



ASEAN AND CONFLICT MANAGEMENT: THE NEED FOR A HIGH COUNCIL

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This year the Association of Southeast Asian Nations (ASEAN) will formally establish the ASEAN Community, which is set to enhance regional community building among its member states. Ramses Amer makes the case that more than ever the formal establishment of the High Council of the Treaty of Amity and Cooperation in Southeast Asia (TAC) is essential if the Association is to enhance its conflict management mechanisms. Failure to do so will represent a continued shortcoming in the ASEAN framework for regional collaboration.

The year 2015 will be a landmark year for the Association of Southeast Asian Nations (ASEAN) and the Southeast Asian region. The ASEAN Community will be formally established, as will its three pillars: the ASEAN Political-Security Community (APSC), the ASEAN Economic Community (AEC), and the ASEAN Socio-Cultural Community (ASSC). The Community's establishment is set to enhance regional community building among its ten member states and serve the goal of deeper regional collaboration within the ASEAN framework. Of particular significance is the need to enhance conflict management between the ASEAN member states, relations among some of which are still beset by maritime and territorial disputes and lingering mistrust. In this regard, formal establishment of the High Council of the Treaty of Amity and Cooperation—a ministerial-level body—would serve to better manage and potentially resolve both current and future disputes between ASEAN member states. Until such a Council is created, question marks will continue to be asked of the ASEAN framework and its “community-building” efforts, especially regarding the relevance and efficacy of its mechanisms for regional conflict management.

ASEAN and Conflict Management

Conflict management is a priority issue for ASEAN. In fact, the desire to secure a peaceful and co-operative environment in Southeast Asia was the decisive contributing factor to the creation of ASEAN in 1967. Thus, ASEAN was from the very outset an Association for conflict management. The Treaty of Amity and Cooperation (TAC),

adopted on February 24, 1976, remains the cornerstone of the ASEAN approach to conflict management—as displayed in the Charter of ASEAN adopted on September 20, 2007, and as once again emphasized more recently in the Chairman's Statement of the 26th ASEAN Summit of April 27, 2015.

The principles enshrined in the TAC include four main factors for managing inter-state relations: non-interference in the internal affairs of other countries, peaceful settlement of disputes, non-threat or use of force, and overall co-operation. Of particular significance is Article 14 of the TAC, which is devoted to the creation and envisaged role of a High Council. It is stipulated that the Council shall be made up of a representative at the ministerial-level from each of the signatories and its role should be to take “cognizance” of existing disputes or situations which could potentially threaten regional “peace and harmony.” The High Council was envisaged as “a continuing body,” which indicates that it should have been established already in 1976 when the TAC was signed.

Although the member states of ASEAN adopted the “Rules of Procedure of the High Council of the Treaty of Amity and Cooperation in Southeast Asia” on July 23, 2001, the High Council has yet to be established. This fact indicates that regional mechanisms for conflict management are—nearly half-a-century after the creation of ASEAN—still not the preferred option when member states fail to reach a bilateral agreement in a dispute situation. Rather, the states have preferred to bring a few cases to the International Court of Justice or, in other cases, disputes are left unsettled. This would appear to imply that there is still lingering mistrust among some of the member



states of ASEAN and their intentions.

High Time for a High Council

There is a need to enhance the relevance of the regional mechanisms for conflict management as developed through the ASEAN framework. Such relevance would be considerably enhanced if the member states of ASEAN would more actively seek to utilize the regional mechanisms for peacefully managing and settling disputes. Indeed, making regional mechanisms the preferred option—through formally establishing the High Council—would be a major boost for ASEAN’s efforts aiming at strengthening conflict management.

The fact that no member states have yet “activated” the High Council by bringing a dispute to it means that it has remained inactive for nearly 40 years. However, the fact of its inactivation should not preclude its establishment. In this regard, the Rules of Procedure of the High Council already ensure that it cannot be used against any of the member states; furthermore, that it can only directly arbitrate in a dispute by consent of the parties to the dispute. This should serve to allay any concerns among the member states over the powers of such a Council. In any case, the High Council would more realistically function, initially at least, on providing a ministerial-level entity promoting peaceful settlement of disputes among ASEAN members and later, with the consent of parties, mediating in dispute situations by recommending to the parties appropriate means of settlement.

In sum, the establishment of the High Council is a viable option and it would be in line with the provisions of the TAC. It would create a regional body to which member states could turn for assistance in managing and, longer term, possibly settling border disputes if negotiations between the parties to the disputes fail. Thus, the High Council could prove attractive as an alternative to the International Court of Justice. Indeed, as seen from the perspective of strengthening and deepening regional community building, when member states bring their disputes to international jurisprudence without first fully utilizing regional mechanisms and frameworks, this can be seen as weakening the relevance of the broader conflict management approach and in particular the dispute settlement framework. In this context, it is worth recalling that the “Declaration of ASEAN Concord II (Bali Concord II),” adopted on October 7, 2003, in connection with the 9th ASEAN Summit, stated that the High

Council “shall be the important component” in what was then termed the “ASEAN Security Community,” and that “it reflects ASEAN’s commitment to resolve all differences, disputes and conflicts peacefully.”

Conclusion

As both the APSC and the ASEAN Community will come into being in 2015, it would be an important symbolic step to establish the High Council to demonstrate the importance of enhanced conflict management within the context of the ASEAN Community. It would also display the continued commitment of the member states to the TAC and its principles and provisions. Failure to establish the High Council will be perceived as evidence of a continued shortcoming in the ASEAN framework for regional collaboration.

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