode and procedures;
- Establish a mechanism to enforce compliance;
- Start a discussion to determine how to balance the preference to retain national autonomy on the one hand and the need for greater collective institutional role on the other;
- Clarify the functions and role of ASEAN's existing organs and institutions and the relationship between them;
- Change the formula for members' financial contribution to the ASEAN Secretariat;
- Empower the ASEC to become a real central mechanism and possess a truly regional perspective that helps the realisation of ASEAN's collective objectives;
- Introduce, clarify and institutionalise the mechanism for engagement with civil society organisations (CSOs); and
- Improve and strengthen the dispute-settlement mechanism.

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ASEAN Beyond 2015: The Imperatives for Further Institutional Changes

By RIZAL SUKMA

As the members of the Association of Southeast Asian Nations (ASEAN) are now committed to a deeper integration process towards an ASEAN Community beyond 2015, the need for greater and deeper institutionalisation has become more urgent. While ASEAN recognises the need to strengthen its institutions, as reflected in its commitment to undertake greater institutionalisation efforts mandated by the ASEAN Charter, the willingness of member states to rely on regional institutions is still circumscribed by strong attachment to the principle of sovereignty and preference for maintaining unity amid regional institutions without necessarily transforming itself into a supra-national organisation.

Introduction

The Association of Southeast Asian Nations (ASEAN) has evolved from a loose and modest inter-governmental regional organisation aimed at preventing inter-state conflicts through economic and socio-cultural cooperation among its members, into an association of sovereign states with a more ambitious agenda of regional integration. The ASEAN Charter, which was adopted in November 2007 and came into force in December 2008, represents the shared goal of ASEAN members to accelerate the process of regional integration among member states and confirms ASEAN's commitment to the realisation of an ASEAN Community. It promises to transform ASEAN from a loosely organised association into a more rules-based organisation.

One important prerequisite for deeper integration has been the promise to strengthen ASEAN's own institutions. The Charter serves as the legal basis for further institutionalisation of ASEAN and introduces a number of institutional changes designed to "streamline ASEAN's cumbersome and uncoordinated organisational structure...". Four

elements of the Charter are of key importance in this respect: First, and foremost, the Charter gives ASEAN a legal personality. Second, it articulates new (and old) objectives of regional cooperation, most importantly the goal of becoming a regional community based on three pillars. Third, it pledges to change the nature of ASEAN from a state-dominated process into a people-oriented organisation that ensures “durable peace, stability, and shared prosperity in the region”. Fourth, it includes the provisions for strengthening ASEAN’s institutional pillars and streamlining its decision-making structures.

ASEAN’s Continuing Problems and Challenges

But despite these institutional changes, there is little evidence to suggest ASEAN has started to function better, more effectively, and differently from how it has functioned over the last 45 years. Despite all the rhetoric and promises made by the ASEAN Charter and official pronouncements, ASEAN essentially remains an inter-governmental form of regional cooperation. And despite the promise to become a people-oriented organisation, it is largely still a state-driven process, even though non-state actors in some (more democratic) members do exercise a degree of influence over national policies of member states towards ASEAN. It remains a regional organisation where progress (or lack of it) in implementing a cooperative agenda is still determined by the political will of member states rather than by an implementing agency of a supra-national body.

These persistent features of ASEAN’s practices are reflected in a number of continuing problems facing the Association that the ASEAN Charter either refused to address or failed to clarify. First, ASEAN’s decision-making process remains guided by the principle of consensus. Second, the new institutions (organs) introduced by the Charter still lack clarity with regard to their functions and roles, and how they relate to each other. Third, despite the enhanced role of the ASEAN Secretariat and the Secretary-General of ASEAN as provided for in the Charter, the two institutions remain constrained by member states’ unwillingness to provide more resources, as reflected in the decision to uphold the principle of equal contribution by member states to the Secretariat. Fourth, ASEAN is still characterised by the lack of a mechanism to enforce compliance, the absence of regime sanctions, and the tenacity of a consensus-based rather than a legalised dispute-settlement mechanism, a reflection of ASEAN’s continued preference for non-binding agreements and informality.

Three major factors have been a constraining effect that continues to define and shape ASEAN’s approach to intramural relations: the inviolability of state sovereignty (and its attendant aversion to non-interference), the overriding concern over unity due to tremendous regional diversity, and the sanctity of national autonomy. These three factors will continue to pose difficult challenges to ASEAN’s efforts at institution-building and are the reasons why the efforts at greater institutionalisation have not significantly changed how ASEAN functions.

Given these constraints, the existing institutions are not adequate for achieving ASEAN’s goals and objectives—(1) to promote regional community-

building, with specific objectives of facilitating economic integration, undertaking conflict prevention and conflict resolution, and becoming a people-oriented organisation; (2) to sustain ASEAN's centrality in the emerging regional order; and (3) to present a more cohesive voice in a global community of nations. Institutional changes and promises introduced by the ASEAN Charter are still inadequate and, in some cases, might even complicate the process of ASEAN community-building.

Recommendations

For ASEAN's goals and objectives to be met, further institutional changes need to be made. To transform itself into a rules-based organisation and accelerate the process of regional integration, without necessarily becoming a supra-national institution, ASEAN needs to:

Change its decision-making mode and procedures

Consensus should remain the fundamental principle of decision-making, but it should not be equated with unanimity. Voting should be introduced as a mode of decision-making, especially on non-sensitive issues. At present, consultation (*musyawarah*) is the primary process for decision-making and the Charter stipulates that "where consensus cannot be achieved, the ASEAN Summit may decide how a specific decision can be made." In such cases, ASEAN leaders tend to seek consensus in order to resolve differences that would typically get swept under the carpet for the sake of tenuous

regional unity, due to the need to find the lowest common denominator.

Establish a mechanism to enforce compliance, requiring the introduction of two processes:

Establish an independent Assessment Task Force. Outside independent assessment of ASEAN's progress is needed. The task should be carried out by those within ASEAN or among ASEAN's stakeholders within the region. For example, within ASEAN, the assessment body—the ASEAN Assessment Task Force—should be comprised of prominent citizens (non-governmental, but appointed by governments) from ASEAN countries. From ASEAN's stakeholders, it can be prominent institutions such as ERIA, which has already done this with regard to the implementation of the ASEAN Economic Community (AEC) through its studies on the AEC Scorecard. Difficult as it may be, the same should also be done with regards to the other two pillars. In fact, progress in economic cooperation cannot be sustained without a solid political-security foundation that the ASEAN Political-Security Community (APSC) seeks to create and a sense of One Community that the ASEAN Socio-Cultural Community (ASCC) attempts to encourage.

Adopt regime sanctions. While this is still a sensitive issue, ASEAN nevertheless needs to admit that rules, commitment and agreements without any punitive actions in case of breaches are meaningless. It should therefore begin to discuss what form of punitive mechanism should be in place, types of sanctions, and in what areas sanctions should and could be applied.

Start a discussion to determine how to balance the preference to retain national autonomy on the one hand and the need for greater collective institutional role on the other

While some sort of supra-national authority in the political-security field is still unlikely, ASEAN member states should be more open to suggestions on measures to give a greater role to regional institutions in the areas of economic community and socio-cultural community. One specific area that requires greater clarity and mandate is the monitoring role of the ASEAN Secretariat (ASEC). Although the ASEAN Charter specifically tasks the ASEAN Secretariat with this function, it is still not immediately clear how the ASEC should undertake this role, and what it can and cannot do.

Clarify the functions and role of ASEAN's existing organs and institutions and the relationship between them

Despite the intention to streamline the organisational structures, the role and functions of those structures (organs) and how they should relate to each other remain unclear. For example, can one say that the ASEAN Coordinating Council (ACC) comprised of foreign ministers, is higher than the other two councils? To whom is the ASEAN Secretary-General (ASG) answerable in undertaking his or her day-to-day functions? Does the ASG have to report to the Committee of Permanent Representatives (CPR), as in the current practice, or to the ACC? Or, as the ASG is given the ministerial status, should he or she report to the head of state/government occupying the position as the ASEAN Chair? These are some of the issues that ASEAN

needs to clarify. The ongoing discussion among member states on a set of rules and procedures for the ACC and the three councils might resolve some of these problems, but the need for clarity goes beyond the ASEAN councils. It should also include other ASEAN's organs such as the CPR whose rules and procedures are clearly in need of revision and refinement.

Change the formula for members' financial contribution to the ASEAN Secretariat

Empowerment of the ASEAN Secretary-General and enlargement of the ASEAN Secretariat requires a much larger budget. An equal contribution determined by a member state capable of contributing a higher sum is no longer adequate. Despite the willingness to provide stronger mandates and a greater workload to the Secretariat, ASEAN governments remain reluctant to commit more funds.

Empower the ASEC to become a real central mechanism and possess a truly regional perspective that helps the realisation of ASEAN's collective objectives

This can be done if it is not subject to, and does not become the victim of, competing national priorities of its member states. It should, for example, (a) abolish the rotational basis for the ASG, (b) introduce open recruitment on the basis of merit for all the DSGs, (c) improve the structure of incentive for staff, (d) give ASEC more implementing power across the three pillars of the ASEAN Community, and (e) provide greater clarity on the role and function of the CPR in relation to the ASEC

in order to avoid the overlapping roles and functions of the CPR, ASEC and ASG.

Introduce, clarify and institutionalise the mechanism for engagement with civil society organisations (CSOs)

ASEAN has pledged that it would transform itself to become a people-oriented organisation. But this objective cannot be met unless ASEAN interacts in an institutionalised way with civil society organisations—ASEAN's main constituencies—in all ten members. Unfortunately, ASEAN does not have a mechanism through which it could engage the CSOs. Therefore, leaders need to agree on a clear mechanism by which greater and institutionalised participation by the people can be ensured, and the people—through various CSOs—can be granted regular access to ASEAN processes in general and to the leaders in particular.

Improve and strengthen the dispute-settlement mechanism

Disputes may arise from three types of problems: traditional inter-state conflict, differences in interpretation of the provisions contained in the ASEAN Charter, and differences on whether a member state has implemented an agreement or not. ASEAN should start discussing how they would resolve these three types of disputes whenever they arise. The existing ASEAN formulation on dispute settlement continues to rely on the “wisdom” of the leaders. The Charter declares “when a dispute remains unresolved, after the application of the preceding provisions of this Charter, this dispute

shall be referred to the ASEAN Summit, for its decision.” Here, the Summit needs to have clear rules and procedures on how a dispute should be resolved and by what mechanism. Reliance solely on consensus defined as unanimity is no longer adequate.

Conclusion

These proposals suggest that ASEAN should take two major initiatives. First, **carry out a review of the ASEAN Charter**, including a stock-taking exercise and comprehensive assessment of how ASEAN's institutions have functioned since the adoption of the ASEAN Charter, and a reassessment of the Eminent Persons Group's (EPG) recommendations.

The EPG report provides many valuable suggestions for ASEAN if it is really serious to strengthen itself. As the EPG has noted, ASEAN's main problem is not a lack of vision, but a lack of responsibility to implement. Implementation depends on member states that tend to be more concerned with their own domestic priorities than regional commitments and obligations. Moreover, ASEAN's agreements are still non-binding in nature, due to the absence of a mechanism to enforce compliance and ASEAN's aversion to sanction-regimes, meaning that breaches of agreements go unpunished. And the problem of implementation is further exacerbated by ASEAN's reluctance to give real power of implementation to a regional body such as the ASEAN Secretariat. The central issue that gives rise to these three problems has been, and still is, ASEAN's refusal to create a space that would reduce national autonomy of member states.

Second, **act on the report submitted by ASG Surin Pitsuwan in 2012.** The report provides valuable insights on the challenges, at practical and structural levels, facing the ASEAN Secretariat in playing its role as the central regional body. Regional integration could be achieved faster with a regional body with a regional perspective. The ASEAN Secretariat should be transformed to become such a body.

The changing economic and political-security environment in East Asia, and the resulting challenges for ASEAN, heightens the need for ASEAN to integrate deeper and function effectively. That would require ASEAN to introduce further institutional changes.■

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