



“RESOLVING LEGAL ISSUES UNDER THE ASEAN CHARTER”

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Ladies and gentlemen,

It is my great pleasure to address you today on the topic of resolving legal issues under the ASEAN Charter.

The **ASEAN Charter** is a constitution for the Association of South East Asian Nations (ASEAN). It was adopted at the 13th ASEAN Summit in November 2007.

The intention to draft the constitution had been formally tabled at the 11th ASEAN Summit held in December 2005 in Kuala Lumpur, Malaysia. Ten ASEAN leaders, one each from each member state, called the ASEAN Eminent persons Group were assigned to produce recommendations of the drafting of the charter.

In the 12th ASEAN Summit held in January 2007 in Cebu, the Philippines. Several basic proposals were made public. The ASEAN Leaders, therefore, agreed during the Summit to set up a "high level task force on the drafting of the ASEAN Charter" composed of 10 high level government officials from ten member countries.

The task force held 13 meetings during 2007. Some of the proposals were the removal of non-interference policy that is central to the regional group since its formation in the 1960s, and to set up a human rights body.



1. The ASEAN Charter is to become a foundational instrument of the Association of South East Asian nations (ASEAN). Since its establishment on the 8th of August, 1967, ASEAN has grown in maturity but yet full potential still has to be realized.
2. With this in mind, the 40th Anniversary of ASEAN held in Singapore on 20th of November, 2007 was marked by the adoption of the ASEAN Charter.
3. The preamble to the charter states that the Heads of States and Governments were:

“Mindful of the existence of mutual interest and inter dependence among the people and member States of ASEAN which are bound by Geography, common objectives and shared destiny.”

INSPIRED by and united under One Vision, One Identity and One Caring and Sharing Community.

UNITED by a common desire and collective will to live in a region of lasting peace, security and stability, sustained economic growth, shared prosperity and social progress, and to promote our vital interests, ideals and aspirations.

RESPECTING the fundamental importance of amity and cooperation, and the principles of sovereignty, equality, territorial integrity, non-interference, consensus and unity in diversity.

ADHERING to the principles of democracy, the rule of law and good governance, respect for and protection of human rights and fundamental freedoms.

By virtue of Article 47 the charter was to enter into force following the deposit of the tenth instrument of ratification with the Secretary General of ASEAN.

The ratification of the ASEAN Charter is as follows :-

Member State	Government Ratification	Deposit of Instrument of Ratification	Signed by
Singapore	December 18, 2007	January 7, 2008	Prime Minister



Brunei Darussalam	January 31, 2008	February 15, 2008	Sultan
Lao People's Democratic Republic	February 14, 2008	February 20, 2008	Prime Minister
Malaysia	February 14, 2008	February 20, 2008	Foreign Minister
The Socialist Republic of Vietnam	March 14, 2008	March 19, 2008	Minister of Foreign Affairs

Member State	Government Ratification	Deposit of Instrument of Ratification	Signed by
The Kingdom of Cambodia	February 25, 2008	April 18, 2008	National Assembly
The Union of Myanmar	July 21, 2008	July 21, 2008	Foreign Minister
The Republic of the Philippines	October 7, 2008	November 12, 2008	Senate
Republic of Indonesia	October 21, 2008	November 13, 2008	The House of Representatives
The Kingdom of Thailand	September 16, 2008	November 14, 2008	Parliament

- From the outset – it was envisaged that this Charter would be a living instrument intended to grow and adopt according to new developments so as to respond to the challenges of the time. Not only in order to achieve political, economical peace security and stability so as to secure the rights of each individual within the ASEAN Borders, but also to establish through this Charter the legal and institutional framework for ASEAN.



5. Article 50 provides that the charter may be reviewed 5 years after it enters into force OR as other wise determined by the ASEAN Summit.
6. While Article 52 Makes it clear that (“All treaties, conventions, agreements, concords, declarations, protocols and other ASEAN instruments which have been in effect before the entry into force of this Charter shall continue to be valid. It is plain that the Charter is intended to be the supreme legal instrument governing all ASEAN affairs).
7. Article 52(2) expressly provides in case of inconsistency between the Rights and obligations of ASEAN member states under such instruments and this Charter, the Charter shall prevail.
8. The scope, ambit and intended purpose of the Charter is both Ambitious and profound. Every member of the ASEAN Law Association must become not only familiar with the provisions of the Charter but also acquire an intimate knowledge of its potential scope of operation.
9. Whilst the subject matter of this talk is “Resolving legal issues under the ASEAN Charter”. I will take the liberty of discussing some legal issues in the Charter itself. As far as resolving disputes within the Charter, as a matter of treaty law, there is not much to be said. The Principles enumerated in the Vienna Convention on the Law of Treaties will apply as its principles are applicable as a matter of customary International Law. In addition , Article 5(3) of the Charter provides that in case of non – compliance of serious breach of the Charter the matter shall be referred to Article 20.

What Article 20 states, in essence is that basic decision making must be consensus and in case of serious breach of the Charter of non compliance the matter shall be referred to the ASEAN Summit”. Article 25 envisages the establishment of appropriate dispute settlement mechanisms including arbitration.

10. The Charter is generally couched in broad terms for example Article 2 details various principles that shall govern the operation of both ASEAN and each of its member states.

Article 2(ii)c – speaks of “renunciation of aggression under the threats or use of force or other actions in any manner inconsistent with international law”.

Article 2(ii)d requires “reliance in peaceful settlement of disputes”.



Article 2(ii)h also stipulates that ASEAN and its member states must act with “adherence to the rule of Law, Good governance, the principles of democracy and constitutional government.”

Article 2(ii) i requires

“respect for fundamental freedoms, promotion and protection of human rights, and the promotion of social justice”.

Article 2(ii)j mandates that ASEAN member states uphold

“The United Nations Charter and international law, including international humanitarian law subscribed to by ASEAN member States. “

11. These principles are, at first blush, exceptionally general. They appear to be unobjectionable and it may even be said that they add little to the obligation of ASEAN member states under the current state of public international law prior to the promulgation of the ASEAN Charter.
12. This is evidenced for eg. by the reference in Article 2(ii) J to uphold the United Nations Charter. The same provision makes reference to the obligation to comply with the international Humanitarian law. However, these obligations are limited. The obligation is limited to ASEAN member states complying with and otherwise upholding only that part of international law, including International Humanitarian Law ALREADY binding upon ASEAN member States. Arguably, it adds nothing new.
13. A potential consequence of all this is that, as between ASEAN member states there may be a gap in standards. “Country A” may sign and ratify numerous international conventions, whilst “Country B” may not. The ASEAN Motto “**One Vision, One Identity , One Community**” may give rise to the danger of double vision”, and the risk of **headaches!!**

The question therefore be asked is whether or not the ASEAN Charter is effectively redundant as far as certain CORE provisions are concerned.

14. Article 28 makes it crystal clear that “unless otherwise provided for in this charter, member states have the right of recourse to the modes of peaceful Settlement contained in Article 33 (l) of the Charter of the United Nations or any other international legal instruments to which the disputing member states are parties”.



15. Once again, we see a theme of the ASEAN Charter that ASEAN member States remain at liberty to have recourse to any and all international instruments that apply to them **individually**. Like all political documents and most international legal conventions or treaties the ASEAN Charter is a creature of compromise. That this is so is unremarkable.

This reality is borne out by the fact that as matter stands, there is no obligation on ASEAN member states collectively to ratify any specific international conventions so as to give teeth to the general obligation to promote “*adherence to the Rule of Law*” [Article 2(ii)(h) or “*the promotion and protection of human rights and promotion of Social Justice*”.(Article 2 (ii)(i))]

The supporting nature of the ASEAN Charter, and its effect to leave largely undisturbed the current international law landscape, is perhaps as stated in Article 28 “*Unless otherwise provided for in this Charter, Member states have the right of recourse to the modes of peaceful settlement contained in Article 33(1) of the Charter of the United Nations or any other international legal instruments to which the disputing Member States are parties*”

There appears to be no provision in the ASEAN Charter that displaces member states ability to have recourse to the modes of peaceful settlement contained in Article 33(1) of the United Nations Charter. The “unless provided for” qualification therefore appears redundant. Similarly, it is not presently clear whether, how, or in what way the ASEAN Charter would displace any existing international convention that any ASEAN member state may currently be a party to.

16. There does not appear to be any express provision in the ASEAN Charter which unequivocally, or explicitly states a particular Article takes precedence over any specified pre-existing international convention or obligation. Similarly, it is not clear to me, as matters stand, on which issue it is can be said an “ASEAN Charter obligation” takes precedence over another pre-existing international obligation. That’s the bad news!! But all is not doom and gloom. The Charter does have purpose and an important role to play. Progress must start somewhere. It is my firm conviction for all its FLAWS and inadequacies the ASEAN Charter constitutes progress.



17. Any foundational document must, by necessity, be couched in somewhat general terms. This is exactly the case, and the criticism of that most important document the United Nations Universal Declaration of Human Rights.
18. The language of a document such as the ASEAN charter is important. The spirit underlying the language is critical.
19. The soul of the ASEAN Charter is solidarity, unity and cooperation.
20. If I raise my eyes for a moment and look to the future I see on the distant horizon an ASEAN Court of Human Rights that may rise from the provisions of Article 14 of the Charter and an ASEAN Court of Justice given by virtue of Article 25 of the Charter. This will lend specificity to the somewhat spartan and general provision that we have described. It will fall to ASEAN member states to nurture the Charter, and give effect to it by additional conventions and legal instruments that must, by necessity, branch off from the main trunk of this Charter. However, it falls to all those believing in a stronger, more united, more peaceful and ever closer associations amongst and between the ASEAN member states and ASEAN citizen to actively strive together for the realization of what the PREAMBLE to the Charter describes as the “Common objectives and Shared destiny” of us all.
21. All Civil society groups and citizens are tasked and challenged to assist ASEAN member States achieve these objectives, to motivate for change and make it happen.
 - a. Annex 2 of the Charter is entitled “Entities Associated with ASEAN”. It includes inter alia. “Parliamentarians, “business organisations”, “think tanks” and at Part IV “accredited Civil Society Organisations”. The ASEAN LAW ASSOCIATION (ALA) is accredited to ASEAN so let us work together and breathe life into what must always be a living document capable of effecting real change.
 - b. ASEAN Charter should include increasing participation of Women in Member States and ratify international Conventions that protects Women’s Rights and improve their status.
 - c. There is a necessity through the ASEAN Charter for a campaign to promote moral development and provide moral education to children in Schools. Trustworthiness and honesty are the foundation for stability and progress, service to humanity will guide to respect the rights of others and accelerate



a process of individual empowerment and transform the way in which people interact with the ASEAN Society.

22. It is necessary for the appointment of a Commission to study borders, frontiers and islands of the ASEAN countries which claims continue to be a source of conflict.
23. ASEAN must propose the appointment of a Commission to start a careful study on the matter of a common language and the adoption of a common script. The language and script to be taught in the ASEAN countries as a supplement to the language of the country whereby it will enable better communication among the ASEAN people.

As a conclusion I would like to add a quotation by Shoghi Effendi on the goal of World Unity which reads as follows :-

“Unification of the whole of mankind is the hall-mark of the stage which human society is now approaching. Unity of family, of tribe, of city-state, and nation have been successively attempted and fully established. World unity is the goal towards which a harassed humanity is striving. Nation-building has come to an end. The anarchy inherent in state sovereignty is moving towards a climax. A world, growing to maturity, must abandon this fetish, recognize the oneness and wholeness of human relationships, and establish once for all the machinery that can best incarnate this fundamental principle of its life.”

L & G

We have all attended numerous conferences, Colloquia and events focused on the presentation, suppression and eventual extradition of the evil scourge that is the trafficking and abuse of women and children.

Do not think for a moment that these are mere talk shops in which mind of people from different parts of the world gather together to discuss an issue that each and everyone of us are deeply committed to L & G that has spared your time to come to this event now that we are making a difference. We are the catalyst for change. Before I go to the substance of my talk today it is my Singular honour to announce and inform the conference that - in Malaysia we have enacted the Anti Trafficking in Persons Act 2007.

This act represent tangible progress like fight against trafficking and abuse of women and children and is testament to the ground breaking work by many across the world in conferences such as these.



There is much work yet to do. But to plagiarise a current inspiration message of change and whether individuals acting together can effect a difference that clarion call should go out from this hall to day **“YES WE CAN”**. It is a message of hope and realism must resonate beyond this hall and contribute to much need further work.

The adage "no peace without justice" is much more than a glib phrase, a ritual incarnation devoid of meaning. Of late, it is pregnant with truth.

A global society which does not take steps to safeguard the weakest, the most vulnerable from exploitation, can never be a society of progress or a society at peace.

Every woman and child trafficked is unquantifiable human tragedy. We must not only look at the scale of the problem we are discussing, but keep in mind the undivided trauma and suffering of each trafficked person endures.

Until we eradicate the trafficking of women, we cannot meaningfully talk about the goal of a real and sustainable peace.

L & G

It is indeed a privilege and immense personal privilege to be invited to this Earth Summit.

There are many international organizations, non _____ lobbying groups and national structures dedicated to _____ of world importance this event is of interest to me as it provides a further platform to address a subject which is close to my heart namely enactment of legislation on the national, regional and international level to address and hopefully eradicate scourge of human trafficking in Women and Children. This practice constitutes not only a scar on the soul of humanity but a running sore. This practise is not only prevalent, widespread and pernicious but it is growing at an alarming rate all over the world. With the greatest of respect to the organizers of this Earth Summit and the loft goals they have set for themselves I am content to be part of this organization and promote world peace and harmony.

It is indeed a truism to state that there can be no peace without Justice, Fellow delegates peace is not only the absence of War, permanent, sustainable meaningful peace requires freedom from want, freedom from hunger, and a social conscience where the plight of the most pitiful, the weakest member of Society is as meaningful, as important as the most powerful.



To progress from such _____ to a reality will be exceptionally difficult. However, the task must start somewhere. Certain issues highlighted or identified as sufficiently critical as requiring immediate action. Apart from the issues of freedom from hunger, right to healthcare; I have charged myself with the task of attempting to make a difference when it come to alleviating the painful tragedy and pernicious crime of human trafficking.

For this Earth Summit to move beyond a mere talking shop it must seize hold of this issue and ensure that no delegate departs – until a clear commitment is sent forth from this Conference that we the People of the World no longer tolerate these that trade in the misery of others.

We the people of the World sent out a clarion call for action to all national governments, International and required organizations and NGOs and wherever there may be that we entered the hand of friendship and cooperation to unite together to eradicate the misery that is the trafficking of Women and children.

What is more fellow delegates in order to move beyond _____ hopes it is essential to enact legislation that will move effectively, commercialize the perpetrators and bring them to Justice.

This will require more effective legislation and enactments on a regional and international level to improve mutual cooperation in the identification and investigation of these crimes.

Declaration of Earth Summit.

We the people of the Earth, assembled here _____, India, 2-7 July, 2009 unanimously declare and affirm

CONSIDERING the scourge of child trafficking and the trafficking of children.

FIRMLY COMMITTED to world peace and the equality of peoples

NOTING no peace is possible justice and

FIRMLY COMMITTED to alleviating the plight of women and children abuse, oppressed and subjected to the tyranny and criminality of such trafficking.

BEING RESOLVED to permanently eradicate this inhuman practice, commending the work of the ALA

Hereby endorse and unanimously adapt the annexed draft bill, and call for its immediate enactment in all countries.