

(L-R): Herman Kraft, George Manzano (UA&P School of Economics), Loretta Rosales (Akbayan), and Wigberto Tanada (member, Working Group for an ASEAN Human Rights Mechanism).

Photo: ATENEO HUMAN RIGHTS CENTER (AHRC)



ASEAN CHARTER POSES DIFFICULT CHALLENGE

Regional alliance takes tentative steps toward one day possibly forming an economic and political union

■ By *VITIT MUNTARBHORN

ONE OF the more challenging developments at the recent summit of the Association of Southeast Asian Nations (Asean) in Cebu was the presentation of a report by the Eminent Persons Group, chosen to put forward groundbreaking ideas on the possibility of an Asean charter.

The charter was to come close to being a constitution for Asean, a treaty to put the organisation on a more certain footing with a legal personality, rather than a mere conglomeration of states. The report will now be followed by the drafting of an Asean charter, although the drafting process will be done by a different group of persons— a more technical group, drawn particularly from ministries within the Asean region.

There are a number of key recommendations in the Eminent Persons Group report.



Filipino solidarity groups picket in front of the Singapore embassy in Makati to call for democracy in Burma and for the release of freedom icon Daw Aung San Suu Kyi.

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First, the objectives of Asean are to be spelled out more clearly. The report highlights “the active strengthening of democratic values, good governance, rejection of unconstitutional and undemocratic changes of government, the rule of law including international humanitarian law, and respect for human rights and fundamental freedoms”. Interestingly, the report projects the vision of Asean as not only a “community” but also a future “union”.

While, of course, mention of

democracy and human rights is much welcome, on this front there has always been a huge gap between principles and practices in Asean. The regional and global public know all too well the ambivalence towards such notions that is prevalent in many national settings. As for the possible aspiration to become a “union”, it is to be remembered that Asean has established three communities as its pillars: the Asean Economic Community, Asean Security Community and Asean Sociocultural Community.

Under the first pillar, for example, there is to be closer integration on the flow of goods, services, investment and skilled labour. The Asean Economic Community now covers 12 priority sectors with cross-sectoral integration through common measures (common to the 12 sectors) and specific measures targeted to the sector concerned. For instance, in one of the sectors, rubber-based products, the common measures include elimination of tariffs for the older members of Asean by 2007 and newer members by 2012. These are complemented by agreements regarding investments, promotion and skilled labour.

Specific measures include the harmonisation of standards and technical regulations. Yet the notion of “union” suggests something more than the integration of sectors. It draws parallels from another regional entity, the European Union, which has evolved from the previous European communities to become a more synchronised body. Union, in that sense, means a monetary and political union.

Second, there is to be institutional restructuring of Asean. At the top level of the alliance today, we have the annual Summit of Heads of Government. This is now to be reshaped, becoming an Asean Council meeting at least twice a year. Under that umbrella, there would be three councils to deal with the three communities mentioned. This should help to propel the creation of “a single market with free movement of goods, ideas and skilled talent along with efforts to harmonise regional economic policies and strengthen regional linkages and connectivity”.

There is to be a greater role for the Asean secretary-general. The secretary-general, assisted by four deputies, will be the chief administrative officer of Asean, with the power to bring important issues to the attention of the council and to represent Asean, when mandated to do so, at the United

Nations and other forums. Yet the secretary-general of any organisation is often faced with the challenge whether to be a mere secretary or to become more of a general. The latter is unlikely for Asean.

Third, the charter is likely to stipulate various rights and obligations pertaining to membership. The pressures for accountability are referred to explicitly in the report, including possible suspension of rights and privileges where a member commits a serious breach. As for the sanction of expulsion from the organisation, the report tactfully states that there shall be no recourse to such action unless otherwise decided by the Asean Council in exceptional circumstances. In a way, this is a bolder vision for Asean, although the harder option will rarely be resorted to. Inevitably, a test case is the non-democratic nature of a key Asean government which has kept the legitimate leaders of the country under arrest and out of power for a long time. While recently Asean has become more assertive against that government and has become less attached to the previously sacrosanct principle of "noninterference in the internal affairs of a state", its position is still less progressive than that taken by various UN organs on this issue, and it has yet to produce tangible results.

Fourth, there is to be a more realistic decision-making process. To date, Asean has worked on the basis of consensus. This has impeded decision-making on some fronts. The Eminent Persons Group report proposes that while consensus should remain the basis for decision making in sensitive areas such as security and foreign policy, in other areas, it says a majority vote should rule if consensus cannot be achieved. There is also room for accepting formally a formula which is already being used in Asean, namely the "Asean minus X" or "2 plus X" formula which enables initiatives to be taken

by some countries, even if not all 10 Asean countries are ready to do so.

Fifth, the report calls for peaceful settlement of disputes and advises that dispute settlement mechanisms in the political and economic fields should be established. Intriguingly, it does not emphasise the reality that actually such mechanisms exist in Asean but they simply have not been used where disputes have arisen. Asean countries have shown themselves more ready to use quiet diplomatic channels rather than formal Asean channels. For instance, the first Asean treaty in the 1970s, the Treaty of Amity and Cooperation, provided for the setting up of a high council to settle disputes, but it has never been resorted to. There are also treaty provisions, which evolved later, to establish economic panels to help settle economic disputes, but these have yet to be utilized in real terms. As a test of confidence for existing Asean mechanisms, some Asean countries have preferred to use the International Court of Justice in the Hague to settle disputes between themselves rather than utilise existing Asean mechanisms. This has been the case with resource disputes between three Asean countries; the three have opted to go to the Hague.

In this regard, the Eminent Persons Group has not been bold enough to suggest that Asean should have a regional court as exist in other parts of the world such as in Africa, Europe and the Americas. Such a court would differ from the current mechanisms available in Asean; it would be able to issue binding decisions and have enforcement powers.

Sixth, one of the underlying aims of having an Asean charter would be to stipulate that the alliance has a legal personality. However, international law suggests that subjective stipulations on this front are not necessarily conclusive. The test of whether an entity has

international legal personality depends on how others deal with the entity, it depends on objective assessment and the recognition by other entities. For instance, are other countries ready to sign treaties with Asean as Asean, or will they continue to sign treaties with the 10 member states of Asean rather than Asean as an entity? If recognised as an entity, it would indicate that Asean had a legal personality. Interestingly, the report opens the door to putting Asean's legal personality on firmer ground by suggesting other countries may wish to send ambassadors accredited to Asean rather than merely accredited to individual countries with the group.

Seventh, there is to be a more people-oriented Asean, with the motto "One Vision, One Identity, One Community". The report calls for Asean to engage civil society, think-tanks and the Asean Inter-Parliamentary Assembly. It proposes the idea of consultative or advisory councils for interacting with civil society and parliamentarians from Asean member states. Yet it has not advocated the need for an Asean parliament or assembly with direct representation from the people of each country through a democratic process. This omission is obviously due to the current political physiognomy of Asean itself.

Eighth, the report notes that the idea of a regional human rights protection mechanism should be pursued further. It is common knowledge that Asia and Asean do not yet have such a mechanism to help promote and protect human rights where the national setting is not yet developed enough to do so. This support from the Eminent Persons Group is welcome and, in reality, a number of ideas have already been offered by civil society.

Given that all Asean countries are parties to the international treaties on women's rights and child rights, an Asean Commission on Women's Rights and Child

Rights could be set up. But it should provide "value added" service and not duplicate the work of international committees which already exist to protect such rights. A key angle is that the "value added" could be provided by an inter-governmental system which offers not only measures to prevent negative situations but also to protect people from harm and to provide redress directly to those affected by the negative situations. Those drafting the charter should consider this option very seriously. They may wish to be even bolder by instituting a broader mechanism such as an Asean Human Rights Commission to cover a whole array of issues. On a parallel front, it can be noted that the Cebu summit also adopted a declaration on the rights of migrant workers. This would also depend upon a monitoring mechanism at the regional level to encourage compliance.

Finally, a really bold measure would be to put the finished draft charter to the test by means of a referendum so that the peoples of Asean can be more involved in the process of evolving a so-called constitution for the region. While this is most improbable at this point in time, it should be necessary in the long term. The quintessential need for people's participation remains at the heart of the growth process of any regional organisation. It is the pivotal test of whether Asean has succeeded or will succeed in the future.

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