

POLICY BRIEF**REVIEWING THE ASEAN CHARTER:
AN OPPORTUNITY TO REFORM ASEAN PROCESSES**

September 2014

EXECUTIVE SUMMARY

This Policy Brief seeks to stimulate discussion among Track II experts and officials on reviewing the ASEAN Charter, to reform ASEAN institutions and processes.

It begins by highlighting the underlying tension behind ASEAN's legal framework and finds there is no broad consensus on the scope and priorities for a review. The Brief then seeks to identify four more limited themes on the review of the ASEAN Charter, to outline the following recommendations, that ASEAN:

1. Maintain unity and engage external powers more effectively by working towards an ASEAN common voice.
2. Move towards a more rules-based system and start formal dispute settlement mechanisms for disputes relating to the ASEAN Economic Community.
3. Postpone review of the ASEAN Intergovernmental Commission on Human Rights (AICHR), given on-going sensitivities and lack of consensus, and focus instead on improving the publicity of AICHR's current work.
4. Refocus the Committee of Permanent Representatives (CPR) to take on more responsibilities and an increased mandate from their home governments for work in Jakarta, and therefore lessen the number of meetings among officials and the workload of the ASEAN Secretariat.

**Introduction: ASEAN's
constitutional moment?**

The promulgation of the ASEAN Charter in 2008 was described as ASEAN's constitutional moment. Negotiated during the course of 2007 by the High-Level Task Force (HLTF), the ASEAN Charter came into force in December 2008. It gave ASEAN a legal personality, and sought to establish ASEAN's values and norms, including the rule of law, democracy and good governance.

The ASEAN Charter is currently slated for a review.¹ However, ASEAN leaders, policymakers and experts are divided on the very topic of whether the Charter needs review; and, if so, what the priority areas are. Many differences of opinion stem from the fact that the vision for ASEAN's future is varied and contested. Should ASEAN proceed with deeper integration and community building. Should it hold on to its principles of non-interference and sovereignty? Are the principles and institutions of ASEAN sufficiently effective for community building?

Ideas about sovereignty and regional community and institutions are not mutually exclusive. There is however a tension between one and the other that reflects an underlying and largely unresolved question in the ASEAN Charter and the movement towards ASEAN Community.

Why review the Charter now?

The year 2014 marks the fifth year since the Charter entered into force. This occasion presents an opportunity for ASEAN to review the provisions of the Charter document, and to also review ASEAN's progress in community-building. Several ASEAN member states, including Myanmar – the ASEAN Chair for 2014 – indicated interest in reviewing the ASEAN Charter. A non-paper on proposals for the review of ASEAN institutions was also circulated by the Singapore government.

A High-Level Task Force (HLTF) on “Strengthening the ASEAN Secretariat and Reviewing the ASEAN Organs” was established at the 24th ASEAN Summit on 11 May 2014 in Nay Pyi Taw, Myanmar.² While not undertaking a full review of the Charter, the HLTF was given the mandate to look at making the ASEAN Secretariat function more efficiently.

This is timely, given the Secretariat's growing responsibilities, and can also build a more coherent approach in how ASEAN conducts its external relations. The HLTF will present its findings to the ASEAN Coordinating Council by November 2014.

Recent geopolitical tensions occurring in the Southeast Asian region have similarly lent a hand to the consideration of Charter review, with the focus to strengthen and unify the regional group amidst competition and tensions among major powers of the region, as well as competing claims in the South China Sea between China and some of the ASEAN members. Some warn that ASEAN is in danger of being “rolled over by the passing giant forces”.³

In this context, it is increasingly important ASEAN leaders will seek to build an ASEAN common voice, so that the region can be united on relations with the major powers.

Another impetus for review of the ASEAN Charter is the logistical stress faced by the ASEAN Secretariat. Presently, it is saddled with a larger mandate than it can effectively handle with its existing resource pool. In their

The principle of non-interference

The principle of non-interference has been the foundation on which relations between ASEAN member states have been built.

This resolve was born out of the historical context of colonial rule and of the Cold War. It was first outlined in ASEAN's founding document, the Bangkok Declaration of 1967, and was reinforced in the 1976 Treaty of Amity and Cooperation in Southeast Asia (TAC).

In its essence, it means that ASEAN member states have determined they would severely limit external interference in each other's domestic affairs, in the interest of domestic and regional stability. ASEAN has never categorically articulated what non-interference means, nor is the principle absolute in nature.

The principle is not particular to ASEAN however and features in the United Nations Charter, where it is known as the doctrine of non-intervention. In the ASEAN's past practice, however, observers have taken the principle to refer to a range of actions from making political comments on each other's domestic affairs to full military intervention.

The principle of non-interference – together with an emphasis on consensus and minimal regional institutions -- is a major part of the norms that are said to constitute the “ASEAN Way”.

effort to move towards an ASEAN Community, there is an increasing impetus to better equip the ASEAN Secretariat to manage the increased responsibilities and workload that accrue. Looking further ahead, as ASEAN formulates a post-2015 vision to succeed the current community blueprints, the need for better regional institutions, including the Secretariat, will likely grow. Yet there remains caution about a bloated regional bureaucracy with too little oversight by the national governments.

Tension between sovereignty and community

The ASEAN Charter provides the legal basis to the grouping and helps move towards a rules-based framework for decision making. With

the Charter, some believe ASEAN can have a chance to grow beyond its traditional means of managing regional issues, which has relied heavily on political compromise and consensus among governments of the ASEAN members. By such means, the Charter can pave the way for a stronger and more cohesive ASEAN Community.

Yet, the ASEAN Charter also maintains many of the principles of the traditional “ASEAN Way”, including the principle of non-interference (Article 2 (2) (e)). Together with the community-building aspirations of ASEAN Community, the very nature of the Charter runs counter to the strict interpretation of the non-interference principle, set out in Article 2 (2) (e).⁴

Left unresolved by the Charter, there is a fundamental tension between:

1. ASEAN’s deeper *community-building* and integration aspirations, as exemplified through the existence of the ASEAN Charter itself and the ASEAN Community 2015 processes; and
2. The principles of the “ASEAN Way” of *sovereignty* and *non-interference*, as committed to in agreements such as the Treaty of Amity and Cooperation (TAC).

This contradiction has practical effects. Often, domestic interests of one or another ASEAN member state take precedence over regional interests. Some may consider it natural that nationally-elected governments hold such priorities. Recent problems in the deeper integration in the European Union (EU) may be seen to support this cautionary view about prioritising regional interests. In fact, the sovereign debt crises caused protracted contestation between supranationalism and intergovernmentalism in the EU,⁵ threatening the existence of the body.

Yet while many see this fundamental tension in the Charter, there is no agreement for a wide and fundamental review of the ASEAN Charter to resolve this issue. There may be scope however for more limited efforts to

streamline ASEAN institutions and current practices.

The following sections of this paper aim to identify some of these areas that have been suggested for priority for change. The paper will first identify the issues and then recommend solutions. The four issues are:

1. How ASEAN can develop a common voice and project that voice to engage external powers.
2. How ASEAN might move towards rules-based mechanisms of resolving differences and disputes.
3. Why differing views continue about the ASEAN institutional approach to human rights and what might be done next; and
4. How to make ASEAN bodies more efficient, effective and better coordinated, especially the Committee of Permanent Representatives and the ASEAN Secretariat.

1. Building a common voice to engage external powers

ASEAN unity is a key to maintaining the group’s centrality in regional summitry and this is under pressure from tensions and differences between major powers. One path forward for ASEAN to maintain unity is to develop common positions regarding key issues with major powers, and to articulate those positions consistently.

Article 41 (4) of the Charter states that “in the conduct of external relations of ASEAN, Member States shall, on the basis of unity and solidarity, coordinate and endeavour to develop common positions and pursue joint actions”. Yet, as recently as 2012, ASEAN seemed in disarray over the South China Sea, with the failure of the 45th ASEAN Ministerial Meeting in Phnom Penh to issue an agreed statement, the first ever such failure since ASEAN was founded in 1967.

This arose because of differences between the then ASEAN Chair, Cambodia, and members that had competing claims with China.

The situation was eventually put right by the efforts of Indonesia, supported by Singapore and others. Nevertheless, Singapore's Foreign Minister K. Shanmugam pointed out that the event inflicted "severe dent" on ASEAN's credibility.⁶

Beyond the particular issue of the South China Sea, a broader concern was raised by this incident. This is whether the provisions of the Charter are presently adequate in prescribing a process to discuss issues among ASEAN members and then to maintain ASEAN unity forging common position on key issues. We believe that there is a critical need to improve the processes and institutions within ASEAN to encourage timely deliberation and decision-making that respects the diversity of views but also maintains ASEAN unity.⁷

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The rotating ASEAN Chair and Secretary-General

How can this be done best? Historically, regional community building and the articulation of views held in common were driven mainly by the governments and political leaders of the various ASEAN member states. In contrast, ASEAN institutions have played a much smaller role.

Today, while there is growing recognition of the need for a common ASEAN voice, there remains a range of opinions about who should do this. One view is that whether ASEAN institutions and its Secretariat, headed by the Secretary-General, should be strengthened to help shape that common voice. Another, more conservative view, is that ASEAN member states collectively and the rotating chairman should continue as the main driver.

There is further debate about whether the ASEAN chair and/or the ASEAN Secretariat should be granted greater powers to take initiative on behalf of the group.

Some advocate the expansion of the Chair country's role. However, the ASEAN Chair is a rotating function between the ten diverse member states. The emphasis and capacity of the Chair's leadership can therefore fluctuate from year to year. National interests of the chair country can also colour the regional perspective.

In this context, recall the 2012 Cambodia chairmanship when – as mentioned earlier – the ministerial meeting failed, over the controversies concerning the South China Sea, to reach an agreed statement. In contrast, the 2013 Brunei chairmanship of ASEAN succeeded not only in issuing such agreed statements but also engendered a fair level of confidence within ASEAN and with external partners. This is all the more impressive given that Brunei is a claimant state in the South China Sea, with claims that overlap with China's.

Given the rotation among member states, some alternatively suggest that the group entrust this function to the ASEAN Secretary-General. The Secretary-General is appointed by the ASEAN Summit for a non-renewable term of office of five years. While this too is rotated from among nationals of the ASEAN member states, the five-year term gives greater continuity. Moreover, the Secretary-General is regarded by the ASEAN Charter as being of ministerial rank, and therefore could have the standing and status to articulate the group's common voice.

However, in the history of the group, the ASEAN Secretary-General has served more as a "secretary" than a "general". In a 2013 report submitted by the out-going Secretary-General Surin Pitsuwan,⁸ he argued that the ASEAN Secretary-General should be given sufficient latitude to carry out their responsibilities, especially since the Secretariat is the only neutral body in ASEAN. This suggestion, although not without

support, remains controversial. One reason is that there remain some question about the ASEAN Secretary-General's ability to rise above his own national loyalty and interests. All Secretary-Generals have been officials or ministers in their own government before taking on the office; the current Secretary-General was deputy foreign minister in Vietnam immediately prior to his appointment.

For both suggestions, the effectiveness of strengthening ASEAN Chair or Secretary-General depends on and is limited by the inherent difficulty to divorce individual loyalty and identity from nation. Also, it challenges the member states to develop a common voice and then to trust that the appointment-holder will serve the common good of the region.

In this regard, a key step forward would be to focus not on who should articulate ASEAN's common – whether chairman or Secretary-General – but on *how*. How can that common voice be fostered?

Recommendation: Foster a “common voice” among ASEAN leaders

ASEAN would benefit if it can develop the necessary foundation for a more consistent articulation of shared view and develop an ASEAN common voice. To develop a common understanding or approach to matters of regional concern, it is important to make the discussion among ASEAN ministers and officials more focused, effective, and to be candid when need be.

Retreats and informal sessions are already held among the ASEAN leaders, foreign ministers and other key officials and policymakers. Closed-door dialogues have served to increase understanding and trust. They can become more candid and focused on an ASEAN “common voice” if made more regular and be allotted more time.

Additionally, workshops can be usefully organised for ASEAN senior officials specifically to discuss and identify key issues for ASEAN. With shared knowledge and

discussion, these workshops can help provide a basic foundation to develop common understanding and shared positions.

Once these are developed, the articulation of the ASEAN common voice can be delegated to the Secretary-General or the Chair, or indeed to others as deemed fit. This delegation could be based on guidelines for officials who speak in ASEAN capacity. With more clearly articulated common positions, ASEAN institutions and member-states better engage external powers, not only bilaterally but in wider regional and global forums such as the East Asia Summit (EAS) and the G20.

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2. Developing dispute resolution

ASEAN has traditionally emphasised consensus and informality in decision making. Formal dispute resolution mechanisms are a rare exception, and are currently limited mainly to economic areas: the ASEAN Free Trade Area (AFTA) and the ASEAN Comprehensive Investment Agreement (ACIA). Even then, there has been limited recourse to these processes.

The Charter nevertheless holds out the promise to move the organisation towards a more rule-based decision-making process, and to resolve disputes among members.

Article 27 of the ASEAN Charter states: “In the case of non-compliance by an ASEAN member state with the findings, recommendations or decisions resulting from an ASEAN dispute-settlement mechanism, any affected member state may refer the matter to the ASEAN Summit for a decision”. Article 22 (2) of the Charter also requires that “ASEAN shall

maintain and establish dispute settlement mechanisms in all fields of ASEAN cooperation”.

Despite these Charter provisions, no new and clear rules, procedures or mechanisms have been added to the Summit or ASEAN generally. Some believe that this is needed to resolve differences within ASEAN. There is also discussion that goes beyond economic issues of trade and investment, and internal ASEAN decision-making, to consider political and security controversies.

On territorial disputes, ASEAN countries have on occasion, submitted themselves to international dispute arbitration. For example, Thailand and Cambodia referred the Preah Vihear Temple dispute to the International Court of Justice (ICJ), as did Singapore and Malaysia with the Pedra Branca dispute, and Malaysia and Indonesia over Pulau Ligitan and Pulau Sipadan.

There is no reason why ASEAN countries should not continue to use the ICJ to settle such disputes, especially ones involving territorial sovereignty. In fact, it is likely that the international, geographically removed and hence more neutral character of the ICJ is precisely advantageous to the resolution of issues between ASEAN member states.

ICJ cases, however, do take much time and resources. One of ASEAN’s challenges is to deal with differences during times of political crisis, where there is often limited time, intense public and media attention and controversy over what should best be done.

One method that can help ASEAN during times of political crisis is to establish mechanisms to react automatically in an organised way.⁹ These should be agreed generally and before crisis arises. This would be in line with the Charter’s goal of making ASEAN a rules-based institution, rather than one that relies on political processes to solve crises. Following this line of thought, some have argued for sanctions and other means of enforcement as measures that can be taken when an ASEAN member state does not comply with a decision that has been made.

A sanctions regime for ASEAN?

Some recommend that ASEAN adopt a sanctions regime.¹⁰ It is argued that without punitive measures and enforcement, formal dispute settlement would be meaningless. It would then undermine the principle of the rule of law, which ASEAN and the Charter upholds.¹¹

Yet the issue of sanctions is an extremely sensitive topic to many member states. The case of Myanmar has crystallised that debate. Rather than imposing sanctions, like the EU and the United States, many in ASEAN believe that its approach was more effective by combining both socialisation and “constructive engagement” with criticism – including the strongly worded ASEAN statement after the then regime clamped down on the Saffron Revolution in 2007.

Many in ASEAN remain uncertain that sanctions would be more effective in fostering compliance among members compared to political pressure.

The next step forward could be to develop from the mechanisms that already exist.

Recommendation: Develop dispute settlement mechanisms

There is a recognition that ASEAN needs rule-based decision making for greater certainty and speed. There are increasing calls for sanctions or other means of enforcement where member states do not comply with the decisions reached. While new ideas for dispute settlement can be explored, the next step forward could be to develop from the mechanisms that already exist.

The 2004 ASEAN Protocol on Enhanced Dispute Settlement Mechanism – otherwise known as the Vientiane Protocol – is the closest form of formal dispute settlement mechanism that ASEAN possess. The use of it is further endorsed by the ASEAN Charter.¹²

The Vientiane Protocol provides for a panel to be set up to study instances of economic disputes between ASEAN member states, and to use its findings to aid the members of the Senior Economic Officials Meeting (SEOM) towards dispute resolution. The use of a panel with expertise and some distance from the dispute can make this mechanism more objective than a direct negotiation between the two disputing parties.

Nonetheless, the Vientiane Protocol still provides a political solution – as compared to rules-based mechanism used in the World Trade Organization (WTO). The WTO procedures provide a step-by-step process that includes stages of consultation, the appointment of a panel, which would then deliberate among themselves and hold hearings, culminating in a report to all WTO members issuing a recommendation and decision on the matter. The whole process takes approximately one year to completion and any appeal would take another three months. This is not inconsiderable, but the pre-determined and automatic process does move the issue forward.

ASEAN may not wish to adopt the WTO's dispute settlement system wholesale. The aim of this comparison recommends that adopting a rules-based system would improve transparency of judgement and limit, if not wholly eliminate, the influence of bilateral politics.

Working from the Vientiane Protocol mechanism, ASEAN could develop similar rules. In this regard, it is noteworthy that the ASEAN Economic Community (AEC) has developed beyond the boundaries – and independently – of the ASEAN Charter.

With the aims of economic integration in mind, a set of instruments regulating economic disputes within ASEAN can be achieved in tandem. This could centre on the agreed initiatives of the AEC Blueprint in trade liberalisation, to include scenario planning for instances of trade disputes with the interpretation of the AEC's provisions as background.

On selected issues concerning the AEC, the Secretariat might be tasked to bring forward questions and concerns, whether from one state to another, or from corporations and others affected by national rules and regulations.

Take for example, non-trade barriers such as safety and other standards and testing of products. A country's rules can create very real problems for companies where, for example, one member's standards for safety lead to requirements that imports from another member be tested repeatedly, rather than depending on previous tests.

Rather than leaving such matters to corporations to deal directly with the government concerned, the Secretariat can assist by raising the particular regulation to the government for clarification.

For the AEC to move ahead, it will that such obstacles can be resolved and cleared through the mediation of the Secretariat, liaising between the governments or between a government and corporation. Looking ahead, to support the AEC, the procedure for filing and addressing such complaints should be clarified. This would in a practical way to move ahead with dispute resolution within ASEAN. For this, the WTO's dispute settlement system could be used as a model for strengthening and expanding the provisions of the Vientiane Protocol, in settling AEC-related disputes.

Additionally, ASEAN could also learn from the WTO's process of holding policy dialogues with different stakeholders. Such policy dialogues proactively review a member government's policies and regulations. This generates discussion on the obstacles that may result for corporations – often inadvertently. The governments may then consider alternative ways to achieve their policy objectives and minimising negative impacts on AEC goals.

Having a more robust dispute settlement mechanism to serve economic and trade disputes is not without some challenge. But we would expect a higher chance for success

in this area, and by taking an incremental approach from what already exists. The notion of using sanctions and for handling disputes on political and security issues may be a further ambition for ASEAN but would be controversial at present.

If dispute resolution can succeed in the AEC this could inspire efforts to use legal resolution for regional disputes of other nature. Beginning with using rules-based procedures for the economic sector and AEC, steps can follow in other areas. For some issues, however, international bodies like the ICJ will continue to be important and indeed irreplaceable in settling major disputes in accordance with international law.

3. Human rights: Differing views continue

The inclusion of human rights in the ASEAN Charter – as a principle for the group and with a human rights commission – was controversial.¹³ While some ASEAN countries tend to regard such an agenda as a platform to interfere with their domestic politics, a number of members like the Philippines are pushing for more robust human rights protection in the region.

The inclusion of human rights into the agenda shows that ASEAN has to respond to the challenges arising from the assertion of human rights as universal values. This goes beyond the defensive policy of the mid-1990s, when “Asian values” were asserted in contrast to human rights as “Western values”.

The ASEAN Charter refers to universal principles in terms of democracy and human rights. However, Article 6 of the ASEAN Human Rights Declaration clearly states that it is the responsibility to protect and promote human rights lies with ASEAN member states. This is a state-centric approach rather than entrusting such roles on the regional community as a whole, or by empowering individual citizens and non-governmental organisations. The ASEAN Charter also emphasises the responsibilities of individuals.

This contradiction constitutes one of the fundamental problems the ASEAN Charter faces on the question of human rights. The concerns of “interference” are even stronger in respect of specific rights. For instance, Article 25 (2) of the ASEAN Human Rights Declaration states that citizens have “the right to vote in periodic and genuine elections”. Those ASEAN member states who do not hold free elections will not accept a strict interpretation of such a clause.

Yet while there are objections to specific human rights provisions, there remains a more general mandate in the ASEAN Charter for the protection of human rights. The codification of principles, norms and practices in the Charter is in itself a rights-based approach towards community-building in ASEAN. Article 1 (7) of the Charter established that the promotion and protection of human rights is one of the purposes of ASEAN.

Recommendation: Focus on improving publicity of AICHR’s work

The very existence of the ASEAN Intergovernmental Commission on Human Rights (AICHR) was a milestone and important start as a confidence-building measure towards greater public discourse in ASEAN on human rights. Despite this, AICHR has faced much criticism from observers.

Common criticisms include not only that AICHR does not have powers to investigate and punish human rights offenders but they do not respond quickly enough to issues. AICHR is accused of serving merely serves as a shield for governments against criticism.

The AICHR has been operating on a “promotion first, protection later”¹⁴ approach with regard to human rights in ASEAN. Yet, there is little public information about its work. Some ASEAN member states like the Philippines have taken it upon themselves to brief civil society organisations on their work on human rights. But not all ASEAN members do so, and the process of providing information is largely unsystematic. Yet the promotion of information about human rights

more broadly across ASEAN can, over time, foster greater understanding and acceptance.

It is recommended that ASEAN focuses on improving the publicity (“promotion first”) of AICHR’s work, and seek to increase efficiency within AICHR’s current scope. AICHR should revamp and step up its communications strategy through new media. Best practices in the promotion of human rights issues in other regions of the world should be identified, while more ASEAN member states should institute more consultation processes with civil society organisations.

Beyond this, given the divisions among ASEAN members on the issue, it is best that reviewing human rights as a topic and AICHR as an institution within the Charter be left to a future time.

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4. Capacity and funding: The ASEAN Secretariat

The ASEAN Secretariat’s scope of work has intensified with the mandate and additional tasks conferred upon it by the ASEAN Charter. However, the staff size at the ASEAN Secretariat has not increased significantly to deal with increased workload associated with the ASEAN Charter and AEC 2015. Nor has its annual budget, which remained at US\$16 million.¹⁵

Many experts and officials agree that the ASEAN Secretariat is underfunded and understaffed. A High Level Task Force (HLTF) has been established during the Myanmar chairmanship of ASEAN – one of its mandate is to look at “strengthening the ASEAN Secretariat”.

One step that has already been taken is to establish the ASEAN Integration Monitoring Office (AIMO). This was created within the ASEAN Secretariat in 2011 to ensure informed

decision making, especially on AEC’s 2015 goals.

Beyond the AIMO, some observers are of the opinion that the Secretariat needs a policy support unit for the ASEAN to have any meaningful role monitoring the progress of the AEC. Such a unit, consisting of a team of analysts and researchers, would be tasked to monitor, analyse and propose ASEAN integration policies in a more rigorous manner. The Asia Pacific Economic Cooperation (APEC) process has already created such a unit.

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A new funding formula?

Yet if we wish to upscale AIMO or indeed to develop other institutions, the total current funding provided by its members to the ASEAN Secretariat must be considered. For this, some believe the formula for those contributions must also be reconsidered.

At present, the principle of parity applies regardless of the population, territorial size or size of economy, each member state contributes the same amount towards the Secretariat. Proposals have been mooted to create different tiers of cost sharing for different ASEAN member states, taking into account their different developmental levels, or according to the size of the economy of each member state by GDP. While details may differ, most of the suggestions point to the idea that the more developed and larger ASEAN members must contribute more.

Not all ASEAN members however agree. One reason for doubt is how ASEAN makes decisions – with an emphasis on consensus and equality. This prevents any one member state from becoming a dominant force in

ASEAN. Yet can and should this principle of consensus in decision-making continue if the principle of parity in funding changes? If so, then the countries who contribute more have reason to expect that they would have more say in decisions for the group. This is not an unreasonable expectation.

In the European Union (EU), the financial contributions of member states are primarily computed as a percentage of gross national income (GNI), resulting in the five largest member states contributing towards almost half of the total EU budget. Commensurately, larger EU countries also have greater voting power in decision-making, due to the use of a weighted voting system in the Council of the European Union.

Changing the financing formula in ASEAN remains a sensitive issue. Alternative solutions to enable the Secretariat to deliver would therefore need to be sought out.

Recommendation: Refocusing the Committee of Permanent Representatives

One way to deal with the increased mandate and expectations is for ASEAN to review the proliferation of official meetings. Rather than simply increasing the Secretariat and requiring more funding, this approach would aim to lessen the workload on the Secretariat in supporting such meetings.

One way to do this is to review the mandate of the Committee of Permanent Representatives (CPR). Comprising the ambassadors based in Jakarta whom ASEAN countries accredit to ASEAN, the CPR was created by the ASEAN Charter (Article 12) with the intention that it should take on the bulk of work of the former ASEAN Standing Committee and help centralise dialogue and negotiations in the CPR. Instead, ASEAN continues to handle a very large and still increasing number of meetings each year, some of which may seem extraneous.

The representatives in the CPR should be empowered – and be mandated by their respective governments – to help negotiate

on behalf of their national ministries. This arrangement would help relieve national ministries and the ASEAN Secretariat of having to organise and attend the plethora of ASEAN meetings throughout the year.

Developing the CPR in this way does not require a review of the ASEAN Charter. Rather this is a case in which ASEAN must demonstrate the political will to give life to the already existing terms and agreed intentions of the Charter.

5. Conclusion: Supporting ASEAN after 2015

This policy brief has identified and addressed four themes that have featured in recent debates on ASEAN's development and its Charter. It is clear that there is a search for ways to make ASEAN more effective.

It is equally clear, however, that the review of the Charter will face obstacles. There are different perspectives and priorities of agreement between ASEAN leaders, policymakers and experts on a number of key issues. This stems, in our analysis, from the unresolved tension behind the Charter's framework, namely between the principles of community building and of the ASEAN way of non-interference.

There are a number of reviews of ASEAN processes due this year, aside from that of the Charter. A coordinated review of ASEAN institutions and processes would be helpful. Without coordination, further contradictions and tensions may develop and hinder the exercise. The review of the implementation of ASEAN's Political-Security Community blueprint was held last year. There is also an on-going review of the Terms of Reference (TOR) of the ASEAN Intergovernmental Commission on Human Rights (AICHR).

We suggest that the ASEAN Charter need not be reviewed in total, but specifically on more limited topics. In this way, the task may be more surmountable and fruitful. There are encouraging indications of interest in a review of the ASEAN Charter, namely the incumbent

ASEAN Chair, Myanmar. This presents a valuable opportunity to reform ASEAN processes, as ASEAN looks beyond 2015 goals.

In summary, this brief has made the following recommendations on the review of the ASEAN Charter:

1. **Common Voice:** ASEAN can engage external powers more effectively by working towards an ASEAN common voice; this could be achieved by and sharpening the retreats, informal sessions and closed-door dialogues among the ASEAN leaders, foreign ministers and other key officials and policymakers, as a starting point to develop the confidence on common positions and interests in ASEAN. Once an ASEAN common voice is shaped, the ASEAN chair and/or the ASEAN Secretary-General and Secretariat can help propagate the group's perspective.
2. **Rules-Based:** ASEAN should continue to work towards a more rules-based system, and strengthen its formal dispute settlement mechanisms, by expanding on the Vientiane Protocol and set up a system to deal with potential economic disputes arising from the ASEAN Economic Community (AEC). This works towards a more rules-based ASEAN.
3. **AICHR Publicity:** Any review of the ASEAN Intergovernmental Commission on Human Rights (AICHR) should be held off, given protracted sensitivities and regional dissension, and the focus should instead aim to strengthen and improve the publicity and educational nature of AICHR's work.
4. **Active and Effective CPR:** The scope of the Committee of Permanent Representatives (CPR) should be refocused to take on more responsibilities and an increased mandate from their home governments for work in Jakarta, and therefore lessening the number of meetings among officials and the workload of the ASEAN Secretariat.

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References

- ¹ Article 50 of the ASEAN Charter states that “This Charter may be reviewed five years after its entry into force or as otherwise determined by the ASEAN Summit”.
- ² ASEAN Secretariat (2014) “Chairman's Statement of the 24th ASEAN Summit: ‘Moving forward in Unity to a Peaceful and Prosperous Community’”, point 81, *ASEAN Secretariat website*, Available: <http://www.asean.org/images/documents/24thASEANSummit/24th%20ASEAN%20Summit%20Chairman%27s%20Statement.pdf> Retrieved: 28 July 2014.
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- ¹¹ Woon, Walter (2009) “The ASEAN Charter Dispute Settlement Mechanisms”, in Tommy Koh, Rosario G. Manalo and Walter Woon (eds) *The Making of the ASEAN Charter* (Singapore: World Scientific), p. 76.
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- ¹⁴ As often characterised, albeit by detractors of AICHR. See for instance, Robert Evans, ‘U.N. Rights Chief “Disappointed” On New ASEAN Body’, *Reuters India*, 22 July 2009.
- ¹⁵ 2012 figure; see for instance Capannelli, Giovanni (2013) “Time to Create an ASEAN Academy”, *East Asia Forum*, 22 November 2013, Available: <http://www.eastasiaforum.org/2013/11/22/time-to-create-an-asean-academy/> Retrieved: 28 July 2014.

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