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Singapore | 28 Jan 2013

Challenges Facing the New ASEAN Secretary-General

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On 9 January 2013, Mr. Le Luong Minh, Deputy Foreign Minister of Viet Nam, succeeded Thailand's Dr. Surin Pitsuwan as the Secretary-General of ASEAN (ASEAN SG). This article explains what the ASEAN SG is expected to do, and suggests what Mr. Le should also try to do.

DUTIES AND RESPONSIBILITIES IN THE CHARTER

Duties and responsibilities of the ASEAN SG are prescribed in the ASEAN Charter's Article 11. Paragraph (a) of the article states: [The Secretary-General shall] "*carry out the duties and responsibilities of this high office in accordance with the provisions of this Charter and relevant ASEAN instruments, protocols and established practices*". According to Article 7 Paragraph 2 (g), the ASEAN Summit appoints an ASEAN SG with the rank and status of Minister, who will serve with the confidence and at the pleasure of the Heads of State and Government of ASEAN upon the recommendation of the ASEAN Foreign Ministers Meeting (AMM). Article 11 Paragraph 1 states: the appointment is for a non-renewable term of 5 years, based on alphabetical rotation [and consensus] "*with due consideration to integrity, capability and professional experience, and gender equality.*"

Undiplomatically speaking, the ASEAN Foreign Ministers have direct supervision over the ASEAN SG, and any of the ASEAN Leaders can sack him. This is the political reality and institutional constraint under which every ASEAN SG has to accept and learn to live with.

Paragraph (b) of Article 11 states: [the Secretary-General shall] “*facilitate and monitor progress in the implementation of ASEAN agreements and decisions, and submit an annual report on the work of ASEAN to the ASEAN Summit*”. The annual report is submitted to the ASEAN Summit in the second quarter of each year; the ASEAN Summit in the third or fourth quarter is devoted more to ASEAN’s external relations. One quandary is whether or not the ASEAN SG should also report on delays and shortcomings. The preference of most government officials is for the omission of negative points and for emphasis on progress and achievements instead. This is part of the celebrated ASEAN Way.

Nevertheless, some ASEAN SGs did occasionally bring up at least verbally, issues of concern when they reported to the ASEAN Summit. This happened either during a working dinner with the Leaders or during the “retreat” (informal exchange of views among the Leaders), but not during a plenary session where Ministers and senior officials are also present and may feel uncomfortable to see their Leaders confronted with problems in ASEAN.

Some ASEAN Leaders actually encouraged Dr. Surin to tell them the “bad news” in ASEAN, not just the good news. One big item of “bad news” that Dr Surin raised was this: ASEAN is not getting anywhere nearer to achieving a drug-free zone by the year 2015. Subsequently, the 20th ASEAN Summit in Phnom Penh in early April 2012 issued a declaration to reaffirm the ASEAN commitment to realizing Drug-Free ASEAN 2015. Thailand hosted a special ASEAN ministerial meeting on 31 August 2012 in Bangkok to also reaffirm the commitment. Yet ASEAN is facing a formidable uphill battle to reach this noble goal. At the start of 2013, “industrial scale” opium poppy fields were discovered in the Thai northernmost province of Chiang Rai. Singapore reported an annual record high seizure of 38 kg of crystal methamphetamine or “ice” in 2012. Drug trade and drug abuse remain serious concerns in slums in Bangkok, Jakarta and Manila. The new ASEAN SG will have to remind ASEAN officials to intensify and speed up their regional cooperation in tackling drug trafficking and drug abuse.

Paragraph (c) of Article 11 requires the ASEAN SG to “*participate in meetings of the ASEAN Summit, the [three] ASEAN Community Councils, the ASEAN Coordinating Council, and ASEAN Sectoral Ministerial Bodies and other relevant ASEAN meetings*”. This is the most important role of the ASEAN SG. He is the only person in ASEAN who has access to the ASEAN Summit, including the Leaders’ “retreat” as well as *all* ministerial meetings, and is therefore the only person who can have a comprehensive overview of ASEAN’s community-building.

ASEAN has more than 30 sectoral ministerial meetings dealing with almost every key area of government. The ASEAN SG would usually attend what he considers more important meetings, such as the AMM, the ASEAN Regional Forum (ARF), the ASEAN Coordination Council (ACC, which consists of the ASEAN Foreign Ministers), the ASEAN Economic Ministers Meeting, the ASEAN Finance Ministers Meeting, the ASEAN Defence Ministers Meeting (ADMM), the ADMM-Plus, and assign one of his four deputies to attend the others.

The fourth function of the ASEAN SG is in Paragraph (d) of Article 11 which provides for him to “*present the views of ASEAN and participate in meetings with external parties in accordance with approved policy guidelines and mandate given to the Secretary-General*”. This Paragraph (d) apparently imposes some constraints on the freedom of expression of the ASEAN SG, who can only air views that are in accordance with “*approved policy guidelines and mandate given*”. He is not expected to be, and should not try to become, the foreign minister of ASEAN, or speak for ASEAN on high political issues without consulting the AMM or taking the cue from the ASEAN Chairman.

Under the 2009 Agreement on the Privileges and Immunities of the Association of Southeast Asian Nations, the ASEAN SG and to a lesser degree his openly recruited staff at the ASEAN Secretariat are “*immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity*”. How much the new ASEAN SG wants to speak his mind and push the envelope, like Dr. Surin had tried, remains to be seen.

It should be noted that the 2009 Agreement so far only has three ratifications—by Singapore, the Philippines and Viet Nam. Without full ratification of all 10 Member States, the Agreement remains on paper product only. Delays in ratifying ASEAN agreements have been a serious problem, and the new ASEAN SG will have to tackle that forcefully.

EXTERNAL RELATIONS ROLE

The ASEAN SG attends ministerial meetings of APEC and ASEM; and he also accompanies the ASEAN Chairman to the annual G-20 summit. In addition, he represents ASEAN in the sectoral dialogue partnership with Pakistan, and in dialogue and cooperation with the UN and other international and regional organizations.

The ASEAN SG receives the accreditation of Ambassadors to ASEAN from countries outside of ASEAN. At last count, Ambassadors of 66 countries, the EU and Vatican City have been accredited to ASEAN. The U.S., Japan, China, and the Republic of Korea have opened their respective Permanent Missions to ASEAN in Jakarta. This large number reflects the growing international recognition and interest in ASEAN. It also constitutes a rich pool of resources and expertise from which the new ASEAN SG can try to tap to support ASEAN’s community-building and to strengthen the ASEAN Secretariat.

Lastly, Paragraph (e) of Article 11 assigns the ASEAN SG to “*recommend the appointment and termination of the Deputy Secretaries-General [DSGs] to the ASEAN Coordinating Council for approval.*” The post of DSG for the Community and Corporate Affairs Department (which is an openly recruited post) is now vacant after Indonesia’s Mr. Bagas Hapsoro completed his three-year term in early December 2012 and decided against seeking a second term.

CHIEF ADMINISTRATIVE OFFICER OF ASEAN

Article 11 Paragraph 3 designates the ASEAN SG as the “*Chief Administrative Officer of ASEAN*”, similar to the United Nations Secretary-General who is “*the chief administrative officer of the Organization*” (Article 97 of the UN Charter). But so far there is no formal definition of what the role of the Chief Administrative Officer of ASEAN is. He is not the head of any of the various ASEAN bodies or centres of excellence. Individually, each of them has its own chairman or CEO.

The only exception is the ASEAN Foundation in Jakarta. Article 15 Paragraph 2 states: “*The ASEAN Foundation shall be accountable to the Secretary-General of ASEAN, who shall submit its report to the ASEAN Summit through the ASEAN Coordinating Council.*”

The Chief Administrative Officer of ASEAN appears mainly to mean heading the ASEAN Secretariat in Jakarta, and in supervising the four DSGs, according to Paragraph 4 of Article 11. The three current DSGs are: Myanmar’s Ambassador Nyan Lynn (Political-Security Department), Brunei Darussalam’s Dr. Lim Hong Hin (Economic Department), the Philippines’ Ms. Alicia Dela Rosa Bala (Socio-Cultural Department). They joined the Secretariat in 2012. In other words, the senior management team at the Secretariat is relatively new.

Moreover, four of the nine Director posts at the ASEAN Secretariat have been vacant for several months. Recruitment has been slow and inefficient. Staff turnover is quite high, mainly because the remuneration is not competitive when compared with the UN, ADB, WTO or the business sector in Jakarta. Filling staff vacancies and improving the working conditions at the ASEAN Secretariat is a serious issue which requires immediate attention and action from the new ASEAN SG.

Article 8 Paragraph 2 (e) mentions that the ACC shall “*consider the report of the Secretary-General on the functions and operations of the ASEAN Secretariat and other relevant bodies*”. The ASEAN SG thus submits a biannual report on the operations of the Secretariat to the ACC through the Committee of Permanent Representatives to ASEAN (CPR) in Jakarta.

WORKING WITH THE CPR

Article 10 Paragraph 2 states that Annex 1 listing ASEAN sectoral ministerial bodies “*may be updated by the Secretary-General of ASEAN upon the recommendation of the Committee of Permanent Representatives without recourse to the provision on Amendments under this Charter.*”

Article 12 Paragraph 2 (c) calls on the CPR to “*liaise with the Secretary-General of ASEAN and the ASEAN Secretariat on all subjects relevant to its work*”. In addition, Article 16 Paragraph 2, requires the CPR to prescribe “*Rules of procedure and criteria*

for engagement [with entities associated with ASEAN]...upon the recommendation of the Secretary-General of ASEAN.” And Article 16 Paragraph 3 states that “Annex 2 [the list of the entities associated with ASEAN] may be updated by the Secretary-General of ASEAN upon the recommendation of the Committee of Permanent Representatives without recourse to the provision on Amendments under this Charter.”

More importantly, the ASEAN SG has to work closely with the CPR on the allocation of operational budget for the ASEAN Secretariat. Article 20 Paragraph 3 states: “*The Secretary-General shall prepare the annual operational budget of the ASEAN Secretariat for approval by the ASEAN Coordinating Council upon the recommendation of the Committee of Permanent Representatives.*”

This year, the budget reportedly sees an increase of only 3%, amounting to about US\$ 16.3 million. Staff vacancies have led to underutilization of the budget. This in turn has become an argument against giving the ASEAN Secretariat a larger budget allocation. Another major cause of the small increase is the equal sharing of contributions. Each ASEAN Member State, rich or poor, large or small, new or old, contributes an equal share. The equal sharing is stipulated in the ASEAN Charter, Article 30 Paragraph 2. One rationale for this is that political equality in ASEAN entails equal sharing of financial obligations.

One more important reason for the new ASEAN SG to maintain a cordial working relationship with the CPR is that the salaries of ASEAN SG and DSGs are determined by the ACC upon the recommendation from the CPR.

LEGAL ROLE

The ASEAN SG shall represent ASEAN in legal proceedings, in accordance with Article 2 Paragraph 1 of the 2009 Agreement on the Privileges and Immunities of the Association of Southeast Asian Nations. This involves exercising the legal capacities of ASEAN under the domestic law of ASEAN Member States in entering into contracts, acquiring and disposing of movable and immovable property, and in instituting or defending ASEAN in legal proceedings. In other words, if ASEAN is to be sued, the ASEAN SG will most likely be the first defendant. However, whether ASEAN can be sued or not is unclear. ASEAN does have the legal personality, as provided for in Article 3 of the ASEAN Charter, and spelled out in greater details in Article 2 of the 2009 Agreement. But ASEAN is an inter-governmental organization with diplomatic immunity, as provided for in Article 3 of the 2009 Agreement, which states in part: “*ASEAN and the property and assets of ASEAN shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity.*”

As the Chief Administrative Officer of ASEAN, the ASEAN SG can sign commercial contracts binding the ASEAN Secretariat, employment contracts with recruits joining the ASEAN Secretariat, hold or dispose of assets of the ASEAN Secretariat in accordance

with the ASEAN Secretariat Financial Rules of Procedure. Parties in commercial contracts can sue or be sued. But whether a staff member of the ASEAN Secretariat can sue the ASEAN SG for any dispute over an employment contract has not yet been tested in court. After all, ASEAN SG has full diplomatic immunities.

ASEAN SG also serves as the depository of Treaty of Amity and Cooperation (TAC) documents, and ratification instruments of ASEAN agreements. Dr. Surin had registered the ASEAN Charter with the Secretariat of the UN.

HUMAN RIGHTS ROLE

ASEAN SG can bring “*relevant issues to the attention of AICHR, and concurrently inform the ASEAN Foreign Ministers of these issues.*” This is stated in Point 7.1 of the terms of reference of the ASEAN Inter-governmental Commission on Human Rights (AICHR). However, we must bear in mind that AICHR is only a “consultative inter-governmental body”. It is not supposed to enforce human rights protection in any ASEAN Member State.

ROLE IN DISPUTE SETTLEMENT

Article 23 Paragraph 2 states: “*Parties to the dispute may request the Chairman of ASEAN or the Secretary-General of ASEAN, acting in an ex-officio capacity, to provide good offices, conciliation or mediation.*” Article 27 Paragraph 2 assigns ASEAN SG to “*monitor the compliance with the findings, recommendations or decisions resulting from an ASEAN dispute settlement mechanism, and submit a report to the ASEAN Summit.*” But this deals only with non-compliance arising from ASEAN dispute settlement mechanisms. It does not apply to disputes inside any Member State or bilateral disputes between ASEAN Member States on, for example, territorial claims.

Therefore the new ASEAN SG will most likely have little say over the island disputes in the South China Sea, except to echo the call of the AMM for an early start to the ASEAN-China formal talks on the drafting of a code of conduct in the South China Sea (the COC). The new ASEAN SG is not expected to speak for Viet Nam. Doing so will erode his credibility, because under Article 11 Paragraph 8 (b), he and his staff shall “*not seek or receive instructions from any government or external party outside of ASEAN;*” and in Paragraph 8 (c), he and his staff shall “*refrain from any action which might reflect on their position as ASEAN Secretariat officials responsible only to ASEAN.*”

Therefore, the fact that the new ASEAN SG was Deputy Foreign Minister of Viet Nam, and his country is one of the claimants in South China Sea disputes, is immaterial. Dr. Surin did not have any significant say either in the Thai-Cambodian border dispute and skirmish. He reportedly lamented: “*This is a dispute between two Buddhist nations over a Hindu temple. What can a Thai Muslim like me do?*” Dr. Surin has also disclosed that

he could not find any “space” to defend ASEAN interests during the 45th AMM when Cambodia, the Philippines and Viet Nam clashed over what to say and what to omit from the draft joint communiqué. Their serious disagreement led to the cancellation of the AMM joint communiqué – the first such case in 45 years of ASEAN history.

Quite obviously, most ASEAN Member Governments want the ASEAN SG to be more of a Secretary than a General. But in defending and advancing ASEAN interests, the new ASEAN SG will have to try pushing the envelope.

The five-year tenure of the new ASEAN SG will go beyond 2015, which is the first major milestone in ASEAN's community-building process. His success depends on how much and how far he is able to persuade Member States to overcome delays, fix shortcomings and increase the quality of the next set of community-building blueprints beyond 2015, and implement them effectively so that the evolving ASEAN Community will truly benefit its 600 million people.

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ISEAS Perspective is published electronically by the Institute of Southeast Asian Studies, Singapore.

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