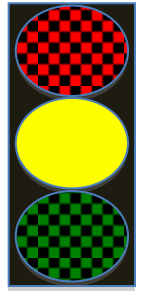


Fact Sheet: Charter of the Association of Southeast Asian Nations (ASEAN)

Law's Current Status: Entered into force 15 December 2008

CCHR Classification: The Cambodian Center for Human Rights (“CCHR”) has classified the Charter of ASEAN (the “Charter”) as yellow under the Law Classification Series. Although the Charter creates a number of benefits and enhances collaboration and unity between the ten ASEAN nations, there are a number of Articles in the Charter that are either vague or prevent ASEAN from taking measures to prevent human rights abuses in Member States or sanction Member States for non-compliance with the Charter.

**Introduction**

This factsheet provides an overview of the [Charter](#), which came into force on 15 December 2008. ASEAN was established on 8 August 1967. From its inception to the creation of the Charter, ASEAN had been a loose informal grouping without legal personality or constituting document. The Charter codifies the institutional framework of ASEAN and provides it with legal status. It outlines its objectives and principles and establishes several new organs to enhance its community-building processes as well as creates the ASEAN Human Rights Body. The Charter also outlines its decision-making procedure which is based on consultation and consensus. This factsheet is written by CCHR, a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia (“Cambodia”).

Greater Cooperation and Unity

The Charter symbolizes the desire of Member States of ASEAN to become a more unified organization, somewhat similar to that of the European Union (EU). According to the Pre-amble, Member States are united by “a common desire...to live in a region of lasting peace, security and stability, sustained economic growth, shared prosperity and social progress”. While it remains to be seen whether the ten nations will grant ASEAN some aspects of their state sovereignty as has occurred with members of the EU, one of the purposes of ASEAN listed under Article 1 of the Charter is to create a single market with the free flow of goods, services, investment and the facilitated movement of labor. To further the level of cooperation and collaboration between the Member States several new bodies have been created under Chapter IV of the Charter. These include the ASEAN Summit, which is comprised of Heads of State or Government of the Member States and is the supreme policy making body of the organization mandated, amongst other things, to deliberate, provide policy guidance and make decisions on key issues pertaining to the realization of the objectives of ASEAN (Article 7); the ASEAN Coordinating Council which among other things implements the Summit’s decisions (Article 8); and the Office of the Secretary-General of ASEAN (Article 11), whose duties include facilitating and monitoring the implementation progress of Summit decisions and “present the views of ASEAN and participate in meetings with external parties” (Article 11(2)(d)).

The Principle of Non-Interference

The principle of non-interference is a cornerstone of ASEAN policy and has been considered of fundamental importance since the Treaty of Amity and Cooperation in Southeast Asia, 1976. Article 2(e) of the Charter states that ASEAN and its Members will act in accordance with the principle of “non-interference in the internal affairs of ASEAN Member States”. Linked to this is the principle in Article 2(f) that every Member State has the right “to lead its national existence free from external interference, subversion and coercion”. Adherence to the principle of the rule of law, democracy, and protection and promotion of human rights are listed after the above two principles at Article 2(h) and (i) respectively which seems to indicate that non-interference in the internal affairs of a country is more important than ensuring human rights are protected.

This is also borne out by the fact that there is no explicit outline of the type of sanctions that may be placed on a Member State for non-compliance or breach of the Charter. The only possible means of sanctioning a Member State is by way of referral to the ASEAN Summit under Article 20 however this is couched in very vague terms (“In the case of a serious breach of the Charter or non-compliance, the matter shall be referred to the ASEAN Summit for decision”).

Human Rights

While the Charter adopts the promotion and protection of human rights as one of its principles, it does not specifically refer to any universally accepted human rights standard nor does it contain any human rights articles. Possibly the most important element of the Charter, from the perspective of human rights protection, is the inclusion of Article 14 which establishes the ASEAN Human Rights Body. However, Article 14 fails to give any guidelines as to the functions of the Body, nor does it give a timeline as to when it should be created. Article 14(b) states that the ASEAN Human Rights Body “shall operate in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting.”

Dispute Resolution

There is a lack of a clear framework or guidelines concerning dispute resolution mechanisms. Article 23 creates a mechanism whereby Member States that are party to a dispute may agree to “resort to good offices, conciliation or mediation in order to resolve the dispute within an agreed time limit”, however, this is vague and the Charter gives no further details regarding dispute resolution mechanisms not relating to specific instruments. Where a dispute remains unresolved, it is referred to the ASEAN Summit for a decision. However as ASEAN operates largely on a consensus basis it may be quite some time before a decision is reached which in the end would most likely be the lowest common denominator of what is acceptable to the parties to the Summit. Although Article 20 permits the Summit to use different decision making mechanisms where consensus cannot be achieved, it is unclear what other mechanisms the Summit may utilise.

Conclusion

The ASEAN Charter should largely be considered a success of international cooperation. It grants ASEAN legal personality and codifies much of its framework and rules. It is also another step towards lasting peace and unity between the ten nations in the region. There are however several issues arising from the Charter that should be addressed. These issues mainly concern the non-interference principle and the lack of sanctions for breach of the Charter, the lack of detailed dispute resolution mechanism and the place, or absence rather, of human rights within the Charter. These are areas that should be reviewed and amended so as to give ASEAN the ability to call Member States to question where they breach their obligations under the Charter.

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CCHR classifies each law according to how acceptable it is in terms of its consistency with international law, norms and principles, and the clarity of its provisions. Laws that are classified green are acceptable in the opinion of CCHR; laws classified yellow contain a number of concerns that should be reviewed and amended; and laws classified red are draconian and/or in violation of obligations under international law, and should therefore be rejected, annulled or re-drafted, as appropriate.