

ASEAN NEWSLETTER

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ASEAN News Updates

New Secretary General as Brunei is ASEAN Chair in 2013

(December 27, 2012)

The ASEAN Secretariat will welcome a new secretary-general in 2013, Mr. Le Loung Minh from Vietnam. A seasoned diplomat, Mr Le was formerly Vietnam's ambassador to the United Nations and president of the UN Security Council in 2008. His five years at the Secretariat will be devoted to increasing the efficiency of the Secretariat and improving the monumental task of coordinating the actions and commitment of the 10 countries. Also, Brunei takes over the role of ASEAN Chair for 2013 and will set the agenda and issue the chairman's statements at ministerial meetings and leaders' summits. This is a powerful tool for a country with a population of 400,000. (Source: Bangkok Post)

ASEAN-India Commemorative Summit marked the 20th Anniversary of the ASEAN-India Dialogue Relations

(December 20, 2012)

India hosted the ASEAN-India Commemorative Summit in New Delhi themed 'ASEAN-India Partnership for Peace and Shared Prosperity'. Enhancing relations with ASEAN has been central to India's "Look East Policy" and there has been steady progress in the relationship with ASEAN countries since the policy was initiated in 1991. The ASEAN-India Commemorative Summit was the culmination of several events organized in celebration of the partnership. These included a number of Ministerial level Meetings, people to people initiatives, B2B activities and cultural programmes both in India and in ASEAN countries.

(Source: ASEANIndia.com)

UNCTAD and ASEAN identify critical issues in harmonizing e-commerce laws

(December 10, 2012)

Senior Southeast Asian officials assessed cyber-legalization and made recommendations for the harmonization of e-commerce laws at the joint ASEAN/UNCTAD workshop held in Cebu, Philippines. The workshop financially supported by the Government of Finland was part of a multi-phase process and was the first of two consultative meetings.

(Source: United Nations Conference on Trade and Development)

ASEAN launches disaster emergency logistics system

(December 10, 2012)

The ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management (AHA Centre) has officially launched a Disaster Emergency Logistic System for ASEAN. The launch of the system indicates an ongoing process for improving disaster management in the region and its existence will complete the AHA Centre's roles.

(Source: Vietnam Plus)

ASEAN ministers agree to enhance transportation

(December 2, 2012)

The transportation ministers of Asean member states agreed to enhance and strengthen transportation connectivity as part of building the region's economic community by 2015. During the ministers' 18th Asean Transport Ministers Meeting in Nusa Dua, the ministers focused on the Air Transport Technical Cooperation work plan to support the effective Asean Single Aviation Market and realize their vision of a "Seamless Asean Sky".

(Source: ASEAN Affairs)

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Why the East Asia Summit Must Return To Its Roots

By Elina Noor

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Actions and personalities matter in international relations. They shape the tenor of discussions, pace of negotiations, and content of decisions. However, in a region where actions often have to be deduced from the unspoken, perception and perspective form equally important parts of the equation.

Perception, after all, feeds reality. Perspective can either clarify or distort it. Inherently subjective, both can have a significant impact on regional security and stability.

If, from Washington, you gaze across the Pacific, you would be apt to notice not only China's rapid economic and military rise but along with that, its growing show of strength in territorial disputes and behind-the-scenes power play in the Association of Southeast Asian Nations (ASEAN).

With an 11 per cent hike in China's 2012 defense budget from last year, the launch of a fully functional aircraft carrier, the successful arrested deck landing of its Shenyang J-15 fighter jets, and development of a stealth aircraft prototype, you might be slightly unnerved by the trajectory of your competitor's "peaceful rise" especially when it is also the largest-sized military in the world.

You would also observe – whether as a function of military strength or pure coincidence – a pronounced assertiveness in Chinese claims to disputed areas in its surrounding waters. From Washington, you will ponder how left unchecked, this might affect the freedom of navigation, your treaty alliance obligations in East and Southeast Asia should the worst happen, and the future of the regional frameworks you have now entrenched yourself in.

By contrast, if you were sitting in Beijing, it would be increasingly difficult to brush off suspicions of US containment or encirclement especially with the United States' roaring return to Asia. The superpower has matched policy with action so its pivot or rebalance towards Asia is being translated through a range of diplomatic, economic, and military initiatives. These include revitalization of its alliances and partnerships, institutionalization of its reengagement with ASEAN, push for the Trans-Pacific Partnership and deployment of rotational forces to Australia. Despite US protestations to the contrary, it would seem incredibly naïve to believe that this rebalancing did not include a China calculus.

It bears reminder that the United States' reengagement with Asia is backed by its mighty defence budget of \$740b, dwarfing China's \$100b. And with all that has been written about China's one aircraft carrier, much less has been said about the United States' own fleet of carriers, which makes up slightly more than half of those currently in service in the world today.

Unlike the United States, China has no formal alliances in the region apart from its "blood alliance" with North Korea. Not only does the United States have defence alliances with Japan, South Korea, Thailand, and the Philippines, it also enjoys a special relationship with Singapore where it has a naval installation and where it is now looking to station up to four of its Littoral Combat Ships. Over the last couple of years, the United States launched a comprehensive partnership with Indonesia and a strategic partnership with India. Its overtures in the region have also been well-received by countries with which it has traditionally had more contentious or muted ties such as Vietnam and Malaysia. Although it is still too early to tell, a more open Myanmar now also appears to be adopting a more balanced foreign policy between China and the United States. For China, it is starting to look increasingly lonely in its own neighbourhood.

If you were contemplating this contestation in the ASEAN headquarters in Jakarta, you would probably be having a bit of a headache. It is to ASEAN's credit that it has attracted a majority of the world's major players from within and outside the region – from China and the United States, to Russia and Brazil. However, with at least two competing heavyweights intensely focused on the region, a divergence of ten national positions among member states, and a rotational chair, ASEAN must not only drive its own community-building agenda amidst flaring tensions but also retain the long-term interest of these major players without being overwhelmed by them.

This means actually leading, rather than muddling along. It also means that ASEAN will have to adapt and innovate in response to an environment in flux, rather than continuing business as usual. This is a tall order – especially for a grouping like ASEAN that operates on the basis of the lowest common denominator – but not impossible.

How Beijing, Washington, and the ten ASEAN capitals each views developments in the region is a composite picture that is pixelated by national and often competing interests. What ASEAN can do is to offer a point of convergence by distilling perceptions and managing expectations.

It has at its disposal the East Asian Summit, a gathering originally conceived as a forum for strategic dialogue to promote community building in the region. Criticised for its vagueness of substance and seeming lack of direction, the EAS adopted priority areas of functional cooperation as its agenda items along the way. These areas – finance, education, energy, disaster management, pandemics prevention, and connectivity – are important relationship builders. In typical ASEAN fashion, they are also safe and uncontroversial.

While specificity provides purpose and direction, paradoxically it is the EAS' nebulosity – and ASEAN's reputation as a talk shop – that may evolve to be its greater strength. Contrary to the EAS' plenary session which is usually a scripted, ritualistic, and somewhat contrived affair, the leaders retreat session affords space for a candid exchange on pressing regional issues at the highest level. Since the retreat produces no joint statement or public document of its discussion, there is greater opportunity to address complex issues of "common interest and concern" head-on behind closed doors.

The aim is not to add to, internationalize, or even resolve issues within the EAS in the short-term. Rather, it is to allow the EAS to function as it was originally intended – to clarify intentions, allay apprehensions, and build trust and confidence. Ultimately, an annual gathering of leaders from around the most robust region in the world should capitalize on their time together not by rehashing prose but by unraveling (mis)perceptions, perspectives, and hidden hands.

The EAS was envisioned to develop into an "open, inclusive, transparent and outward-looking forum". With much at stake for all sides in the region, it is time the EAS – and ASEAN – came into its own.

The Politics of Human Rights Standard Setting in ASEAN

By Yuyun Wahyuningrum

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On November 18, 2012, ASEAN Heads of States/Governments adopted the controversial ASEAN Human Rights Declaration (AHRD). At the launching of AHRD, The Cambodian Prime Minister Hun Sen said “The adoption of the ASEAN Human Rights Declaration [AHRD] at the 21st ASEAN Summit will further promote peace, security, reconciliation and the protection of human rights in the region,” (The Jakarta Post, 19/11/2012).

AHRD does not only introduce the new normative standards on human rights as the common framework for state-citizen relationship in ASEAN, but also reflects the continuing ambiguity of ASEAN Member States in their commitment to human rights.

AHRD clearly spells out nine principles on the individual person as the bearer of rights and freedoms without any kind of distinction, and with equal protection before the law. It also emphasizes that the process of realization of human rights, “shall take into account peoples’ participation, inclusivity and the need for accountability” in Article 9. It then follows with civil, political, social, cultural rights as well as specific rights to development and peace.

At the same time, AHRD recognizes the limitation of rights as its general principles of their realization, which “shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition for the human and fundamental freedoms of others, and to meet the just requirements of national security, public order, public health, public safety, public morality as well as the general welfare of the peoples in a democratic society” (Article 8). Furthermore, while recognizing that all human rights are universal, indivisible, interdependent and interrelated, the Article 7 of the AHRD puts a restriction that its realization must be considered in the context of national and regional particularities.

Earlier drafts of the AHRD contained the whole sections “duties and responsibilities” and “limitation of rights” of the individual. These revealed the pragmatic concerns of many ASEAN Member States that people in ASEAN will demand more rights and disregard their responsibilities as citizens. The end product of AHRD condensed these concerns into Article 6-8. With the same basis, the guarantee of freedom of association had disappeared in the actual text of AHRD while it was stated in the earlier draft. In responding to civil society’s inputs to include the rights of specific groups, AICHR went further on their pragmatic approach by stating AHRD cannot include specific rights for specific groups when they are not recognized by the member countries of ASEAN, specifically to include the respect to the rights of the indigenous people and LGBTIQ.

It is interesting to note that the arrival of AHRD was accompanied with the two-page Phnom Penh Statement signed by all ten ASEAN Head of States, which reaffirms ASEAN Member States’ international obligations to international standards to include United Nations’ Charter, Universal Declaration on Human Rights, Vienna Declaration and Programme of Actions, and a number of international instruments on human rights which ASEAN Member States are party to. This Statement that was initiated by Indonesia and endorsed by the Philippines signifies the efforts to put AHRD on the right track.

Furthermore, Article 40 states “nothing in this Declaration may be interpreted as implying for any State, group or person any right to perform any act... at the destruction of any of the rights and fundamental freedoms set forth in this Declaration and international human rights instruments to which ASEAN member states are parties”.

This obscurity in capturing the concept of rights has been the source of criticism by national, regional and international civil society groups. The United Nations Office of High Commissioner on Human Rights (OHCHR) expressed concern of its incompliance to the international norms, by saying that the AHRD “retains language that is not consistent with international standards” in the press release dated November 19, 2012 but at the same time welcome the renewed commitment by leaders of ASEAN on human rights.

The AHRD is a political document in the context making up for democracy deficits in ASEAN Member States. Let's not forget that ASEAN member countries' record on ratification of international instruments is relatively low. So, perhaps it is not a surprise if the ADHR chose to represent the lowest common denominator. This lack of modalities resonate in the keynote speech of the former Indonesian Foreign Minister, Hassan Wirajuda during the Jakarta Human Rights Dialogue in October 2012 as, "In the absence of democracy, one cannot expect that the indivisibility between civil and political rights, as well as economic, social and cultural rights will be respected, for in the absence of checks and balances, a monopoly of power by an authoritarian government will lead to a monopoly of truth, which in turn perpetuates gross violations of human rights and a culture of impunity"*.

Secondly, AHRD is an outcome of saving-face exercise in ASEAN. The failure of the ASEAN Foreign Ministers to issue a joint communiqué during their 45th Annual Meeting (AMM) underlined the importance of ASEAN's unity, credibility and consensus. Delaying the adoption of the AHRD would have meant a second strike for Cambodia's chairmanship in failing to endorse yet another important document of the year.

It took one and half years to drafting the document including the different stages in the drafting process. It started from formulating the Drafting Group in June 2011. It was followed by a process of political negotiations among the members of the ASEAN Inter-governmental Commission on Human Rights (AICHR) which took place between January to September 2012 ending with it being approved and finalized at the Senior Official Meeting (SOM) of the ASEAN Foreign Ministries, before being adopted during the 21st Summit in November 2012 in Phnom Penh, Cambodia.

After all, the AHRD was not intended to be a legally-binding document from the beginning. The AHRD was meant to establish meaning to the term "human rights" as mentioned as one of the purposes of ASEAN in its Charter. By consolidating and pronouncing the existing norms, it contributes to human rights protection aiming to ensure progress and not a regress, as often witnessed in ASEAN's turbulent past. Many international law and standards included in the field of human rights continue to expand with time as cultural norms evolved. New demands would mean legal instruments needed to keep up with the development.

Although further conventions or treaties on human rights must follow the more legally precise terms of the international standard, it is not advisable for AICHR to come up with one in the immediate future. It would be better for AICHR to put the AHRD into action rather than coming up with another standard setting exercise.

*Keynote Speech of Hassan Wirajuda in the Jakarta Human Rights Dialogue, 29 October 2012, Jakarta, Indonesia. Text is with the author

Handle With Care: Malaysia's New FTAs and Transformation Toward Market-Based Policies

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'Transform' is the buzzword *du jour* in Malaysia. Just to name a few, we often hear phrases such as the Government Transformation Plan, Economic Transformation Programme and '*salam transformasi*' or transformational greetings in Malay before the start of a speech. In April last year during the Invest Malaysia 2011 seminar, Najib Tun Razak, the Prime Minister of Malaysia, even said that some of his staff referred him as the leader of transformers, or the 'Optimus' Prime Minister.

The truth is: there is a much bigger 'transformation' process going on in Malaysia that people do not talk about. Malaysia's new free trade agreements (FTAs) are becoming new-age, or so-called high-quality 21st century agreement, FTAs that are indirectly transforming the country into a more liberal, market-friendly economy.

Malaysia's new FTAs are not old wine in new bottles. Malaysia's FTAs are anchored on a rules-based multilateral system with complementary agreements in both bilateral and plurilateral trade pacts. New and more comprehensive FTAs are embedded into existing ones over time in order to create a much larger trade and investment framework. This 'building-block approach' started from 'traditional' areas of duty elimination and removal of non-trade barriers and now transformed to new areas such as government procurement (GP), competition policy, intellectual property rights (IPR), labour and environment.

Today, Malaysia is playing a different ball game altogether. The country is now ready to negotiate high-quality issues such as regional integration, regulatory coherence, competitiveness, supply chain and small medium enterprises collaboration. In other words, Malaysia's new FTAs are also 'new' FTAs.

Malaysia's involvement in the Trans-Pacific Partnership (TPP), for example, explicitly implies that the country is all geared up towards liberalizing its domestic economy more aggressively than before. To begin with, the TPP, unlike any other, has no exclusion list. In addition, the TPP will adopt the negative list approach that requires all services sectors to be fully liberalized from the very beginning unless specific measures are set out in the reservations list.

Contrary to its previous stance, Malaysia is also ready to negotiate specific requests and offers under the GP chapter. The government acknowledges that protectionist industrial policies cannot last forever. Home-grown players must improve their capacity by participating in larger and more competitive markets. Now, this is new to Malaysia.

Be that as it may, Malaysia's commitments in FTAs are getting deeper as they progress. Malaysia's latest signing – Malaysia-Australia FTA (MAFTA) – marks the point of departure from its previous FTAs. MAFTA is Malaysia's most comprehensive agreement encompassing trade in goods, services, investment, economic cooperation, IPR, E-Commerce and Competition Policy.

Australia is Malaysia's first FTA partner which will eliminate all of its tariffs on goods starting from Day One. That is to say, duty elimination for all Malaysian exports is significantly deeper than that of the ASEAN Australia-New Zealand FTA. Under the services sector, the Australian market will remain open except for minor restrictions on its telecommunications industry.

Malaysia's big-scale FTAs are usually used as benchmarks to its subsequent trade deals and translated into domestic economic policies. Commitments made under AFTA, for example, were adopted as Malaysia's point of reference to its bilateral FTAs such as with Japan and Pakistan. As for the domestic economy, the government is slowly liberalizing its foreign equity participation in the services sector and *bumiputera* development policies, including the highly protected automotive industry in line with Malaysia's commitments made under AFTA and other FTAs.

As a result of continuous economic liberalization process, Malaysia's economic ranking is improving over the years. According to the Economic Freedom of the World 2012 Annual Report by the Institute for Democracy and Economic Affairs with Canada's Fraser Institute, Malaysia have improved its ranking from 78th to 71st amongst 144 countries. Malaysia also moved up two places from 14 to 12 in the World Bank's Doing Business 2012 report.

Despite being a late-comer in the FTA game, Malaysia has a good pool of trade negotiators. The country's preparedness in negotiating high-quality FTAs started after having to deal with tough negotiators under the Malaysia-US FTA. It was a great capacity building platform for its negotiators. Although the negotiation ended in a stalemate, Malaysia came out strongly as a credible player in the global FTA game thereafter and now willing to take on economic giants with a view to continue reforming its domestic economy.

But of course, economic liberalization will inevitably open its economy to a level playing field to foreign players. High-quality trade agreements must provide space for domestic SMEs to participate in the global supply chain via capacity building programmes with advanced economies. As such, Malaysia is expected to continue to push for provisions under high-quality FTAs that allow the domestic industry to adjust and adapt to the new trade and investment environment.

Malaysia's large corporations, regardless of their size, are still tiny compared to many globally connected foreign corporations. As a developing economy, Malaysia still requires a higher degree of flexibility to allow the domestic development agenda to be implemented in an inclusive and sustainable manner. In this respect, the government could use various provisions under the TPP to protect the domestic economy from being clobbered as a result of market opening.

The liberalization of the domestic economy can be a great deal for Malaysia to continue its race-based development agenda that surrounds the progress of *bumiputera's* involvement in the economic pie. Racial affirmative policies are still seen as relevant to some today as it is also the fundamental feature of the ruling coalition of the day. However, the effectiveness of current race-based policies is highly debatable since it was first introduced in the 1970s.

Suffice to say that Malaysia has transformed its FTA game with advanced countries for future trade gains. The upcoming Regional Comprehensive Economic Partnership (RCEP) negotiations and the TPP will inevitably be Malaysia's reference point towards negotiating high-quality FTAs in the future and will provide opportunities to continue transforming its domestic economy towards market-based policies.

The question is: how much of economic liberalization is enough before injuring the local players? It is yet to be seen how the government will comply with its future FTA commitments if the vote bank of the ruling coalition continues to fight for its rights to participate in the domestic economy, let alone participating in the global supply chain.
