

WORKSHOP ON LIFE AFTER THE CHARTER

Insights from the emerging issues on the ASEAN Charter's meaning, implications and implementation

After forty years of existence, ASEAN now has a legal and constitutional framework—the ASEAN Charter – to help support a rules-based and effective organisation. But even with this significant achievement, ASEAN still has to tackle issues on the Charter's meaning, implications and the issues pertaining to its implementation. At the same time, ASEAN is working hard on economic issues to realise the goal of economic integration by 2015. To create the necessary environment for the free movement of goods and to have more an open investment system, two legal instruments in relation to the goods and investment areas: the ASEAN Trade in Goods Agreement 2009 (ATIGA 2009) and the ASEAN Comprehensive Investment Agreement 2009 (ACIA 2009) have been revised. However, there are some concerns on how key provisions of these documents will be implemented by national governments and monitored at the regional level.

To help address these emerging issues, the ASEAN Studies Centre at the Institute of Southeast Asian Studies (ISEAS) organised a workshop on “Life After the Charter” on 27-28 July 2009 at ISEAS in Singapore. The workshop aimed to complement the ASEAN process by pooling together the insights of practitioners, members of the academia, the business sector with the experience and knowledge of government and ASEAN officials closely involved in the legal personality, implementation issues and the work on the two agreements.

Workshop discussions dealt first with the nature, meaning and implications of the legal personality conferred by the Charter on ASEAN, particularly the important question of what ASEAN can or cannot do with its legal personality. Discussions highlighted three problem areas that may arise in implementation of the Charter, which ASEAN countries would need to tackle. These are:

- (1) a lack of political will at the government level to implement the Charter due to internal disagreements or other reasons;
- (2) domestic courts purportedly applying laws implementing the Charter may not enforce the obligations of the Charter if the domestic laws being applied by the courts are not in conformity with it or are silent with regard to treaty norms or obligations;
- (3) administrative structural problems preventing the obligations of the Charter from being applied at the ground level.

Regarding the ATIGA 2009 and ACIA 2009, the workshop was of the view that ASEAN had moved forward through its review, rationalisation, enhancement and consolidation exercises on these two instruments, but ASEAN needs to do more, including:

- (1) working on the real obstacles to integration, which are tackling non-tariff barriers at and behind the borders, ASEAN having made little progress on such barriers and on trade facilitation;
- (2) tackling the regulation barriers behind the borders so as to make real progress on market access; and
- (3) handling the listing of reservations under ACIA 2009 in a manner which would ensure that ASEAN would be an attractive investor destination.

Workshop participants shared their view that awareness about ASEAN in its member states is not wide-spread. One of the aims of the ASEAN Charter is to promote a common ASEAN identity and a sense of belonging among its peoples. With the ASEAN Charter now in place, it is now for ASEAN to ensure that knowledge about the Charter is spread among its peoples. This would help bridge the information gap and overcome the current disconnect between central policymaking and reality on the ground, paving the way towards greater transparency and accountability under the aegis of a strong and dynamic ASEAN Charter.

The workshop was conducted as a closed-door event. The preliminary report of the workshop was submitted to the 41st ASEAN Economic Ministers (AEM) held in Bangkok, Thailand on 12-16 August 2009. Copies of the preliminary report have also been provided to policy-makers in ASEAN countries. A full report will be published by ISEAS.

For the preliminary report text click [here...](#)