



NTS ALERT

ASEAN Ministerial Meeting: Taking Stock of Challenges

This edition of NTS Alert elaborates on the issues of ASEAN Charter, Cambodia-Thai border disputes and ASEAN disaster management that were discussed at the 41st ASEAN Ministerial Meeting held in July 2008 in Singapore.

Delay in ASEAN Charter Ratification

There have been some doubts over the full ratification of the charter whose soft deadline is in December this year. Three of the bloc's five founders - Indonesia, Thailand and the Philippines - remain the only members yet to ratify the charter that seeks deeper integration of its 10 members under the pillars of security, economy and social culture by 2015.

Some members of the Philippines senate have threatened to block the ratification of the charter unless Myanmar releases democracy icon Aung San Suu Kyi. However, ASEAN Secretary General Surin Pitsuwan remained optimistic as Philippine Foreign Secretary Alberto Romulo had assured him that the ratification process was moving forward. There is speculation that Aung San Suu Kyi might be released in November

2009 as Myanmar Foreign Minister Nyan Win said the six-year period for lawful detention is expected to end six-months after May 2009.

In the case of Indonesia, the ratification had initially been planned for in April, but lengthy delays have taken place amid sporadic criticism from Indonesian lawmakers and analysts, particularly over the planned creation of a regional human rights body and the absence of provisions on a mechanism for sanctions. However, Indonesian Foreign Ministry spokesperson Teuku Faizasyah said the government had submitted the charter to the House of Representatives for ratification in mid-August. Unlike in some ASEAN countries, internationally binding treaties require ratification by the House to take effect in Indonesia.

Although Thailand has yet to ratify the charter, Secretary General Surin Pitsuwan expressed full confidence in Thailand delivering the ratification sometime in August, after the new parliamentary session begins on 1 August. However, even if full ratification can be obtained, obstacles lie ahead in the implementation process.

Difficulty in Charter Implementation

Myanmar's military government, which has been strongly criticised by Western governments and fellow ASEAN members for its dismal human

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rights record, appears to be using the bloc's policy of non-interference to parry any attempt by outsiders to intervene on behalf of human rights victims in the military-ruled nation. Myanmar's Foreign Minister Nyan Win asserted that Myanmar wanted ASEAN to uphold a strict policy of non-interference in domestic affairs, and indicated that it would oppose any effort to give a Southeast Asian human rights body the power to monitor or investigate rights violations in the region. On the other hand, a majority of other ASEAN foreign ministers, led by Indonesia, the Philippines and Thailand, have said that the human rights body should at least be empowered to monitor violations and offer advice to prevent such problems.

Myanmar's refusal to allow ASEAN the right to monitor human rights situations would clearly undermine the development of a rules-based ASEAN. If ASEAN abides by the longstanding principle of consensus-based decision making, the planned establishment of dispute settlement mechanisms and a human rights body could likely turn out to be an exercise in form rather than substance. With ASEAN already making clear that the human rights body will not have the power to impose sanctions or seek prosecution of violators, Myanmar's objections, if honoured, will make the body even less effective.

Nonetheless, work on the dispute settlement mechanisms and human rights body has gone ahead as stated in the Joint Communiqué of the 41st ASEAN Ministerial Meeting. The document states that ASEAN expects to have a first draft of recommendations on dispute settlement mechanisms, on the legal personality of ASEAN and other legal matters by the 14th ASEAN Summit in December 2008. The High-Level Panel would also draft the Terms of Reference for the establishment of the ASEAN human rights body.

Whether Myanmar can be persuaded or pressured to endorse a human rights body with monitoring and advisory capacities – the minimum powers for such bodies – remains to be seen. Chances of securing endorsement from Myanmar are arguably high despite its current adamant position. As seen from the government's handling

of Cyclone Nargis, the Myanmar leadership, true to General Than Shew's training in psychological operations, engages in psychological battles when dealing with pressure from the international community. Myanmar refused to succumb to international pressure to allow entry of foreign humanitarian aid organisations and came under intense criticism for neglecting the cyclone victims in the first two weeks of the disaster. The leadership eventually allowed selected aid organisations to enter the county and sped up visa approvals after strategic partners China, India and ASEAN, and United Nations Special Advisor Ibrahim Gambari, applied much diplomatic pressure. The amount of pressure exerted by the international community was disproportionate to the compromise made by the military government and demonstrates deft play of brinksmanship. The same tactic could be used in the case of the

Key Points of ASEAN Charter

- Confer ASEAN with a legal personality of an Inter-Governmental Organization
- Commit members to strengthening democracy, enhancing good governance and the rule of law, and promoting human rights and basic freedoms
- Establish a rules-based system and move ASEAN from a mere 'talk shop' to a European Union-style security, economic and social bloc by 2015
- Establish three ASEAN Community Councils: Political and Security; Economic; Socio-Cultural
- Enhance mandate and role of the Secretary-General with powers to monitor progress in the implementation of ASEAN Summit decisions and agreements, and compliance with economic commitments
- Establish Committee of Permanent Representatives to be based in Jakarta by January 2009
- Establish ASEAN human rights body
- Uphold consultation and consensus-based decision-making

Source: "Media Release: Interesting Changes to the ASEAN Institutional Framework", ASEAN Secretariat, 20 November 2007

ASEAN Charter. Myanmar is likely to first, flatly refuse the empowerment of a human rights body and insist on the policy of non-interference (which it has done), and hope the final recommendations put forth by the High-Level Panel is heavily tempered by its strong stance.

Since September 2007, the Myanmar government has come under the scrutiny of the international community. First, the military government came under intense criticism for its harsh suppression of peaceful protests led by the *Sangha*, this was followed by widespread condemnation for initially refusing to allow in foreign aid workers to assist the victims of Cyclone Nargis, and only bowing to ASEAN pressure two weeks after the tragedy. Further, the government was also slammed for conducting a referendum on a military-backed constitution instead of focusing on disaster relief efforts.

Cambodia-Thai Border Dispute

The necessity of having dispute settlement mechanisms for ASEAN and the ease in which domestic political developments can trigger armed conflict between member states are clearly demonstrated by the ongoing border dispute between Cambodia and Thailand over the area near the *Preah Vihear* temple. Despite ASEAN's efforts at mediation, Thailand rejected the offer of an ASEAN Inter-Ministerial Group to help find a peaceful solution to the current crisis and to avoid military confrontation, citing preference for bilateral talks, which led Cambodia to refer the dispute to the United Nations, hence raising questions on ASEAN's relevance as a regional group. Although troops on both sides have been ordered to remain peaceful, the possibility of armed conflict is real and ASEAN's proudest achievement of preventing inter-state armed conflict amongst members since its inception in 1967 is at stake.

Singapore Foreign Minister George Yeo said, "It should not have gone to the UN Security Council. It was not a problem a few weeks ago, but it suddenly become a problem. Why has it become a problem?" Besides the fact that ASEAN currently lacks dispute settlement mechanisms to

address the issue which leaves the United Nations as the only supranational body with powers to resolve the dispute, if one traces the events in the lead up to the face-off by troops on both sides of the border, it is apparent that domestic politics in the two countries played a large role in triggering and escalating the conflict.

The recent tensions between the neighbours began when the United Nations granted Cambodia's request to have the *Preah Vihear* ruins listed as a World Heritage Site on 7 July. Hun Sen's portrayal of the recognition of the ruins as a national triumph caused outrage among nationalists in Thailand – some of whom still claim *Preah Vihear* as their own. Troops were sent to the region in mid July after Cambodia arrested three Thai protesters who tried to illegally enter the temple, which the World Court said in 1962 legally belonged to Cambodia. The World Court ruling had been accepted until anti-government protests in Thailand triggered a revisit of the issue and became politicised by the political opposition in a bid to topple the Samak government.

The situation worsened as it coincided with Cambodia's national elections on 27 July and Cambodian Prime Minister Hun Sen chose to win votes by capitalising on nationalist sentiments. The two countries recently agreed in talks held from 15-18 August to pull back most of the estimated 1,000 troops gathered around the disputed territory near the temple, leaving just over 50 troops remaining. It is unknown whether the talks addressed the second disputed territory, a second temple 130 kilometres west of *Preah Vihear* where Cambodian troops have been accused of encroaching on Thai territory.

The dispute underscores the urgency of implementing the ASEAN Charter and developing strong dispute settlement mechanisms for the institution. The ease in which the conflict escalated exposed the weaknesses of a regional organisation that prides itself on having successfully prevented inter-state armed conflict among member states, despite its lack of legal personality. This is indeed an achievement, but in order to ensure ASEAN is equipped to deal with the fast-changing international system and uphold





its unblemished record, ASEAN institutional processes must evolve to manage the challenges of today. Indeed, as Singapore Prime Minister Lee Hsien Loong said, "ASEAN cannot take its continued relevance for granted. If our efforts to achieve faster and deeper integration falter, ASEAN may well be sidelined."

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ASEAN and the Road Map towards Disaster Management

It appears that natural disasters can bring out the best in Man and in the case of Myanmar which was hit by a devastating cyclone in May, it seems that disasters too can bring the best out of political institutions and some may argue the worst as well. A Category 3 Cyclone *Nargis* hit Myanmar on 2nd and 3rd May and it led to more than 84,000 deaths while more than 53,000 people are still missing and about 19,000 people were left injured, according to the Post-*Nargis* Joint Assessment Report (Ponja) by the ASEAN Tripartite Core Group. By 9th May, an ASEAN Emergency Rapid Assessment Team, which was coordinated by the ASEAN Committee on

Disaster Management (ACDM), was deployed to Myanmar to assess the situation.

Following the recommendations from the assessment team, the ASEAN Foreign Ministers set-up the ASEAN Humanitarian Task Force for the Victims of the Cyclone *Nargis* (AHTF) to facilitate the distribution and assistance from the international community in terms of expediting deployment of health and medical personnel in the affected areas. This ASEAN led mechanism, chaired by ASEAN Secretary-General Surin Pitsuwan, worked closely with the United Nations (UN) and Myanmar government. The AHTF led to the formation of the Tripartite Core Group which was based in Yangon, Myanmar, to coordinate, monitor and facilitate the flow of international assistance into the country. Interestingly, the deployment of the assessment team although in line with the spirit of the 2005 ASEAN Agreement on Disaster Management and Emergency Response (AADMER), the AADMER itself has not yet been entered into force. Thus, it may be argued that the deployment of the emergency rapid assessment team was a measure of the political will of ASEAN to ensure that it can take care one of its own.

ASEAN's rapid response was also important in more ways than just its humanitarian mission. It goes as far as to show the depth of the unity of the member states and their ability to manage disaster relief efforts as a team. In short, ASEAN as a regional multilateral institution was put to the test. Recognising the impact of Cyclone *Nargis* on ASEAN, Singapore's Prime Minister Lee Hsien Loong said, "ASEAN's response to Cyclone *Nargis* demonstrated ASEAN's unity, and showed that ASEAN member countries recognised the responsibilities and obligations of membership." He was however quick to add that "while not perfect, the ASEAN-led tripartite process bridged the gap of trust between the Myanmar authorities and the international community to facilitate the flow of emergency aid to the disaster victims."

In a separate statement, Malaysia Deputy Prime Minister, Datuk Seri Najib Tun Razak, described the crisis in Myanmar as an 'acid test' for ASEAN in terms of how the regional association

About ACDM and ASEAN Cooperation on Disaster Management

From 1967 to 2003

ASEAN cooperation on disaster management dates back to the founding days of ASEAN in 1967 when Foreign Ministers established the ASEAN Permanent Committee on Socio-Cultural Activities to implement social and humanitarian projects including operations against natural disasters. This is in line with the ASEAN Declaration of 8 August 1967 that seeks to “promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific and administrative fields.”

The Declaration of ASEAN Concord (Bali Concord I), adopted on 24 February 1976, further stressed the importance of cooperation in disaster management within ASEAN. As one of its eight principles and objectives, the Declaration states that “natural disasters and other major calamities can retard the pace of development of member states, therefore they shall extend, within their capabilities, assistance for relief of member states in distress”.

Emphasizing the need for mutual assistance in mitigation, and rescue and relief of victims of natural disasters, the ASEAN Declaration on Mutual Assistance on Natural Disasters, adopted on 26 June 1976, called for Member Countries to cooperate in improvement in communication for early warning; dissemination of medical supplies, services and relief assistance; and exchange of experts, trainees, information and documents.

ASEAN’s priority for disaster management was reaffirmed by the ASEAN Leaders in the Bali Concord II of October 2003 where they pledged to achieve an ASEAN Community by 2020. The ASEAN Socio-Cultural Community calls for intensifying cooperation in addressing problems associated with, among others disaster management, to enable individual members to fully materialise their development potential and to enhance the mutual ASEAN spirit.

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would respond to the needs of one of its members in a time of crisis. He said “It is important for us to show the world that as an association, ASEAN has come a long way”. ASEAN indeed has come a long way since its inception in 1967. During these three decades, member states have worked closely towards addressing common challenges and the most recent of which is the humanitarian crisis in Myanmar.

Despite strong criticisms from the international community, member states have stood by one another. However, while ASEAN’s response to the humanitarian crisis in Myanmar was indeed commendable, it appears that more can be done to ensure that a region-wide long-term disaster response and management strategy is in place. Coordination and collaboration between member states is needed to ensure that aid, which should transcend beyond the provision of food and water and relief missions, can be disbursed according to the immediate and long-term needs of the affected country.

Perhaps, it is also worth noting that disaster management is probably most effective on the outset. The first world conference on disaster

reduction, organised by the UN in Japan in 1994, put forward a “Yokohama Strategy” aimed at preventing or minimising damages and human losses before disasters occur followed by efforts towards building a strong society. More importantly, this strategy aspired towards a systematic and concerted approach towards disaster management and relief effort at the international level. The “Yokohama Strategy” and its Plan of Action, amongst other things, recognises the sovereign right of states to protect its citizens from natural disasters, to develop and strengthen national capacity in disaster management, and to strengthen regional cooperation in related activities. The sentiment at that conference appeared confident that the severity of damages and loss of human lives due to natural disasters could be significantly reduced if countries are prepared for the worst. The principle behind the “Yokohama Strategy” seems to resonate well with ASEAN.

At the end of the recently concluded ASEAN Ministerial Meeting (AMM) held in Singapore in July 2008, the ASEAN foreign ministers have tasked the ASEAN Regional Forum (ARF) to draw up a disaster relief workplan which aims to





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2003 onwards

The ASEAN Committee on Disaster Management (ACDM) was established in early 2003 elevating regional cooperation on disaster management which was earlier carried out by an experts group. The ACDM is guided by the ASEAN Regional Programme on Disaster Management (ARPDM) in implementing the regional activities. The ASEAN Agreement on Disaster Management and Emergency Response (AADMER) provides a regional comprehensive framework to strengthen preventive, monitoring and mitigation measures to reduce disaster losses in the region.

Institutional Arrangements

The ASEAN Committee on Disaster Management (ACDM) consists of heads of national agencies/organisations of ASEAN member countries responsible for disaster management. The ACDM meets at least once in a year and the chairmanship rotates among ASEAN member countries every year. The ASEAN Ministerial Meeting on Disaster Management and the ASEAN Standing Committee provide policy guidance to the work of ACDM. ASEAN Secretariat assists the ACDM in formulating policies and programmes and implementing their various activities.

source: Information taken from ASEAN ACDM website , <http://acdm-online.net/> or visit www.aseansec.org

coordinate, prepare and train member states for disaster preparedness. In addition to emergency preparedness, the ministers also wanted to explore the possibility of utilising the military and civil defence agencies in disaster relief programmes.

This idea is not new in ASEAN and has long been advocated by some of the member states. For example, at the 2005 ARF Inter-Sessional Meeting on Disaster Relief held at Bandung, Indonesia, delegates hailed the civil-military cooperation in relief efforts in Tsunami-hit Aceh as an excellent example on the effective use of both agencies in relief and reconstruction programmes. The experiences and lessons learned from Aceh and Myanmar have perhaps prompted the ASEAN foreign ministers to endorse the proposal from the Philippines and the United States to hold an ARF Disaster Relief Exercise in the next ARF Inter-Sessional year. While the details of the exercise has yet to be fully released, news reports suggest that the region-wide exercise, termed as Voluntary

Demonstration of Response (VDR), may be held in the Philippines in 2009. It seems now that ASEAN is prepared to take the region-wide disaster management agenda to the next level.

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<p>NTS- Asia Secretary General <i>Mely Caballero Anthony</i></p> <p>NTS Alert Team <i>Belinda Chng</i> <i>Irene A. Kuntjoro</i> <i>Nur Azha Putra</i></p>		<p>Website www.rsis-ntsasia.org</p> <p>Contact Us webmaster@rsis-ntsasia.org</p>
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