

# *Disaster Response in Southeast Asia: The ASEAN Agreement on Disaster Response and Emergency Management*

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## **Abstract**

Southeast Asia includes some of the states at greatest risk of disasters worldwide, and ASEAN has been at the forefront of using international law to attempt to co-operate in disaster risk reduction and response. The ASEAN Agreement on Disaster Management and Emergency Response (AADMER) is a regional treaty that has been hailed as among the world's best practice: progressive, comprehensive, and, unusually for a disaster instrument, legally binding. This paper evaluates ASEAN's responses to two mega-disasters: Cyclone Nargis that hit Myanmar in May 2008 and Super-typhoon Haiyan/Yolanda that hit the Philippines in November 2013. The paper aims further to investigate the role of non-state actors, such as civil society and the private sector, in institutionalizing and implementing AADMER.

On 26 December 2004, a 9.3 magnitude earthquake struck off the coast of northern Sumatra. It generated a series of tsunamis that affected fourteen countries bordering the Indian Ocean. Indonesia, especially Aceh and the northern coast of Sumatra, was worst hit, but fellow Association of Southeast Asian Nations (ASEAN) members Thailand, Myanmar, and Malaysia also suffered.<sup>1</sup> The estimated death toll from the tsunami was 240,000, with 125,000 injured and 1.7 million displaced. The tsunami destroyed agriculture, businesses, and infrastructure, generating over US\$10 billion in

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1. The Indian Ocean tsunami also affected parts of South Asia, including Bangladesh, India, Sri Lanka, and the Maldives, as well as parts of southern and eastern Africa, including the Seychelles, Madagascar, Somalia, Kenya, Tanzania, and South Africa. See generally "At-a-Glance: Countries Hit" *BBC News* (22 December 2005), online: BBC News <<http://news.bbc.co.uk/2/hi/asia-pacific/4126019.stm>> .

economic losses.<sup>2</sup> A feared second wave of health emergencies did not eventuate due to rapid response. Analysis of the international legal framework following the tsunami made no mention of ASEAN.<sup>3</sup> The Indonesian government immediately sought assistance, which was provided by international organizations, non-governmental organizations (NGOs), and foreign military forces.<sup>4</sup> This mega-disaster increased awareness of disasters and was the catalyst for international, regional, and domestic law reform. ASEAN Secretary-General Ong Keng Yong recognized that ASEAN had been unprepared and unco-ordinated in addressing the tsunami.<sup>5</sup> So, ten years on from the tsunami, what has changed?

ASEAN adopted the Agreement on Disaster Management and Emergency Response (AADMER) in Vientiane, Laos, in July 2005. It defines disaster as “a serious disruption of the functioning of a community or a society causing widespread human, material, economic or environmental losses”.<sup>6</sup> A “disaster emergency” is one where “a Party declares that it is unable to cope with a disaster”.<sup>7</sup> Negotiations on AADMER had just commenced when the Indian Ocean tsunami struck, hastening its finalization in the record time of four months.<sup>8</sup> AADMER is cited with approval by the UN Special Rapporteur on the protection of persons in the event of disasters as progressive, comprehensive, and, unusually for an instrument implementing disaster risk reduction measures, legally binding.<sup>9</sup> The International Federation of Red Cross and Red

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2. Sisira JAYASURIYA and Peter MCCAWLEY, *The Asian Tsunami: Aid and Reconstruction after a Disaster* (Cheltenham: Edward Elgar Publishing Limited, 2010) at 2. On Aceh, see Tjokorda Nirata SAMADHI, “BRR Aceh-Nias: Post-Disaster Reconstruction Governance” in Simon BUTT, Hitoshi NASU, and Luke NOTTAGE, eds., *Asia Pacific Disaster Management: Comparative and Socio-Legal Perspectives* (Berlin: Springer, 2014), at 165.
  3. See for example, David P. FIDLER, “Disaster Relief and Governance After the Indian Ocean Tsunami: What Role of International Law?” (2005) 6 *Melbourne Journal of International Law* 458; John TELFORD and John COSGRAVE, “The International Humanitarian System and the 2004 Indian Ocean Earthquake and Tsunamis” (2007) 31 *Disasters* 1.
  4. Delphine ALLES, “Depoliticizing Natural Disasters to Enhance Human Security in a Sovereignty-Based Context: Lessons from Aceh (2004) to Yangon (2008)” in B.T.C. GUAN, ed., *Human Security: Securing East Asia's Future* (Dordrecht: Springer, 2012), 157 at 162.
  5. Ong Keng Yong, “Leadership in Asia After Tsunami”, remarks delivered by HE Ong Keng Yong, Secretary-General of ASEAN, at the Asian Leadership Conference 2005, Seoul, online: ASEAN <[http://asean.org/?static\\_post=leadership-in-asia-after-tsunami-2](http://asean.org/?static_post=leadership-in-asia-after-tsunami-2)>.
  6. *ASEAN Agreement on Disaster Management and Emergency Response*, 26 July 2005 (entered into force 24 December 2009), online: ASEAN <<http://agreement.asean.org/media/download/20140119170000.pdf>> [AADMER], art. 1(3). This definition informed and is consistent with the ILC draft articles on the protection of persons in the event of disasters, which defines “disaster” as “a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society”. “Protection of persons in the event of disasters: Titles and texts of the preamble and draft articles 1 to 19 of the draft articles on the protection of persons in the event of disasters adopted, on second reading, by the Drafting Committee”, UN Doc A/CN.4/L.871, 27 May 2016, art. 3(a). The AADMER definition includes disruption of a community, which is more localized than the ILC definition.
  7. AADMER, art. 1(7).
  8. “ASEAN Disaster Management Agreement to Enter into Force by End of 2009” (16 September 2009), online: ASEAN <<http://www.asean.org/archive/PR-AADMER-EIF-End-2009.pdf>>.
  9. *Preliminary Report on the Protection of Persons in the Event of Disasters*, Report by Special Rapporteur Mr Eduardo Valencia-Ospina, UN Doc. A/CN.4/598 (2008), at para. 34; *Sixth Report on the Protection of Persons in the Event of Disasters*, Report by Special Rapporteur Mr Eduardo Valencia-Ospina, UN Doc. A/CN.4/652 2012, at para. 94; and ASEAN Secretariat, “ASEAN Agreement on Disaster Management and Emergency Response Work Programme 2010–15” (December 2013), online: ASEAN

Crescent Societies (IFRC), whose International Disaster Law project aims to promote legal preparedness for disasters, has described it as among the world's best practice.<sup>10</sup> AADMER also has the distinction of being one of only a handful of binding regional disaster treaties worldwide.<sup>11</sup> AADMER was designed to implement the Hyogo Framework for Action on Disaster Risk Reduction for ASEAN, and its legally binding status was unique for an instrument implementing the Hyogo Framework.<sup>12</sup>

The first aim of this paper is to evaluate the claims made on behalf of AADMER as a progressive and comprehensive regional disaster treaty. The focus here will be on assessing AADMER as an instrument for regional co-operation in disaster response. The second aim, related to the first, is to identify to what extent ASEAN's success in managing disaster risk and response is attributable to AADMER, as opposed to the political and policy context in which treaty law operates. In Southeast Asia, this context includes a range of political, security, and economic institutions, as well as formations that feature co-operation on disaster risk reduction and response as an element of non-traditional security threats, or in recognition of the fact that disasters are increasingly responsible for loss of development gains.<sup>13</sup> In general, guidelines, recommendations, and "soft law" are undoubtedly central to the emerging international law of disasters, to a greater extent than many other subfields of international law.<sup>14</sup> However, the second aim of this paper is to investigate whether it is the "hard law" status of AADMER, rather than Southeast Asia's political and institutional context, that makes a difference.

The third aim of the paper is to examine the role of non-state actors in institutionalizing and implementing AADMER.<sup>15</sup> The focus here is on civil society, understood as a not-for-profit sector in contrast to the private sector, which is also briefly

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<[http://www.asean.org/?static\\_post=asean-agreement-on-disaster-management-and-emergency-response-aadmer-work-programme-2010-2015-4th-reprint](http://www.asean.org/?static_post=asean-agreement-on-disaster-management-and-emergency-response-aadmer-work-programme-2010-2015-4th-reprint)> at 4.

10. Discussion with IFRC delegates.
11. *The Inter-American Convention to Facilitate Disaster Assistance*, 7 June 1991, OAS Treaty Series No A-54 (1996) (entered into force 16 October 1996); *Agreement Establishing the Caribbean Disaster Emergency Management Agency*, 26 February 1991, U.N.T.S. 2256 (entered into force 19 May 2002); *The Agreement Among the Governments of the Participating States of the Black Sea Economic Cooperation (BSEC) on Collaboration in Emergency Assistance and Emergency Response to Natural and Man-Made Disasters*, 15 April 1998, (entered into force 1 May 1999), online: BSEC <<http://www.bsec-organization.org/documents/LegalDocuments/agreementmous/agr4/Documents/Emergencyagreement%20071116.pdf>>. See also *Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism* [2013] OJ L347/924, online: EUR-Lex <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013D1313>> [*Decision on a Union Civil Protection Mechanism*].
12. *The Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters* was replaced by the *Sendai Framework for Disaster Risk Reduction 2015–2030*, online: UNISDR <<http://www.unisdr.org/we/coordinate/sendai-framework>>.
13. For example, disasters result in an average loss of two percent of GDP for up to five years in developing countries. See World Bank Group, "Investing in Resilience" (2015), online: Global Facility for Disaster Risk Reduction <[https://www.gfdr.org/sites/default/files/publication/Investing-in-Resilience\\_1.pdf](https://www.gfdr.org/sites/default/files/publication/Investing-in-Resilience_1.pdf)> at 5.
14. For a Foucauldian reading of manuals comprising "soft law", see Fleur JOHNS, "Death, Disaster and Infra-legality in International Law" in Fleur Johns, *Non-Legality in International Law: Unruly Law* (Cambridge: Cambridge University Press, 2013), at 185.
15. See Rajib SHAW and Takako IZUMI, eds., *Civil Society Organization and Disaster Risk Reduction: The Asian Dilemma* (Tokyo: Springer, 2014).

discussed. Governments of ASEAN Member States differ in their approaches to relations with civil society.<sup>16</sup> For example, the governments of Myanmar and the Philippines treated civil society initiatives quite differently in responding to Nargis and Haiyan, respectively. Discussion focuses on the AADMER Partnership Group (APG), a consortium of seven international NGOs<sup>17</sup> whose goal is “to support the people-centred implementation of AADMER, by raising awareness of AADMER and supporting the engagement of civil society actors and community-based organizations in AADMER discussion and implementation processes at the national and regional level”.<sup>18</sup> Analyzing the role played by civil society, and increasingly by the private sector, in institutionalizing AADMER will form part of the assessment of ASEAN’s role in disaster response.

The paper then compares ASEAN’s response to two mega-disasters: Cyclone Nargis and Typhoon Haiyan/Yolanda. When Cyclone Nargis struck Myanmar in May 2008, AADMER had been adopted but had not yet entered into force. It did so in December 2009, on the fifth anniversary of the Indian Ocean tsunami. In contrast, Super-typhoon Haiyan, or Yolanda as it is known in the Philippines, devastated parts of the central Philippines in November 2013. AADMER had entered into force by this time. These two case-studies also aim to draw out the role of non-state actors in disaster response. That being said, the focus on attention-grabbing mega-disasters is not to deny “the familiar, the routine, [and] the ordinary impact of natural [disasters which cause] persistent insecurity for peoples, communities and states”.<sup>19</sup> While referring to smaller disasters as relevant, this paper focuses on these two sudden onset mega-disasters, as they are more likely to elicit regional and international responses, and therefore enable comparison of the operation of AADMER before and after its entry into force.

## I. DISASTERS IN SOUTHEAST ASIA

The Asia Pacific region faces the greatest risk of disasters of any region worldwide. Although different methods for gauging risk exist, they are all based on analysis of a natural hazard (such as a volcanic eruption or flood), to which a population is exposed, and the vulnerability or resilience of that population.<sup>20</sup> Natural hazards are classified

16. See TAN Hsien-Li, “Non-State Actors in Southeast Asia: How does Civil Society Contribute Toward Norm-building in a State-centric Environment?” in Jean D’ASPREMONT, ed., *Participants in the International Legal System: Multiple Perspectives on Non-State Actors in International Law* (London: Routledge, 2011), at 109.

17. These NGOs are ChildFund International, Oxfam, HelpAge International, Save the Children, Mercy Malaysia, Plan, and World Vision. See AADMER Partnership Group, “Who We Are: Members”, online: AADMER Partnership Group <<http://www.aadmerpartnership.org/who-we-are/members/>> .

18. AADMER Partnership Group, “Evaluation Report 2013: Facilitating Partnerships of National and ASEAN DRR Authorities and Civil Society to Support AADMER Implementation” (2013), online: AADMER Partnership Group <<http://www.aadmerpartnership.org/aadmer-partnership-group-evaluation-report-2013/>> at 1 [AADMER Evaluation Report 2013].

19. Alan COLLINS, *Building a People-oriented Security Community: The ASEAN Way* (London: Routledge, 2013) at 131.

20. Christopher B. FIELD, Vicente BARROS, Thomas F. STOCKER, QIN Dahe, David Jon DOKKEN, Kristie K. EBI, Michael D. MASTRANDREA, Katharine J. MACH, Gian-Kasper PLATTNER, Simon K. ALLEN, Melinda TIGNOR, and Pauline M. MIDGLEY, eds., *Summary for Policy-makers, Managing*

as geophysical (e.g. volcanoes, earthquakes, dry mass movements), climatological (e.g. drought, wildfire), hydrological (e.g. floods), meteorological (e.g. storms), and biological (e.g. epidemics, insect infestations, animal stampedes).<sup>21</sup> The Asia Pacific region is particularly vulnerable to the increase in frequency and intensity of hydro-meteorological disasters linked to climate change.<sup>22</sup> Technological, industrial, and nuclear disasters, as well as health emergencies, can be caused by or interact with other disasters, such as outbreaks of disease following a flood or earthquake due to the pollution of water supplies and inadequate sewage. Urbanization concentrates risk to large numbers of people in cities, particularly where town planning and building regulations are inadequate or ignored.<sup>23</sup> Furthermore, many of the world's largest cities are located in Asia, compounding the aforementioned risk.

While individual countries face varying degrees of risk, the Southeast Asian region as a whole accounted for more than fifty percent of global disaster mortalities from 2004 to 2014.<sup>24</sup> ASEAN suffers damage amounting to an average US\$4.4 billion annually as a result of natural disasters, not including large-scale disasters such as Typhoon Haiyan.<sup>25</sup> Country risk depends on individual geophysical profiles, exposure to hydro-meteorological events, and level of development.<sup>26</sup> Factors such as the level of inequality, the role played by civil society in each country, and the legal framework, can also increase or reduce the risk of disasters. While the Philippines and Indonesia are exposed to multiple types of risks, their disaster law and policy has been described as “state of the art”.<sup>27</sup> Some ASEAN Member States face high levels of risk but are less well prepared; others are less hazard-prone. Nevertheless, ASEAN members, taken collectively, are amongst the most disaster-prone countries in the world.

ASEAN plays a significant role in disaster law and practice in Southeast Asia. ASEAN was founded in 1967 by Thailand, Malaysia, Singapore, Indonesia, and the

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*the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation: Special Report of the Intergovernmental Panel on Climate Change* (New York: Cambridge University Press, 2012) at 2.

21. Centre for Research on the Epidemiology of Disasters (CRED), “General Classification”, online: CRED <<http://www.emdat.be/classification>> .
22. Vinod THOMAS, Jose Ramon G. ALBERT, and Rosa T. PEREZ, “Climate-related Disasters in Asia and the Pacific”, Asian Development Bank (ADB) Working Paper No. 358, July 2013, online: ADB <<http://www.adb.org/sites/default/files/publication/30323/ewp-358.pdf>> at 10.
23. United Nations University and Alliance Development Works, “World Risk Report 2014” (2014), online: United Nations University <<http://i.unu.edu/media/ehs.unu.edu/news/4070/11895.pdf>> .
24. ASEAN Secretariat, “ASEAN Vision 2025 on Disaster Management”, online: ASEAN <<http://www.asean.org/storage/2016/02/ASEAN-Vision-2025-on-Disaster-ManagementAdopted.pdf>> at para. 6 [ASEAN Vision 2025].
25. AADMER Work Programme 2016–2020, 16 December 2015, online: ASEAN <<http://www.asean.org/storage/2016/02/AADMER-Work-Programme-2016-2020ADOPTED.pdf>> at 5 [AADMER Work Programme 2016–2020].
26. UNISDR and the World Bank, “Synthesis Report on Ten ASEAN Countries Disaster Risks Assessment” (December 2010), online: UNISDR <[http://www.unisdr.org/files/18872\\_asean.pdf](http://www.unisdr.org/files/18872_asean.pdf)> .
27. Daniel PETZ, “Strengthening Regional and National Capacity for Disaster Risk Management: The Case of ASEAN”, Brookings Institution, Brookings-LSE Project on Internal Displacement, November 2014, online: Brookings Institution <<http://www.brookings.edu/~media/research/files/reports/2014/11/05-south-east-asia-drm-petz/strengthening-regional-and-national-capacity-for-drm-case-of-asean-november-5-2014.pdf>> at 25. On Indonesia, see Simon BUTT, “Disaster Management Law in Indonesia: From Response to Preparedness?” in Butt *et al.*, *supra* note 2 at 183.

Philippines as an organization for regional co-operation.<sup>28</sup> In the Cold War context, these post-colonial (except for Thailand) states were keen to assert their independence by ensuring freedom from external interference, and by promoting development and the socioeconomic stability of the region. In 1976, the Treaty of Amity and Cooperation articulated important principles that have become synonymous with “the ASEAN Way”; namely, “non-interference in the internal affairs of one another”, renunciation of the threat or use of force, and peaceful dispute resolution.<sup>29</sup> Other characteristics of the ASEAN Way are “a decision-making process that favours a high degree of consultation and consensus”,<sup>30</sup> and a “behind-the-scenes, non-confrontational style”.<sup>31</sup> Since then, the other five states in Southeast Asia have become members: Brunei Darussalam in 1984, Vietnam in 1995, Myanmar and Laos in 1997, and Cambodia in 1999.<sup>32</sup> ASEAN is organized into three pillars or “communities”: political and security, economic, and socio-cultural.<sup>33</sup> Disasters fall within the socio-cultural community, where “[building] disaster-resilient nations and safer communities” is listed as an objective under social welfare and protection.<sup>34</sup>

Several other regional organizations also address disasters, some of which are expanded groupings of ASEAN. The ASEAN Regional Forum conducts exercises on disaster response and has an Intersessional Meeting on Disaster Relief.<sup>35</sup> The ASEAN Defence Ministers Meeting (ADMM) Plus has working groups on Humanitarian Assistance in Disaster Response and Military Medicine relevant to disasters.<sup>36</sup> There is also an ASEAN-UN Strategic Plan of Action on Disaster Management.<sup>37</sup> In July 2015, the UN Office for the Coordination of Humanitarian Affairs (OCHA) significantly scaled back its operations in Indonesia and Asia generally due to increased local

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28. *Bangkok Declaration*, 8 August 1967, online: ASEAN <<http://www.asean.org/the-asean-declaration-bangkok-declaration-bangkok-8-august-1967/>> .
  29. *Treaty of Amity and Cooperation in Southeast Asia*, 24 February 1976, online: ASEAN <<http://www.asean.org/treaty-amity-cooperation-southeast-asia-indonesia-24-february-1976/>> , art. 2.
  30. Amitav ACHARYA, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order* (London: Routledge, 2001).
  31. Lillianne FAN and Hanna B. KREBS, “Regional Organizations and Humanitarian Action: The Case of ASEAN”, Humanitarian Policy Group, Working Paper, September 2014, at 7.
  32. ASEAN Secretariat, “ASEAN Member States”, online: ASEAN <<http://www.asean.org/asean/asean-member-states>> ; A. Ibrahim ALMUTTAQI, “The Case for Timor Leste’s Membership of ASEAN” *Jakarta Post* (11 October 2015), online: Jakarta Post <<http://www.thejakartapost.com/news/2015/10/11/the-case-timor-leste-s-membership-asean.html>> .
  33. ASEAN Secretariat, “About ASEAN: Overview”, online: ASEAN <<http://www.asean.org/asean/about-asean/overview>> .
  34. ASEAN Secretariat, “ASEAN Socio-Cultural Community Blueprint” (2009), online: ASEAN <<http://www.asean.org/wp-content/uploads/archive/5187-19.pdf>> at 11.
  35. ASEAN Regional Forum, online: ASEAN <<http://aseanregionalforum.asean.org/gallery/arf-ism-on-dr.html>> .
  36. Partners are Australia, China, India, Japan, the Republic of Korea, New Zealand, Russia, and the US. See AHA Centre, “AADMER Work Programme Phase I: Accomplishment Report”, online: AHA Centre <[http://www.ahacentre.org/download-file/default-file\\_admeer-iREmV3Qpofnwe4gx.pdf](http://www.ahacentre.org/download-file/default-file_admeer-iREmV3Qpofnwe4gx.pdf)> at 27 [AADMER Accomplishment Report].
  37. United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), “ASEAN-UN Strategic Plan of Action on Disaster Management (2011–2015)”, online: UNOCHA <<https://docs.unocha.org/sites/dms/ROAP/Partnership/FINAL%20ASEAN-UN%20SPA%20%282011-2015%29.pdf>> .

capacity while working with ASEAN in Jakarta.<sup>38</sup> ASEAN has a policy of ASEAN centrality, with one of ASEAN's purposes being "to maintain the centrality and proactive role of ASEAN as the primary driving force in its relations and cooperation with its external partners".<sup>39</sup> In 2011, ASEAN leaders meeting in Bali agreed to use "AADMER as the main common platform for disaster management in ASEAN with the ACDM [ASEAN Committee on Disaster Management] as the driver in the process to maintain ASEAN's Centrality in these efforts".<sup>40</sup> These factors aside, the importance of AADMER as a leading binding regional instrument for disaster risk reduction and response justify focusing on ASEAN. In addition to ASEAN, the Asia Pacific Economic Cooperation (APEC) Emergency Preparedness Working Group and the East Asia Summit also address disasters, as do the Asian Ministerial Conference on Disaster Risk Reduction and the Asian Disaster Reduction Centre.<sup>41</sup>

As a regional organization, ASEAN has long focused on co-operation in disasters. In 1971, the ASEAN Expert Group on Disaster Management first met.<sup>42</sup> In the early 1970s, ASEAN reached agreement on co-operating in searching for aircraft and ships,<sup>43</sup> and on a Food Security Reserve.<sup>44</sup> The ASEAN Agreement on Transboundary Haze Pollution was adopted in 2002 in response to seasonal burning of forest and peat, particularly in Indonesia and Malaysia, with widespread negative health and environmental impacts.<sup>45</sup> In 1976, ASEAN issued a Declaration on Mutual Assistance on Natural Disasters [the Declaration]. The Declaration identified "the serious consequences of natural disasters on the economic and social development" of its members. Although it comprised only four main principles, the Declaration contained the seeds for AADMER. First, the Declaration promotes co-operation in communication regarding disaster warnings, exchange of experts and trainees, information, and documents, and provision of medical supplies, services, and relief. Second, it

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38. Alisa TANG, "After Decade of Disasters, U.N. Shifts Its Asia Operations" *Reuters* (29 June 2015), online: Reuters <<http://www.reuters.com/article/2015/06/30/us-asia-disaster-un-idUSKCN0PA03220150630#9BfAXEtHkrG6euBZ.97>> .
  39. *Charter of the Association of Southeast Asian Nations*, 20 November 2007 (entered into force 15 December 2008), online: ASEAN <[http://www.asean.org/storage/images/ASEAN\\_RTK\\_2014/ASEAN\\_Charter.pdf](http://www.asean.org/storage/images/ASEAN_RTK_2014/ASEAN_Charter.pdf)> [ASEAN Charter].
  40. *ASEAN Declaration on Enhancing Cooperation in Disaster Management*, 9 October 2013, online: ASEAN <[http://www.asean.org/storage/images/pdf/Final\\_Draft\\_ASEAN\\_Declaration\\_on\\_Disaster\\_Management\\_-\\_23rd\\_ASEAN\\_Summit.pdf](http://www.asean.org/storage/images/pdf/Final_Draft_ASEAN_Declaration_on_Disaster_Management_-_23rd_ASEAN_Summit.pdf)> at para. 7.
  41. UNOCHA-ROAP, "Disaster Response in Asia and the Pacific: A Guide to International Tools and Services", online: UNOCHA <<http://www.unocha.org/publications/asiadisasterresponse/>> at 16–20; Elizabeth FERRIS and Daniel PETZ, "In the Neighbourhood: The Growing Role of Regional Organizations in Disaster Risk Management", Brookings Institution, Brookings-LSE Project on Internal Displacement, February 2013, online: Brookings Institution <<http://www.brookings.edu/research/reports/2013/02/regional-organizations-disaster-risk-ferris>> at 63–76.
  42. Collins, *supra* note 19 at 132.
  43. *ASEAN Agreement for the Facilitation of Search for Aircrafts in Distress and Rescue of Survivors of Aircraft Accidents*, 14 April 1972, online: ASEAN <<http://agreement.asean.org/media/download/20150407141705.pdf>> ; *ASEAN Agreement for the Facilitation of Search of Ships in Distress and Rescue of Survivors of Ship Accidents*, 15 May 1975, online: ASEAN <<http://agreement.asean.org/media/download/20140119164542.pdf>> .
  44. *Agreement on the ASEAN Food Security Reserve*, 4 October 1979, online: ASEAN <<http://agreement.asean.org/media/download/20140422150508.pdf>> .
  45. *ASEAN Agreement on Transboundary Haze Pollution*, adopted June 2002 (entered into force November 2003), online: ASEAN <[http://haze.asean.org/?wpfb\\_dl=32](http://haze.asean.org/?wpfb_dl=32)> .

requires ASEAN Member States to designate a national government agency as a disaster co-ordinating focal point in charge of co-operation with other ASEAN Member States. Third, it provides that ASEAN Member States may, within their capacity, assist upon the request of affected members and facilitate transit of relief personnel supplies and equipment subject to compliance with domestic law. Fourth, it obliges affected states to facilitate relief supplies, personnel, and equipment.<sup>46</sup>

ASEAN's work on disasters is carried out at ministerial, official, and expert/technical levels. In December 2015, the ASEAN Vision 2025 on Disaster Management was adopted by ASEAN Disaster Ministers and the Conference of the Parties to AADMER.<sup>47</sup> Through institutionalization, financial resourcing, and partnerships, it aims to position ASEAN "as a pioneer in transforming disaster management landscape in the Southeast Asian region and beyond".<sup>48</sup> At the official level, the ASEAN Committee on Disaster Management was established in 2003, formalizing pre-existing arrangements.<sup>49</sup> It comprises the heads of the national disaster management agencies, who meet at least annually, and reports to the ASEAN Ministerial Meeting on Disaster Management.<sup>50</sup> The ASEAN Secretariat is also given specific duties under AADMER, in addition to its global mission of supporting ASEAN. The ASEAN Secretary-General is Executive Secretary of the Conference of the Parties of AADMER, and was appointed ASEAN Humanitarian Assistance Coordinator in 2009, a role that can be activated at the request of the affected ASEAN Member State.<sup>51</sup> At the technical level, ASEAN has an Earthquake Information Centre, based in Jakarta.<sup>52</sup>

The 2004 Indian Ocean tsunami was a landmark in ASEAN's approach to disasters. Negotiations for a regional disaster treaty to implement the Hyogo Framework for Action had commenced only three weeks earlier. Around two weeks after the tsunami, ASEAN leaders held a special meeting in Jakarta, where they issued the Declaration that, among other things, referred to an ASEAN "regional instrument on disaster management and emergency response", and the need for "community participation in disaster preparedness and early response".<sup>53</sup> Evidence of AADMER's impact lies in its use as a model by the South Asian Association for Regional Cooperation (SAARC) for

46. ASEAN Declaration on Mutual Assistance on Natural Disasters, 26 June 1976, online: AHA Centre <[http://www.ahacentre.org/download-file/default-file\\_admeer-pOhDYAT20GEH11dy.pdf](http://www.ahacentre.org/download-file/default-file_admeer-pOhDYAT20GEH11dy.pdf)>.

47. ASEAN Vision 2025, *supra* note 24; Work Programme 2016–2020, *supra* note 25 at 3.

48. ASEAN Vision 2025, *supra* note 24 at para. 5.

49. For terms of reference, see Work Programme 2016–2020, *supra* note 25, annex 4.

50. ASEAN Secretariat, "ASEAN Ministerial Meeting on Disaster Management (AMMDM)", online: ASEAN <<http://www.asean.org/asean-socio-cultural/asean-ministerial-meeting-on-disaster-management-ammdm/>>.

51. On the role of the Executive Secretary, see ASEAN Charter, *supra* note 39, art 11.2.b; for terms of reference of the ASEAN Humanitarian Assistance Coordinator, see Work Programme 2016–2020, *supra* note 25, annex 6.

52. ASEAN Earthquake Information Centre, "Introduction", online: Government of Indonesia <<http://aeic.bmkg.go.id/>>.

53. Declaration on Action to Strengthen Emergency Relief, Rehabilitation, Reconstruction and Prevention on the Aftermath of Earthquake and Tsunami Disaster of 26 December 2004, 6 January 2005, online: ASEAN <[http://www.asean.org/?static\\_post=declaration-on-action-to-strengthen-emergency-relief-rehabilitation-reconstruction-and-prevention-on-the-aftermath-of-earthquake-and-tsunami-disaster-of-26-december-2004](http://www.asean.org/?static_post=declaration-on-action-to-strengthen-emergency-relief-rehabilitation-reconstruction-and-prevention-on-the-aftermath-of-earthquake-and-tsunami-disaster-of-26-december-2004)>.

its Agreement on Rapid Response to Natural Disasters. Many South Asian countries, particularly Sri Lanka,<sup>54</sup> were badly affected by the Indian Ocean tsunami. However, the SAARC adopted the Agreement only in 2011 and by 2016 it had not entered into force. Against the backdrop of the ASEAN mechanisms developed to address disaster risks to which Southeast Asia is prone, Part II addresses each of the three aims of this paper, seeking to evaluate whether AADMER is a progressive and comprehensive regional disaster treaty as claimed; the extent to which its status as a treaty, rather than its political and institutional context, is more relevant; and to analyze the role of non-state actors in implementing the treaty.

## II. THE ASEAN AGREEMENT ON DISASTER MANAGEMENT AND EMERGENCY RESPONSE

### A. AADMER: A Progressive, Comprehensive Regional Disaster Treaty?

AADMER aims to:

provide effective mechanisms to achieve substantial reduction of disaster losses in lives and in the social, economic and environmental assets of the Parties, and to jointly respond to disaster emergencies through concerted national efforts and intensified regional and international cooperation.<sup>55</sup>

This aim is to be pursued “in the overall context of sustainable development”.<sup>56</sup> AADMER’s Preamble refers to concerns regarding “the increasing frequency and scale of disasters in the ASEAN region and their damaging impacts both short-term and long-term”.<sup>57</sup> While this Preamble also refers to the list of ASEAN declarations and treaties discussed above, AADMER appears motivated, at least in part, by the recognition that disasters threaten the development of ASEAN Member States—a core concern of ASEAN. Key principles, such as “sovereignty, territorial integrity and national unity” central to the Treaty of Amity and Cooperation in Southeast Asia, are recalled.<sup>58</sup> The primacy of the affected state in responding to disasters, and its responsibility to direct and control external assistance within its territory, are asserted in this context.<sup>59</sup> AADMER recognizes the different “needs, capabilities and situations” of ASEAN Member States in co-operating under AADMER.<sup>60</sup>

In Asia, states usually welcome, but do not request, assistance.<sup>61</sup> AADMER is broadly consistent with this practice, requiring that assistance only be deployed with

54. Jayasuriya and McCawley, *supra* note 2, chapter 6.

55. AADMER, art. 2.

56. *Ibid.*

57. *Ibid.*, preamble.

58. *Ibid.*, art. 3(1).

59. *Ibid.*, art. 3(1) and (2). See also the ILC, *Report on the Work of the Sixty-third Session* (2011), chapter IX, Protection of persons in the event of disasters, draft article 11 and commentary at para. 2, fn 619.

60. AADMER, art. 3(3).

61. For a list of selected Asian state practice (e.g. Indonesia, Pakistan, Bangladesh, Myanmar, China, the Philippines, and Cambodia), see Rebecca BARBER, “Localising the Humanitarian Toolkit: Lessons from

the consent of the Receiving Party.<sup>62</sup> In the case of Cyclone Nargis, the Myanmar government's extreme reluctance to accept international assistance, especially from outside Asia, contrasts with the openness of the Philippines to receiving external humanitarian aid in the response to Typhoon Haiyan, facilitated by the Philippines' incorporation of the international humanitarian cluster system in its domestic framework.<sup>63</sup> However, the international humanitarian architecture assumes a generalized lack of capacity, and only swings into action on the basis of an appeal.<sup>64</sup> Where international agencies, donor governments, and NGOs are familiar with Asian regional practice, they offer assistance, and affected states reply with a list of specific needs. Yet there is the potential for unnecessary delays where the international humanitarian system assumes a lack of capacity and expects a generalized "appeal".<sup>65</sup> In practice, requests for assistance sometimes come in the form of text messages from senior government officials to UN agency heads who respond, at least initially, by first using the resources available in the country without necessarily having to launch an international appeal.<sup>66</sup> Increasing capacity in Asian governments in disaster response based on experience means that the assumed lack of capacity may be outdated, not just for Asia, but for other regions as well. Further, it highlights the need for international responders to work within existing national and regional frameworks, rather than superimposing their own procedures.

The innovation of AADMER is especially apparent in its approach to disaster risk reduction. It prioritizes prevention and mitigation, and obliges parties, "to the extent possible, to mainstream disaster risk reduction efforts into sustainable development policies, planning and programming at all levels".<sup>67</sup> Most importantly it obliges parties to "involve, as appropriate, all stakeholders including local communities, non-governmental organizations and private enterprises, utilizing, among others, community-based disaster preparedness and early response approaches".<sup>68</sup> It is here that the influence of the Hyogo Framework for Risk Reduction is most evident. While subject to the qualification "as appropriate", AADMER specifically refers to a range of stakeholders and community-based preparedness and response.

Some of the general obligations imposed by AADMER can be traced directly to the 1976 Declaration on Mutual Assistance on Disasters. The first obligation under AADMER is to co-operate to reduce disaster losses. AADMER builds on the obligation

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Recent Philippines Disasters" (August 2013), online: Save the Children (Australia) <[https://www.savethechildren.org.au/\\_data/assets/pdf\\_file/0006/6558/Localising\\_the\\_Humanitarian\\_Toolkit\\_-\\_SC\\_Report\\_Aug\\_2013.pdf](https://www.savethechildren.org.au/_data/assets/pdf_file/0006/6558/Localising_the_Humanitarian_Toolkit_-_SC_Report_Aug_2013.pdf)> at 4.

62. AADMER, art. 11(2).

63. Barber, *supra* note 61 at 17.

64. *Guiding Principles Annexed to GA Res 46/182 (1991) on Strengthening of the Coordination of the Humanitarian Emergency Assistance of the United Nations*, UN Doc. A/RES/46/182 (1991), para. 3.

65. In the context of the 2011 floods, see Rebecca BARBER, "Responding to Emergencies in Southeast Asia: Can we do Better?" (September 2012), online: Save the Children (Australia) <[https://www.savethechildren.org.au/\\_data/assets/pdf\\_file/0018/6561/SC\\_report\\_Review\\_of\\_2011\\_southeast\\_Asia\\_floods.pdf](https://www.savethechildren.org.au/_data/assets/pdf_file/0018/6561/SC_report_Review_of_2011_southeast_Asia_floods.pdf)> at 22.

66. *Ibid.*, at 15.

67. AADMER, art. 3(4) and (5).

68. *Ibid.*, art. 3(6).

in the 1976 Declaration to co-operate in communication to include identifying disaster risk, developing monitoring, assessment, and early warning systems, standby arrangements for disaster relief, exchange of information and technology, and provision of mutual assistance.<sup>69</sup> AADMER also imposes new obligations to respond immediately to a disaster and to requests for information about disasters that may affect other ASEAN Member States; to respond promptly to a request for assistance from an affected party; and to take legislative, administrative, and other measures as necessary to implement obligations under AADMER.<sup>70</sup>

While AADMER is comprehensive in its approach, it adds few new obligations at a regional level. It covers all the phases of disaster management: disaster risk identification, disaster prevention, preparedness, and “rehabilitation” (recovery). However, many obligations can be undertaken “jointly or individually”, meaning that parties can undertake most of their obligations at a domestic level and that co-operative regional action comes a weak second. Parties must identify and assess disaster risks, and communicate this information regularly to the ASEAN Coordinating Centre for Humanitarian Assistance (the AHA Centre) that disseminates this information to parties. The AHA Centre may, “where appropriate, conduct analysis on possible regional-level implications”.<sup>71</sup> Parties are obliged to take measures to reduce losses from disasters and “to cooperate on regional disaster prevention and mitigation programmes to complement national-level efforts”.<sup>72</sup> Parties’ obligations to be prepared for disasters are subject to the qualifications “jointly or individually” or “as appropriate”, with the exception of the obligation to regularly inform the AHA Centre of its available resources for regional standby arrangements, contribution to which is, in any case, on a voluntary basis.<sup>73</sup> Given the varying levels of capacity among ASEAN Member States, a universal obligation to contribute to standby arrangements would be unrealistic. However, there is scope for greater regional co-operation on other issues, particularly on disaster early warning.<sup>74</sup>

Part V of AADMER deals with emergency response. The primary obligation is on states to ensure that they are able to respond to disasters in accordance with national law, and they may inform other parties and the AHA Centre of such measures.<sup>75</sup> This provision adds no regional-level obligation to national law. Article 11(2) is key to joint emergency response: “Assistance can only be deployed at the request, and with the consent, of the Requesting Party, or, when offered by another Party or Parties, with the consent of the Receiving Party.”<sup>76</sup> This provision reaffirms the primacy of the disaster-affected state (in AADMER terms, the Requesting or Receiving Party).<sup>77</sup>

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69. *Ibid.*, art. 4(1).

70. *Ibid.*, art. 4(b)(c)(d).

71. *Ibid.*, art. 5.

72. *Ibid.*, art. 6.

73. *Ibid.*, art. 8.

74. *Ibid.*, art. 7: obligations subject to qualification “as appropriate”.

75. *Ibid.*, art. 10.

76. *Ibid.*, art. 11(2).

77. *Ibid.*, art. 1(12) and (13).

This is consistent with state practice around the world, as identified by the International Law Commission, and resonates with the ASEAN principles of sovereignty and territorial integrity. As identified in the case-studies, it contrasts with the international humanitarian architecture, which assumes that a lack of capacity in an affected state will lead to an appeal for assistance, to which the humanitarian system will respond.

Article 11 varies between referring to the source of assistance as “any other Party”, which presumably means another ASEAN Member State, and “the Assisting Entity”, which is defined to mean “a State, international organization, and any other entity or person that offers and/or renders assistance to a Receiving Party or a Requesting Party in the event of a disaster emergency”.<sup>78</sup> Presumably an Assisting Entity could include a national Red Cross or Red Crescent society, the IFRC, an international, regional, or national NGO, or a private sector entity. For example, Article 11(3) provides that:

[the] Requesting Party shall specify the scope and type of assistance required and, where practicable, provide the Assisting Entity with such information as may be necessary for that Party to determine the extent to which it is able to meet the request

Requesting or Receiving Parties are given the option to communicate with Assisting Entities either directly or through the AHA Centre.<sup>79</sup> Again, this is an area where the AHA Centre could relieve the affected state of the burden of communicating with multiple Assisting Entities by channelling information. However, AADMER’s retention of affected state discretion to bypass a regional organization is also found at the European Union.<sup>80</sup>

The primacy of the affected state is underlined by asserting its role in exercising its overall direction and control of assistance.<sup>81</sup> Claims regarding provision of assistance as between Assisting Entities and Receiving Parties are to be resolved by consultation and co-ordination.<sup>82</sup> The provision on quality of relief goods and materials is commendatory: “[the] relief goods and materials provided by the Assisting Entity should meet the quality and validity requirements of the Parties concerned for consumption and utilisation.”<sup>83</sup>

Military assistance is permitted by AADMER, but the Agreement does not specify the legal framework for such assistance. Article 11(6) provides that:

[the] Parties shall, within the limits of their capabilities, identify and notify the AHA Centre of *military* and civilian personnel, experts, equipment, facilities and materials which could be made available for the provision of assistance to other Parties in the event of a disaster emergency as well as the terms, especially financial, under which such assistance could be provided.” [emphasis added]

78. *Ibid.*, art. 1(1).

79. *Ibid.*, art. 11(4) and (5).

80. *Decision on a Union Civil Protection Mechanism*, *supra* note 11, preamble and para. 1.

81. AADMER, art. 12.

82. *Ibid.*, art. 12(3).

83. *Ibid.*, art. 12(4).

Military personnel and assets should only be used in humanitarian relief as a last resort, according to the Oslo Guidelines.<sup>84</sup> These “soft law” guidelines provide recommendations on the use of foreign military and civil defence assets in disaster relief. Nevertheless, in the Asia Pacific region, military response to disasters is so well established that, in 2014, regional guidelines were adopted regarding the use of military assets in disaster relief.<sup>85</sup> The presence of foreign military personnel has legal implications that are typically covered in agreements such as Status of Forces Agreements (SOFAs) for visiting forces or in peacekeeping arrangements.<sup>86</sup> The presence of foreign military personnel in disaster relief has the potential to infringe the core ASEAN values of sovereignty and territorial integrity, but references to military personnel and assets are cursory.<sup>87</sup> AADMER refers to Assisting Entities designating a person in charge of military personnel and related civilian officials to supervise in co-operation with authorities of the affected state.<sup>88</sup> It provides generally that assisting personnel must respect national law except where they are exempt.<sup>89</sup> However, military humanitarian assistance in disaster response could merit a model treaty or optional annex on its own.<sup>90</sup> The presence of foreign military troops from outside ASEAN is dealt with by affected states on a bilateral basis, as they have different practices in this regard.

AADMER is unusual as a treaty-status disaster instrument. It is comprehensive in addressing risk reduction, not just disaster response, and is inclusive of non-state actors. However, its obligations are qualified and there are gaps in its coverage. For example, as discussed, its references to military assistance in disaster response are cursory. AADMER may well not be the most appropriate instrument to address the role of military assistance in disaster response, as there are other mechanisms for this purpose.<sup>91</sup> Acknowledging that AADMER is a model regional disaster treaty, there is a need to look beyond its status as a binding instrument at international law, and examine the political and institutional context in which it operates.

84. UNOCHA, “Guidelines on the Use of Foreign Military and Civil Defence Assets in Disaster Relief (Oslo Guidelines)” (November 2007), online: UNOCHA <[https://docs.unocha.org/sites/dms/Documents/Oslo%20Guidelines%20ENGLISH%20\(November%202007\).pdf](https://docs.unocha.org/sites/dms/Documents/Oslo%20Guidelines%20ENGLISH%20(November%202007).pdf)> .

85. APC-MADRO, “Asia-Pacific Regional Guidelines for the Use of Foreign Military Assets in Natural Disaster Response Operations” (14 January 2014), online: UNOCHA <<https://docs.unocha.org/sites/dms/Documents/Guidelines-APC%20MADRO-%20Final.pdf>> .

86. Aurel SARI, “The Status of Armed Forces in Public International Law: Jurisdiction and Immunity” in Alexander ORAKHELASHVILI, ed., *Research Handbook on Jurisdiction and Immunities in International Law* (Cheltenham: Edward Elgar Publishing Limited, 2015), at 319.

87. For example, AADMER, arts. 15(1) and 12(2) refer to military personnel being permitted to wear uniform, and the prohibition on carrying arms, respectively.

88. *Ibid.*, art. 12(1).

89. *Ibid.*, arts. 13 and 14.

90. See for example, the *Model Agreement Covering the Status of National Elements of the EADRU on Mission on the Territory of a Stricken Nation*, in annex 4 of the *Standing Operating Procedures for the Euro-Atlantic Disaster Response Unit (EADRU)*, online: NATO <<http://www.nato.int/eadrcc/sop/sop.htm>> .

91. See further US Department of Defense Center for Excellence in Disaster Management and Humanitarian Assistance, *ASEAN Disaster Management Reference Handbook 2015*, online: CFE-DMHA <<https://www.cfe-dmha.org/LinkClick.aspx?fileticket=3ZJKfsgWnk%3d&portalid=0>> at 33–43, 61–5.

### B. *The Political and Institutional Context of AADMER*

ASEAN mechanisms to address the high risks of disaster in Southeast Asia have been discussed in Part I. At the level of implementing AADMER, the AHA Centre's role is to facilitate "cooperation and coordination among the Parties, and with relevant United Nations (UN) and international organizations, in promoting regional collaboration".<sup>92</sup> The AHA Centre responds to requests from states who seek assistance in disasters, without precluding states from approaching Assisting Entities directly. It functions as a data management, analysis, and co-ordinating centre for disaster risk, and facilitates joint emergency response.<sup>93</sup> It is also tasked with co-ordinating technical co-operation and facilitating research, and may be called on to facilitate processing of personnel, equipment, facilities, and materials for assistance in disaster response.<sup>94</sup> The AHA Centre is located in Jakarta and has been operating since November 2011. Although positions are open to all ASEAN nationals, most of its staff are Indonesian.<sup>95</sup> Currently, many of the systems used are different than those used by National Disaster Management Organizations (NDMOs), as the Centre is "mainly oriented towards replicating international best practice".<sup>96</sup> This appears to be based on the assumption that the AHA Centre, as well as ASEAN Secretariat, will be imparting regional expertise to national-level officials. However, some NDMOs, such as Indonesia's national agency, see themselves as well placed to share their experience gained in dealing with multiple disasters with the AHA Centre.<sup>97</sup> South Asian disaster management officials undertook a study visit to the AHA Centre in January 2015 and a West African delegation visited in April 2014.<sup>98</sup>

AADMER also established the ASEAN Disaster Management and Emergency Relief Fund. The Fund provides the AHA Centre budget, emergency funds for emergency activities, and funds AADMER Work programme activities. ASEAN Member States contribute to the Fund on a voluntary basis and it is open to contributions from other sources.<sup>99</sup> ASEAN Member States pay an annual contribution of at least \$30,000, meaning that \$300,000 of its budget comes from ASEAN member dues. The AHA Centre is currently supported by funding from Japan, the EU, the US, Australia, and New Zealand.<sup>100</sup> The ASEAN Secretariat administers the fund.<sup>101</sup>

AADMER is implemented through its rolling work programme. Achievements to date include establishing a Disaster Emergency Response Logistic System, training an ASEAN Emergency Rapid Assessment Team, developing Standard Operating

92. AADMER, art. 20(1).

93. *Ibid.*, annex.

94. *Ibid.*

95. Petz, *supra* note 26 at 13.

96. *Ibid.*

97. *Ibid.*, at 29.

98. Humanitarian Futures Programme, "ECOWAS-ASEAN Exchange", online: Humanitarian Futures Programme <<http://www.humanitarianfutures.org/forewarn/ecowas-asean-exchange/>>.

99. AADMER, art. 24.

100. AADMER *Accomplishment Report*, *supra* note 35 at 28–9.

101. AADMER, art. 24.

Procedures, and establishing Disaster Monitoring and Early Warning Systems.<sup>102</sup> ASEAN holds annual disaster exercises, several of which have been cancelled due to real disasters, to test inter-operability between Member States, the AHA Centre, and international organizations.<sup>103</sup> It is also involved in ASEAN Regional Forum disaster relief exercises that include the UN and other ASEAN Regional Forum states, such as the US and Japan.<sup>104</sup> Hence, the specific institutions established under AADMER, combined with broader political ASEAN mechanisms, provide an important context for the implementation of AADMER, a task in which non-state actors play a key role.

### C. *The Role of Non-State Actors in Implementing AADMER*

One of the aims of the ASEAN Charter is “to promote a people-oriented ASEAN in which all sectors of society are encouraged to participate in, and benefit from, the process of ASEAN integration and community building”.<sup>105</sup> The fact that AADMER is being implemented through a work programme illustrates that ASEAN Member States understand it as a treaty that needs to be institutionalized at a national level following AADMER’s entry into force. The text of AADMER refers to “Assisting Entities”, which is ambiguous but could be read as including civil society organizations. The AADMER Partnership Group is the most visible way in which non-state actors participate in disaster risk reduction and response under AADMER. Comprising seven major international NGOs, the APG has been active since 2009 and sees itself as the “catalyst for dialogue between disaster management and risk reduction authorities and civil society”.<sup>106</sup> Hence, international NGOs currently dominate ASEAN’s interaction with civil society, but there are plans to broaden membership of the APG by including local civil society organizations. More recently, ASEAN has noted private sector initiatives in disaster management and risk reduction and called for increased private sector participation in such activities.

The APG works at three levels: ASEAN, with international organizations and NGOs, and at country level. At ASEAN level, the APG has supported the ASEAN Secretariat in implementing AADMER, and has also undertaken some functions that might be expected to be undertaken by states, such as translating the English language text of the treaty into national languages.<sup>107</sup> Two advisers are seconded to the ASEAN Secretariat and APG, providing support for drafting the AADMER Work Plan,<sup>108</sup> ASEAN’s Emergency Rapid Assessment Team methodology

102. AADMER Accomplishment Report, *supra* note 35 at 5–6.

103. *Ibid.*, at 12.

104. For more on the Japan-US-Philippines Civil-Military Disaster Preparedness Initiative, see Jon EHRENFELD and Charles AANENSON, *Frameworks and Partnerships: Improving HA/DR in the Asia Pacific* (Seattle, WA: Peace Winds America, 2015).

105. ASEAN Charter, art. 1(13).

106. Lilian Mercado CARREON, “Working with ASEAN on Disaster Risk Reduction and Disaster Management” *Humanitarian Exchange Magazine* (May 2011), online: Overseas Development Institute: <<http://www.odihpn.org/humanitarian-exchange-magazine/issue-50/working-with-asean-on-disaster-risk-reduction-and-disaster-management>>.

107. AADMER Partnership Group, “Where We Work”, online: APG <<http://www.aadmerpartnership.org>>.

108. Carreon, *supra* note 106.

and tools,<sup>109</sup> and the ASEAN Safe Schools Initiative, which aims to educate and protect children and, through them, to educate families about disaster preparedness.<sup>110</sup> The AADMER Conference of the Parties endorsed the APG in March 2012. The APG also works with international organizations, such as the UN Office for Disaster Risk Reduction (UNISDR), UNOCHA, the IFRC, and international NGOs.<sup>111</sup>

At country level, the APG is led by the Country Manager for the NGO designated for that country. For example, in the first phases of the work programme, World Vision was the Country Lead in Vietnam, and Plan International was Lead in Cambodia.<sup>112</sup> The APG has conducted legal policy research, media campaigns, and ASEAN Day for Disaster Management activities. Although it might be expected to address civil society in particular, and the public in general, the APG cites raising awareness of NDMOs of the existence and importance of AADMER among its achievements. NDMO officials have identified the APG as a bridge between government and civil society in countries like Myanmar and Laos.<sup>113</sup> In Cambodia and Laos, translation of AADMER has assisted politicians in understanding draft disaster laws.<sup>114</sup> The APG has also organized AADMER orientation workshops in most ASEAN Member States in co-operation with NDMOs. Similarly, the APG has identified a lack of awareness and failures of national governments to co-ordinate within themselves. For example, the Foreign Ministry reports to ASEAN on AADMER, even though the NDMO, located in the Prime Minister's Office, is tasked with co-ordination but is unable to exert authority as it lacks the status of a ministry.<sup>115</sup> AADMER Advocates from civil society help to publicize and promote the treaty and have developed a framework for its implementation.<sup>116</sup>

While AADMER is silent on this, one area in which the APG is leading is in advocating for inclusion of vulnerable groups in disaster risk assessment and response. For example, the APG identified people with disabilities, children, and older people as vulnerable in the response to Typhoon Haiyan.<sup>117</sup> Vulnerability differs according to country and potentially also with different types of disasters. An example is undocumented workers from Myanmar affected by the 2011 floods in Thailand, who were reluctant to access aid due to their precarious migration status.<sup>118</sup> Poverty, gender, age, sexuality, disability, ethnicity, nationality, and actual or perceived opposition to government, whether in politics or ongoing conflict, are factors that can increase

109. *AADMER Evaluation Report 2013*, *supra* note 18 at 15.

110. *AADMER Accomplishment Report*, *supra* note 35.

111. *Ibid.*, at 23.

112. *Ibid.*

113. *AADMER Evaluation Report 2013*, *supra* note 18 at 12.

114. *Ibid.*, at 8.

115. *Ibid.*

116. Petz, *supra* note 27 at 27.

117. See Alex ROBINSON, "Inclusive Disaster Risk Reduction: Reflecting on Haiyan"; HelpAge, "Older People Disproportionately Affected by Typhoon Haiyan"; Save the Children, Plan, UNICEF, and World Vision, "After Yolanda: What Children Think, Need and Recommend", online: AADMER Partnership Group <<http://www.aadmerpartnership.org/>>.

118. Barber, *supra* note 65.

vulnerability. In many cases, civil society organizations are more likely than government to reach out to such groups and to advocate their inclusion in disaster management policy and programming.

The formal partnering of ASEAN governments with a consortium of NGOs has implications for ASEAN and for international law more broadly. Collins argues that “[t]he role and function of the APG is thus the benchmark for assessing the challenge to the consensus decision-making norm [within ASEAN]”.<sup>119</sup> Examples might include highlighting vulnerabilities of specific populations whose needs would otherwise go unremarked, in accordance with other ASEAN principles of non-interference. Sharing ASEAN Emergency Response Assessment Team assessments more widely than with governments and the ASEAN Secretariat to include international organizations and international and national NGOs could deepen civil society participation in implementing AADMER.<sup>120</sup> ASEAN Member States interpret the founding principles of non-interference and consensus decision-making differently, with the older ASEAN Member States taking more flexible approaches. Nonetheless, AADMER has implications for ASEAN as a regional organization. In international law more generally, there are few examples of civil society actors being given specific roles in performing tasks under, and monitoring compliance with, a treaty. The International Committee of the Red Cross under the Geneva Conventions is a rare example. More common is NGOs using international treaties as leverage in their advocacy and preparation of shadow reports on human rights, for example. ASEAN Member States appear to have recognized that the APG can greatly increase the number of people reached above that by states alone. Further, ASEAN states appreciate the technical expertise offered by the APG at a time when ASEAN is building on the experience and expertise that exists in a few Member States to develop regional expertise that may be offered to assist in building national capacity.

The private sector is increasingly recognized as an important player in disaster management and risk reduction. ASEAN Vision 2025 refers to the Corporate Citizen Foundation in Singapore and the Philippines Disaster Recovery Foundation as examples of how the private sector has organized itself to prepare for, and respond to, disasters.<sup>121</sup> There are benefits for the private sector, especially the insurance industry, in becoming involved in risk mitigation and transfer. ASEAN seeks providers of electronic payment systems for relief aid transfers, and social entrepreneurs with micro-finance expertise, to assist in disaster response.<sup>122</sup> ASEAN also refers to other “non-traditional” partners, such as universities, think tanks, and the Digital Humanitarian Network.<sup>123</sup> ASEAN’s engagement with the private sector is less developed than its relationship with civil society through the APG; however, it will

119. Collins, *supra* note 19 at 150.

120. Barber, *supra* note 66 at 19; ASEAN Secretariat, “Weathering the Perfect Storm: Lessons Learnt on the ASEAN’s Response to the Aftermath of Typhoon Haiyan” (2014), online: ASEAN <<http://www.rcrc-resilience-southeastasia.org/document/weathering-the-perfect-storm/>> at 7 [*The Perfect Storm*].

121. ASEAN Vision 2025, *supra* note 24 at para. 19.

122. AADMER Work Programme 2016–2020, *supra* note 25 at 46.

123. ASEAN Vision 2025, *supra* note 24 at para. 43.

need to grow in order to realize ASEAN's commitment to investing in disaster risk reduction.<sup>124</sup>

In conclusion, AADMER is clearly an influential regional disaster treaty. Examining its provisions reveals that it is comprehensive in encompassing all stages of disaster management and risk reduction, and inclusive of state and non-state actors. However, many of its obligations are qualified, and it adds few regional requirements above domestic law apart from an obligation to co-operate. AADMER's significance for disaster response in Southeast Asia lies less in the text or its status as a treaty than in the ASEAN perception of AADMER as a "common platform" for regional co-operation. The innovative partnership between civil society, ASEAN, and ASEAN Member States has been important in raising awareness of government, as well as communities, of the existence and relevance of AADMER. Part III considers the questions of comprehensiveness, treaty or context, and the role of non-state actors in two case-studies of how AADMER worked in practice.

### III. AADMER IN PRACTICE

#### A. *Cyclone Nargis: Myanmar 2008*

On 2–3 May 2008, Cyclone Nargis made landfall in the Aeyarwaddy Delta and Yangon Division of Myanmar.<sup>125</sup> It also hit Mon and Karen states and Bago division in the south and east of the country. It resulted in more than 140,000 deaths and affected approximately 2.4 million people.<sup>126</sup> The Indian Meteorological Department had been tracking the storm and had warned the government of Myanmar that a severe storm was approaching forty-eight hours before Nargis hit. The government issued warnings, yet those whom the warnings reached neither appreciated the seriousness of what was about to hit them nor knew how to prepare.<sup>127</sup> When Nargis hit, Myanmar did not have a disaster law in place. The Standing Order on Natural Disaster Management, which allocated responsibility to different government agencies, was finalized only in January 2009.<sup>128</sup>

The government was castigated for its reluctance to accept international aid in the face of a disaster that clearly overwhelmed national capacity. On 2 May, the

124. *Declaration on Institutionalising the Resilience of ASEAN and its Communities and Peoples to Disasters and Climate Change*, 27 April 2015, online: ASEAN <<http://www.asean.org/declaration-on-institutionalising-the-resilience-of-asean-and-its-communities-and-peoples-to-disasters-and-climate-change/>> at para. 5.

125. ASEAN Secretariat, "A Humanitarian Call: The ASEAN Response to Cyclone Nargis" (18 July 2010), online: ASEAN <<http://www.asean.org/storage/images/2012/publications/A%20Humanitarian%20Call%20The%20ASEAN%20Response%20to%20Cyclone%20Nargis.pdf>> at 9 [*A Humanitarian Call*].

126. Tripartite Core Group, "Post Nargis Joint Assessment Report", July 2008, online: Global Facility for Disaster Risk Reduction <[https://www.gfdr.org/sites/default/files/GFDRR\\_Myanmar\\_Post-Nargis-Joint\\_Assessment\\_2008\\_EN.pdf](https://www.gfdr.org/sites/default/files/GFDRR_Myanmar_Post-Nargis-Joint_Assessment_2008_EN.pdf)> .

127. ASEAN Secretariat, "Compassion in Action: The Story of the ASEAN-led Coordination in Myanmar" (1 August 2010), online: ASEAN <[http://www.asean.org/?static\\_post=compassion-in-action-the-story-of-the-asean-led-coordination-in-myanmar-2](http://www.asean.org/?static_post=compassion-in-action-the-story-of-the-asean-led-coordination-in-myanmar-2)> [*Compassion in Action*].

128. See now the National Disaster Management Law, Pyidaungsu Hluttaw Law No. 21, 31 July 2013, online: <[http://www.themimu.info/sites/themimu.info/files/documents/Natural\\_Disaster\\_Management\\_Law\\_2013\\_ENG.pdf](http://www.themimu.info/sites/themimu.info/files/documents/Natural_Disaster_Management_Law_2013_ENG.pdf)> .

government in the capital Nay Pyi Taw activated the National Disaster Preparedness Central Committee and the prime minister, high-ranking cabinet ministers, and military officers, relocated to the largest city, Yangon.<sup>129</sup> Navy and airforce personnel were engaged to distribute relief. On 5 May, Foreign Minister U Nyan Win met diplomats in Yangon and stated that the government would only accept bilateral aid, while refusing some offers of aid.<sup>130</sup> On 9 May, the government “welcomed donations of cash and emergency aid but ‘was not ready’ to receive search and rescue teams or journalists from foreign countries”.<sup>131</sup> Some international aid workers waited in Bangkok for weeks to receive visas to enter the country. Those granted a visa had difficulty gaining permission to access the worst-hit areas,<sup>132</sup> and the government refused access to certain military humanitarian deployments.<sup>133</sup>

The government of Myanmar accepted offers of assistance from Asian countries more readily than offers from non-Asian countries.<sup>134</sup> On 5 May, ASEAN Secretary-General Dr Surin Pitsuwan called on all Member States to provide urgent relief assistance through the framework of AADMER.<sup>135</sup> At that time, AADMER had been adopted, and Myanmar had ratified it, but the Agreement did not enter into force until the Philippines ratified it in December 2009. Nevertheless, Secretary-General Pitsuwan urged the government to allow aid workers entry “in the spirit” of AADMER.<sup>136</sup> The ASEAN Emergency Rapid Assessment Team comprised members from Brunei, Malaysia, the Philippines, Singapore, and the ASEAN Secretariat.<sup>137</sup> The ASEAN Disaster Management Committee deployed the team to Myanmar between 9 and 18 May 2008, the team’s first ever deployment.<sup>138</sup> The Emergency Rapid Assessment Team referred to AADMER as the basis for its deployment, arguing that:

*[c]onsistent with Myanmar’s ratification of the AADMER and its active participation in the ACDM, the Government of Myanmar can demonstrate its commitment in harnessing the most experienced disaster management expertise from around the globe as part of an*

129. *A Humanitarian Call*, *supra* note 125 at 14.

130. Collins, *supra* note 19 at 139.

131. *A Humanitarian Call*, *supra* note 125 at 14.

132. “Myanmar to Allow Copters to Deliver Aid, U.N. Says” *Associated Press* (21 May 2008), online: New York Times <[http://www.nytimes.com/2008/05/21/world/asia/21myanmar.html?\\_r=0](http://www.nytimes.com/2008/05/21/world/asia/21myanmar.html?_r=0)> .

133. “Burma Shuns Foreign Aid Workers” *BBC News* (9 May 2008), online: BBC <<http://news.bbc.co.uk/2/hi/asia-pacific/7391535.stm>> ; Julian BORGER and Ian MACKINNON, “UN: Burma Junta is Seizing International Storm Aid” *The Guardian* (10 May 2008), online: The Guardian <<http://www.theguardian.com/world/2008/may/10/cyclonenargis.burma>> .

134. Ian MACKINNON and Julian BORGER, “Burmese Junta Allows Neighbours to Provide Cyclone Aid” *The Guardian* (20 May 2008), online: The Guardian <<http://www.theguardian.com/world/2008/may/20/burma.cyclonenargis>> .

135. Yves-Kim CREACH and Lilianne FAN, “ASEAN’s Role in the Cyclone Nargis Response: Implications, Lessons and Opportunities” *Humanitarian Exchange Magazine* (December 2008), online: Overseas Development Institute <<http://odihpn.org/magazine/asean%20-%20role-in-the-cyclone-nargis-response-implications-lessons-and-opportunities/>> .

136. *A Humanitarian Call*, *supra* note 125 at 14.

137. It was assisted on the ground by representatives of the World Food Programme, UNOCHA, and the UN Disaster Assessment and Coordination team. See *Compassion in Action*, *supra* note 127 at 34–5.

138. ASEAN Secretariat, “ASEAN Emergency Rapid Assessment Team Mission Report, 9–18 May 2008: Cyclone Nargis, Myanmar”, online: ASEAN <<http://www.asean.org/uploads/archive/21558.pdf>> at para. 2.

ASEAN-coordinated “Humanitarian Coalition for the Victims of Cyclone Nargis”, in support of the disaster affected people in Myanmar.<sup>139</sup> [emphasis added]

While not quite treating AADMER as if it were already in force, ASEAN, through its Secretary-General and Emergency Response Assessment Team, attempted to leverage “the spirit” of AADMER to pressure the Myanmar government to accept external assistance in managing the disaster response. States that have expressed their consent to be bound by a treaty have an obligation to refrain from acts that would defeat the object and purpose of that treaty prior to its entry into force under the Vienna Convention on the Law of Treaties, which is widely considered to represent customary international law.<sup>140</sup> Myanmar had ratified the treaty, thus expressing its consent to be bound. In practice, ASEAN’s reference to “the spirit” of AADMER proved remarkably effective.

On 19 May, at the initiative of the chair of ASEAN, at that time Singapore, ASEAN foreign ministers met in Singapore and considered the Report of the Emergency Rapid Assessment Team. Secretary-General Pitsuwan then gave the Myanmar government a choice: (1) a UN-led mechanism; (2) an ASEAN-led mechanism; or (3) the responsibility to protect, potentially leading to the delivery of aid without authorization by the Myanmar government.<sup>141</sup> Unsurprisingly, the government opted for an ASEAN-led mechanism.<sup>142</sup> The mechanism devised operated at two levels. The Tripartite Core Group comprised three members from ASEAN, the UN, and the Government of Myanmar, and was chaired by Myanmar Deputy Foreign Minister U Kyaw Thu. This formed the political leadership and strategic oversight of the Nargis response.<sup>143</sup> An ASEAN Humanitarian Task Force, headed by Secretary-General Pitsuwan and comprising two members from the ASEAN Secretariat and two officials from each ASEAN Member State, advised the Tripartite Core Group.<sup>144</sup>

Following this meeting, aid from ASEAN Member States was admitted, but Myanmar had already begun accepting aid on a bilateral basis from some of its neighbours.<sup>145</sup> On 7 May, the Thai air force had brought drinking water and construction material. On 19 May, Myanmar agreed to the deployment of ASEAN medical teams.<sup>146</sup> Beyond ASEAN, India and China also provided assistance.<sup>147</sup>

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139. *Ibid.*, para. 1.

140. *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 U.N.T.S. 331 (entered into force 27 January 1980), art. 18(b).

141. Surin Pitsuwan, cited in *Compassion in Action*, *supra* note 127 at 38.

142. Karin LOEVY, “The Legal Politics of Jurisdiction: Understanding ASEAN’s Role in Myanmar’s Disaster, Cyclone Nargis (2008)” (2015) 5 *Asian Journal of International Law* 55 at 58.

143. The Tripartite Core Group was assisted by an Advisory Group comprising representatives from China, India, Bangladesh, the UN, the Red Cross and Red Crescent movement, the World Bank, the Asian Development Bank, and NGOs. Donors Australia, Norway, and the UK joined later: *Compassion in Action*, *supra* note 127 at 41.

144. See further *Compassion in Action*, *supra* note 127 at 33.

145. “Myanmar Agrees to Accept ASEAN Cyclone Aid” *CNN* (19 May 2008), online: CNN <<http://edition.cnn.com/2008/WORLD/asiapcf/05/19/myanmar.aid/index.html>> .

146. *Compassion in Action*, *supra* note 127 at 29.

147. “Burmese Storm Toll ‘Tops 10,000’” *BBC News* (6 May 2008), online: BBC News <<http://news.bbc.co.uk/2/hi/asia-pacific/7384041.stm>> ; Aid Data, “China Provides \$10 million for Cyclone Nargis Emergency Response”, online: Aid Data <<http://china.aiddata.org/projects/34291>> .

Following ASEAN's resolution of the deadlock, the Myanmar government began to allow access to the country by international personnel and to accept international aid. The ASEAN Humanitarian Task Force processed almost 4,000 visas and visa extensions for international aid workers.<sup>148</sup> Italy was the first country outside Asia permitted to deliver humanitarian aid.<sup>149</sup> Other Western countries complained that the Myanmar government did not act quickly enough to accept international aid.<sup>150</sup> At the UN Security Council in New York, French Foreign Minister and founder of Médecins Sans Frontières Bernard Kouchner invoked the Responsibility to Protect, potentially authorizing military intervention to deliver humanitarian aid.<sup>151</sup> However, opposition from five UN members, including South Africa, permanent Security Council members China and Russia, and ASEAN Member States Vietnam and Indonesia, meant that a resolution to authorize the use of force was not introduced.<sup>152</sup> Naval boats from the UK, France, and the US stood by for around three weeks waiting for permission to deliver supplies, but departed without unloading.<sup>153</sup>

The crucial importance of ASEAN's political role in the response to Cyclone Nargis, leveraging references to its regional disaster treaty AADMER, contrasts with the modest level of technical expertise and practical support it provided. Secretary-General Pitsuwan described Nargis as "baptizing" ASEAN, while commentators Pavin Chachavalpongpun and Moe Thuzar described the ASEAN-brokered solution to the deadlock between the government of Myanmar and the international humanitarian community as "ASEAN's defining moment".<sup>154</sup> Hence, managing disaster response can be important tests not just for national governments, but also for regional organizations.<sup>155</sup> ASEAN developed the Post-Nargis Joint Assessment and Post-Nargis Recovery and Preparedness Plan, key documents utilizing innovative methodology that guided the response. However, Cyclone Nargis exposed needs in ASEAN human resources capacity in disaster response, leading the World Bank, the UN Development Programme, and the Asian Disaster Preparedness Centre to provide experts to

148. *Compassion in Action*, *supra* note 127.

149. Matthew WEAVER, "Cyclone Nargis: The Relief Effort in Burma" *The Guardian* (7 May 2008), online: <http://www.theguardian.com/news/blog/2008/may/07/cyclonenargisinburmathere> .

150. "Burma Continues to Reject Help" *BBC News* (13 May 2008), online: <http://news.bbc.co.uk/2/hi/asia-pacific/7397617.stm> .

151. "France Angered by Burmese Delays" *BBC News* (17 May 2008), online: <http://news.bbc.co.uk/2/hi/asia-pacific/7405998.stm> ; Seth MYDANS, "Myanmar Faces Pressure to Allow Major Aid Effort" *New York Times* (8 May 2008), online: [http://www.nytimes.com/2008/05/08/world/asia/08myanmar.html?\\_r=0](http://www.nytimes.com/2008/05/08/world/asia/08myanmar.html?_r=0) .

152. Catherine Shanahan RENSHAW, "Disasters, Despots, and Gun-boat Diplomacy" in David D. CARON, Michael J. KELLY, and Anastasia TELESETSKY, eds., *The International Law of Disaster Relief* (New York: Cambridge University Press, 2014), 164 at 177.

153. Collins, *supra* note 19 at 138; Andrew SELTH, "Even Paranoids Have Enemies: Cyclone Nargis and Myanmar's Fears of Invasion" (2008) 30 *Contemporary Southeast Asian Studies* 379.

154. Pavin CHACHAVALPONGPUN and Moe THUZAR, *Myanmar: Life after Nargis* (Singapore: Institute of Southeast Asian Studies, 2009) at 74.

155. There are similarities with the 2015 earthquake in Nepal being regarded as potentially rescuing the South Asian Association for Regional Cooperation from irrelevance: Chanakya, "SAARC's Resurrection May Lie in Nepal's Tragedy" *Hindustan Times* (2 May 2015), online: <http://www.hindustantimes.com/columns/saarc-s-resurrection-may-lie-in-the-nepal-tragedy/story-gnp6iej51O-boAfxE17VPtL.html> .

supplement ASEAN's support for the Tripartite Core Group.<sup>156</sup> These needs were the result of ASEAN Member States' reluctance to empower the regional organization at the expense of their own national authority. It was not until Nargis that ASEAN Member States decided to increase the disaster management capacity of the ASEAN Secretariat.<sup>157</sup> Further, the role played by Secretary-General Pitsuwan could be regarded as exceptional due to his personal qualities as "a politician and an active member of civil society", not likely to be replicated by subsequent Secretaries-General who tend to be professional civil servants.<sup>158</sup> Finally, there are grounds for scepticism regarding ASEAN's role in future disasters due to its lack of financial capacity.<sup>159</sup> With Nargis, ASEAN reached the height of its influence in disaster response to date, despite AADMER not yet having entered into force. The next case-study considers ASEAN's role in response to another mega-disaster that occurred after AADMER had entered into force.

### B. *Typhoon Haiyan/Yolanda: the Philippines 2013*

Typhoon Haiyan struck the central Philippines on 8 November 2013. The Philippines usually experiences around twenty typhoons per year, half of which make landfall.<sup>160</sup> The impact of climate change is felt through the heavier rainfall that accompanies the storms as well as a change in the storms' paths, affecting communities with little experience of tropical storms.<sup>161</sup> Wreaking destruction described by an international aid worker as "worse than hell",<sup>162</sup> Haiyan was the strongest ever tropical cyclone to make landfall, with the destructive power of its winds leading to calls to expand the Saffir-Simpson hurricane windscale to include a new Category 6.<sup>163</sup> It affected twice as many people as Cyclone Nargis and six times as many as the 2004 Indian Ocean tsunami.<sup>164</sup> The tsunami-like storm surge of up to six metres accompanying Haiyan caused most of the deaths, which totalled almost 8,000, and affected fourteen million people.<sup>165</sup> Haiyan also caused landslides, flash floods, and damage to agriculture and infrastructure, resulting in over US\$142 million in losses.<sup>166</sup> Around one million

156. Collins, *supra* note 19.

157. *Ibid.*, at 144.

158. Julio Santiago AMADOR III, "Community-building at the Time of Nargis: The ASEAN Response" (2009) 28 *Journal of Current Southeast Asian Affairs* 3 at 17. See further "Deployment of ASEAN Emergency Rapid Assessment Team to Assess 2011 Floods on the Basis of Agreement Between the Thai Ministry of Foreign Affairs and the ASEAN Secretary-General", Barber, *supra* note 65 at 18.

159. Loevy, *supra* note 142 at 91.

160. Ralph S. BROWER, Francisco A. MAGNO, and Janet DILLING, "Evolving and Implementing a New Disaster Management Paradigm: The Case of the Philippines" in Naim KAPUCU and Kuotsai Tom LIOU, eds., *Disaster and Development: Examining Global Issues and Cases* (Cham: Springer, 2014), 289 at 292.

161. Barber, *supra* note 61 at 6.

162. "Typhoon Haiyan: Worse than Hell" *The Economist* (16 November 2013), online: The Economist <<http://www.economist.com/news/asia/21589916-one-strongest-storms-ever-recorded-has-devastated-parts-philippines-and-relief>> [*Worse than Hell*].

163. International Institute for Strategic Studies, "Asian Disaster Relief: Lessons of Haiyan" (2014) 2 *Strategic Comments* iii [*Lessons of Haiyan*].

164. *The Perfect Storm*, *supra* note 120.

165. Fan and Krebs, *supra* note 31 at 11.

166. *The Perfect Storm*, *supra* note 120 at 3.

people were evacuated, but some of those evacuated died when a five-metre-high storm surge swamped a sports stadium used as an evacuation centre in Tacloban, the capital of Leyte province.<sup>167</sup> While it was relatively simple to fly aid into tourist centres like Cebu, it proved more difficult to deliver aid to harder hit locations.<sup>168</sup>

Legal and policy frameworks have been identified as a factor that potentially increases or reduces disaster risk. Thus, analysis of the domestic law of the Philippines is relevant to an assessment of the response to Typhoon Haiyan. When Typhoon Haiyan struck, the Philippines already had in place its Disaster Risk Reduction and Management Act of 2010, adopted in June 2011 following over a decade of failed attempts to reform and update its disaster law.<sup>169</sup> The legislation resulted from “a consortium of civil society groups, business leaders, and university experts [who] enlisted the help of legislative champions”.<sup>170</sup> The Philippines National Disaster Risk Reduction and Management Council, within the Department of Armed Forces, includes four seats for civil society groups and one each for the Philippines Red Cross and the private sector.<sup>171</sup> Hence, the law integrates community participation and resilience in line with the Hyogo Framework for Action. Following Haiyan, the Philippines customs received and cleared almost ten times the normal volume of goods from flights and shipments.<sup>172</sup> Challenges remain and the legislation has been reviewed in the light of Haiyan.<sup>173</sup> Local government was overwhelmed and there were problems co-ordinating the response and recovery.<sup>174</sup> A UK evaluation report identified lack of priority accorded to gender-based violence in the aftermath of the Typhoon as a concern.<sup>175</sup> A potential source of tension arises from the role of the military in disaster response, given that peer and community educators may be more effective than military commanders in conveying messages about disaster preparedness.<sup>176</sup>

In this context, what role did ASEAN play in the response to Haiyan? ASEAN was active on a number of levels during Haiyan. However, given domestic capability and the Philippines’ openness to international humanitarian assistance, its role was much smaller than in the response to Cyclone Nargis. All other ASEAN Member States provided aid to the Philippines. Malaysia, Thailand, and Brunei used the AHA Centre

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167. *Worse than Hell*, *supra* note 162.

168. *Ibid.*

169. Brower *et al.*, *supra* note 160 at 298.

170. *Ibid.*, at 290.

171. *Ibid.*, at 297.

172. Charles-Antoine HOFMANN, David FISHER, Mel SCHMIDT, and Joseph NOGRA, “Learning Review of the Cooperation Between the Government of the Philippines and Humanitarian Actors in Their Response to Typhoon Yolanda” (18 June 2014), online: DRD Initiative <<http://www.drdinitiative.org/v2/files/armadillo/media/DRDlearningreviewFINAL5Aug.pdf>> at 18.

173. Petz, *supra* note 27 at 24.

174. KOH Kheng-Lian and Rose-Liza EISMA OSORIO, “The Role of ASEAN in Disaster Management: Legal Frameworks and Case Study of Typhoon Haiyan/Yolanda” in KOH Kheng-Lian, Ilan KELMAN, Robert KIBUGI, and Rose-Liza EISMA OSORIO, eds., *Adaptation to Climate Change: ASEAN and Comparative Experiences* (Singapore: World Scientific Publishing Co Pte Ltd, 2016), 455 at 486.

175. Department for International Development, “What Works in Addressing Violence Against Women and Girls? Lessons Learned from Typhoon Haiyan: Workshop Report” (2015), online: <<https://www.gov.uk/government/publications/what-works-in-addressing-violence-against-women-and-girls>> .

176. Brower *et al.*, *supra* note 160 at 302–5.

to offer assistance to the Philippines, and Indonesia worked informally with the AHA Centre.<sup>177</sup> The AHA Centre's assistance included monitoring the storm, pre-positioning staff and equipment, deploying an Emergency Response Assessment Team to assist in needs assessment, seconding personnel to the Office of Civil Defence in Tacloban, sharing information, and facilitating the provision of relief goods from ASEAN Member States, as well as diplomacy to support reconstruction financing.<sup>178</sup> In addition to in-kind donations, personnel, and logistics, ASEAN cash donations to the Philippines amounted to less than US\$4.5 million out of US\$538 million funding for the Haiyan response.<sup>179</sup> However, the lack of clarity of the ASEAN response plan resulted in ASEAN Member States tending to channel aid bilaterally rather than through the AHA Centre.<sup>180</sup> In fact, ASEAN later acknowledged, in relation to the Emergency Operations Centre in the Haiyan response, that "there was a lack of clarity on who should lead the planning for the response ... there was no over-all planning or a strategic response plan".<sup>181</sup> The US and Japan provided significant amounts of aid, and China offered a hospital ship.<sup>182</sup> Foreign armed forces from twenty-one countries were also involved, and it was the largest OCHA civil-military co-ordination to date.<sup>183</sup> Yet "[n]either ASEAN nor ADMM Plus played a role in coordinating the response to Haiyan", despite ASEAN having conducted a Humanitarian Assistance in Disaster Relief military exercise four months earlier.<sup>184</sup> This raises the question: What value does ASEAN's response to disasters add to bilateral responses?

ASEAN's response to Haiyan might be summed up as too little, too late.<sup>185</sup> ASEAN has acknowledged its weaknesses in a frank and valuable "lessons learnt report". While the ASEAN telecommunications expert pre-deployed to Tacloban was key to restoring telecommunications in the wake of the typhoon, the small size of the Emergency Response Assessment Team (five members), inadequate preparation, and lack of self-sufficiency or a vehicle hampered its performance.<sup>186</sup> The AHA Centre had trained mostly government employees of national disaster management organizations and defence personnel whose states would not release them for deployment by ASEAN. The lessons learnt report identified as priorities the need to diversify the team's

177. *The Perfect Storm*, *supra* note 120 at 27–9, 5.

178. AHA Centre, *Annual Report 2013*, online: AHA Centre <<http://www.rcrc-resilience-southeastasia.org/wp-content/uploads/2016/02/AHA-Centre-Annual-Report-2013.pdf>> at 28.

179. UNOCHA, "Philippines: Typhoon Haiyan—Situation Report No 27" (26 December 2013), online: UNOCHA <<https://www.unhcr.org/hk/files/2014/20Emergency/Philippines/jan%208/OCHAPhilippinesTyphoonHaiyanSitrepNo27.27December2013.pdf>> at 2.

180. *The Perfect Storm*, *supra* note 120 at 52.

181. *Ibid.*, at 42.

182. *Lessons of Haiyan*, *supra* note 163 at iv.

183. Hofmann *et al.*, *supra* note 172 at 16.

184. *Lessons of Haiyan*, *supra* note 163 at iii.

185. Steven KEITHLEY, "ASEAN Slowly Gets Up to Speed on Haiyan" *The Diplomat* (23 November 2013), online: *The Diplomat* <<http://thediplomat.com/2013/11/asean-slowly-gets-up-to-speed-on-haiyan/>>; Jeffrey WRIGHT, "Wherefore Art Thou ASEAN? Typhoon Haiyan's Teachable Moment" *The Internationalist* (20 November 2013), online: Council on Foreign Relations <<http://blogs.cfr.org/patrick/2013/11/18/wherefore-art-thou-asean-typhoon-haiyans-teachable-moment/>>.

186. This compares with NGOs that sent twenty to fifty staff each, and UNOCHA that deployed 150–170 staff at a time: *The Perfect Storm*, *supra* note 120 at 35–6.

membership by training civil society organizations, the Red Cross, and the private sector, and to increase the length of deployment from ten–fourteen days to one–three months.<sup>187</sup> ASEAN Secretary-General Le Luong Minh, in his role as Humanitarian Assistance Coordinator, visited the Philippines to deliver the first aid from the AHA Centre (rice and bottled water) eleven days after the typhoon hit.<sup>188</sup> The US\$10,000 limit on spending by the AHA Centre’s Executive Director, pitifully inadequate in the face of the devastation wrought by Haiyan, is one of several issues earmarked for review in the light of ASEAN’s recognition that unprecedented disasters represent the “new normal”, along with the need to prepare for “multiple, simultaneous emergencies”.<sup>189</sup>

ASEAN is still searching for its “niche in the humanitarian space”.<sup>190</sup> A defence of ASEAN and the AHA Centre would be that they:

were not intended to comprise a traditional aid agency, involved in distributing assistance on the ground. Instead, ASEAN’s humanitarian institutions are intended to provide information and, as appropriate, support the government of the affected ASEAN and humanitarian action where it is requested and able to do so.<sup>191</sup>

Assuming that most aid will probably continue to originate from outside ASEAN, what is the relevance of AADMER? In ASEAN documents, AADMER is described as the “regional policy backbone”,<sup>192</sup> a “common platform” for ASEAN disaster response,<sup>193</sup> and a “robust policy framework”.<sup>194</sup> Curiously, from an international lawyer’s perspective, ASEAN does not refer to AADMER as binding international law, despite its recognition as a model regional disaster treaty outside the region. The concept of ASEAN solidarity was more prominent in ASEAN analysis of the response to Haiyan than examining the extent to which the provisions of AADMER were implemented.<sup>195</sup> Further, AADMER accords primacy to the affected state whose consent to international assistance is required, in contrast with the general incapacity assumed in the international humanitarian system. AADMER does not add any regional standard or obligations to domestic law on issuing an appeal for assistance following a disaster. In the initial stand-off between the Myanmar government and the Assisting Entities seeking to provide disaster assistance following Nargis, it was the politics of a treaty commitment, rather than the actual text of AADMER, that contributed to breaking the deadlock.

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187. *Ibid.*, at 5, 38.

188. *Ibid.*, at 62, 19.

189. *Ibid.*, at 64, 10.

190. *AADMER Work Programme 2016–2020*, *supra* note 25 at 73.

191. Steven A. ZYCK, Lilianne FAN, and Clare PRICE, “ASEAN and Humanitarian Action: Progress and Potential—Jakarta Expert Roundtable” (2014), online: Humanitarian Policy Group and Center for Strategic and International Studies <<http://www.odi.org/sites/odi.org.uk/files/odi-assets/events-documents/5081.pdf>> at 3.

192. *AADMER Work Programme 2016–2020*, *supra* note 25 at 108.

193. *The Perfect Storm*, *supra* note 120 at 12.

194. *AADMER Work Programme 2016–2020*, *supra* note 25 at 61.

195. *The Perfect Storm*, *supra* note 120 at 11.

#### IV. CONCLUSION

This paper aimed to examine the extent to which AADMER merited its accolades as a progressive and comprehensive regional disaster treaty. A close reading of the text of AADMER reveals that it is comprehensive in its definition of disasters, its references to the participation of Assisting Entities, and its coverage of the phases of disaster management, which include risk reduction, preparedness, disaster response, and, briefly, recovery. However, many of the obligations under AADMER are subject to the qualification “jointly or individually” or “as appropriate”, leaving much to the discretion of State Parties. There is a risk that the regional treaty imposes few new obligations, as it does not specify regional standards that individual states need to meet. The treaty is also silent on vulnerable groups, potential indicators of vulnerability, or any obligations on government to include assessments of vulnerability in risk reduction or disaster response. While AADMER includes cursory references to the role of the military in disaster response, analysis of the response to Haiyan has led to a Joint Task Force on Humanitarian Assistance in Disaster Response, and a Joint Disaster Response Plan is currently under development.<sup>196</sup>

The second question posed was the extent to which AADMER’s perceived success is due to its status as a treaty or to its policy and political context. Paradoxically, in the case-studies selected, it appears that “the spirit” of AADMER had greater force in Myanmar in 2008 before it entered into force than as the letter of the law in the Philippines in 2013. ASEAN saw Myanmar’s agreement to its proposal to lead the Nargis response as “a defining moment ... [when ASEAN was] able to ... affirm [its] relevance as a regional organization”.<sup>197</sup> Fan and Krebs argue that:

the unprecedented role ASEAN played in Myanmar [in relation to Nargis] was possible only at that time, and in that place; in the Philippines [in the Yolanda response], there simply was no similar mediatory role for the Association to play. ASEAN’s strength there lay in its role as coordinator as evinced by its support to the Philippines NDRRMC [National Disaster Risk Reduction and Management Council].<sup>198</sup>

Fan and Krebs refer to ASEAN generally, rather than specifically to AADMER. Considering that AADMER had not yet entered into force, the Myanmar government’s response to Nargis was exceptional, warranting the politics of high diplomacy rather than an offer of technical assistance. Yet, the fact that AADMER was there in the background, waiting to enter into force generally, and that Myanmar had already ratified it, were arguments in favour of allowing international humanitarian access to affected people. As discussed, the fact that the Philippines’ disaster laws are considered world standard meant that AADMER added little, if anything, by way of standards or obligations. ASEAN’s analysis of its response to Haiyan focused on practical issues, and referred to AADMER as a “common platform” rather than a legal framework or

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196. AADMER Work Programme 2016–2020, *supra* note 25 at 62.

197. Adelina Kamal, who led the ASEAN Emergency Response and Assessment Team, cited in *Compassion in Action*, *supra* note 127 at 29.

198. Fan and Krebs, *supra* note 31 at 13.

source of obligations. ASEAN's main role was that of a facilitator, even though most ASEAN Member States provided aid bilaterally rather than through the AHA Centre.

Examining case-studies of smaller-scale disasters would allow further evaluation of AADMER's usefulness, although such smaller-scale disasters are less likely to prompt a regional response, as governments may be able to cope on their own. A better test would be whether AADMER were invoked in relation to an industrial or technological disaster or health emergency, the handling of which was perceived as "political". The selected case-studies indicate that AADMER is interpreted and implemented in the context of the Southeast Asian regional order and the ASEAN emphasis on co-operation and non-interference. Thus, it is very difficult to distinguish between "hard law" and political and institutional context in this case, suggesting that the fact that a regional disaster treaty exists is more important than the substantive content of the treaty.<sup>199</sup>

Finally, this paper sought to examine the role of non-state actors in implementing and institutionalizing AADMER. The APG is an innovative formation that has the potential to broaden and deepen the understanding of disaster risk reduction and preparedness throughout ASEAN. The ASEAN Vision 2025's focus on partnership emphasizes the role that local civil society organizations play, and notes that the APG aims to expand its membership to include local organizations, which have the advantage of speaking local languages and the ability to expand local norms and cultures.<sup>200</sup> ASEAN is beginning to extend its approach to disaster management and risk reduction by calling for private-sector engagement in disaster risk financing and reduction. AADMER's implementation through non-state actors in civil society and the private sector has implications for ASEAN more broadly, particularly for the ASEAN Charter's aim of making ASEAN a more people-oriented and participatory community. More generally, it also has implications for the emerging international law of disasters.

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199. I am grateful to an anonymous reviewer for this point.

200. *ASEAN Vision 2025*, *supra* note 24 at para. 40.