

**Seminar co-organised by the ASEAN Studies Centre of ISEAS,
the Centre for Humanitarian Dialogue and the Singapore Institute
of International Affairs**

**“The ASEAN Way of Resolving Conflict :
Lessons Learnt and Preparing for the Future”**

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**Opening Remarks by Tommy Koh
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Talking Points

1. I shall begin by congratulating the three partners for taking the initiative to organise this timely seminar.
2. I wish also to thank the organisers for inviting me to make a few opening remarks.
3. I am not sure why Michael, Rod and Simon have chosen me to make the opening remarks. My guess is that the reasons probably include the facts that I had played a role in the drafting of the ASEAN Charter and because, in 1993, I had served as the UN Secretary-General’s Special Envoy, on a peace mission, to Russia, Estonia, Latvia and Lithuania. I am a strong believer in quiet diplomacy and in the softer modalities for the resolution of conflict, such as, conciliation, mediation and fact-finding. When these options are not acceptable to the parties involved, I also favour the harder options of international arbitration and international adjudication.
4. First, I want to draw your attention to two provisions in the ASEAN Charter, which are relevant to this seminar. The first provision is Article 23, para 2, which 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.” The other provision is Article 32, para (c), which reads: “The Member State holding the Chairmanship of ASEAN shall: (c) ensure an effective and timely response to urgent issues of crisis situations affecting ASEAN, including providing its good offices and such other arrangements to immediately address these concerns.”

5. My hope is that, in the coming years, these two provisions will be activated. I think ASEAN can learn from the best practices of the UN, especially of the UN Secretary-General, in exercising his good offices, to promote peace, to settle disputes and to prevent conflict. In good time, I hope that the use of Special Envoys, appointed either by the ASEAN Chairman or the ASEAN Secretary-General, could also be adopted. I hope this seminar will discuss some of the situations in which either the Chairman of ASEAN or the Secretary-General of ASEAN could play a helpful role as envisaged by the Charter, and how to create the conditions which will motivate ASEAN’s member States to resort to these resources.
6. Second, I want to refer to the ASEAN Treaty of Amity and Cooperation (TAC). Under the TAC, there is a mechanism called the High Council. The High Council is not, strictly speaking, a dispute-settlement mechanism. It is empowered to take cognizance of conflict situations and recommend ways of settling disputes in Southeast Asia. Up to now, the High Council has not been invoked. I would request this seminar to discuss the reasons for its non-utilisation and whether there are situations in our region which would benefit from its invocation.
7. Third, I want to recall briefly the leading role which ASEAN played in bringing the Cambodian conflict to a peaceful settlement. The conflict began on the 25th of December 1978 when, in response to provocations by Cambodia, along the Cambodian-Vietnamese border, Vietnam invaded Cambodia, overthrew the Khmer Rouge Government (aka the Government of Democratic Kampuchea), and installed a new government backed by Vietnam. ASEAN objected to Vietnam’s actions and took the issue to the United Nations. The battle at the UN was a difficult one because almost everyone hated the Khmer Rouge and ASEAN was confronted by a strong opposition consisting of Vietnam, the Soviet bloc and NAM leaders, such as Cuba and

India. ASEAN was careful to explain that it had not supported the Khmer rouge Government and was not asking for its restoration. Instead, ASEAN demanded the withdrawal of Vietnamese armed forces from Cambodia, the formation of an interim UN administration and the holding of free elections. This campaign at the UN lasted from December 1978 until the Paris Peace Conference in 1991, a period of over 22 years, when the ASEAN plan was finally accepted by all the parties to the conflict and by the five Permanent Members of the UN Security Council.

8. The ASEAN story on the Cambodian conflict has not yet been written. Now that almost 20 years have passed since the Paris Peace Conference, and a new Cambodia has risen from the ashes of war and conflict, the time has come to write that story. One useful purpose would be to see what lessons we can learn from this story on the use of diplomacy, by a regional organisation, in bringing a regional conflict with international connections, to a successful conclusion. The conflict in Afghanistan is an example, but the regional organisation, SAARC, is in no position to play the role which ASEAN did in the Cambodian conflict.
9. Fourth, I want to refer to another instance in which ASEAN played a helpful role in Cambodia. Cambodia had applied to join ASEAN. In 1997, a few weeks before Cambodia's admission to ASEAN, fighting broke out between the forces loyal to the two co-Prime Ministers, Hun Sen and Norodom Ranariddh. ASEAN intervened and persuaded the two parties to stop fighting. ASEAN's intervention was successful because it enjoyed tremendous leverage at that critical moment. Cambodia was admitted in 1999. It is not easy to envisage another situation in which ASEAN could exercise such unique leverage.
10. Fifth, I want to refer to the critical role which ASEAN played in Myanmar, post-Cyclone Nargis. I am indebted to Moe Thuzar and Pavin Chachavalpongpun for sharing their writings on this subject with me. Cyclone Nargis smashed into the Ayeyawaddy Delta on the 2nd of May 2008, with such force that it killed 77,738 people, with 55,917 missing and presumably dead, destroyed the homes and livelihoods of 7 million families. The Secretary-General of ASEAN, Dr Surin Pitsuwan, reacted with speed to the emergency. Using his personal diplomacy, he

helped to coordinate the delivery of humanitarian assistance to Yangon, from Bangkok. The first US air flight arrived in Yangon on 12 May 2008, followed by 170 more flights in the following months.

11. Dr Surin Pitsuwan mounted an ASEAN Emergency Rapid Assessment team, to assess the damage and the needs, from 9 to 18 May 2008. The report of the team was submitted to the special meeting of ASEAN's Foreign Ministers, held in Singapore, on 19 May 2008, which was, coincidentally, Lord Buddha's birthday. This meeting led to a breakthrough as the Government of Myanmar agreed to accept international assistance through ASEAN's coordination. A successful pledging conference was held, in Yangon, on 25 May 2008, under the joint auspices of ASEAN and the UN. The ASEAN Foreign Ministers established the ASEAN Humanitarian Task Force. This, in turn, led to the formation of the Tripartite Core Group (TCG), consisting of ASEAN, the UN and the Government of Myanmar. I would like to use this opportunity to pay a tribute Surin Pitsuwan, John Holmes and Noeleen Heyzer. I must also acknowledge the positive role played by the Chairman of TCG, U Kyaw Thu.
12. The TCG has worked successfully. As Moe Thuzar has written:

“The TCG has continued to lead coordination of relief and recovery efforts, and has conducted regular assessments informing the international community of progress made and gaps to be bridged.”
13. Moe Thuzar also wrote:

“The more intangible benefit – which has been the most impactful – is the spirit of partnership that characterised the post-Nargis recovery effort, with ASEAN taking the central coordinating role ASEAN's key role was to build trust and remove obstacles to relief and recovery.”
14. Sixth and finally, I wish to refer to the exercise by Indonesia, of Track II diplomacy, to build confidence, to enhance cooperation and to prevent conflict in the South China Sea. The South China Sea is a potential area of conflict between China and Taiwan, on the one hand, and the four claimant States of Southeast Asia,

namely, Brunei, Malaysia, Philippines and Vietnam, on the other. China has signed the 2002 ASEAN Declaration on the Conduct of Parties in the South China Sea. In spite of this, tensions have been rising because the parties have not complied with their commitment to observe “self-restraint”. Nor have they made any progress towards negotiating an agreement or agreements for the joint development of the disputed areas. In the meantime, the claimant countries have awarded contracts to oil companies to areas which overlap.

15. For the past 20 years, Ambassador Hasjim Djalal of Indonesia has convened an annual workshop on the South China Sea. The workshop has the following three objectives: (i) to enhance confidence building; (ii) to promote dialogue; and (iii) to undertake cooperative programmes. Pak Hasjim is with us. I request you to join me in thanking him for having taken this important initiative and to congratulate him on the occasion of the workshop’s 20th anniversary this year. He deserves our praise and support.

Conclusion

16. I shall conclude. In accordance with my wife’s standing instruction, I shall make three points.
17. First, the ASEAN campaign to bring the Cambodian conflict to a negotiated and internationally accepted peaceful settlement is probably sui generis. We must all hope that our region will never be inflicted with another armed conflict of such complexity. There are, however, valuable lessons to be learned, for example, on how the five ASEAN countries were able to maintain their unity in spite of clear national differences; on the masterful way in which ASEAN was able to use diplomacy to support its campaign; on ASEAN’s simultaneous overtures to Vietnam; on ASEAN’s dialogue with the five Permanent Members; and the smooth manner in which ASEAN was able to work with the UN Secretary-General, Dr Kurt Waldheim and Dr Javier Perez de Cuellar, and their senior advisers.
18. Second, the leadership role which ASEAN played in Myanmar, since 2 May 2008, in response to Cyclone Nargis, also contains teachable lessons. The ASEAN Foreign Ministers and the

ASEAN Secretary-General must be commended for contributing to the breakthrough. In a situation such as Myanmar, when the incumbent government is suspicious of the West, it was unhelpful for the US to offer to send humanitarian assistance by its Navy. It was even more unhelpful for a member of the French government to threaten to invoke the doctrine of “responsibility to protect” and to deliver assistance directly to the people of Myanmar, without the consent of the government of Myanmar. ASEAN saved the day by convincing the government of Myanmar that its assistance was given without strings and without any political agenda. Having gained the trust and confidence of that government, ASEAN was able to bring in the UN and formed the Tripartite Core Group, which has worked effectively.

19. Third, I wish to note that the ASEAN countries have a good track record of relying on international dispute settlement mechanisms, such as the WTO dispute settlement body, the International Tribunal for the Law of the Sea and the International Court of Justice. Since ASEAN has accepted third party dispute settlement procedures, I am optimistic that in the future, there would be a greater willingness by member States of ASEAN to rely on our own institutions and modalities. When border skirmishes occurred recently between Cambodia and Thailand, the ASEAN Foreign Ministers offered their good offices to the two parties. This offer was accepted by one party but not by the other.
20. Thank you very much.

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