



# Significance of the ASEAN Charter

10 December 2008

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2008/ASPSC/004

With the entry into force of the ASEAN Charter on 15 December 2008, ASEAN will henceforth operate under a new legal framework and establish a number of new organs to boost its community-building process.

The ASEAN Charter has been fully ratified (or accepted in Member States without Parliament or when such ratification can be done through a Cabinet decision) in all the 10 ASEAN Member States. Singapore was the first to deposit its instrument of ratification with the Secretary-General of ASEAN, on 7 January 2008; Thailand was the last, on 15 November 2008.

In effect, the ASEAN Charter has become a legally binding agreement among the 10 ASEAN Member States. It will also be registered with the Secretariat of the United Nations, pursuant to Article 102, Paragraph 1 of the Charter of the United Nations.

The importance of the ASEAN Charter can be seen in the following contexts:

- New political commitment at the top level
- New and enhanced commitments
- New legal framework, legal personality
- New ASEAN bodies
- Two new openly-recruited DSGs
- More ASEAN meetings
- More roles of ASEAN Foreign Ministers
- New and enhanced role of the Secretary-General of ASEAN
- Other new initiatives and changes
- What remains unchanged?

## New political commitment at the top level

- To unite under One Vision, One Identity and One Caring and Sharing Community
- To build the ASEAN Community comprising: (1) ASEAN Political-Security Community (2) ASEAN Economic Community (3) ASEAN Socio-Cultural Community

## New and enhanced commitments

### Political

- Mutual interests and interdependence among ASEAN peoples; common objectives and shared destiny
- “Member States shall take all necessary measures, including the enactment of appropriate domestic legislation, to effectively implement the provisions of this Charter and to comply with all obligations of membership;” (Article 5.2)
- Principles of democracy, the rule of law, and good governance
- Respect for and protection and promotion of human rights
- Peace-oriented values
- Nuclear weapon-free Southeast Asia, and free of all other weapons of mass destruction
- “shared commitment and collective responsibility in enhancing regional peace, security and prosperity” (Article 2.2 (b))
- “enhanced consultations on matters seriously affecting the common interest of ASEAN;” (Article 2.2 (g))

### Economic

- Rules-based economic integration; market economy
- Adherence to multilateral trade rules and ASEAN’s rules-based regimes
- Progress reduction towards elimination of all barriers to regional economic integration

### People-oriented

- “We, THE PEOPLES of the Member States of the Association of Southeast Asian Nations (ASEAN), ...” (Preamble)
- At least 10 of the 15 “purposes” of ASEAN are directly related to the peoples of ASEAN (See Article 1.4, and 1.6 – 14)
- Peoples at the centre of the ASEAN community-building process
- “To promote a people-oriented ASEAN in which all sectors of society are encouraged to participate in, and benefit from, the process of ASEAN integration and community building;” (Article 1.13)



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- Common values in the spirit of unity in diversity
- Chapter V: Entities Associated with ASEAN provides for enhanced ASEAN's engagement with these entities

## **New legal framework, legal personality**

- The ASEAN Charter is a legally-binding international (intra-ASEAN) agreement
- All the Governments of the 10 Member States of ASEAN have ratified/accepted it
- All the 10 ASEAN Governments have deposited their instruments of ratification/acceptance with the Secretary-General of ASEAN
- Singapore was the first to deposit on 7 January 2008; Thailand was the last on 15 November 2008
- The ASEAN Charter is due to enter into force on 15 December 2008, in accordance with its Article 47.4
- The ASEAN Charter shall be registered with the Secretariat of the UN
- Article 3 states: "ASEAN, as an inter-governmental organisation, is hereby conferred legal personality."

A High Level Legal Experts Group (HLEG), appointed at the 41st AMM in Singapore, consisting of 10 senior legal experts, one each from every Member State, is looking into all legal issues arising from the Charter.

HLEG is chaired by H.E. Vasin Teeravechyan, former Ambassador of Thailand to the Republic of Korea, and former Director-General of the Treaty and Legal Affairs Department, Ministry of Foreign Affairs of Thailand. HLEG is addressing three key issue areas: (1) legal personality of ASEAN (2) dispute settlement (3) privileges and immunities.

## **New ASEAN bodies to be established**

- ASEAN Coordinating Council (ACC), consisting of the ASEAN Foreign Ministers
- Three Community Councils
- Committee of Permanent Representatives to ASEAN
- ASEAN human rights body

## **Two new openly-recruited DSGs**

- Two additional Deputy Secretaries-General (DSGs) will be openly recruited: one for the ASEAN Economic Community, another for the Community and Corporate Affairs. Each will serve a three-year term, which may be renewed for another three years
- Two other DSGs will continue to be appointed from national nominations, based on alphabetical rotation. The two incumbents are H.E. Nicholas T. Dammen from Indonesia, and H.E. Dr. Soeung Rathchavy from Cambodia. They will be succeeded next year by DSGs from Lao PDR and Malaysia respectively. Each of these two DSGs shall serve a 3-year non-renewable term
- The posts of these four DSGs and the post of the Secretary-General of ASEAN shall be held by ASEAN nationals from five different Member States, in accordance with Article 11.5

## **More ASEAN meetings**

- ASEAN Summit of the Heads of State/Government shall be held twice annually
- Special ASEAN Summit may be held when necessary, and it can be convened outside the ASEAN region; (a Special ASEAN Summit was, for example, held in Beijing on 23 October 2008 on the sidelines of the 7th ASEM)
- ASEAN Coordinating Council, and the three Community Councils to meet at least twice a year; they shall be supported by relevant senior officials
- The Committee of Permanent Representatives to ASEAN is expected to meet regularly at the ASEAN Secretariat in Jakarta

## **More roles of ASEAN Foreign Ministers**

- The annual ASEAN Ministerial Meeting of Foreign Ministers (AMM) will be renamed as the ASEAN Foreign Ministers Meeting; its abbreviation will stay as the AMM

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- The Post-Ministerial Conferences (PMC+10, PMC+1 sessions with Dialogue Partners)
- The annual meeting of Foreign Ministers on the ASEAN Regional Forum (ARF), which now has 27 participating States (including the EU)
- The Southeast Asian Nuclear Weapon-Free (SEANWFZ) Commission
- The High Council of the Treaty of Amity and Cooperation in Southeast Asia, if and when constituted
- The AMM will determine the terms of reference of the ASEAN human rights body; in effect, the AMM will supervise the ASEAN human rights body
- The AMM shall decide on the accreditation of Ambassadors to ASEAN of non-ASEAN countries and relevant inter-governmental organisations. So far, the USA (Mr. Scot Marciel), Australia (Ms. Gillian Bird), New Zealand (Ambassador Phillip Gibson), and Japan (Ambassador Yoshinori Katori) have appointed their respective Ambassadors to ASEAN
- In addition, the AMM will come under the ASEAN Political-Security Community (APSC) Council; they are in three of the six Ministerial bodies of the APSC Council : AMM, SEANWFZ Commission, and ARF
- Another very important new role of the ASEAN Foreign Ministers is in the ASEAN Coordinating Council (ACC), which is empowered to “prepare the meetings of the ASEAN Summit;” (Article 8.2.a) and “coordinate the implementation of agreements and decisions of the ASEAN Summit;” (Article 8.2.b)
- The ACC will also supervise the Committee of Permanent Representatives to ASEAN. The terms of reference of the Committee of Permanent Representatives to ASEAN was approved at the 41st AMM. After the entry into force of the ASEAN Charter, every Member State shall appoint its Permanent Representative to ASEAN with the rank of Ambassador, who shall be based in Jakarta. Under the ASEAN Charter, the ACC may determine additional functions of the Committee
- The ACC shall be the authority in approving and terminating the appointment of DSGs
- The ACC shall be the first ASEAN body to consider every proposed amendment to the ASEAN Charter. If there is consensus, the ACC shall then submit the proposed amendment to the ASEAN Summit for its decision, according to Article 48.2.
- The ACC shall ensure consistency of terms of reference and rules of procedure in the ASEAN organisation structure. Unless otherwise provided for in the Charter, the ACC shall determine the terms of reference and rules of procedure, and shall ensure their consistency, according to Article 49.

## New and enhanced role of the Secretary-General of ASEAN

- The Secretary-General of ASEAN shall “carry out the duties and responsibilities of this high office in accordance with the provisions of this Charter and relevant ASEAN instruments, protocols and established practices;” (Article 11.2.a)
- The Secretary-General shall “facilitate and monitor progress in the implementation of ASEAN agreements and decisions, and submit an annual report on the work of ASEAN to the ASEAN Summit;” (Article 11.2 b)
- The SG shall be assisted by 4 DSGs: 2 nominated, 2 openly-recruited
- Work closely with the Committee of Permanent Representatives to ASEAN in Jakarta
- Work closely with Dialogue Partners’ Ambassadors to ASEAN
- The ASEAN Foundation shall be accountable to the Secretary-General (Article 15.2)
- Engage the “entities associated with ASEAN” in accordance with Chapter V
- The Secretary-General may be requested by parties to a dispute to provide good offices, conciliation or mediation (Article 23.2)
- The Secretary-General of ASEAN, assisted by the ASEAN Secretariat or any other designated ASEAN body, shall monitor the compliance with the findings, recommendations or decisions resulting from an ASEAN dispute settlement



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- mechanism, and submit a report to the ASEAN Summit (Article 27.1)
- Upon the request of any Member State, the interpretation of the Charter shall be undertaken by the ASEAN Secretariat in accordance with the rules of procedure determined by the ASEAN Coordinating Council.” (Article 51.1)
- SG’s 5-year term is now non-renewable. The incumbent (2008-2012) is H.E. Dr. Surin Pitsuwan, a former Minister of Foreign Affairs of Thailand. His successor will be nominated by Viet Nam.

## Other new initiatives and changes

- Legal personality of ASEAN
- Admission of new members (Article 6) – this is the first time that the admission criteria is spelled out
- Each Member State to appoint its Permanent Representative to ASEAN
- Establishment of an ASEAN human rights body as an organ of ASEAN (Article 14)

The High Level Panel (HLP) to draft the terms of reference for the ASEAN human rights body was established at the 41st AMM in Singapore in July 2008. The HLP is chaired by H.E. Ambassador Sihak Phuangketkeow, Thailand’s Permanent Representative to the UN in Geneva. The HLP will convene its 6th meeting from 11-13 December 2008 at the ASEAN Secretariat. After that, it will be able to submit its first draft of the Terms of Reference (TOR) to the ASEAN Foreign Ministers. The HLP is on schedule to submit its final draft of the TOR to the Ministers during the 42nd AMM in Thailand in July 2009.

- Recognition of “entities associated with ASEAN”
- Privileges and immunities for officials on ASEAN duties
- New dispute settlement mechanisms may be established (Article 25)
- Serious breaches of the ASEAN Charter and non-compliance cases shall be referred to the ASEAN Summit for its decision
- Single ASEAN Chairmanship in one calendar year (Article 31)

Article 31 provides for the single ASEAN Chairmanship in each calendar year, based on annual rotation. According to Article 31.2, the Member State assuming the Chairmanship shall chair the ASEAN Summit and related summits; the ACC; the three ASEAN Community Councils; the relevant ASEAN Sectoral Ministerial bodies and senior officials; and the Committee of Permanent Representatives. In addition, the ASEAN Defence Ministers Meeting, the ASEAN Economic Ministers Meeting, and the ASEAN Finance Ministers Meeting have agreed to come under the single Chairmanship.

- ASEAN Chair may be requested to provide good offices, conciliation and mediation (Article 23.2)
- Unresolved disputes shall be referred to the ASEAN Summit for its decision (Article 26)
- When consensus cannot be achieved, the ASEAN Summit may decide how a specific decision can be made (Article 20.2)
- ASEAN Secretariat’s budget to follow the calendar year, starting in 2009
- ASEAN Motto: “One Vision, One Identity, One Community” (Article 36)
- ASEAN Anthem (Article 40):

Thailand had organised a region-wide competition in which a panel of ASEAN representatives, assisted by three independent experts from outside ASEAN, has chosen *The ASEAN Way*<sup>1</sup>, as the winning entry. The ASEAN anthem will be played during the upcoming celebration on 15 December 2008.

1. *Music by Kittikhun Sodprasert and Sampao Triudom, lyrics by Payom Valaiphachra, and arrangement by Kittikhun Sodprasert, all from Thailand.*

- Dialogue Partners and relevant inter-governmental organisations will be encouraged to appoint their Ambassadors to ASEAN (Article 46)

## What remains unchanged?

- The name “ASEAN” stays
- ASEAN Day: 8 August
- ASEAN Emblem
- ASEAN Flag

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- English shall continue to be the working language of ASEAN
- Contribution to the annual operating budget of the ASEAN Secretariat will continue to be on the basis of equal sharing
- Consultation and consensus remains the basic principle of decision-making in ASEAN (Article 20)

## The ASEAN Charter is NOT cast in stone

- Its drafters realised the Charter is not perfect, but it was drafted in the “ASEAN Way” to meet a very tight deadline (January – October 2007)
- It is good enough and can be improved: amendments or review
- “Any Member State may propose amendments to the Charter.” (Article 48.1)
- Review of the Charter in 5 years after its entry into force, or when determined by the ASEAN Summit (Article 50)★

For more information on the ASEAN Charter, contact Mr. Termsak Chalermphanupap ([termsak@asean.org](mailto:termsak@asean.org)) of the Office of the Secretary-General at the ASEAN Secretariat.

Please visit [www.asean.org/AC.htm](http://www.asean.org/AC.htm) for the full text of the ASEAN Charter and [www.asean.org](http://www.asean.org) for related information.

## RATIFICATION OF THE ASEAN CHARTER

Member State	Date on Instrument of Ratification	Date of Deposit of Instrument of Ratification
Singapore	18 December 2007	7 January 2008
Brunei Darussalam	31 January 2008	15 February 2008
Malaysia	14 February 2008	20 February 2008
Lao PDR	14 February 2008	20 February 2008
Viet Nam	14 March 2008	19 March 2008
Cambodia	02 April 2008	18 April 2008
Myanmar	11 July 2008	21 July 2008
Philippines	5 May 2008 (by the President)  7 October 2008 (by the Senate)	3 November 2008
Indonesia	11 November 2008	13 November 2008
Thailand	15 November 2008	15 November 2008

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