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## **Editorial**

CHRISTIAN WAWRINEC

*ASEAS Redaktion / ASEAS Editing Board*

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*In Anerkennung der internationalen Ausrichtung der Österreichischen Zeitschrift für Südostasienwissenschaften (ASEAS) werden in dieser vierten Ausgabe erstmals ausschließlich englischsprachige Beiträge gedruckt. Wir sind stolz, nur zwei Jahre nach der Gründung von ASEAS vermehrt auch ein globales Publikum anzusprechen, und wundern uns, ob das vermehrte Interesse australischer AutorInnen am ähnlich klingenden Namen unserer beiden Länder liegt. Was*

*Due to the truly international feedback and submissions to our Austrian Journal of South-East Asian Studies (ASEAS), this fourth issue will for the first time since the establishment of our journal consist of English language articles only. We are proud that within only two years we were able to address a global audience. At the same time we are amusingly curious whether the increase of submissions by Australian authors is due to the similar naming of both our*



auch immer der Grund dafür ist, das „A“ in ASEAS steht weiterhin für „Austrian“, und es wird uns auch in Zukunft ein Anliegen sein, weiter deutschsprachige Beiträge zu publizieren.

Das vorliegende Heft beinhaltet sowohl einige Vorträge, die am 19. und 20. Juni 2009 im Rahmen der vierten Wiener Südostasienkonferenz gehalten wurden, als auch Artikel, die uns auf den Call for Papers (Thema „Transnationale Krisen, Konfliktlösungen und nicht-traditionelle Sicherheitsbedrohungen in Südostasien“) hin zugesandt wurden.

Zunächst untersucht Ramses Amer (Stockholm University) die bewusst zurückhaltende Rolle der Vereinigung südostasiatischer Nationen (ASEAN) im Konfliktmanagement zwischen ihren Mitgliedstaaten. Dabei betrachtet er die Kernelemente des ASEAN-Konfliktmanagementmodells sowie dessen Auswirkungen auf zwischenstaatliche Streitigkeiten innerhalb Südostasiens.

Susanne Schmeier (Berlin Graduate School of Transnational Studies) verweist in ihrer Analyse der Mekong-Region auf die transnationale Dimension des Ressourcenmanagements der dortigen Flüsse. Sie erläutert, wie Flussbeckenorganisationen dabei mithelfen, Kooperationsstrukturen in diversen Politikfeldern aufzubauen und damit einen Beitrag zur

countries. The “A” in ASEAS still stands for “Austrian”, hence we look forward to revive our journal’s bilingual format in future issues.

This issue includes some of the presentations held during the fourth Viennese Conference on South-East Asian Studies on June 19 and 20, 2009, as well as articles submitted in response to our Call for Papers (Topic “Transnational crises, conflict resolution and non-traditional security threats in South-East Asia”).

Opening this issue, Ramses Amer (Stockholm University) examines the deliberately limited role of the Association of South-East Asian Nations (ASEAN) in the management of conflicts amongst its member-states. In doing so, he looks at the core elements of the ASEAN conflict management model and its impacts on (border) disputes within South-East Asia.

In her analysis of the Mekong region Susanne Schmeier (Berlin Graduate School of Transnational Studies) argues that resource management of international rivers need not always lead to rivalries and conflicts. Rather, as she shows, river basin organizations had a share not only in the establishment of cooperation structures in various policy fields, but also pushed forward regional

*Entwicklung der Region leisteten.*

*Der zweite Beitrag Ramses Amers, diesmal zusammen mit Nguyen Hong Thao (Vietnam National University) verfasst, analysiert beigelegte und fortdauernde Grenzstreitigkeiten Kambodschas, Laos und Vietnams sowie sich abbildende Trends in der Bearbeitung eben dieser Konflikte. Die beiden Autoren gehen dabei auch auf politische Herausforderungen ein, die einer Umsetzung rechtlicher Vereinbarungen zur Schlichtung noch ungelöster Konflikte im Wege stehen.*

*Oliver Pye (Universität Bonn) behandelt in seinem Beitrag die Palmölexpansion in Südostasien als multiple transnationale Krise. Seine Studie über die malaysischen Palmölproduzenten und globalen Kampagnenkoalitionen gegen die Agrotreibstoffpolitik der Europäischen Union machen die transnationalen Dimensionen der Palmölkrise verständlicher.*

*Malysias Sicherheitsgesetze und ihre Anwendung seit 9/11 stehen im Mittelpunkt von Andrew Humphreys (University of Wollongong) Artikel. Der staatliche Sicherheitsapparat Malaysias blieb seiner Analyse nach im Laufe des sogenannten „Krieg gegen den Terrorismus“ größtenteils unverändert. Westliche Regierungen kritisieren den Einsatz repressiver Gewalt gegen Oppositionelle*

*development.*

*In his second paper, Ramses Amer together with Nguyen Hong Thao (Vietnam National University) present settled and unsettled border disputes of Cambodia, Laos and Vietnam, as well as trends in managing these conflicts. Also, the two authors address the political challenges that come with the implementation of legal agreements in relation to these unsettled disputes.*

*Oliver Pye (Bonn University) deals with the palm oil expansion in South-East Asia as a multiple crisis. Based on his research on Malaysian palm oil producers and on global campaign coalitions against the agrofuel policies of the European Union, he shows the transnational dimensions of the palm oil crisis.*

*Malaysia's security legislation and its use since 9/11 are the focus of Andrew Humphrey's (University of Wollongong) contribution. He argues that Malaysia's internal security apparatus remained largely unchanged during the so-called "War on Terror". However, after the 2001 terrorist attacks in the USA, Western governments notably reduced their criticisms of the repressive use of force against opposition elements inside Malaysia.*

*Ming Hwa Ting (University of*

nunmehr jedoch weniger als vor den Terroranschlägen in den USA im Jahr 2001.

Ming Hwa Ting (University of Adelaide) betrachtet Singapurs und Indiens Verhältnis zueinander und stellt dabei fest, dass sich die bilateralen Beziehungen seit dem Ende des Kalten Krieges nicht nur im wirtschaftlichen Bereich, sondern auch in der politischen, militärischen, sozialen und kulturellen Sphäre rapide verbesserten. Aus dem diplomatisch distanzierten Verhältnis beider Länder während des Kalten Krieges wurde eine enge zwischenstaatliche Beziehung, die jener während der Kolonialzeit nicht unähnlich scheint.

Param Cumaraswamy spricht in dem von Christian Bothe (ASEAS) geführten Interview über die Stärkung der Menschenrechte in Südostasien und seine eigene Rolle als Mitglied Malaysias in der regionalen Arbeitsgruppe zur Entwicklung eines ASEAN-Menschenrechtsmechanismus. Inzwischen aus der Taufe gehoben, kommen einem solchen südostasiatischen Menschenrechtsgremium hohe Erwartungen entgegen, die angesichts seines beschränkten Mandats nun skeptisch überprüft werden müssen.

Als Premiere bieten wir in dieser Ausgabe einen Beitrag in der Rubrik „Südostasien sehen“. Alexander Trupp (Universität Wien) und Kosita Butra-

Adelaide) examines the Singapore-India relations and observes that since the end of the Cold War, bilateral contacts (and cooperation) improved significantly not only in the economic field, but also in the political, military, social, and cultural sphere. What during the Cold War was diplomatically distant became a very close bond – and steadily similar to the relationship the two countries had during the colonial period.

Param Cumaraswamy, in his interview with Christian Bothe (ASEAS), talks about strengthening human rights in South-East Asia and his own role as a Malaysian member of the Regional Working Group for an ASEAN Human Rights Mechanism. His interview displays hopes and expectations towards the newly founded and heavily criticized ASEAN Human Rights institution.

For the first time this ASEAS issue also features a contribution in our section “South-East Asia visually”. Alexander Trupp (University of Vienna) and Kosita Butratana (Suan Dusit Rajabhat University) present documentary photos as well as background information on Hans Manndorff’s ethnological field research in Northern Thailand (1961-65) as well as efforts to make his archive accessible to an interested audience.

As the deputy editor-in-chief let me

*tana (Suan Dusit Rajabhat University) präsentieren dabei Dokumentationsaufnahmen zu Hans Manndorffs ethnologischer Forschung in Nordthailand (1961-65) sowie Hintergrundinformationen zu seinem Fotoarchiv und Bemühungen, dieses einer interessierten Öffentlichkeit zugänglich zu machen.*

*Als stellvertretender Chefredakteur wünsche ich Ihnen viel Spaß bei der Lektüre der interessanten Beiträge und ermuntere Sie, zukünftig mit uns – in deutscher oder in englischer Sprache – zu publizieren.*

*Wien, Dezember 2009*

*encourage you to publish with us in the future – both German and English submissions are welcome. Enjoy reading our present issue!*

*Vienna, December 2009*

 **Aktuelle Südostasienforschung / Current Research on South-East Asia****The Association of Southeast Asian Nations' (ASEAN)  
Conflict Management Approach Revisited:  
Will the Charter Reinforce ASEAN's Role?**RAMSES AMER<sup>1</sup>*Stockholm University, Sweden**ASEAS - Österreichische Zeitschrift für Südostasienwissenschaften / Austrian Journal of South-East Asian Studies  
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*The main aim of this study is to assess the role played by the Association of Southeast Asian Nations (ASEAN) in the management and resolution of disputes between its member-states in the South-East Asian region. The ASEAN approach to conflict management is outlined and the context in which it has developed is presented. The achievements and challenges that ASEAN has faced and is still facing in the field of conflict management are identified. ASEAN's contribution to conflict management in the South-East Asian region is recognized, although the nature of the contribution and the role played by the Association is debated. ASEAN's model and approach to conflict and dispute management and the possible impact of the approach on the conflict situation in the South-East Asian region are examined from three main dimensions: (1) the core elements of the approach; (2) the role played by the Association in terms of conflict management; (3) the possible impact of the ASEAN approach in managing disputes among its member-states. The possible impact of recent developments within ASEAN – the ASEAN Charter in particular – is analyzed in assessing the role that the Association can play in promoting conflict management.*

**Keywords:** *Association of Southeast Asian Nations, Conflict Management Mechanisms, ASEAN Charter, Treaty of Amity and Cooperation (TAC)*

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*Hauptziel dieser Studie ist, zu untersuchen, welche Rolle die Vereinigung südostasiatischer Nationen (ASEAN) im Management und in der Bewältigung von Konflikten zwischen ihren Mitgliedstaaten spielt. ASEANs Verständnis von Konfliktmanagement und Streitschlichtung wird dargestellt – ebenso der Hintergrund, vor dem es entstand. Weiters werden ASEANs Errungenschaften wie Herausforderungen im Konfliktmanagement behandelt. Im Allgemeinen sind ASEANs Erfolge in Südostasien anerkannt. ASEANs Beitrag und ihre Rolle dabei wird jedoch debattiert. In diesem Artikel wird das ASEAN-Modell für Konfliktmanagement und Streitschlichtung sowie die möglichen Auswirkungen auf Konfliktsituationen in Südostasien aus drei Blickwinkeln analysiert: (1) Kernelemente des ASEAN-Ansatzes; (2) die Rolle ASEANs im Management von Konflikten zwischen Mitgliedstaaten; (3) mögliche Implikationen des ASEAN-Modells auf regionale Konflikte. Potenzielle Auswirkungen jüngerer Entwicklungen innerhalb ASEANs, vor allem der ASEAN Charter, werden analysiert, um die Rolle, die ASEAN im regionalen Konfliktmanagement spielen kann, besser abschätzen zu können.*

**Schagworte:** *Vereinigung südostasiatischer Nationen, Konfliktmanagement-Mechanismen, ASEAN-Charter, Freundschafts- und Kooperationsabkommen (TAC)*

### ***Purpose and structure***

The main purpose of this study is to assess the role played by the Association of Southeast Asian Nations (ASEAN) in the management and resolution of disputes between its member-states in the South-East Asian region. The ASEAN approach to conflict management is outlined and the context in which it has developed is presented. The achievements and challenges that ASEAN has faced and is still facing in the field of conflict management are identified. ASEAN's model and approach to conflict and dispute management and the possible impact of the approach on the conflict situation in the South-East Asian region are examined from three main dimensions: first, the core elements of the approach, second, the role played by the Association in terms of conflict management, and, third, the possible impact of the ASEAN approach in managing disputes among its member-states. The possible impact of recent developments within ASEAN – the ASEAN Charter in particular – is analysed in assessing the role that the Association can play in promoting conflict management.

The study is structured in the following way. First, the mechanisms of the ASEAN approach for conflict management are outlined including the ASEAN Charter. Second, the role of ASEAN, the attitude of member-states and the degree of success of ASEAN are outlined. Third, some concluding remarks are outlined relating to ASEAN and conflict management.

### ***Mechanisms for conflict management within ASEAN***

#### ***Introduction***

The mechanisms for conflict management are drawn from seven key ASEAN documents: The 'ASEAN Declaration' (Bangkok Declaration), the 'Declaration of ASEAN Concord', the 'Treaty of Amity and Cooperation' (TAC), the 'Rules of Procedure of the High Council of the Treaty of Amity and Cooperation in Southeast Asia'; the 'Declaration of ASEAN Concord II' (Bali Concord II), the 'ASEAN Security Community Plan of Action', and the 'Charter of the Association of Southeast Asian Nations' (ASEAN Charter). These key documents are examined in chronological order based on the dates of adoption by ASEAN.

#### ***The ASEAN Declaration***

The ASEAN Declaration, adopted on August 8, 1967, spells out the overall goals and aims of ASEAN and set the stage for a process aiming at defining the way in which the Association should function and the mechanisms by which the goals and aims of the Association should be achieved. The references to conflict management in the Declaration are general in character as can be seen from the expressed desire to "establish a firm foundation for common action to promote regional cooperation in South-East Asia in the spirit of equality and partnership and thereby contribute towards peace, progress and prosperity in the region" (ASEAN Declaration).

Also in the part relating to the aims and purposes of the Association the paragraph dealing specifically with the promotion of 'regional peace' is general rather than specific in its wording, as can be seen in the following: "To promote regional peace and stability through abiding respect for justice and the rule of law in relationship

among countries of the region and adherence to the principles of the United Nations Charter” (ASEAN Declaration).

### ***The Declaration of ASEAN Concord***

The evolution that followed during the so-called ‘formative years’<sup>2</sup>; that is 1967 to 1976, led to the signing of the Declaration of ASEAN Concord on February 24, 1976, in connection with the First Summit Meeting of ASEAN held in Bali.

The Declaration of ASEAN Concord relates to the member-states of ASEAN. The Declaration of ASEAN Concord contains both general principles relating to the overall goals of the Association and principles relating to the specific goal of managing disputes and expanding co-operation among the member-states. One of the stated overall objectives is the ambition to establish a Zone of Peace, Freedom and Neutrality (ZOPFAN) in South-East Asia.<sup>3</sup> Emphasis is also put on the respect for the principles of “self-determination, sovereign equality and non-interference in the internal affairs of nations” (ASEAN Concord 1).

### ***The Treaty of Amity and Cooperation (TAC)***

The TAC was also adopted on February 24, 1976, in Bali. It provides specific guidelines in the field of conflict management, particularly so in relation to the peaceful settlement of disputes. According to Article 18 the TAC “shall be open for accession by other States in Southeast Asia”; that is in addition to the five founding members of ASEAN, which are Indonesia, Malaysia, the Philippines, Singapore, and Thailand. In Chapter I, dealing with ‘Purpose and Principles’, Article 2 outlines the fundamental principles that should guide the relations between the signatories to the Treaty. The principles are:

- a. *Mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations;*

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<sup>2</sup> Askandar argues that the First Summit Meeting marked the end of the ‘formative stage’ of ASEAN regionalism and that the signing of the Declaration of ASEAN Concord and the TAC marked the beginning of the ‘second phase’ (Askandar, 1994, p. 68).

<sup>3</sup> The ASEAN member-states adopted the Kuala Lumpur Declaration on November 27, 1971. It called for the creation of a ZOPFAN in South-East Asia. The Declaration of ZOPFAN states ASEAN’s peaceful intentions and its commitment to build regional resilience free from interference from external powers (Zone of Peace).

- b. *The right of every State to lead its national existence free from external interference, subversion of coercion;*
- c. *Non-interference in the internal affairs of one another;*
- d. *Settlement of differences or disputes by peaceful means;*
- e. *Renunciation of the threat or use of force;*
- f. *Effective co-operation among themselves (TAC).*

The principles include three main factors for managing inter-state relations; non-interference in the internal affairs of other countries, peaceful settlement of disputes, and, overall co-operation.

In Chapter III, dealing with 'Co-operation', the areas in which mutual co-operation can be established and expanded are outlined and the linkages between co-operation, peaceful relations and non-interference are displayed. The latter is most evidently shown in Article 12, which states that, the signatories:

*in their efforts to achieve regional prosperity and security, shall endeavour to cooperate in all fields for the promotion of regional resilience, based on the principles of self-confidence, self-reliance, mutual respect, co-operation and solidarity which will constitute the foundation for a strong and viable community of nations in Southeast Asia (TAC).*

In Chapter IV, devoted to 'Pacific Settlement of Disputes', Article 13 outlines the way in which the signatories should behave in situations in which there is a risk that disputes may arise or have arisen. It stipulates that the signatories "shall have the determination and good faith to prevent disputes from arising. In case disputes on matters directly affecting them shall refrain from the threat or use of force and shall at all times settle such disputes among themselves through friendly negotiations" (TAC).

Article 14 is devoted to the creation and envisaged role of a 'High Council'. The Council shall be made up of a representative at the ministerial-level from each of the signatories. The role of the Council should be to take "cognisance" of existing disputes or situation, which could potentially threaten regional "peace and harmony" (TAC). The High Council is envisaged as "a continuing body", i.e. it should have been established in 1976.

Article 15 deals with the mediating role of the Council, a role that it can assume in the event that no solution to a dispute is reached through 'direct' negotiation between the parties to the dispute. The Council can assume the role as mediator by recommending to the parties to a dispute appropriate means of settlement; i.e. good offices, mediation, inquiry, or conciliation. It can also 'constitute itself into a

committee' of mediation, inquiry or conciliation (TAC).

Article 16 displays some limitations to the mediating functions of the Council by stating that the provisions of Articles 14 and 15 shall apply to a dispute only if the parties to the dispute agree to their 'application'. Literally this implies that only the High Council can decide on mediating in a dispute if the parties agree to the 'application' of the provisions in Articles 14 and 15, but that the parties to the dispute cannot bring the matter to the High Council. However, among some officials and researchers in the South-East Asian region another interpretation has been put forward, namely that the High Council can only assume role of mediator in a dispute if the parties involved agree on bringing it to the Council.<sup>4</sup> Article 16 also states that signatories who are not parties to such a dispute can offer assistance to settle it and the parties to the dispute should be "well disposed towards such offers" (TAC).

### ***The Rules of Procedure of the High Council***

On July 23, 2001, in connection with the 34<sup>th</sup> ASEAN Ministerial Meeting (AMM) held in Hanoi, the member-states of ASEAN adopted the Rules of Procedure of the High Council of the Treaty of Amity and Cooperation in Southeast Asia. The rules of procedure consist of ten 'Parts' encompassing 25 'Rules' (Rules of Procedure). In the following the most relevant provisions will be outlined with a focus on the dispute settlement procedure.

In Part I, 'Purpose', Rule 1, it is stated that in the "event of" a conflict between any provision of the rules of procedure and a provision of the TAC the latter should prevail (Rules of Procedure). In Part III, 'Composition', Rule 3, Paragraph a, it is stated that the High Council shall comprise one representative at ministerial level from each of the "High Contracting Parties" that are South-East Asia countries. According to Rule 5 there shall be a Chairperson of the High Council. The Chairperson shall be the representative of the member-state that holds the Chair of the Standing Committee of ASEAN. Or "such other" representative of a member-state of ASEAN "as may be decided by the High Council in accordance with these rules" (Rules of Procedure).

In Part IV, 'Initiation of Dispute Settlement Procedure', Rule 6, Paragraph 1, it is

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<sup>4</sup> This can be exemplified by the fact that this interpretation was prevalent in the author's discussions with officials and researchers in Malaysia in August 1998.



stipulated that the High Council “may take cognisance over a dispute or a situation provided for in Articles 14 to 16 of the Treaty”, that is the TAC. In Paragraph 2 it is stated that the “dispute settlement procedure” of the Council “shall be invoked only by a High Contracting Party which is directly involved in the dispute in question”. According to Rule 7, Paragraph 1, a High Contracting Party seeking to invoke the dispute settlement procedures must do so by written communication through diplomatic channels to the Chairperson of the Council and to the other High Contracting Parties. Rule 8 stipulates that once such written communication has reached the Chairperson, the latter shall seek written confirmation from all other parties to the dispute that they “agree on the application of the High Council’s procedure as provided for in Article 16 of the Treaty”. Of crucial importance in this context is Rule 9 in which it is stipulated that: “Unless written confirmation has been received from all parties to the disputes in accordance with Rule 8, the High Council may not proceed further on the matter.” If the precondition set forward in Rule 9 is met then the High Council can proceed with the implementation of the dispute settlement procedure. If this is successful and the Council is to make a decision then Part VII – ‘Decision-making’, Rule 19, stipulates that the Council has to take all its decisions by consensus at “duly” convened meetings (Rules of Procedure).

***The Declaration of ASEAN Concord II (Bali Concord II)***

The Declaration ASEAN Concord II, adopted on October 7, 2003, in connection with the ninth ASEAN Summit held in Bali, displays the continuity in the development of collaboration within ASEAN. In its preamble part it is confirmed that the fundamental values and principles are still very much in evidence as displayed by the fact that it is stated that the member-states are: “Reaffirming the fundamental importance of adhering to the principle of non-interference and consensus in ASEAN Cooperation” (ASEAN Concord 2).

The pre-eminence of the TAC is also in evidence as displayed by the fact that the member-states are: “Reiterating that the Treaty of Amity and Cooperation in Southeast Asia (TAC) is an effective code of conduct for relations among governments and peoples” (ASEAN Concord 2). This is further emphasized in the part of the Declaration of ASEAN Concord II in which the ASEAN member-states issue ten

declarations. Declaration 5 states that TAC is “the key code of conduct governing relations between states and a diplomatic instrument for the promotion of peace and stability in the region”. Declaration 4 stresses the commitment of the ASEAN member-states to “resolve to settle long-standing disputes through peaceful means” (ASEAN Concord 2).

The Declaration of ASEAN Concord II also includes a part in which the member-states adopt a framework to achieve a: “dynamic, cohesive, resilient and integrated ASEAN community”. To achieve this overarching goal the Association will strive to create an ‘ASEAN Security Community’ (ASC), an ‘ASEAN Economic Community’ (AEC), and, an ‘ASEAN Socio-Cultural Community’ (ASSC) (ASEAN Concord 2).

In the field of conflict management the ASC is the most relevant to examine and it contains twelve points. Point 3 relates to the fact that ASEAN shall continue to promote regional solidarity and cooperation and in this context it is stated that “member countries shall exercise their rights to lead their national existence free from outside interference in the internal affairs.”<sup>5</sup> Point 4 also relates to this dimension but is more general and it states that

*The ASEAN Security Community shall abide by the UN Charter and other principles of international law and uphold ASEAN's principles of non-interference, consensus based decision-making, national and regional resilience, respect for national sovereignty, the renunciation of the threat or use of force, and peaceful settlement of differences and disputes (ASEAN Concord 2).*

Of interest is that Point 7 is devoted exclusively to the High Council and it is stated that “the High Council of the TAC shall be the important component in ASEAN Security Community since it reflects ASEAN’s commitment to resolve all differences, disputes and conflicts peacefully” (ASEAN Concord 2).

The Declaration also seeks to be innovative or at least forward looking in setting the stage for the further development of its conflict management mechanisms. This can evidently be seen in Point 12 that states that “ASEAN shall explore innovative ways to increase its security and establish modalities for the ASEAN Security Community which include, inter alia, the following elements: norms-setting, conflict prevention, approaches to conflict resolution, and post-conflict peace building” (ASEAN Concord 2).

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<sup>5</sup> Outside interference should be understood in the broad sense both by other member-states of ASEAN and other powers.

*The ASEAN Security Community Plan of Action*<sup>6</sup>

The process aiming at establishing the ASC was reinforced at the 10<sup>th</sup> ASEAN Summit held in Vientiane in late November 2004 when ASEAN adopted the ASEAN Security Community Plan of Action. This Plan outlines that the ASC should be based on “shared norms and rules of good conduct in inter-state relations; effective conflict prevention and resolution mechanisms; and post-conflict peace building activities.” It also clarifies that the ASC is to promote an “ASEAN-wide political security and cooperation in consonance with the ASEAN Vision 2020 rather than a defence pact, military alliance or a joint foreign policy.” The Plan also stresses that the ASC process shall be “progressive” and that it shall be guided by

*well-established principles of non-interference, consensus based decision-making, national and regional resilience, respect for the national sovereignty, the renunciation of the threat or the use of force, and peaceful settlement of differences and disputes which has served as the foundation of ASEAN cooperation (ASEAN Security).*

Thus, the Plan clearly displays a high degree of continuity and adherence to established principles for inter-state collaboration in ASEAN. It also states that ASEAN shall not only strengthen existing “initiatives” but also launch new ones and set “appropriate implementation frameworks” (ASEAN Security).

The Plan includes seven sections; I. Political Development, II. Shaping and Sharing of Norms, III. Conflict Prevention, IV. Conflict Resolution, V. Post-conflict Peace Building, VI. Implementing Mechanisms, and, VII. Areas of Activities.

In the section on shaping norms it is stated that the aim is to achieve a standard of “common adherence to norms of good conduct among the members of the ASEAN Community” and in any norm setting activity the following principles must be adhered to:

1. *Non-alignment,*
2. *Fostering of peace-oriented attitudes of ASEAN Member Countries;*
3. *Conflict Resolution through non-violent means;*
4. *Renunciation of nuclear weapons and other weapons of mass destruction and avoidance of arms race in Southeast Asia; and*
5. *Renunciation of the threat or the use of force (ASEAN Security).*

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<sup>6</sup> Unless otherwise stated all factual information in this section is derived from the text of ‘ASEAN Security Community Plan of Action’ (ASEAN Security) and ‘ANNEX for ASEAN Security Community Plan of Action’ (ASEAN Security Annex).

In the field of conflict prevention it is stated that the objectives of conflict prevention shall be:

1. *To strengthen confidence and trust within the Community;*
2. *To mitigate tensions and prevent disputes from arising between or among member countries as well as between member-countries and non-ASEAN countries; and*
3. *To prevent the escalation of existing disputes (ASEAN Security).*

In terms of conflict resolution the Plan stresses that disputes and conflicts involving ASEAN members shall be resolved in a “peaceful way”. Of great relevance in the context of regional mechanisms is the following:

*While continuing to use national, bilateral and international mechanisms, ASEAN Member Countries shall endeavour to use the existing regional dispute settlement mechanisms in the political and security areas and work towards innovative modalities including arrangements to maintain regional peace and security so as to better serve theirs as well as collective interests of all members for peace and security (ASEAN Security).*

In the field of post-conflict peace building the Plan states that the aim is to create conditions for sustainable peace in conflict affected areas and to prevent the re-emergence of conflicts. In the context of implementing mechanisms the primacy of the AMM in taking the necessary follow-up measures to implement the Plan of Action is emphasized. Finally, the areas of activities refer to the ‘Annex’ of the plan and that ASEAN shall “endeavour to work towards the implementation of the areas of activities” (ASEAN Security).

This Annex deserves some attention in relation to the areas highlighted above. In relation to shaping and sharing norms the following measures are identified: the strengthening of the “TAC regime”, working towards the development of an “ASEAN Charter” to reaffirm the goals and principles of ASEAN in inter-state relations, to resolve outstanding issues to ensure an early signing to the Protocol of the Southeast Asian Nuclear Weapon-Free Zone (SEANWFZ) Treaty by “Nuclear Weapon States”, to establish an “ASEAN Treaty on Mutual Legal Assistance (MAL) Agreement”, to establish an “ASEAN Extradition Treaty” – as envisaged in the ‘Declaration of ASEAN Concord’ of 1976, to ensure the implementation of the ‘Declaration on the Conduct of the parties in the South China Sea’ (DOC)<sup>7</sup>, and the establishment of an “ASEAN

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<sup>7</sup> The measures outlined are to establish an ‘ASEAN-China Working Group on the Implementation of the DOC’, to establish a review mechanism on the implementation of the DOC; and to work towards ‘the adoption of the code of

Convention on Counter Terrorism” (ASEAN Security Annex).

In relation to conflict prevention the following measures are outlined: strengthening confidence building measures including working towards convening an annual “ASEAN Defence Ministers Meeting (ADMM)”, strengthening preventive measures, strengthening the ASEAN Regional Forum (ARF) in support of the ASC, enhancing co-operation on non-traditional security issues, strengthening “efforts in maintaining respect for territorial integrity sovereignty and unity of member countries”, and, strengthening co-operation to address “threats and challenges” posed by separatism (ASEAN Security Annex).

In relation to conflict resolution the first measure relates to the strengthening disputes settlement mechanisms by:

- a. *The use of existing modes of pacific settlement of disputes such as negotiations and consultations, good offices, conciliation and mediation by all ASEAN Member Countries, or use of the High Council of the TAC as a preferred option; and*
- b. *If the High Council so requires, it may establish on an ad hoc basis an Experts Advisory Committee (EAC) or an Eminent Persons Group (EPG), which may extend assistance to the High Council to provide advice or counsel on the settlement of disputes upon request, in accordance with the Rules of Procedure of the High Council of TAC (ASEAN Security Annex).*

Furthermore, measures to develop regional co-operation for the maintenance of peace and stability are outlined as well as developing support initiatives such as the possible establishment of an “ASEAN Institute for Peace and Reconciliation” (ASEAN Security Annex).

In relation to post-conflict peace building, the Annex calls for strengthening of ASEAN humanitarian assistance, for the development of co-operation in post conflict reconstruction and rehabilitation, and, for the establishment of a mechanism to mobilise resources (ASEAN Security Annex).

### ***The Charter of the Association of Southeast Asian Nations***<sup>8</sup>

The Charter of the Association of Southeast Asian Nations (ASEAN Charter) – adopted on November 20, 2007, in Singapore and in force since December 2008 – reaffirms a

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Conduct in the South China Sea (COC)’ (ASEAN Security Annex).

<sup>8</sup> Unless otherwise stated all factual information in this section is derived from the text of ‘The Charter of the Association of Southeast Asian Nations’ (ASEAN Charter).



number of fundamental principles governing inter-state relations among its member-states. In paragraph 7 of the Preamble it is stated: “Respecting the fundamental importance of amity and cooperation, and the principles of sovereignty, equality, territorial integrity, non-interference, consensus and unity in diversity” (ASEAN Charter, p. 2).

The importance of peace is also evident as stated in paragraph 6 of the Preamble and also explicitly outlined in Article 1 ‘Purposes’ of Chapter I ‘Purposes and Principles’ which states that the first purpose of ASEAN is “to maintain and enhance peace, security and stability and further strengthen peace-oriented values in the region” (ASEAN Charter, p. 3).

In Article 2 ‘Principles’ both non-interference, peace, and dispute settlement are highlighted as displayed by the following principles that ASEAN member-states should “act in accordance with”:

- (a) *respect for the independence, sovereignty, equality, territorial integrity and national identity of all ASEAN Member States;*
- (b) *shared commitment and collective responsibility in enhancing regional peace, security and prosperity;*
- (c) *renunciation of aggression and the threat or use of force or other actions in any manner inconsistent with international law;*
- (d) *reliance of peaceful settlement of dispute;*
- (e) *non-interference in the internal affairs of ASEAN member-states;*
- (f) *respect for the right of every Member State to lead its national existence free from external interference, subversion and coercion*
- [...]
- (k) *abstention from participation in any policy or activity, including the use of its territory, pursued by any ASEAN Member State or non-ASEAN State or any non-State actor, which threatens the sovereignty, territorial integrity or political and economic stability of ASEAN Member States* (ASEAN Charter, pp. 5-6).

The non-interference dimension is extensive and explicit in these principles. The strict adherence to the provisions of the Charter of the United Nations relating to the prohibition of the “threat or use of force” in inter-state relations is also notable.

In the context of settlement of disputes Chapter VIII is of direct relevance as it deals with ‘Settlement of Disputes’ and it encompasses seven articles – 22 to 28. The chapter deals both with disputes relating to “specific ASEAN instruments” and with other kind of disputes. The ‘General Principles’ in Article 22 stresses that the ASEAN member-states “shall endeavour to resolve peacefully all disputes in a timely manner” (ASEAN Charter: 23). The role of ASEAN is to “maintain and establish dispute

settlement mechanisms in all fields of ASEAN Cooperation” (ASEAN Charter, p. 23). In Article 24 – ‘Dispute Settlement Mechanisms in Specific Instruments’ paragraph 2 states that “disputes which do not concern the interpretation or application of any ASEAN instrument shall be resolved peacefully in accordance with the Treaty of Amity and Cooperation in Southeast Asia and its rule of procedure” (ASEAN Charter, pp. 23-24).

In Article 24 the issue of “unresolved disputes” is addressed and it is stated that if a dispute is not “resolved” after the application of the “preceding provisions of this Chapter” then it “shall be referred to the ASEAN Summit, for its decision” (ASEAN Charter, p. 24).

In relation to the ASC it is stated in Preamble paragraph 11 of the ASEAN Charter that the Association is “committed to intensifying community building through enhanced regional cooperation and integration, in particular by establishing the ASEAN Community comprising the ASEAN Security Community” (ASEAN Charter, p. 2).<sup>9</sup>

### ***Conflict management in ASEAN***

The examination of the conflict management dimension in practice is divided into two parts the first relating to the establishment of the Association in the 1960s and the second relating to the conditions and developments in an expanded ASEAN, i.e. developments since the mid-1990s – Vietnam joined in 1995, Laos and Myanmar in 1997, and Cambodia in 1999.<sup>10</sup>

### ***Conflict management in the formation of ASEAN<sup>11</sup>***

The creation of ASEAN was the result of efforts by some South-East Asian states to establish an association that could provide the framework for successful management

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9 The ASEAN Charter refers to the “ASEAN Political-Security Community Council” in Paragraph 1, Article 9 ‘ASEAN Community Councils’, Chapter IV ‘Organs’ (ASEAN Charter, p. 12). In accordance with ASEAN Political-Security Community Blueprint the relationship between the ASC and the APSC is as follows: “The APSC Blueprint builds on the ASEAN Security Community Plan of Action.” It also states: “The ASEAN Security Community Plan of Action is a principled document, laying out the activities needed to realise the objectives of the” APSC (APSC, p. 1).

10 For details on the expansion process of ASEAN and the main factors behind it see Amer (1999, pp. 1031-1048).

11 For a more extensive analysis see Amer (1998, pp. 34-35).

of disputes among them. The creation of ASEAN can be seen as determined by the desire of its original member-states, i.e. Indonesia, Malaysia, the Philippines, Singapore, and Thailand,<sup>12</sup> to handle existing and potential inter-state disputes through peaceful measures and minimise the risk of militarized conflicts. There was in other words a desire to secure a peaceful and co-operative environment in the sub-region of South-East Asia and this was the decisively contributing factor to the creation of ASEAN. Thus, ASEAN was from the outset an Association for conflict management.

Empirical evidence lends support to this interpretation of the process of formation of ASEAN. During the first half of the 1960s deep conflicts erupted between Indonesia and Malaysia and between Malaysia and the Philippines, respectively. Furthermore, the then existing sub-regional organisations in South-East Asia – the Association of Southeast Asia (ASA) created in 1961 with the then Malaya, the Philippines and Thailand as members, and, Maphilindo created in 1963 with Malaysia, the Philippines and Indonesia as members – failed to contain the two conflict situations.

The limitations and shortcomings of ASA and Maphilindo clearly indicated that there was a need for a broader and more efficient association as a vehicle for regional co-operation and conflict management. To bring about a broader membership base in the new association all the major non-socialist countries in South-East Asia, except the Republic of Vietnam (South), established ASEAN together with Singapore in 1967.

### ***Conflict management in an expanded ASEAN<sup>13</sup>***

If conflict management within ASEAN is examined from the perspective of the prevention of inter-state military conflicts the track record of ASEAN is impressive since no dispute has led to such conflicts between the original member-states since 1967. In fact earlier research suggests a high degree of success in managing conflicts between the original member-states of ASEAN.<sup>14</sup> However, this does not imply that all the disputes have been resolved or that disputes in general do not occur.

On a less positive note in the midst of the Asian Financial Crisis in the late 1990s disputes among some of the ASEAN-members re-emerged.<sup>15</sup> One example was the

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12 Brunei Darussalam was admitted as the sixth member of ASEAN in 1983.

13 This section draws on the approach used in Amer (2003, pp. 111-131).

14 For a more detailed argumentation along this line see Amer (1998, p. 41).

15 For a broad overview of bilateral tensions within the Association with a focus on the original five members and

increased tension between Malaysia and Singapore in 1998 which centred over three main issues namely, water, Malaysian workers' savings and railway land, most of which have been in evidence for years without causing such a level of tension.<sup>16</sup> It seems likely that this heightened tension had its roots in national mobilisation in the face of the economic crisis on both sides rather than the issues as such.

The expansion of ASEAN membership in the 1990s brought additional disputes into the Association, thus further complicating the task of managing them. Among the disputes involving the new member-states, some have been settled while others remain unsettled. For example the level of tension relating to the unsettled border disputes varies considerably. In terms of conflict management strategy the member-states of ASEAN have displayed a preference for bilateral talks and dialogue on the disputes with other members of the Association.<sup>17</sup> However, in the 1990s Indonesia and Malaysia agreed to refer the sovereignty disputes over Pulau Sipadan and Pulau Ligitan to the International Court of Justice (ICJ) and Malaysia and Singapore did likewise with regard to the sovereignty dispute over Pedra Branca/Pulau Batu Puteh.<sup>18</sup> This displays a willingness among some ASEAN members to seek international arbitration when bilateral efforts to resolve disputes are not sufficient to bring about a solution to the disputes.

The bilateral efforts to manage and settle disputes can be facilitated and/or supported by the mechanisms for conflict management created by ASEAN. This relates to ASEAN's role as facilitator rather than as an active third-party mediator in the disputes. However, it does not preclude that the role of ASEAN itself can be enhanced as long as it is within the limits set by the ASEAN framework for conflict management. There is also a need for a political consensus among the parties to the disputes that ASEAN should play such a role.

In this context it is important to assess the possible role that the ASEAN framework for conflict management can play in the context of the disputes among its member-states. The question is how to enhance the framework's relevance in meeting the challenge of disputes. The first step in such a process would be to establish the

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Brunei Darussalam see Ganesan (1999).

<sup>16</sup> For a broad overview of relations between Malaysia and Singapore see Ganesan (1998, pp. 21-36).

<sup>17</sup> This is most clearly displayed in relation to the way in which border disputes among the member-states are managed. For studies on these issues see Amer (1998, pp. 33-56; 2000, pp. 30-60; 2001-2002, pp. 81-96).

<sup>18</sup> For details see Amer (1998, p. 43; 2000, pp. 43-44; 2001-2002, p. 85 and pp. 94-95).

High Council. This has proven to be a difficult task as it took 25 years after the adoption of the TAC before ASEAN managed to adopt the Rules of Procedure of the High Council of the Treaty of Amity and Cooperation in Southeast Asia in 2001. This is an important step towards the possible establishment of the High Council and it was the most important formal development relating to the ASEAN framework for conflict management since the expansion of membership in the 1990s. The importance of the High Council has been reaffirmed in the provisions aiming at establishing the ASC both in the Declaration of ASEAN Concord II and in the ASEAN Security Community Plan of Action. This plan calls on the ASEAN member-states to “endeavour to use existing regional dispute mechanisms and processes” and in its ‘Annex’ the member-states are urged to “use the High Council of the TAC as a preferred option” (ASEAN Security Annex).

The long period needed in order to reach an agreement on such rules indicates that the informal and formal political co-operation among the ASEAN-members could be enhanced in order to remove the lingering feelings of suspicion about the intentions of other members of the Association. Another factor that has to be taken into consideration is that a High Council created on the basis of the provisions of the TAC could have considerable power through decisions it could make relating to disputes. Making the High Council a decision-making body would increase the degree of institutionalisation within ASEAN and this would be a step away from the more informal approach preferred within the Association. An additional dimension is concerns about the possible multilateralization of bilateral disputes. This would not be an attractive scenario for member-states that are involved in disputes with other ASEAN-members. Or for states which would fear that the opposing party to a dispute has a higher degree of diplomatic influence or leverage within the Association.

Reverting back to the adoption of the rules of procedure for the High Council it can be said that the agreement on such rules indicate that the ASEAN member-states are committed to the establishment of the Council and to strengthen the regional conflict management mechanisms. This has been reaffirmed in the context of the provisions aiming at establishing the ASC contained in the Declaration of ASEAN Concord II and in the ASEAN Security Community Plan of Action.

By adopting the rules of procedure the ASEAN member-states have mitigated the earlier fears among some of them with regard to the potentially considerable powers

of the High Council and about the possible negative impact of the multilateralization of a dispute. As stipulated in the rules if any party to a dispute does not agree on the application of the High Council's procedure then it cannot proceed further on the matter. Thus, the High Council can only initiate dispute settlement procedure if all parties to a dispute agree to it. Furthermore, at least one party to a dispute must bring the matter to the High Council. Finally, since all the member-states of ASEAN are entitled to one representative in the High Council no decisions can be taken against the will of any given party to a dispute, that is any given member of the Association. In fact this amounts to a veto power of any member-state involved in a dispute. In the current context the de facto veto power of a party to a dispute will be retained. Even if ASEAN would adopt a model of consensus minus one principle in other fields it is highly unlikely that it will apply in the settlement on inter-state disputes.

Through the adoption of these rules of procedure ASEAN has brought about conducive conditions for the establishment and activation of the High Council. A Council to which the member-states could turn for assistance in resolving border disputes if negotiations between the parties to the disputes fail. Such a High Council, if established, may be attractive as an alternative to the ICJ. This should not be understood as an argument implying that parties to a dispute should not bring such disputes to the ICJ no matter the circumstances. On the contrary, the ICJ can still be used as an alternative if the bilateral and regional conflict management approaches and efforts fail to lead to settlement of a dispute that is acceptable to the parties to the dispute.

The adoption of the rules of procedure implies that the member-states of ASEAN have established regional mechanisms that can be utilized for managing disputes between the member-states if bilateral and/or multilateral efforts by the parties to a dispute are not adequate or sufficient to manage and/or resolve the dispute. Whether or not the High Council will be activated and be allowed to assume such a role will depend on the willingness and readiness of the member-states of ASEAN to bring disputed issues to such a regional body. The rules of procedure ensure that the Council cannot be used against a member-state. The latter was most probably a necessary condition in order to secure the adoption the rules and it is likely to be a key factor in enabling a future activation of the Council itself. Only when it will

be established will it be possible to assess how effectively and how often the High Council will be used by the ASEAN member-states in dealing with inter-state disputes affecting them.

In this context it is necessary to clarify that ASEAN is not intended to formally act as a third-party mediator in the disputes involving its member-states unless it is ascribed to do so or asked to do so by the member-states. Instead the Association is intended to serve as a vehicle to promote better relations among its member-states. This is done by creating conducive conditions for increased interaction through the overall co-operation carried out under the ASEAN-umbrella. Another role that ASEAN can play is through the formulation and adoption of mechanisms, which can be utilized by the member-states to manage their disputes. ASEAN can also establish principles for how its member-states should behave towards each other and this has been done through the Declaration of ASEAN Concord and the TAC of 1976 and the Declaration of ASEAN Concord II of 2003. These mechanisms are also in evidence in the ASEAN Security Plan of Action and in its Annex. Also of relevance is the strong emphasis put on dispute settlement in the ASEAN Charter.

This implies that in order to achieve peace and stability in the region the member-states of ASEAN must act in such a way as to peacefully manage the existing and potential inter-state disputes among them. Consequently, failure to do so can be attributed to the member-states involved in the disputes and not to the Association as such. Furthermore, ASEAN can urge its member-states to seek peaceful solutions to such disputes, but it cannot force them nor directly intervene to try and halt a dispute unless the parties to the dispute ask ASEAN to intervene in such a manner.

Both the Declaration of ASEAN Concord II with its provisions for the establishment of an ASC and the more detailed ASEAN Security Community Plan of Action reaffirm and expand the conflict management mechanisms available to the member-states of ASEAN in dealing with inter-state disputes. In doing so they serve both as vehicles for continuity and innovation in field of conflict management. However, as with other ASEAN agreements the efficiency of the ASC will depend on the policies and actions of the member-states. The same applies to the future utilisation of the regional mechanisms for conflict management.<sup>19</sup>

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<sup>19</sup> For an analysis of the ASC carried out after the adoption of the Declaration of ASEAN Concord II but before the adoption of ASEAN Security Community Plan of Action see Severino (2004).

The ASEAN Charter not only reiterates the continued relevance of prior documents but also puts strong emphasis on the peaceful settlement of disputes among the member-states of ASEAN.

### ***Concluding remarks***

As observed above, in order to properly understand and assess what ASEAN does and could possibly do in terms of conflict management it is necessary to clarify that ASEAN is not intended to formally act as a third-party mediator in the disputes involving its member-states unless it is ascribed to do so or asked to do so by the member-states. Instead the Association is intended to serve as a vehicle to promote better relations among its member-states. This is done by creating conducive conditions for increased interaction through the overall co-operation carried out under the ASEAN-umbrella. Another role that ASEAN can play is through the formulation and adoption of mechanisms, which can be utilized by the member-states to manage their disputes. ASEAN can also establish principles for how its member-states should behave towards each other and this has been done through the Declaration of ASEAN Concord, the TAC of 1976 as well as the Declaration of ASEAN Concord II of 2003 and through the ASEAN Charter adopted in 2007. The envisaged ASC will further reinforce both the principles and mechanisms and strive to develop new ones.

Another important aspect is that the principle of non-interference in the internal affairs of other states prevents member-states from intervening in internal conflicts in other member-states. This implies that only if a member-state requests assistance or the intervention of ASEAN, selected member-states and/or individual member-states, can they intervene. The nature of such intervention can differ depending on the request and on the role that ASEAN or the member-states are willing to provide. It can also be noted that the ASEAN approach to conflict management is geared towards the inter-state level and not the intra-state context. This can best be understood by taking into consideration the context in which ASEAN was established and the paramount importance for the then leaderships to safeguard their political survival in the face of major internal challenges.

This implies that in order to achieve peace and stability in South-East Asia the member-states of ASEAN must act in such a way as to peacefully manage the existing



and potential inter-state disputes among them. Consequently, failure to manage inter-state disputes among the member-states of ASEAN can be attributed to the states involved in the disputes and not to the Association as such. Furthermore, ASEAN can urge its member-states to seek peaceful solutions to such disputes, but it cannot force them nor directly intervene to try and halt a dispute unless the parties to the dispute ask ASEAN to intervene in such a manner. The same applies to conflict situations within member-states, i.e. ASEAN can only act if so requested by the member-state affected by the conflict.

The relevance of the regional mechanisms for conflict management as developed and formulated through collaboration within ASEAN would be considerably enhanced if the member-states of ASEAN would more actively seek to utilise them when managing and settling disputes. The fact that the High Council has yet to be activated and that no dispute has been brought to it indicates that regional mechanisms for dispute settlement are – after more than 40 years – not yet the preferred option when the member-states fail to reach a bilateral agreement in a dispute situation. To make regional mechanisms the preferred option would be a major boost to ASEAN efforts aiming to strengthen dispute settlement in the region and a key step towards establishing an ASC and also in establishing the ASEAN Community.

The above overview and analysis have displayed that ASEAN puts considerable efforts into promoting the peaceful settlement of disputes among its member-states. The approach of ASEAN has been to adopt principles and to create mechanisms that are available to the member-states when dealing with disputes. Thus far ASEAN has not assumed the role of directly intervening in such disputes.

What then can be said about the role of the ASEAN Charter? The role is not one of being innovative, but instead it reaffirms the importance of conflict management through peaceful settlement of disputes. It also reaffirms the established principles and mechanisms established in earlier ASEAN documents, in particular in the TAC. The continued importance of the latter is in evidence in the provisions of the ASEAN Charter. As noted above, the Charter puts strong emphasis on peaceful settlement of disputes among the ASEAN-members. Thus, the ASEAN Charter both reaffirms and assures continuity in the conflict management approach of the Association.

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**Aktuelle Südostasienforschung / Current Research on South-East Asia**

***Regional Cooperation Efforts in the Mekong River Basin:  
Mitigating river-related security threats and promoting  
regional development***

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*The development of international rivers is often perceived as leading to conflicts or even water wars. However, as the development of the Mekong River shows, cooperation has not only prevailed in the last decades, but River Basin Organizations (RBOs), established to mitigate river-related conflicts and/or develop the river basin, have also contributed to the emergence of more general cooperation structures, mainly by creating spill-over effects in other issue-areas, bringing cooperation to policy fields beyond the river itself. This article assesses the contribution of the Mekong River Commission (MRC) and the Greater Mekong Sub-Region (GMS) to the sustainable development of the Mekong Region as well as to the promotion of regional cooperation in mainland South-East Asia in general.*

**Keywords:** Environmental Security, Shared Natural Resources, International Rivers, Mekong River Basin, River Basin Organizations

*Die Entwicklung grenzüberschreitender Flüsse wird oft mit Konflikten oder gar Kriegen um Wasser assoziiert. Wie jedoch die Entwicklung im Mekong-Becken zeigt, waren die vergangenen Jahrzehnte nicht nur von Kooperation gezeichnet, sondern Flussbeckenorganisationen konnten außerdem dazu beitragen, weitreichendere Kooperationsstrukturen zu entwickeln, die sich auf andere Politikfelder ausdehnen. Dieser Artikel beschäftigt sich mit dem Beitrag der Mekong River Commission (MRC) und der Greater Mekong Sub-Region (GMS) zur nachhaltigen Entwicklung in der Mekong Region sowie zur Förderung allgemeiner regionaler Kooperation im Festländischen Südostasien.*

**Schlagworte:** Umweltsicherheit, gemeinsame natürliche Ressourcen, internationale Flüsse, Mekong-Einzugsgebiet, Flussbeckenorganisationen

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## 1. Introduction

While the political map of the world is structured according to nation states, the Earth is composed of ecosystems, not necessarily matching with national boundaries. This holds particularly true for international rivers. The use of a river by one riparian necessarily affects the opportunities of other riparians, creating externalities or common pool resources situations leading to international collective action problems. Since international rivers provide 60 percent of the world's freshwater flow and their basins cover 45 percent of the world's surface, inhabiting 40 percent of its population (Wolf, 2004, p. 2), the emergence of opposing interests and strategies is likely. Environmental security approaches (Homer-Dixon, 1991, Homer-Dixon, 1994; Bächler, Böge, Klötzli, Libiszewski, & Spillmann, 1996; Gleditsch, 1998; Carius & Lietzmann, 1999) have emphasized the strong link between environmental degradation and conflicts. They argue that increasing stress on natural resources and the environment is likely to lead to an intensification of collective action problems, possibly responded by vulnerable states through conflict or even war. Especially in the early 1990s, water was perceived as one of the resources the most prone to conflict, with various authors forecasting the emergence of water wars (Starr, 1991; Bulloch & Darwish, 1993; Frey, 1993; Gleick, 1996; Butts, 1997). Although most of the water war studies focus on the Middle East, the Mekong River Basin (MRB) has also often been referred to as a basin likely to experience major conflicts (Wolf, Yoffe, & Giordano, 2003).

However, reality in international basins has shown that collective action problems are more likely to serve as incentives for cooperation, particularly when riparian states realize that cooperation can generate benefits and lead to positive-sum-games: Out of the 1832 events coded by the Transboundary Freshwater Dispute Database (TFDD)<sup>2</sup> for the second half of the twentieth century, 1228 have been cooperative. And out of the remaining 604 conflictive events, only 37 involved any form of violence, all of them below the threshold of war (Wolf, 1998; Wolf et.al., 2003). This also holds true for the Mekong River Basin, where cooperation on river-related issues has prevailed

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<sup>2</sup> The TFDD Events Database coded every event on international rivers since the late 1940s. Additionally, the level of conflict or cooperation has been measured on the basis of so-called "Basins-at-Risk"-intensity values, ranging from -7 (highest level of conflict, i.e., war) to 7 (highest level of cooperation, i.e., voluntary merging of countries due to water) (see TFDD, n.d.; Wolf et.al., 2003).

in the last decades.

International institutions play an important role in turning water-related conflicts into cooperation, with the Mekong River Commission (MRC) and, although to a smaller extent, the Greater Mekong Sub-Region (GMS) being the most important ones in Mainland South-East Asia. Besides the direct contribution to the resolution of river-related conflicts, they advance regional cooperation in more general terms by creating spill-over effects in other issue-areas and extending cooperation beyond the river. Thereby, spill-over effects play a decisive role: Originally developed by neo-functional theories of regional integration (Haas, 1980), the more general concept of spill-over describes the phenomenon that increased cooperation in one specific policy field leads to the emergence of more cooperation in other issue-areas as well. The creation of interdependencies and increased regional cooperation or even integration will then limit the opportunities for unilateral actions and the likelihood of conflict.

The main question of this paper focuses on whether and to what extent river-related collective action problems in the MRB are cooperatively managed through River Basin Organizations (RBOs) and, more importantly, whether and to what extent they have contributed to regional cooperation beyond the river, enhancing socio-economic development and political stability. The paper is structured as follows: The first part introduces the different riparians' interests in developing the MRB and the potentially arising conflicts; the following part focuses on existing institutionalized cooperation efforts, namely MRC and GMS.

## ***2. Conflict and Cooperation in the Mekong River Basin***

Running through mainland South-East Asia for 4,900 km, the Mekong River is the region's largest waterway, with a catchment area of more than 800,000 km<sup>2</sup> in six riparian states (see Fig. 1). It can be divided into the Upper Mekong (mainly the Chinese river stretch and the Lao-Myanmar border stretch), and the Lower Mekong Basin between Laos and the river's mouth.

Hitherto, the river is largely undeveloped, particularly if compared to other large river basins in the world. Only since the 1990s, riparian states have increasingly recognized the Mekong as a great potential for their socioeconomic development (MRC,





2002, p. 7; Menniken, 2006, p. 14): The river is the most important resource for irrigation (with agriculture accounting for 85 percent of the entire river use) in a region largely depending on (irrigated) agriculture for food production and exports. It is essential for fisheries, significantly contributing to the daily protein needs of riparian communities and to riparian states' exports (with an average contribu-

tion to the GDP of 5 percent). Moreover, fisheries and agriculture employ nearly 75 percent of the population in the Lower Mekong Basin and contribute to growth, development and the reduction of poverty. And the river is increasingly important for industrial and household purposes, particularly in fast industrializing and urbanizing riparian states such as China, Thailand and Vietnam. The generation of hydropower is another important use, providing electricity for the rapidly growing riparians. And the Mekong – although not entirely navigable – is an important transport route, especially in those riparian countries still lacking sufficiently developed railway or road networks.

## **2.1. Riparian States' Interests – Between River Development and Protection**

### **2.1.1. China**

China is the most upstream state and controls half of the river's length. Its interests in exploiting the Mekong and its resources are all aimed at fostering the country's socioeconomic development: First, the central government wishes to develop the Southwestern provinces Tibet and Yunnan, which has so far not experienced the same levels of economic growth as the East, by integrating their markets with their South-East Asian neighbors. The Western Regional Development Plan (2000) emphasizes the importance of links between China and the other Mekong riparians, with the Mekong acting as a main transport axis. An 'Agreement on Commercial Navigation on the Mekong-Lancang River' has been signed with Myanmar, Thailand and Laos in 2000, aiming at improving the navigability of the upper stretches of the river. The first passenger connection between Thailand and China was opened in June 2006 by a Chinese company ("China to Thailand," 2006). The first ships transporting oil to the Chinese port of Simao followed in December 2006 ("Sparks fly," 2007). Since navigability is still restricted, the Chinese government is working with its neighbors on more projects, aiming at blasting more rapids and falls and creating a transport route on the entire length of the river.

China furthermore has an ever-growing need for hydropower: The government aims at developing a cascade of at least eight dams, which are able to generate electricity for Yunnan's future economic development and for electricity exports to Eastern Provinces and South-East Asian neighbors (especially Thailand and Vietnam). While the first dams were constructed in the 1980s (starting with the Manwan Dam in 1984, operational in 1993), hydropower activities increased enormously in recent years. In addition, China invests in other Mekong riparians' hydropower facilities (particularly Myanmar, Laos and Cambodia).

Due to its powerful upstream position, China's salience and vulnerability to the river are relatively low. The country therefore has little interest in engaging in regional river basin management efforts, especially if the latter imply the establishment of binding principles – a policy the Chinese government opposes altogether. This



has become obvious when China was one of only three states rejecting the 1997 UN Convention on the Non-Navigational Use of Transboundary Watercourses. Still, China has increased its engagement in Mekong-related cooperation in an informal and market-driven form. As such, China is increasingly involved in the GMS not only as a participant but also as a donor. China has become an important investor in other Mekong riparian countries, particularly in Laos, where it invests in the Nam Mang III Dam and is willing to provide financial guarantees for the Nam Theun II Project in case of the World Bank pulling out.

Overall, the Chinese policy towards the other Mekong riparians is not focused solely on natural resources, but is embedded in a more general foreign policy strategy, being more cooperative than a pure focus on the river and its resources might suggest. Therefore, the Chinese position towards downstream Mekong riparians can only be understood in the context of the country's general foreign policy strategy and its increasing rapprochement towards its South-East Asian neighbors, namely in order to (re-)establish its regional hegemony and its economic relations (Hilpert et.al., 2005, pp. 31-35; Shambaugh, 2005; Möller, 2006). Since China opposes any form of binding rules that would restrict its river development, but has realized the benefits of good relations with its neighboring countries and with river basin management initiatives, the future balance of China's resources needs and the importance it attributes to its relations with neighboring states will, therefore, be decisive for the Mekong's future development.

#### **2.1.2. Myanmar**

The Mekong is only a border river for Myanmar with Laos for approximately 200 km. So far, the country has shown little interest in developing its stretch of the river and, in fact, lacks the capacity to undertake any major development projects. Nevertheless, the country's large hydropower potential on the Mekong has received the interest of political leaders and external investors, particularly from China and Thailand. First efforts have been undertaken to develop Myanmar's hydropower potential, mainly as a source of income for the internationally isolated military government. In 2002, the Department of Hydroelectric Power was established within the Ministry of Energy which has so far identified 268 potential sites for dams (Graecen & Palettu,

2007, p. 105). In 1997 and 2005, Myanmar signed Memorandums of Understanding with Thailand on the potential export of electricity. In the coming years, large-scale projects might be set up, which would affect both downstream riparians as well as the Myanmar population, namely since the government has been known for violently relocating local communities without any compensation.

Being internationally isolated, Myanmar does not play an important role in regional cooperation. However, the country depends on China's development aid and economic cooperation (especially in the area of gems and timber exploitation). Therefore, it has "approached the rank of a Sino satellite" (Stoett, 2005, p. 17) and is unlikely to oppose any Chinese development projects or to join further downstream states' efforts in establishing regional mechanisms to restrict unilateral resource exploitation.

### **2.1.3. Laos**

Laos is one of the least developed countries in the region and – with 95 percent of its territory in the Mekong basin – largely depends on the Mekong. Fishery and agriculture account for more than 52 percent of the country's GDP, contribute more than 40 percent to its foreign currency income and provide employment opportunities for more than 85 percent of the population (Öjendal, 2000, p. 134; Molle, 2007, p. 13). The government therefore aims to develop so far non-existent irrigation schemes and using the river's water for potentially increasing industrial and household demands. In addition, land-locked Laos relies on the Mekong as an axis of transport.

Hydropower is by far the most important Mekong resource Laos is interested in. Electricity is one of the main export goods – particularly to Thailand, which already imports 2 percent of its total electricity from Laos and has signed new treaties guaranteeing electricity supply at least until 2017 (Graecen & Palettu, 2007, p. 86). According to this strategy, the Lao government is engaged in further developing large-scale projects. To become the "battery of Southeast Asia", existing hydropower facilities (the Nam Ngum, Xeset, Theun Hinboun, Hoay Ho and Nam Leuk Dams) will be complemented by more dams, with at least 28 projects being planned until 2010, seven of them directly on the mainstream (Gajaseni, Heal, & Edwards-Jones, 2006, pp. 53-55; Herling, 2006, p. 23; Middleton, Garcia, & Foran, 2009, pp. 31-36). Along with increa-

sing activity in the hydropower sector, new investors from Thailand, China, Russia, Vietnam and Malaysia push into Laos. For example, Chinese companies are currently involved in two hydropower projects under construction, Vietnamese companies participate in feasibility studies on the Luang Prabang Dam and a Malaysian company signed an agreement for project development on the Don Sahong Dam. Since Laos fears dependency from Thailand, it welcomes new investors as yet another means to counter dependency besides the diversification of exports towards China and Vietnam.

Such projects are likely to create various adverse effects on more downstream Lao regions (which already suffer from the effects of Chinese dams) and on Cambodia and Vietnam. This has also called the attention of NGOs (most recently against the Nam Theun II Project), with large protests leading as far as international donors reconsidering their engagement in the projects, which has traditionally been very high and has helped the country to justify its intensive river development projects regionally and internationally.

Since Laos is characterized by an abundance of unexploited water resources and a large contribution to the river's flow, it has a crucial position in the Mekong's future development. Its position towards regional structures is ambiguous: While it is likely to be negatively affected by Chinese developments on the Mekong, it depends on its own hydropower projects for socioeconomic development and is therefore unlikely to join any efforts to regulate the river's use in a more binding way. Laos acknowledges the importance of regional cooperation mechanisms – particularly for their financial contribution to development projects and their role in increasing regional trade and development – but is neither completely willing nor capable to comply with their requirements.

#### **2.1.4. Thailand**

Although one third of the country is situated in the MRB, the Mekong has – other than the Chao Praya – never played an important role in the country's history. Only recently, the Mekong's great potential for developing the country's dry and underdeveloped Northeast and for guaranteeing water supply to Bangkok has been realized: Large irrigation projects in the Isaan Region and initiatives to transfer water

to Bangkok have been designed in the last years. Yet, political and economic turmoil has prevented implementation so far. Once political stability and economic growth will return to the country, there could be a renaissance of those plans, increasing conflict potential in the region. Furthermore, Thailand needs to ensure its growing demand for electricity (expected to double until 2021; Middleton et.al., 2009, p. 24). Since domestic hydropower opportunities have either been already exploited or massive protests from the civil society impede further developments, Thailand is interested in supporting the development of hydropower facilities in neighboring countries, especially in Laos and China. With both countries Memorandums of Understanding have been signed on electricity trade.

Moreover, Thailand is interested in increasing its trade and investment ties with neighboring countries by using the Mekong as its “gate to Indochina”: In the search for new markets for Thai export products, new sources for natural resources, new opportunities for Thai border towns in the country’s Northern part and new investment opportunities for Thai companies, Thailand actively promotes further economic integration among riparians (Masviriyakul, 2004, pp. 308-310). This is mainly done through infrastructure development (i.e. funding of Mekong bridges and the improvement of roads and ports) in neighboring countries. However, recent economic and political instabilities have slowed down Thai engagement.

Economic integration, together with security cooperation, is, thus, the main interest of Thailand, making issues beyond the river the most likely to push Thailand towards a more cooperative behavior. However, Thailand has little interest to further institutionalize regional cooperation, especially if they established more binding water use principles or even veto rights for downstream countries. In this context, Thailand favors the integration of China into regional institutions, hoping to build coalitions against potential efforts of downstream countries to prevent large-scale development upstream.

#### **2.1.5. Cambodia**

With more than 85 percent of its territory in the Mekong Basin, Cambodia is one of the most vulnerable countries. The river and its resources are not only decisive for the living of riparian communities, but also provide development opportunities

for the entire country, which is still struggling with the consequences of war, the reestablishment of a democratic system, and a high dependence on external aid. Agriculture is the country's main economic sector – accounting for more than 50% percent of its GDP and employing more than 90 percent of the population – with the Mekong and the Tonle Sap providing most of the water. As irrigation systems are largely missing or have been destroyed in years of conflict, the Cambodian government aims at developing new irrigation schemes in the next years. In addition, fishery is important for the food security of local communities as well as for exports. Moreover, the Mekong is an important transport route in a country with an insufficient road. In addition, the development of tourism – regarded as one of the main new sources of income – largely draws from the Mekong. Cambodia also aims to develop its own hydropower facilities, although its capacities are relatively limited and largely found on Mekong tributaries. While the most important project, the Sambor Falls Dam, financed by Thai, Malaysian and Chinese investors, has received much attention, most other projects are likely to focus on domestic supply only, thus being relatively small in scale (Graecen & Palettu, 2007, p. 110).

Overall, Cambodia's dependence on the river explains its large interest in sustainable river development, with regional cooperation structures being perceived as helpful. Moreover, the Cambodian government hopes to further integrate the country in regional cooperation structures which might foster the economic development or even provide financial and technical resources for development projects. Cambodia fosters the establishment of more directly river-related cooperation initiatives within the MRC, for example by hosting the MRC Flood Management and Mitigation Program's Regional Flood Centre and the MRC Fisheries Program. Still, Cambodia lacks the means and capacities to actively engage in the promotion of joint river basin management or to even push for more binding rules.

#### **2.1.6. Vietnam**

As the most downstream riparian, Vietnam is extremely vulnerable to upstream river development activities. And although only 20 percent of the country lie within the Mekong Basin, it is of great importance for Vietnam's overall development. While only 25 percent of the population lives in the Mekong Basin, the region produces

50 percent of all the country's agricultural products, including 80 percent of the country's rice crops and 90 percent of its rice exports, and contributes 50 percent to its seafood exports (Backer, 2007, p. 43). In order to do so, it is dependent on sufficient water flow from upstream to guarantee irrigation and to prevent salinity intrusion from the South China Sea. Additionally, severe floods have caused significant damage in recent years and are likely to worsen as a consequence of global climate change, requiring elaborated flood monitoring and management.

Therefore, Vietnam has a high interest in regional river basin management, particularly through data exchange, joint flood protection and the establishment of binding rules on water quantity and quality. Additionally, Vietnam perceives regional cooperation initiatives as means of its regional foreign policy strategy, focusing on increased regional integration in political and economic terms. On the other hand, Vietnam also has an interest in developing further hydropower facilities (in addition to the already existing Drayling and Yali Dams on Mekong tributaries), especially to provide electricity to the economically growing region around Ho Chi Minh City. Since the country's electricity demand will quadruple until 2015 (Middleton et. al., 2009, p. 24), the Prime Minister announced in the National Strategy for Electricity in 2004 (Vietnamese Prime Minister's Decision 677/2004/QD-TTG; see Dan Sinh Nguyen Vo, 2008), that Vietnam will further increase its hydropower capacity from 39 percent in 2006 to 62 percent in 2020. Therefore, another 17 projects are currently in the planning stage. Most of them are likely to affect Cambodia, which lies downstream to the Vietnamese Central Highlands. Along with other investors, the Asian Development Bank (ADB) and the World Bank have made important contributions to those projects. Besides dams in the Central Highland, Vietnam also finances and builds projects in Laos and Cambodia which, besides the long-term supply of electricity, are also thought to increase the competitiveness of Vietnamese construction companies. Moreover, Vietnam buys electricity from Chinese Mekong hydropower plants, only being possible through the second Power Grid developed through the GMS (Hensengerth, 2008, p. 117). However, in doing so, Vietnam indirectly supports projects it suffers from.

The high dependence of most riparian states and the importance of the river and its resources for their socioeconomic development and, thus, for their overall national security has turned the Mekong into a central issue of regional politics – far

beyond river basin management. Hence, “the Mekong is an inescapable variable in

Table 1: Riparian interests			
Country	Main interests in river development	Strategic position on the river	Foreign policy strategy towards the region/Mekong
<b>China</b>	<ul style="list-style-type: none"> <li>• Development of Yunnan Province (Western Regional Development Plan)</li> <li>• Hydropower generation (cascade on mainstream and tributaries)</li> <li>• Improvement of river navigability (navigation between Simao and Luang Prabang)</li> </ul>	Low salience/ upstream hegemon	Strategy of „peaceful development“, integration into regional cooperation networks for economic benefits (but no willingness to surrender to supra-national decisions), problematic relations to Vietnam, rather good relations to Thailand
<b>Myanmar</b>	<ul style="list-style-type: none"> <li>• Hydropower generation (sale to Thailand and China), but not yet developed</li> </ul>	Low salience/ weak/ low capacity	International isolation under military government, no interest in integration into regional networks
<b>Laos</b>	<ul style="list-style-type: none"> <li>• Hydropower generation (for sale to Thailand, China and Vietnam)</li> <li>• Integration into region (through infrastructure, growth triangles) with help of regional bodies</li> <li>• Fishery/irrigation potential of Mekong decisive for population and development</li> </ul>	High salience/ low capacity	Integration into regional cooperation network that provides major economic benefits (but still limited opening), traditionally good relations with Vietnam, strong relations to Cambodia, improving relations to China, conflictive relations with Thailand
<b>Thailand</b>	<ul style="list-style-type: none"> <li>• Water diversion for irrigation/ agriculture, water supply in Bangkok</li> <li>• Hydropower generation and purchase of electricity (from Laos)</li> <li>• Avoiding major environmental degradation</li> </ul>	Limited salience/ midstream power	Good relations with neighbors and strong ASEAN (but, foreign policy disrupted due to recent domestic political developments), favorable perception of China, tight relations to Myanmar, complicated relations with Cambodia, Laos, and Vietnam
<b>Cambodia</b>	<ul style="list-style-type: none"> <li>• Maintenance of water flow and water level in Tonle Sap Region guaranteeing fishery, agriculture, navigation, etc.</li> <li>• Hydropower (with aim to export to Thailand and to substitute oil imports), but not yet developed</li> </ul>	High salience/ low capacity	Integration into regional cooperation networks for the country's socioeconomic development/reconstruction after civil war; however, difficult relations to Vietnam and Thailand
<b>Vietnam</b>	<ul style="list-style-type: none"> <li>• Hydropower generation in Upper Highlands on Mekong tributaries</li> <li>• Irrigation in Mekong Delta (including avoiding saltwater intrusion) and aquaculture</li> </ul>	High salience/ downstream power	Regional cooperation in economic terms/integration into ASEAN (balance Chinese influence), difficult relations with China (and Cambodia), strong relations with Laos, competition with Thailand over regional Lower Mekong hegemony

Source: Own Compilation

the foreign policy planning of all Southeast Asian countries” (Stoett, 2005, p. 169). Existing and emerging collective action problems in the river basin are, therefore, often thought to lead to conflicts among riparian states. This will be elaborated in the following chapter.

## **2.2. Conflict or Cooperation**

As the previous sections have demonstrated, the MRB is characterized by a complex structure of interests and strategies. Therefore, international collective action problems are present, which – according to proponents of environmental security and water-war concepts – can lead to conflicts among riparian states. The specific upstream-downstream structure, with China as an upstream hegemon, tends to intensify existing problems, since upstream unilateral development projects are difficult to obviate. Moreover, the fact that competition for resources is not related to geophysical scarcity but rather to geopolitical and socioeconomic scarcities (that is, situations in which the opportunities of use of otherwise abundant resources by further downstream states are significantly reduced due to political power constellations and/or unequally distributed developments; Gleick, 1996, p. 6) tends to increase the conflict-conduciveness of river-related collective action problems.

The development of hydropower projects, one of the most contested issues in the basin, illustrates this perfectly: With a capacity of 200,000 million KW/year in the Lower Mekong Basin and 300,000 million KW/year in China (Dinar, Dinar, McCaffrey, & McKinney, 2007, p. 237), hydropower provides great development opportunities for the region. Especially upstream countries are interested in exploiting this potential for their development. On the other hand, the development of large hydropower projects has severe impacts on the river. As the Manwan and Dachaoshan Dams in China have already made clear, large dams can affect the river’s flow, reduce the availability of water for irrigation and the content of sediments, cause severe floods and droughts, and negatively impact on fish populations. Especially downstream states are affected, potentially being restricted in their development opportunities and, hence, their national security perception.

Moreover, other factors can further increase the likelihood of conflict in shared basins. Among them, economic asymmetries and problematic relations between ri-



riparian states in issues other than water have a particularly high likelihood of adding fuel to existing flames (Wolf, 2006, p. 25). Although all riparian states (with the exception of Myanmar) have experienced exceptionally high GDP growth rates in the last years, ranging from 4.8 percent in Thailand to 13 percent in China in 2007, their levels of development differ highly. Despite Thailand's suffering from an economic downturn in the last decade, it is still the most advanced country with a GDP per capita of 3,400 USD in 2007 and a high level of human development. Cambodia and Laos, on the other hand, recently experienced high growth rates, but still lack basic human development. Vietnam managed to translate its high growth rates into a broader development and the reduction of poverty, nevertheless, far more has to be done. Similar findings hold true for Yunnan, which – despite the enormous growth rates of China – still struggles with various insufficiencies in terms of development, not least due to its relative marginalization in China (World Bank, 2009). Moreover, those countries compete on international markets, with economic competition outnumbering complementarities among them.

In addition, relations between the different riparian states are often problematic. Rooted in the 1000-year long Chinese occupation of Vietnam and ideological differences related to the Sino-Soviet conflict in the 1960s and 1970s and the Chinese support to Cambodian Khmer Rouge during the Vietnamese occupation of Cambodia 1979 to 1989, Vietnam remains suspicious of any Chinese attempts to re-establish regional hegemony. Although all land border issues could be solved in 2008, disputed territories in the Gulf of Tonkin and the South China Sea remain a major challenge. Still, China is increasingly interested in good relations to its South-East Asian neighbors and has recognized Vietnam as a key player. Vietnam also has complicated relations to Cambodia, mainly due to the Vietnamese occupation and the increasing Vietnamese influence in Cambodia. However, significant improvements could be made in recent years, particularly due to increased economic cooperation and a joint perception of being the Mekong's most downstream states. Vietnam and Thailand, being old rivals in the region and having experienced major conflicts in the 1970s and 1980s, mainly following the Vietnamese invasion in Cambodia and the Thai support to the Khmer Rouge, have different perceptions concerning the regional order in mainland South-East Asia, occasionally producing irritations in their relations (Hensengerth, 2008). The very different positions on the Mekong's development are likely to deteriorate.

rate this problem, possibly leading to “the most intense rivalry” in the Mekong Basin (Dinar et. al., 2007, p. 239). Another major conflict line is found between Thailand and Laos. Following historic confrontations due to the Thai support to the US while Laos was following a Communist way, relations between the two countries today are characterized by unresolved border issues (despite the establishment of a border commission in 1997) that have led to occasional outbreaks of violence (with a short war erupting in the 1980s on border and refugee issues). Moreover, the increasing Lao economic dependence on Thailand has become an issue of conflict, particularly as Thailand largely benefits from the purchase of natural resources and electricity from Laos. Unresolved border issues also characterize the relations between Thailand and Cambodia, particularly in the Northwest of Cambodia where borders remain contested despite the establishment of a border commission in 2000. This led to occasional outbreaks of violence, particularly in the area of the Preah Vihear Temple, where gunfire was exchanged in 2008. Additionally, Thai business communities have been regularly accused to be involved in the (illegal) exploitation of natural resources and the promotion of gambling and sex labor in Cambodia. Relations imploded in 2003, when Cambodian demonstrators attacked the Thai embassy and Thai businesses in Phnom Penh.

Despite those adverse circumstances cooperation prevailed in the last decades. Not only did the number of interactions among the Mekong’s riparian states increase in general, but cooperative events also increased far more than conflictive ones, the latter only showing a very low level of conflict, usually in the form of verbally expressed disagreement (see Table 2). Thus, cooperation has clearly dominated the MRB.

Similar to what general findings on water conflict and cooperation suggest (Wolf, 1998; Wolf et. al., 2003), water has helped to provide incentives for cooperation even in times of hostile relations between riparian states (for example, cooperation on electricity export from Laos to Thailand prevailed despite ideological differences in the 1970s and 1980s). With institutional capacity in a river basin being a decisive variable for turning water-related collective action problems into conflict or cooperation (Wolf et. al., 2003, p. 43), regional organizations have played a decisive role.

Timeframe	BAR scale events in the Mekong Region															Average BAR-value
	-7	-6	-5	-4	-3	-2	-1	0	1	2	3	4	5	6	7	
1950-1959	0	0	0	0	0	0	0	0	0	3	5	3	0	1	0	0,80
1960-1969	0	0	0	0	0	0	0	1	1	1	1	20	1	1	0	1,73
1970-1979	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0,07
1980-1989	0	0	0	0	0	0	0	0	4	0	4	4	0	0	0	0,80
1990-1999	0	0	0	0	0	1	2	3	17	28	11	12	0	2	0	5,07
2000-2008	0	0	0	0	0	0	12	1	30	2	4	8	0	0	0	3,80
All years	0	0	0	0	0	1	14	5	52	34	25	47	2	4	0	

Data provided by the TFDD Events Database.

### 3. Institutionalized Cooperation Efforts in the Mekong River Basin

As early as the 1950s, joint river basin management efforts developed in the MRB, particularly through initiatives of the US and UN Economic Commission for Asia and the Far East (UN-ECAFE). Although those two actors had different positions on how regional cooperation in mainland South-East Asia should look like – with the US being led by a functionalist logic of regionalism and the idea of pushing back communism, preferring a light and little institutionalized way, and UN-ECAFE opting for a more tightly knit and binding network – river basin management was seen as “one of the major means of accomplishing economic growth and social change” (Sewell & White, 1966, p. 5). In line with general development concepts of the 1950s and 1960s, the Mekong Committee (MC), founded in 1957, had the task to “promote, coordinate, supervise and control the planning and investigation of water resources development projects” (Statute of the Committee). In its early years, the MC was very active in fulfilling those high expectations, undertaking several studies on the opportunities to exploit the Mekong in order to foster growth. The Indicative Basin Plan (1970) proposed a strategy for more development projects until the year 2000. However, cooperation soon fell to the vicissitudes of regional conflicts, with institutionalized cooperation practically ending when Cambodia withdrew from the MC in 1975. Until

the early 1990s, cooperation remained mainly bilateral, focused on low political issues and pragmatic projects only. Institutionalized cooperation did not come to a renaissance until the early 1990s, when MRC and GMS were founded.

This development must also be seen in the context of a generally more cooperative regional environment, where other regional institutions, namely ASEAN and several related initiatives such as the ASEAN Regional Forum (ARF), (re-)emerged as well.

### **3.1. The Mekong River Commission – Intergovernmental River Basin Management**

The MRC was established through the Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin, signed by Laos, Thailand, Cambodia and Vietnam in 1995. Negotiations on the agreement had been very difficult due to disagreements between Thailand and Vietnam on potential veto rights and on binding principles of water use. Only the active promotion of negotiations by the United Nations Development Program (UNDP) finally made an agreement possible (Browder, 2000; Menniken, 2006; Dinar et. al., 2007, p. 239).

The MRC consists of a Council, responsible for policy decisions on the highest level, a Joint Committee, operationalizing the Council's general strategy into specific projects, and the MRC Secretariat, providing technical and administrative services and implementing projects. Its task is

*to promote, support, cooperate and coordinate in the development of the full potential of sustainable benefits to all riparian States and the prevention of wasteful use of MRB waters, with emphasis and preference on joint and/or basin-wide development projects and basin programs through the formulation of a basin development plan (Mekong River Commission, 1995, chap. 3, art. 2).*

Therefore, its work focuses on eight key areas, namely irrigation and drought management, navigation, hydropower, flood management, fisheries, watershed management, environment and tourism.

Despite its emphasis on key principles of water use, such as the equitable and reasonable use, the maintenance of flow in the dry season, and the exchange of information and data, the 1995 Agreement is less binding than previous rules; namely the 1957 Agreement and the 1975 Joint Declaration of the MC contained explicit veto rights and the respective prior notification principles for riparian states against

unilateral projects. Even the adoption of an 'Agreement on Data and Information Sharing' in 2001 and the 'Regulations on Prior Notification and Consultation' as well as the 'Agreement and the Regulations on Supervision of the Use of the Mekong River Water' in 2003, providing guidelines on how to manage the river according to international river basin management principles, has not been able to establish truly binding rules for the river's development. This is not least due to the fact that Thailand refused to sign them in 2004, arguing that they would be useless without Chinese participation anyway. In 2002, China and the MRC signed an agreement on technical cooperation, which became operational in 2004. It mainly deals with data sharing from two hydrological stations on the Upper Mekong, aiming at improving flood forecasting and flood protection for downstream states. So far, cooperation is taking place, albeit not satisfyingly. Data is only delivered in the dry season and China retains the right to restrict the data for strategic reasons, which, indeed, occasionally happens. Moreover, information from two stations only is not sufficient for comprehensive flow monitoring.

Similar to previous institutions in the region, funding largely comes from international donors. UNDP's contributions are of particular importance. Although important for MRC's capacity, the high dependence on donor funding negatively affects ownership at the institution. In 2008, contributions from member states were only USD 0.95 million, while donors contributed more than ten times as much (MRC, 2008, p. 2). Therefore, the MRC has introduced a "riparianization policy" (MRC, 2006, p. 35), aiming at substituting donor funding for its core budget (that is, all costs except for project costs) by riparian's resources until 2014. As until today, less than 10 percent of MRC's budget is funded by its member countries, this target is far too optimistic.

Altogether, MRC's contribution to sustainable river basin management and the promotion of regional cooperation, peace and security is ambiguous. It clearly has contributed to institutionalizing cooperation structures in mainland South-East Asia, particularly by providing a forum of negotiation for river-related collective action problems and by engaging in various cooperation projects, ranging from the promotion of infrastructure development to the protection of transboundary natural resources and the environment. On the other hand, it "cannot be claimed to have a decisive impact on the members' management of the basin's natural resources" (Backer, 2007, p. 44). Besides the lack of institutional capacity of the MRC, this is due to the fact that

elites in member states still lack the acknowledgement of the importance of Mekong cooperation in general (Will, 2009, p. 39). Since the implementation of policy recommendations from the MRC rests with member states and is not binding, copious achievements have been rare so far. Moreover, many “riparian member states prefer the MRC to be a rather toothless organization that identifies development projects and attracts external funds, whilst control of the development remains with the states themselves” (Backer, 2006, p. 38). As long as member states “continue to lack the will to commit to a strict regime with specified procedures to establish a flow regime” (Backer, 2007, p. 45), the MRC is unlikely to contribute to the establishment of binding principles and rules that will guarantee the river’s sustainable development. Moreover, the non-participation of China in the MRC further decreases its capacities. Although China increasingly cooperates on minor issues (such as data sharing, or navigation), it remains unwilling to commit to more than its observer status.

Nevertheless, the MRC has made important contributions not only to water-related cooperation and the sustainable management of the Mekong, but also to confidence building and intensified cooperation among riparians in issue-areas other than water management.

### ***3.2. The Greater Mekong Sub-Region – Economic Integration beyond the River***

The GMS was established among all Mekong riparian states in 1992 at the Conference of Mekong Riparian States initiated by the ADB. From the very beginning on, the GMS was understood as a loosely connected group of countries linked to each other by the Mekong. Similar to the concept of sub-regional growth triangles (Masiriyakul, 2004; Kongkraew, 2004; Dosch & Hensengerth, 2005), geographic links are thought to make economic integration beneficial for all states and to foster further integration. While the MRC focuses on the sustainable development of the river, emphasizing the river as the key variable of cooperation, the GMS’ approach centers around economic development and market-driven exploitation of natural resources, particularly through infrastructure development.

According to its wide and market-led concept, the GMS is organized in a loose institutional structure, consisting of the Meeting of Prime Ministers (every three years), yearly Ministerial Conferences and Working Groups (in addition, National Co-

ordination Committees manage cooperation projects within the member states). The ADB itself holds an important position within the GMS framework. It is the single most important actor in GMS cooperation, providing not only funding, administrative and technical support, but also functioning as the GMS Secretariat.

In line with its integration-centered approach, GMS focuses on the promotion of trade liberalization and FDIs, the removal of trade barriers, and the development of physical links between the participating states, led by the idea of “enhancing competitiveness through connectivity” (GMS, 2007). The Vientiane Action Plan 2008-2012 (GMS, 2008) identifies nine key sectors (transport, energy, telecommunication, agriculture, environment, tourism, human resources development, trade, investment). The Economic Corridors, linking China, Thailand and Vietnam (North-South Corridor), Myanmar, Thailand, Laos and Vietnam (East-West Corridor) and Thailand, Cambodia and Vietnam (Southern Corridor) are of particular importance, since the development of physical links is regarded as one of the most important prerequisites for economic integration.

In recent years, especially since the 10<sup>th</sup> GMS Summit in Phnom Penh 2002, which reemphasized GMS’ commitment to fostering regional cooperation and proposed the Greater Mekong Subregion Strategic Framework 2002-2012, the GMS has expanded in its projects, covering more issue-areas (such as energy, biodiversity, health, transnational crime, flood and drought management, and human resources development). GMS is increasingly turning towards non-traditional security threats in the region, acknowledging that they can have severe negative effects on the socioeconomic development of Mekong riparians.

Overall, “the wide range of cooperation efforts as part of the GMS and related intergovernmental activities has had an impact on fostering subregional peace and stability” (Dosch, 2007, p. 134). GMS projects can be perceived as “multi-dimensional confidence-building measures” (Dosch & Hensengerth, 2005, p. 272). Particularly the integration of China into Mekong-related cooperation and the high relevance China attaches to the GMS, the GMS thus being „a core element of Beijing’s policy outlook“ (Dosch & Vuving, 2008, p. 15), has allowed to establish a basin-wide cooperation structure. On the other hand, the GMS could not (yet) achieve all its goals and even in its core focus area, the promotion of regional economic integration, results remain small. For example, trade between the Chinese province of Yunnan and other

GMS states has decreased despite major infrastructure and trade promotion projects, while trade between Yunnan and non-GMS states significantly increased in the 1990s (Poncet, 2006). Especially less developed countries such as Cambodia and Laos do not benefit from economic integration as much as they expected. Moreover, the GMS deals with a large number of planning and implementation problems: The development of joint projects only requires the participation of at least two states, with other countries not even being asked for their approval – a practice likely to worsen collective action problems related to river-basin development, particularly in the hydropower sector, instead of enhancing security in the region. However, GMS' contribution to a more cooperative environment in mainland South-East Asia – and particularly its potential to improve this further – should not be neglected.

#### **4. Conclusion**

Overall, conflict and cooperation in the MRB revolves around three different, yet interdependent issues: the exploitation of natural resources, the protection of the river basin, and the promotion of economic integration.

The main contribution of institutionalized cooperation efforts in the Mekong Region has been the creation of a stable and peaceful environment in which collective action problems related to the river can be peacefully mitigated. The establishment of cooperative projects on the river and beyond – ranging from joint flood protection mechanisms to the active promotion of cross-border trade and investments – has led to growing interdependence among riparian states. As TFDD Events data shows, conflictive actions have decreased compared to cooperative ones and average BAR-values did significantly increase in the 1990s in the context of the establishment of institutions (see Table 2). Institutionalized mechanisms have made an important contribution to mitigating conflicts, even in the context of otherwise complicated relations between riparian states. Furthermore, water-related issues have helped to generate cooperation in issue-areas beyond the river as well, starting with infrastructure developments and environmental protection, increasingly spilling over to economic and even political cooperation.

Although significantly contributing to regional security, neither MRC nor GMS can (yet) be perceived as a security community in the proper sense of the term, since



unresolved conflicts persist in the region and existing cooperation remains at a low level and riparian states are not integrated in a tightly knit net of security-related interdependencies. MRC's and GMS' contribution to the establishment of regionalization building blocks can, however, be perceived as important contributions to an improvement of regional security in the Mekong River Basin, even beyond the issue-area of river basin management. Generally speaking, it can be summarized that MRC and GMS did, indeed, contribute to a large extent to the resolution of water-related conflicts and the promotion of regional cooperation beyond the Mekong River itself, thus contributing to the overall security in mainland South-East Asia. However, several improvements need to be achieved to not only enhance regional cooperation and generate cooperation benefits, but to also make cooperation more effective – thus establishing a resilient framework of cooperation that is able to sustainably enhance the overall security in the region both for riparian states as well as for riparian communities.

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**Aktuelle Südostasienforschung / Current Research on South-East Asia**

**Regional Conflict Management: Challenges of the Border Disputes of Cambodia, Laos, and Vietnam**

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*This study analyzes the border disputes of Cambodia, Laos, and Vietnam, respectively. Both settled and unsettled disputes are encompassed. The study outlines the settlements reached and the remaining unsettled disputes. Furthermore, the broader trends in managing the border disputes are analyzed and remaining challenges, both in implementing agreements and in managing the unsettled disputes, are addressed. So are the implications for regional conflict management. The study displays that both Laos and Vietnam have made considerable progress in both managing and settling their existing border disputes, whereas Cambodia has thus far been less successful.*

**Keywords:** Border Disputes, Regional Conflict Management, Cambodia, Laos, Vietnam

*Dieser Beitrag analysiert Grenzstreitigkeiten Kambodschas, Laos und Vietnams. Gelöste und ungelöste Konflikte, als auch weitere Trends im Management von Grenzstreitigkeiten werden dabei betrachtet. Herausforderungen in der Umsetzung von Vereinbarungen sowie in der Schlichtung noch ungelöster Dispute und deren Implikationen auf das regionale Konfliktmanagement werden adressiert. Die Studie zeigt auf, dass Laos und Vietnam beträchtliche Fortschritte im Management und in der Lösung ihrer Grenzstreitigkeiten gemacht haben, während Kambodscha bis dato weniger erfolgreich war.*

**Schlagworte:** Grenzstreitigkeiten, regionales Konfliktmanagement, Kambodscha, Laos, Vietnam

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### ***Purpose and structure***<sup>3</sup>

The purpose of this study is to outline and assess the border disputes of Cambodia, Laos, and Vietnam, respectively. The study encompasses both disputes between the three countries and between each of the three countries and other countries. Both settled and unsettled disputes are encompassed in the study. The study is divided into three main parts. The first part encompasses two sections: the first devoted to the settlements reached and the second to the remaining unsettled disputes. The second part is a broader analysis of the trends in managing the border disputes of the three Indochinese countries and of the remaining challenges both in implementing agreements and in managing the unsettled disputes. The final part is a conclusion summarizing the main findings of the study and also addresses the regional conflict management dimension.

### ***Settled and unsettled border disputes***

The border disputes of the Indochinese countries can be studied from various perspectives; in this study the focus is on the current status of the disputes, i.e. whether the disputes are settled or not. Since some of the border disputes have been settled the overview of the disputes is divided into two categories; the first devoted to the settled disputes and the second to unresolved disputes.

### ***Settled territorial disputes***

On July 18, 1977, Laos and Vietnam signed a Treaty delimiting the land boundary between the countries. Following the completion of the demarcation process a Complementing Treaty was signed on January 24, 1986. On March 1, 1990, an Additional Protocol was signed and on the same day an Agreement on border regulation was signed.<sup>4</sup> More recently, the two countries signed a Supplementary Treaty to the

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<sup>3</sup> This study partly draws on Amer (2009). This study also draws both on Amer's and Thao's individual and joint research on Vietnam's border dispute and on the South China Sea situation. It also draws on Amer's research on regional collaboration and conflict management in South-East Asia with a focus on the border dispute dimension. The views expressed in this study only represent the private views of the two authors.

<sup>4</sup> For details on the settlement and demarcation of the land border between Laos and Vietnam see Gay (1995). See also a report carried by VNA News Agency reproduced in BBC/FE 2975, B/6-7.

Border Treaty on November 27, 2007 (MFA Vietnam, 2007a).

On July 7, 1982, Vietnam and the then People's Republic of Kampuchea (PRK) signed an agreement on "historic waters" located between the coast of Kien Giang Province, Phu Quoc Island and the Tho Chu islands on the Vietnamese side and the coast of Kampot Province and the Poulo Wai islands on the Cambodian side. The agreement stipulated that the two countries would hold, "at a suitable time", negotiations to determine the maritime frontier in the "historic waters". Pending such a settlement the two sides would continue to regard the Brévié Line drawn in 1939 as the dividing line for the islands within the "historic waters". The exploitation of the zone would be decided by "common agreement".<sup>5</sup> On July 20, 1983, the two countries signed a Treaty on the settlement of border problems and an Agreement on border regulations (BBC/FE 7393, A3/1; Quang, 1986, pp. 8-9). On December 27, 1985, the two countries signed the Treaty on the Delimitation of the Vietnam-Kampuchea Frontier (BBC/FE/8143, A3/1-3; Quang, 1986, pp. 8-9). On October 10, 2005, the two countries signed a Supplementary Treaty to the 1985 Treaty (MFA Vietnam, 2005b).

In October 1991 Laos and China signed the Treaty on the Sino-Laotian Boundary System. Subsequently the two countries agreed on a Supplementary Protocol to the Treaty on the Sino-Laotian Boundary System in 1993.<sup>6</sup>

On June 5, 1992, an agreement was reached between Malaysia and Vietnam to engage in joint development in areas of overlapping claims to continental shelf areas to the south-west of Vietnam and to the east-north-east off the east coast of Peninsular Malaysia (Amer, 1995, p. 306; Nguyen, 1999, pp. 79-88; Nguyen, 2002a, pp. 53-56).

On April 8, 1994, Laos, Myanmar and China signed a 'Convention' relating to the delimitation of a Tri-junction point where the borders between the three countries meet (Gay & Phommachack, 1999, pp. 14-15).

On June 11, 1994, Laos and Myanmar reached an agreement relating to their land boundary, i.e. along the Mekong river. The 'Convention' relates to the 'fixation' of the

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<sup>5</sup> For the full text of the Agreement of July 7, 1982, see BBC/FE 7074, A3/7-8. The text of the Agreement has also been reproduced in an English language version as 'Appendix 2' in Kittichaisaree (1987, pp. 180-181). Interestingly enough the 'full text' of the Agreement transmitted by the official Cambodian news agency (SPK) on July 8 omitted the sentence "Patrolling and surveillance in these historical waters will be jointly conducted by the two sides", which was included in Article 3 of the version published by the Vietnamese News Agency and reproduced in Kittichaisaree's study (BBC/FE 7074, A3/8; BBC/FE 7076, A3/7; Kittichaisaree, 1987, pp. 180-181).

<sup>6</sup> MFA China (2003a; 2003b). The second document refers to the 'Treaty on China-Laos Boundary'. Neither of the two documents provides more specific details about the dates of agreements.



international boundary between the two countries.<sup>7</sup>

On August 9, 1997, Thailand and Vietnam reached an agreement delimiting their continental shelf and Exclusive Economic Zones (EEZ) boundaries in a disputed area in the Gulf of Thailand to the south-west of Vietnam and to the north-east of Thailand (BBC/FE 1996, B/4-5; Nguyen, 1997, pp. 74-79; Nguyen, 1998, pp. 7-10; Nguyen, 2002a, pp. 51-53).

On December 30, 1999, China and Vietnam signed a 'Land Border Treaty' settling the land border dispute between the two countries (Nhan Dan, 1999).

On December 25, 2000, China and Vietnam signed the 'Agreement on the Delimitation of the Territorial Seas, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin' settling their maritime boundary disputes in the Gulf (MFA Vietnam, 2000b). On the same day the two countries signed an agreement on fishery co-operation in the Gulf of Tonkin (Nguyen, 2005, pp. 35-41; Zou, 2002, pp. 127-148).

On June 11, 2003, Vietnam and Indonesia signed an agreement on the delimitation of their continental shelf boundary in an area to the North of the Natuna Islands (Nhan Dan, 2003).

On October 10, 2006, China, Laos and Vietnam signed a treaty defining the tri-junction point of their land boundaries (MFA Vietnam, 2006).

On August 26, 2008, Cambodia, Laos and Vietnam signed an agreement defining the tri-junction of their land boundaries (MFA Vietnam, 2008d).

### ***Unsettled territorial disputes***

Between Laos and Thailand there are disputed areas along the land border. The border is partly made up of the Mekong River.<sup>8</sup>

Between Cambodia and Thailand there are disputes relating to both the land border and to the maritime borders in the Gulf of Thailand where the claims of the two countries to maritime zones overlap.<sup>9</sup>

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7 For details on the settlement and demarcation of the boundary between Laos and Myanmar see Gay & Phommachack (1999, pp. 7-18).

8 Ramses Amer's discussions with officials in Bangkok in December 1998, April 1999 and November 2000.

9 Amer's discussions with officials in Bangkok in December 1998, April 1999 and November 2000. See also Prescott (1998).



Between Cambodia and Laos there are disputes relating to the land border.<sup>10</sup>

The agreements reached between Vietnam and Cambodia in the 1980s, were not recognized by all parties within Cambodia for most of the 1990s. New bilateral talks on the status of their borders between the countries have been initiated to reach a solution to remaining disputed issues. This eventually led to signing in 2005 Supplementary Treaty to the Treaty of 1985 thus settling the land border dispute between the two countries. However, the maritime disputes are still not settled, therefore in the context of this study the maritime disputes between Vietnam and Cambodia cannot be considered as resolved and they are listed among the unsettled disputes. The disputes relate to overlapping claims to maritime areas in the Gulf of Thailand.<sup>11</sup>

Between China and Vietnam the overlapping sovereignty claims to the Paracel and Spratly archipelagos are still unresolved. The same applies to China's claims within the so-called 'nine dotted lines' to the east of the Vietnamese coast in the South China Sea.

Between Malaysia, Thailand and Vietnam there is a multilateral dispute relating to an area of overlapping claims in the Gulf of Thailand.<sup>12</sup>

Between Malaysia and Vietnam the major dispute relates to Vietnam's sovereignty claim to the whole Spratly archipelago which overlaps the Malaysian claim to the southern part of the archipelago (Amer, 1995, pp. 305-306; Prescott, 1985, pp. 218-222; Valencia, 1991, pp. 54-66). These parts of the Archipelago are also claimed by China and Taiwan as well as partly claimed by the Philippines. Furthermore, Brunei Darussalam also claims Louisa Reef.

Between the Philippines and Vietnam there is a dispute in the South China Sea where Vietnam's sovereignty claim to the whole Spratly archipelago overlaps the Filipino claim to the major part of it (Amer, 1995, pp. 306-308; Prescott, 1985, pp. 218-222). These parts of the Archipelago are also claimed by China and Taiwan as well as partly claimed by Malaysia.

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10 This was acknowledged by the then Cambodian First Prime Minister Ung Huot in early June 1998 (BBC/FE 3250, B/1).

11 For details on the disputes between Cambodia and Vietnam relating to the land and sea borders see Amer (1997, pp. 80-91; 1995, pp. 299-301).

12 For an overview of the maritime conflicts and co-operative agreements in the Gulf of Thailand see Prescott (1998). The area is currently included in the JDA between Malaysia and Thailand but is recognized by the two countries as claimed by Vietnam (Amer's discussions with officials in Bangkok December 1998, in April 1999 and in November 2000).

Between Vietnam and Indonesia the issue of the delimitation of the EEZ between the two countries remains to be settled.

Brunei's claim to Louisa Reef also overlaps with a Vietnamese claim through its sovereignty claim to the whole of the Spratly archipelago.<sup>13</sup>

Vietnam's claims to the Paracel and Spratly archipelagos also overlap with Taiwan's claims to the two archipelagos.

### ***Between conflict management and tension***

#### ***Cambodia***

During the 1980s came agreements between the then PRK and Vietnam in 1982, 1983 and 1985. But no progress was made in negotiating the border disputes with Thailand. The Cambodian conflict prevented any such initiatives from 1979 to 1991. Although the PRK had good relations with Laos, border issues do not appear to have been addressed in the 1980s.

In the 1990s after the settlement of the Cambodian Conflict in late 1991 and in particular following the formation of a coalition government in Cambodia in mid-1993 after the United Nations-organized election, the border disputes with its three neighbouring countries – Laos, Thailand and Vietnam – re-emerged as contentious issues. In fact during the 1990s Cambodia openly accused Laos, Thailand and in particular Vietnam of violating its borders (Amer, 2000, pp. 40-43).

With Vietnam in particular, the land border issue and events along it have caused periods of tension in bilateral relations. Vietnam has repeatedly rejected accusations that it has violated Cambodian territory. The initiation of renewed talks on the border issues in the late 1990s did not lead to any agreement by the end of the decade. The status of the agreements of 1982, 1983 and 1985 were first put in doubt by the Cambodian side, but since the late 1990s they seem to have become acceptable to both sides as basis for further talks (Amer, 1995, pp. 299-301; Amer, 1997, pp. 80-91; Amer, 2000, pp. 40-42). The bilateral talks did progress into the year 2000 and Vietnam officially stated that an agreement would be reached by the end of that year (Nhan

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<sup>13</sup> A conflict over overlapping claims to 200-mile EEZ could emerge if Brunei and Vietnam would begin to assert such claims from islands and reefs which they claim in the area (Valencia, 1991, pp. 48-50 and pp. 66-67).

Dan, 2000; MFA Vietnam, 2000a). However, this did not materialize and for a few years talks were more sporadic. Eventually the two countries managed to make progress in their talks on the land border dispute resulting in the agreement on a Supplementary Treaty on October 10, 2005. Following the completion of the ratification process in both countries, the exchange of ratification documents for the Supplementary Treaty took place on December 6, 2005 and thus it entered into force (Nhan Dan, 2005). This settled the land border issue between the two countries. Currently, Cambodia and Vietnam are carrying-out the demarcation and marker planting of the land border in order to complete the process by 2012 in accordance with the agreement between the two Prime Ministers (MFA Vietnam, 2009e). However, the maritime disputes in the Gulf of Thailand are still not settled. Talks on the maritime disputes were initiated following Cambodian complaints that the Thai-Vietnamese maritime boundary agreement of August 1997 encroached on Cambodian waters.<sup>14</sup> Thus far, little progress has been made in the maritime talks with one major point of differences being the interpretation of the Brévié line left by the French.<sup>15</sup>

In relation to the land border disputes with Laos the two countries established the Cambodia-Laos Joint Boundary Commission (CLJBC) and the Laos-Cambodia-Joint Boundary Commission (LCBJC), respectively, and they met for the first time in Vientiane from November 20-22, 1995. Talks have continued with some progress being reported in terms of survey and also demarcation including the 2008 tri-junction agreement with Vietnam, but the land border issue has not been fully settled yet.<sup>16</sup>

For the major part of the 1990s areas of Cambodia bordering Thailand were under the control of the Party of Democratic Kampuchea (PDK) (*Khmer Rouge*). This situation caused tension and also prevented the Cambodian government from getting involved in talks with Thailand on the common border.<sup>17</sup> Cambodia and Thailand initiated

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14 For Cambodia's complaints about the Thai-Vietnamese agreement see BBC/FE (3223, B/2-3; 3228, B/14). For the Vietnamese response see BBC/FE (3228, B/14). The information relating to the agreement was carried by the Voice of Vietnam.

15 In an earlier study it has been observed that "the Brévié-line left by the French, which primarily addressed the question of the islands in the area, is to be regarded as an administrative delimitation and not as a border delimitation" (Amer, 1997, p. 89). In fact the Governor General Brévié made this distinction in his decision of January 31, 1939 (see Chhak, 1966, p. 158; Tran, 1979, p. 39). For the text of Brévié's decision see Sarin (1966, pp. 207-208) and Tran (1979, pp. 62-63).

16 For details on developments up to 2000 see Amer (2000, pp. 42-43) and St John (2001, pp. 101-102). In January 2005 Cambodia officially reported that "86% of the border issues" had been settled (Cambodia MFA, 2005). In late 2008 Cambodia officially issued information that border demarcation would be terminated in 2009 ("Cambodia, Laos to end", 2008).

17 For information about the situation along the border in the 1990s see St John (2001, pp. 103-104).

talks on their land border dispute with the first meeting of the Joint Commission on Demarcation of the Land Boundary held in Thailand in early July 1999. Reportedly, the two sides could not agree on which system to opt for when using earlier conventions and treaties.<sup>18</sup> Later the same year, talks on the maritime disputes between the two countries were initiated. Due to periods of tension in bilateral relations in the 2000s – most notably in 2003 with attacks on Thai assets in Cambodia including the Thai Embassy in Phnom Penh – and to periods of tension along the land border – most notably in 2008 and 2009 when tension in and relating to areas in the vicinity of the Preah Vihear temple led to both deep political tension and to sporadic clashes between Thai and Cambodian troops resulting in casualties<sup>19</sup> – the talks on the border issues between the two countries have been hampered and both land and maritime disputes remain to be settled.

### *Laos*

During the second half of the 1970s Laos and Vietnam reached agreements relating to their land border with the demarcation being finalized in 1990. Officially the two countries did not refer to any border dispute between them but the outcome of the demarcation process displayed that areas of overlapping claims existed and that such differences were resolved in the negotiation and demarcation processes. Since September 2008, Laos and Vietnam are implementing a project to add and upgrade border landmarks between the two countries. This project will be carried-out during the period 2008-2014 and about 800 border pillars will be planted along the 2,300 km boundary line (MFA Vietnam, 2008b; MFA Vietnam, 2008c).

With other neighbouring countries it was not until after the end of the Cold War and the changing regional developments with the end of the Third Indochina Conflict that border issues were being addressed.

The most notable progress is the agreements and demarcations of the borders

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18 Land Boundary (1999, p. 46) and Boundary Talks (1999, p. 37).

19 Official Cambodian sources provide details on Cambodia's position on key periods of the 2008-2009 dispute with Thailand. First, through letters to the United Nations complaining about Thailand's violation of Cambodia's territorial integrity (UN Cambodia Letter, 2008a, UN Cambodia Letter, 2008b; UN Cambodia Letter, 2008c). Second, by clarifying that there is no territorial dispute in the Preah Vihear temple area ("No overlapping", 2008). Third, on Thai de-mining activities encroaching on Cambodian territory ("Cambodia: Thailand", 2008; "Statement of the Spokesman", 2008). Fourth, through accounts about military clashes in both October 2008 and April 2009 ("Cambodia informs", 2008; "Cambodia clarifies", 2009; "Cambodia demands", 2009). Fifth, an official rebuttal that the inscription of Preah Vihear Temple provoked Thailand's military action ("Inscription of the Temple", 2009).

between Laos and China and Laos and Myanmar, respectively, as well as the tri-junction agreement between the three countries during the first half of the 1990s.

With Thailand, Laos agreed in August 1996 to set up a Joint Border Committee, to be chaired by the Foreign Ministers of the two countries, to deal with the demarcation of the common border.<sup>20</sup> The demarcation process has been initiated and some sections of the land border have been demarcated but a number of disputed areas remain to be settled.<sup>21</sup> Furthermore, the two countries need to agree on the principles for establishing the borderline along the Mekong River which makes up a large section of the common border between Laos and Thailand. The attempts at progressing with the demarcation process have at times been hampered by tension between the two countries.<sup>22</sup>

### **Vietnam**

With the exception of Laos and the PRK, Vietnam only held border talks with Indonesia prior to the early 1990s. The 1990s were characterized by considerable progress in negotiations. In 1992 a joint development agreement (JDA) was reached with Malaysia relating to an area of bilateral dispute in the Gulf of Thailand. In 1997 an agreement was reached with Thailand relating to maritime boundaries in areas of bilateral dispute in the Gulf of Thailand. The agreement entered into force on February 27, 1998, following the completion of the ratification process (Thai-Vietnam Ratification, n.d.). In 1995 Vietnam and the Philippines agreed on a 'code of conduct' to be observed by the two countries in the South China Sea. In the late 1990s Vietnam, Malaysia and Thailand initiated trilateral talks relating to an area in the Gulf of Thailand where the claims of the three countries overlap. These talks were made possible by the maritime boundary agreement between Vietnam and Thailand in 1997 (Amer & Nguyen, 2005, p. 432 & p. 434).

The claims of Taiwan and Vietnam, respectively, to the Spratly and Paracel archipelagos overlap and Vietnam have made official statements criticizing Taiwanese

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20 Amer's discussions with officials in Bangkok in December 1996. See also BBC/FE (2713, B/4; 2770, B/4.)

21 Thai sources indicate that more than 90 percent of its border with Laos has been demarcated. This does not include the sections of the border along the Mekong River (Amer's discussions with officials in Bangkok in November 2007 and in February 2009).

22 For background information including clashes in both 1984 and in 1987 as well as developments up to 2000 see St John (2001, pp. 102-103).

activities in the Spratlys in recent years. However, Vietnam does not recognize Taiwan as a sovereign country. Vietnam not only adheres to the 'one China policy' – implying that Vietnam is committed to only recognize China and not Taiwan – but also has repeatedly stated its commitment to this policy. Thus, Vietnam cannot enter into official talks with Taiwan over the overlapping claims by the two parties. The non-recognition of Taiwan does not imply that Vietnam refrains from official protest against Taiwanese activities in the Spratlys.<sup>23</sup>

Given the extent of the border disputes between China and Vietnam along the land border, in the Gulf of Tonkin and in the South China Sea, these disputes deserve more extensive analysis. During the process leading up to the full normalisation of relations between the two countries in November 1991 the border disputes were not resolved.<sup>24</sup>

Following the full normalization of relations the major part of the 1990s was characterized by a fluctuating level of tension relating to the border disputes. Sharp differences relating to all the border disputes, i.e. overlapping claims to the Paracel and Spratly archipelagos; to water and continental shelf areas in the South China Sea and in the Gulf of Tonkin; and to areas along the land border, were prevalent from May to November 1992. Differences relating to oil exploration in the South China Sea and the signing of contracts with foreign companies for exploration were prevalent during the periods April to June 1994, April to May 1996, and March to April 1997. In 1998 there was no extended period of tension relating to the border disputes but shorter periods can be noted such as in January along the land border and in the South China Sea in April, May, July, and September (Amer, 2002, pp. 8-26).

In order to cope with the fluctuating level of tension relating to the border disputes, the two countries developed a system of talks at the expert-, government- and high-levels to deal with the border issues (Amer, 2002, pp. 9-41 & pp. 50-58; Amer, 2004, pp. 329-331, Amer, 2008; Amer & Nguyen, 2005, pp. 433-434; Amer & Nguyen, 2007a, pp. 74-76; Amer & Nguyen, 2007b, pp. 118-122). The talks at the government-level began in August 1993, the thirteenth round of talks was held in January 2007, and in

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23 The most recent Vietnamese protest was made on May 5, 2008 (MFA Vietnam, 2008a).

24 For more detailed analyses of the normalization process as such and the way in which the border disputes were addressed during this process see Amer (2002, pp. 7-8). For broader analysis of the normalization process see Amer (1994, pp. 365-366 & p. 376; 1999, pp. 73-74 & pp. 105-108; 2004, pp. 320-328).

August 2009 the most recent 'round' of government-level talks was held.<sup>25</sup> The first achievement was the signing of an agreement on October 19, 1993, on the principles for handling the land border and Gulf of Tonkin disputes. It was further agreed to set up joint working groups at the expert-level to deal with the two issues. The joint working group on the land border held sixteen rounds of talks from February 1994 to the signing of the 'Land Border Treaty' in December 1999. The joint working group on the Gulf of Tonkin met 17 times from March 1994 to the signing of the 'Agreement on the Delimitation of the Territorial Seas, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin' in December 2000. Talks at the expert-level on the disputes in the South China Sea proper, the so-called 'sea issues', were initiated in November 1995 and the eleventh round of talks was held in July 2006.<sup>26</sup>

The progress is evident relating to both the land border and the Gulf of Tonkin with the agreements of 1999 and 2000 respectively. Both countries ratified the 'Land Border Treaty' in 2000 and it officially took effect on July 6 (Amer, 2002, pp. 27-35; Amer, 2004, pp. 334-335). The demarcation process was officially concluded at the end of 2008 (MFA Vietnam, 2009a; MFA China, 2008; Nhan Dan, 2009). The maritime boundary agreement relating to the Gulf of Tonkin entered into force on June 30, 2004, when the two countries exchanged documents relating to the ratification of the agreement in Hanoi (Nhan Dan, 2004; People's Daily, 2004). The ratifications process and the entry into force of the agreement were made possible by the completion of the talks on an additional protocol to the agreement of fishery co-operation. This agreement also entered into force on June 30 (People's Daily, 2004; "VN - China gulf," 2004, pp. 8-10, Nguyen, 2004, pp. 9-15 & p. 19; Nguyen, 2005, pp. 25-44; Zou, 2005, pp.13-24).

Following the entry into force of the Gulf of Tonkin maritime boundary agreement and the fisheries cooperation agreement, the two countries initiated expert-level talks on the delimitation of the area outside the entrance of the Gulf of Tonkin - the

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25 The thirteenth round of government-level talks we held in Beijing January 19-20, 2007 (Nhan Dan, 2007; MFA Vietnam, 2007b). At a meeting in Hanoi November 27-29, 2007, between the Vietnam and Chinese delegations to the 'Sino-Vietnamese Government Border and Territory Negotiation' it was agreed that the fourteenth round of talks at the government-level will be held in 2008 (MFA Vietnam, 2007d). From August 12-14, 2009, government-level talks were held in Hanoi. Reports do not indicate which round this corresponds to (MFA Vietnam, 2009d; MFA China, 2009b).

26 The eleventh round of talks on 'sea issues' was held July 10-12, 2006 (Nhan Dan, 2006). At a meeting in Hanoi from November 27-29, 2007, between the Vietnam and Chinese delegations to the 'Sino-Vietnamese Government Border and Territory Negotiation' it was agreed that the twelfth round of talks on the 'Sea Issues' would be held in 2008 (MFA Vietnam, 2007d).



so-called mouth of the Gulf of Tonkin. The first meeting of the expert-level working group was held in January 2006 in Hanoi and the fifth meeting was held in Hanoi in January 2009 (Nguyen & Amer, 2007, p. 313; MFA Vietnam, 2009b).

The expert-level talks on the so-called 'sea issues' (South China Sea – referred to as East Sea by Vietnam) have not made much progress partly due to disagreements on what issues should be on the agenda with Vietnam pushing for the inclusion of the issue of the Paracels and China insisting that that issue should not be on the agenda. Nevertheless, the level of tension relating to the disputes in the South China Sea had been considerably reduced by 1999, a trend that has continued to largely prevail in the 2000s (Amer, 2002, pp. 27-35; Amer, 2004, pp. 334-335; Amer & Nguyen, 2005, pp. 434-435; Amer & Nguyen, 2007a, p. 76; Nguyen & Amer, 2007, p. 313).

Despite this lack of progress in the expert-level talks, the high-level talks have resulted in agreements on increasingly sophisticated principles for the behaviour of the two countries in the South China Sea in order to avoid actions that can provoke tension and to minimize tension if a dispute arises. Notable provisions relating to the behaviour in the South China Sea can be found in Joint Declarations, Joint Statements and Joint Communiqués from high-level meetings between China and Vietnam over the last decade.<sup>27</sup>

This clearly displays the stated commitment to handle the disputes in the South China Sea through peaceful means and to strive for both a solution and collaboration in the area. In the context of the multilateral dispute relating to the Spratly archipelago and the broader issue of the situation in the South China Sea, Vietnam is actively involved in the ASEAN-China dialogue. The most tangible outcome of that dialogue was the signing of the 'ASEAN-China Declaration on the Conduct of Parties in the South China Sea' (DOC) on November 4, 2002, during the Eighth ASEAN Summit. The DOC is seen as an important step in the process aiming at establishing and agreeing on a 'code of conduct' in the South China Sea. The parties concerned undertake to resolve their border and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 United Nations Convention on the

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<sup>27</sup> For an overview of such high-level meetings and the focus of the Joint Declarations, Joint Statements and Joint Communiqués see Amer (2008).



Law of the Sea (UNCLOS) (Nguyen, 2001, pp. 105-130; Nguyen, 2002b, pp. 19-21).

In the context of the situation in the South China Sea it can be noted that an Agreement on seismic survey in the South China Sea between the Chinese National Offshore Oil Company (CNOOC) and the Philippines National Oil Company (PNOC) was signed on September 1, 2004 (DFA 2004). The area of seismic survey covers some parts of the Spratly archipelago. Vietnam officially stated that the agreement had been concluded without consulting other parties. It 'requested' China and the Philippines to inform Vietnam about the content of the agreement. Vietnam also reiterated its sovereignty claims to both the Spratly and Paracel archipelagos. Finally, it called on all other signatories to join Vietnam in "strictly implementing the DOC" (MFA Vietnam, 2004).

In March 2005 there were further developments relating to the South China Sea. First, on March 7, it was announced by the Department of Foreign Affairs of the Philippines that the Maritime and Ocean Affairs Center, Department of Foreign Affairs of the Philippines would host the Third Philippines-Vietnam Joint Oceanographic Marine Scientific Expedition in the South China Sea (JOMSRE-SCS III) from April 6-9, 2005 (DFA, 2005a). On March 11 the Spokesman of China's Ministry of Foreign Affairs expressed China's "concern" about the joint marine research and that China and the "relevant parties" would follow the "principles enshrined in the Declaration on Conduct of Parties in the South China Sea" in their marine research (MFA China, 2005a).

Second, on March 14, a 'Tripartite Agreement for Joint Marine Seismic Undertaking in the Agreement Area in the South China Sea' (JMSU) was signed between China National Offshore Oil Corporation (CNOOC), Vietnam Oil and Gas Corporation (PETROVIETNAM) and the Philippine National Oil Company (PNOC). It was stipulated that the signing of the agreement 'would not undermine the basic position held by the Government of each party on the South China Sea issue'. However, the parties expressed their "resolve to transform the South China Sea into an area of peace, stability, cooperation and development".<sup>28</sup> The three-year term of JMSU ended on July 1, 2008, and the three parties have not officialized any information about the possible continuation and future direction of the tripartite collaboration.

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28 Information derived from MFA Vietnam (2005a). For the report from China see MFA China (2005b). For the report of the Philippines see DFA (2005b).

On February 2, 2009, the House of Representatives of the Philippines passed House Bill 3216. The Bill aimed at defining the Archipelagic Baselines of the Philippine Archipelago and it reportedly includes both the Kalayaan Island Group (KIG)<sup>29</sup>, i.e. the major part of the Spratly archipelago, and Scarborough Shoal. The passing of the Bill prompted reactions from both Vietnam and China.<sup>30</sup>

In early May 2009 Vietnam submitted a 'Partial Submission' relating to Vietnam's extended continental shelf in the "North Area" (UN Vietnam Submission, 2009) as well as a "Joint Submission" together with Malaysia to the Commission on the Limits of the Continental Shelf (UN Malaysia-Vietnam Submission, 2009). Both submissions prompted China to protest and to reiterate its claims in the South China Sea.<sup>31</sup>

In the context of the border disputes with Indonesia the 1990s did not bring about a breakthrough in the negotiations. The two countries failed to capitalize on the traditionally good bilateral relations. Furthermore, the impact of the Asian Financial Crisis on Indonesia brought other more pressing needs on the agenda for the Indonesian leaders. Thus, no progress was made in negotiating the border disputes, but stability was maintained. This state of affairs continued to prevail into the early 2000s (Nguyen, 2002a, pp. 56-58) until a breakthrough was made in 2003 leading to the agreement of June 2003 settling the continental shelf dispute between the two countries. After the completion of a lengthy ratification process the agreement entered into force on May 29, 2007 (MFA Vietnam, 2007c). The issue of the delimitation of the EEZ between the two countries remains to be settled.

### ***Patterns of conflict management***

From the observations above it can be noted that the resolution of the Cambodian conflict in October 1991 was a watershed in the management of both Laos' and Vietnam's border disputes. Prior to this development Laos and Vietnam had settled

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29 The KIG encompasses all features of the Spratly archipelago with the exception of the Spratly Island itself, Royal Charlotte Reef, Swallow Reef, and Louisa Reef (Nguyen & Amer, 2007, p. 308).

30 On the passing of the bill see Dalangin-Fernandez (2009). On Vietnam's initial response see MFA Vietnam (2009c). On China's initial response see MFA China (2009a).

31 China's reaction to the Joint Submission was through a Letter from the Permanent Mission of the People's Republic of China to the Secretary General of the United Nations (UN China Letter, 2009a). China's reaction Vietnam's Partial Submission was through a Letter from the Permanent Mission of the People's Republic of China to the Secretary General of the United Nations (UN China Letter, 2009b). Attached to both Letters was a map of the South China Sea outlining China's claims in the area and the so-called 'nine-dotted lines' are clearly displayed on the map.

only their common land border.

During the first half of the 1990s Laos settled its land borders with China and Myanmar, respectively. During the 1990s talks were also initiated with Thailand and Cambodia, respectively. These talks have continued in the 2000s and progress has reportedly been made also in terms of border demarcation.

As noted above the agreements reached between Cambodia and Vietnam in the 1980s did not resolve the border disputes as displayed by continued differences and renewed attempts at negotiations in the late 1990s and the early 2000s. However, the land border dispute was settled in late 2005.

Since the settlement of the Cambodian conflict, Vietnam has agreed on a JDA with Malaysia in areas of overlapping claims in the Gulf of Thailand in 1992. In 1997 Vietnam and Thailand agreed on maritime boundaries between the two countries in the Gulf of Thailand. The agreement with Thailand has also paved the way for talks between Vietnam, Thailand and Malaysia relating to the area of the Gulf of Thailand where the claims of the three countries overlap. In 2003 Vietnam and Indonesia agreed on their continental shelf boundary. Furthermore, the 1995 agreement with the Philippines on a 'code of conduct' to be observed in the South China Sea is another notable progress after the resolution of the Cambodian conflict. More recently in May 2009 the 'Joint Submission' by Vietnam together with Malaysia to the Commission on the Limits of the Continental Shelf can be seen as the result of a bilateral conflict management process (UN Malaysia-Vietnam Submission, 2009).

In relation to the border disputes between Vietnam and China the full normalization of bilateral relations in late 1991 certainly facilitate the management of the disputes. However, the most interesting feature is the fact that the full normalization took place without resolving the border issues. This can best be understood in light of the major efforts that both countries have invested in managing and resolving the border issues since full normalization. In other words, as noted above, full normalization of relations between China and Vietnam would not have been possible in 1991 if resolving the border issues would have been a pre-condition for it.

Overall Vietnam has made considerable progress in managing and resolving its border disputes. Some bilateral disputes have not been formally settled but they are managed through various measures such as JDA, code of conduct, and talks. The multilateral dispute over the Spratlys is more complicated due to the nature of the

disputes. Thus far Vietnam has made most progress in its bilateral talks with the Philippines and China, respectively, when it comes to managing disputes in the area. Vietnam also contributes to the policy of ASEAN on the South China Sea situation and the Association's attempts at promoting peace and stability in the area. Differences are likely to persist such as those between Vietnam and China relating to the Paracels and also with regard to areas to the east of the Vietnamese coast and the west of the Spratlys. However, as noted above both sides have made considerable progress in containing tension in recent years and have agreed on a number of measures to avoid and contain possible sources of tension.

Cambodia has been less successful in formally settling its border disputes with the notable exception being the land border with Vietnam, which is currently being demarcated. However, Cambodia is involved in border talks and in border demarcation with Laos on the land border issues, with Vietnam on the maritime issues, and with Thailand on both land and maritime border issues.

### ***Achievements***

Since the early 1990s, Vietnam has emerged as an active actor in settling border disputes by peaceful means in the region. During a period spanning less than fifteen years (1992-2005) Vietnam reached agreements relating to its land border disputes with China and Cambodia and on maritime disputes with Malaysia, Thailand, China, and Indonesia. In addition Vietnam has reached an agreement on a code of conduct with the Philippines relating to the South China Sea. More recently Vietnam and Malaysia made a 'Joint Submission' to the Commission on the Limits of the Continental Shelf. This is an impressive success rate in terms of settlement of border disputes in the South-East Asian context. Through these agreements, Vietnam has contributed to the development of international law such as the application of *uti possidetis* principle, the equitable principle, the application of the single line for maritime delimitation, and in terms of the effect of islands in maritime delimitation.

Also Laos has been actively addressing its border disputes with the notable progress achieved with Vietnam as well as with China and Myanmar, respectively. Progress has also been made in terms of border demarcation with both Thailand and Cambodia, although these processes have not yet been completed.

Cambodia has not been as successful as its two neighbours but the 2005 agreement relating to the land border with Vietnam is a notable progress for Cambodia in terms of settling its border disputes. Talks are also underway with Laos relating to the land border and with Vietnam relating to the maritime disputes. Although tension dominated the interaction between Cambodia and Thailand in 2008 and 2009 the mechanisms for talks on border issues are in existence.

### ***Challenges***

In the case of Cambodia the land border disputes with Thailand have been the most acute and tension filled over the past year. The lack of progress in addressing the maritime disputes with both Thailand and Vietnam, respectively, display the continued challenges facing Cambodia in terms of dispute settlement on border issues. The fact that the land border issue with Laos still persists further adds to the challenges that Cambodia faces in dealing with its border issues. There is also a need to complete the land border demarcation with Vietnam within the deadline agreed upon by the two countries, i.e. by 2012.<sup>32</sup>

In the case of Laos the main challenges are the settlements of its land border disputes with Thailand and Cambodia, respectively.

For Vietnam the demarcation processes of the land border with Cambodia has to be completed. Vietnam and China have to complete their negotiations relating to maritime delimitation in then the so-called mouth of the Gulf of Tonkin. The talks between Vietnam, Malaysia and Thailand relating to the area of tri-lateral overlap in the Gulf of Thailand have to be concluded. In the South China Sea the disputes with China have to be continuously managed and the same applies to Vietnam disputes with other claimants in the area, i.e. Malaysia, Taiwan, the Philippines, and potentially Brunei.

### ***Conclusion and regional conflict management dimension***

The analysis carried out in this study has displayed the positive developments relating

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<sup>32</sup> The on-going demarcation process between Cambodia and Vietnam is expected to be completed by 2012 (Nhan Dan, 2008; MFA Vietnam, 2008b; MFA Vietnam, 2009e).

to both Laos and Vietnam's border disputes. The developments relating to Cambodia's border disputes display less progress than that of its two neighbours.

The case of Cambodia displays few formal settlements of border disputes, with the land border with Vietnam being the exception, while talks are underway with Laos, Thailand, and Vietnam, respectively, on unsettled border disputes. This relates to the land border dispute with Laos, the land and maritime disputes with Thailand, and the maritime dispute with Vietnam.

The cases of both Laos and Vietnam display track records in settling border disputes, which has been impressive as seen from the perspective of the South-East Asian region. The reduction in tension relating to the remaining border disputes of Vietnam is also a positive development. Also Laos is on the process of managing its borders with both Thailand and Cambodia. These overall positive developments do not imply that all disputes have been settled nor that all agreements have been fully implemented, therefore continued efforts are needed to resolve the remaining bilateral disputes, e.g. in the case of Vietnam the maritime disputes with Cambodia, and to prevent tension from reemerging, e.g. the South China Sea. For Laos the settlement of its land border disputes with Thailand and Cambodia, respectively, has to be achieved.

The full implementation of the agreements reached thus far is essential. In the case of Vietnam this relates to the land border with Cambodia, along which the demarcation processes has to be completed. The negotiations relating to maritime delimitation in the so-called mouth of the Gulf of Tonkin needs to be completed by Vietnam and China.

Vietnam's integration into ASEAN can be further enhanced and strengthened if the trilateral dispute involving Thailand and Malaysia in the Gulf of Thailand could be formally managed through some sort of joint scheme. It could serve as a model for handling other multilateral dispute in the region. The settlement of the maritime disputes with Cambodia would also be a positive contribution.

Furthermore, continued and renewed efforts between Vietnam and China to manage their disputes in the South China Sea are also of importance to Vietnam and to the rest of the region. The importance placed on minimizing tension by the two sides can be seen in the agreements on mechanisms to reduce tension and the actual

reduction in tension that has been prevailing since the late 1990s.<sup>33</sup> Despite such efforts differences are likely to persist and administrative decisions in the respective country relating to the Paracels and/or Spratlys will spark official protest from the other side as will oil exploration and related contracts with foreign oil companies. However, both sides will continue to strive to minimize the tension caused and refrain from escalating it, as has been the prevailing policy since the late 1990s.

As for the broader South China Sea situation the adoption by ASEAN and China of the DOC for the South China Sea is a positive step in terms of conflict management. Vietnam and other parties concerned can play active and constructive roles in implementing and abiding by the DOC. The Tripartite Agreement – JSMU – between the national oil companies of China, the Philippines and Vietnam could possibly have an important impact on the South China Sea situation. The findings generated from this tripartite initiative will also provide valuable information about how resource rich the area is. The latter will certainly be an important factor in influencing the involved parties in discussions about the possible future direction of the tripartite collaboration.

In terms of regional integration into ASEAN, the settlement of the land and maritime disputes between Cambodia and Thailand, of the maritime disputes between Cambodia and Vietnam, and the settling of Cambodia's land border issues with Laos, would not only enhance bilateral relations between Cambodia and its three neighbours, but also enhance Cambodia's integration into ASEAN. Laos' integration would also be strengthened by the formal settlement of its land border issues with Thailand. Vietnam's integration into ASEAN can be further enhanced and strengthened if the trilateral dispute involving Thailand and Malaysia in the Gulf of Thailand could be formally settled which could serve as a model for handling other multilateral disputes in the region.

In the above the question of regional integration has been discussed relating to Cambodia, Laos and Vietnam, respectively. If this is expanded to the field of regional

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33 Despite the sharp reduction in tension some incidents have occurred since 1999 (Amer, 2002, pp. 27-35; Amer, 2004, pp. 334-335). For example in 2007 two events led to Vietnamese official responses. First, on November 27 – in response to a military exercise by China in the Paracels – Vietnam reiterated its sovereignty claims to both the Paracel and Spratly archipelagos (MFA Vietnam, 2007e). Second, the establishment by China – of what the Vietnamese called 'San Shan city' – on Hainan Island to administer the Paracel and Spratly archipelagos in 2007 led to an Vietnamese official protest. On December 3, 2007 (MFA Vietnam, 2007f). In an unprecedented development protests were held outside the Chinese embassy in Hanoi and the Chinese consulate in Ho Chi Minh City on December 9, 2007, prompting an official response by the Chinese Foreign Ministry stating that China was "deeply concerned over the recent developments in Vietnam" and warning that they could undermine bilateral relations (MFA China, 2007).

conflict management and in particular the ASEAN approach to conflict management, it can be said that all three Indochinese countries display a preference to bilateral approaches to negotiating their border disputes. This is not in contradiction with the ASEAN approach as long as the three countries do adhere to the Treaty of Amity and Cooperation and other ASEAN documents of relevance to inter-state relations among its members. The fundamental principle is of course the peaceful settlement of disputes as enshrined in the TAC.

As has been argued in earlier studies on the management of Vietnam's border disputes the progress made in formally settling a number of Vietnam's border disputes strengthens the credibility of ASEAN in the field of conflict management (Amer & Nguyen, 2005, p. 443; Amer & Nguyen, 2007a, pp. 81-82). This study has shown that also Laos has contributed to enhance the credibility of the ASEAN approach. This line of argumentation draws on the logic that bilateral approaches are not in contradiction with the regional approach as long as the bilateral ones adhere to the same basic principles guiding the regional approach. This relates to the ASEAN role as one of norm creator and not necessarily as a third-party mediator in disputes between its members. More problematic are cases where the bilateral approaches are not successful and where regional mechanisms such as the High Council of the TAC are not utilized.

By way of concluding it can be argued that since formal talks and negotiation are the approaches utilized by both Vietnam and Laos with success and also by Cambodia with less formal settlement outcome thus far, the informality that is said to be the dominant within ASEAN as part of the so-called 'ASEAN Way' does not seem to apply when addressing the border disputes of the Indochinese countries. On the contrary in particular Vietnam has intentionally and consistently sought to address through management and when possible formal settlement its border disputes. This displays a preference for both diplomatic and legalistic approaches to managing and settling border disputes. It indicates that the study of conflict management and disputes settlement in South-East Asia and among the ASEAN members must take into account the experiences of the newer members, e.g. Vietnam, to a greater extent.



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**Aktuelle Südostasienforschung / Current Research on South-East Asia**

***Palm Oil as a Transnational Crisis in South-East Asia***

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*This paper discusses the recent palm oil expansion as a multiple crisis of climate change, biodiversity loss, and (failed) development. It draws on recent research on the Malaysian “Palm Oil Industrial Complex” and on transnational campaign coalitions around palm oil to explore the transnational dimensions of the palm oil crisis. It argues that a new campaign coalition around the issue of agrofuel policies in the European Union has emerged that links social and environmental struggles in Indonesia and Europe. This new transnational activism not only rejects the palm oil development paradigm, but also points to possible alternative development futures.*

**Keywords:** *Palm Oil, Climate Change, Agrofuels, Transnational Activism, Indonesia & Malaysia*

*Dieser Beitrag analysiert die gegenwärtige Palmölexpansion in Südostasien als multiple Krise von Klimawandel, Biodiversitätsverlust und (gescheiterter) Entwicklung. Forschungen zum malaysischen “Palmöl-industriellen Komplex” und zu transnationalen Kampagnenkoalitionen um das Thema Palmöl werden herangezogen, um die transnationalen Dimensionen der Palmölkrise zu skizzieren. Es wird gezeigt, dass eine neue Kampagnenkoalition gegen die Agrotreibstoffpolitik der Europäischen Union entsteht, die soziale und umweltbezogene Bewegungen in Indonesien mit europäischen Netzwerken verbindet. Diese transnationale Kampagne lehnt das Palmöl-Entwicklungsparadigma ab und zeigt mögliche Alternativen auf.*

**Schlagworte:** *Palmöl, Klimawandel, Agrotreibstoffe, transnationale Kampagnen, Indonesien & Malaysia*

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## **Introduction**

Over the last couple of years, palm oil has become a widely and controversially discussed topic in Europe. This is not so much because of the plant itself, which is actually quite useful, but because of the rapid expansion of oil palm plantations across South-East Asia which is seen as causing the destruction of rainforests (Buckland, 2005; Goossens et al., 2006; Nellemann, Miles, Kaltenborn, Virtue, & Ahlenius, 2007), as well as a lot of social problems (Wakker, 2005; Marti, 2008). The really contentious issue, however, is the idea that burning palm oil for energy and for fuel can be part of the solution in combating global warming (Hoijer, Silvius, Wösten, & Page, 2006; Greenpeace, 2007).

In this paper, I will attempt to analyze these issues as a multiple crisis of capitalism, one in which the crisis of climate change is connected to that of biodiversity loss but also to a crisis of development. I am using the term crisis in the sense of a deep and prolonged problem of catastrophic proportion to which currently adopted answers provide no solution. The climate crisis, therefore, is the combination of the problem of global warming that is progressing towards a tipping point<sup>2</sup> that could lead to rising sea levels, substantial changes in weather patterns, drought etc. (Intergovernmental Panel on Climate Change [IPCC], 2007, pp. 44-54) with the fact that the rate of growth of global emissions (as the primary cause) has *increased* between 1995-2004 (IPCC, 2007, p. 14), i.e. since the adoption of the United Nations Framework Convention on Climate Change (UNFCCC) in 1992, which aimed to reduce emissions. Similarly, the biodiversity crisis is a combination of the extinction of species<sup>3</sup>, with the fact that the “threats to biodiversity are generally increasing” (Secretariat of the Convention on Biological Diversity [SCBD], 2006, p. 3), despite the Convention on Biological Diversity (CBD) being in place for seventeen years. As I will argue below, although palm oil is promoted as a development strategy in South-East Asia, the current expansion is creating new poverty, leading to a development crisis in which the pursued model is undermining development.

At the same time, I will try to analyze palm oil as a *transnational* crisis. I am

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<sup>2</sup> Commonly associated with a Greenhouse Gas concentration of 450ppm of CO<sub>2</sub>-eq. (IPCC, 2007, p. 67).

<sup>3</sup> For example, for South-East Asia, Sodhi and Brook (2006, p. 143) predict the loss of 24 to 63 percent of endemic species within the next century if current trends continue.

using transnational not in the colloquial sense of global or international, but in the more specific sense developed by (among others) Basch, Schiller, & Szanton Blanc (1994), Castles (2004), Pries (2001; 2008) and Vertovec (1999; 2009). Rather than using the “national container state” (Pries, 2001, pp. 3-33) as the term of reference, the transnational approach looks at the reconfiguration of and changing relation between spatial, economic, social, cultural and political spaces in which transnational communities are “based in two or more countries and engage[d] in recurrent and significant transactions, which may be economic, political, social or cultural over long periods” (Castles, 2004, p. 25).

Accordingly, I will try to very briefly identify the transnational economic, social and political spaces that shape the palm oil crisis.

### ***Global Warming, EU Climate Policy and Agrofuels***

At the heart of the multiple crisis is the failure of capitalism to deal seriously with climate change. In order to stabilize Greenhouse Gas (GHG) concentrations at 450 ppm CO<sub>2</sub>-eq., an 80 percent reduction in global emissions will be necessary (IPCC, 2007, p. 67). This requires a shift towards a low-carbon economy in the key sectors responsible for emissions (energy, transport, industry, agriculture, forestry), i.e. an end to fossil fuel use (responsible for 56 percent of emissions), a fundamental shift in agriculture and an end to deforestation. The necessary change is deepest in the industrialized North (particularly the USA and Europe) where per capita emissions stand at sixteen tonnes compared to four tonnes in the Global South (IPCC, 2007, p. 37).

However, not only are the emission reduction targets (8 percent compared to 1990 levels) set out in the Kyoto protocol wholly inadequate to even slow down global warming, the mechanisms adopted – in particular emissions trading and the Clean Development Mechanism (CDM) – ensure that the necessary break with the fossil fuel economy does not take place. As Lohmann (2006, pp. 101-136) conclusively argues, emissions trading, by awarding the largest emitters the most emission permits and by treating every emission cut as the same, “locks in” existing technologies rather than encouraging structural changes which would accelerate the shift away from fossil fuels. In addition, the offsets involved in CDM projects in the Global South prevents

changes in the North (instead of cutting emissions in the North, the projects cut emissions in the South), and, in many cases, contribute directly and indirectly to increased emissions (Lohmann, 2006, pp. 219-328).

Inaction on climate change is not a technical problem. Already, we have at our disposal the technology that could usher in a solar, low-carbon era. The energy from the sun “provides 15,000 times more energy a day than the earth consumes” (Scheer, 2006, p. 1), and the potentially harnessed 1 percent of that would still provide six times the current level of energy consumption (Greenpeace & European Renewable Energy Council [EREC], 2007, p. 60). Leaving wind, wave and geothermal energy and autonomous photovoltaic units aside, areas as small as 11,000 km<sup>2</sup> (in Europe) and 6,000 km<sup>2</sup> (in South-East Asia) covered with solar thermal power stations could be sufficient to provide all energy needed by these two regions (Greenpeace & EREC, 2007, p. 63).

At issue are rather the specific “social relations of nature” (*gesellschaftliche Naturverhältnisse*) (Görg, 1999) involved in the way energy production is organized in late capitalism. On a fundamental level, the basic dynamics of capitalist production, i.e. the drive towards capital accumulation, market competition and the rate of profit, work against introducing solar energy. The amount of investment required means that – in competition with other energy sources such as coal – solar energy is more expensive and that the rate of return on investment is lower. Despite the huge future costs that societies will have to bear because of climate change, for a private energy company, it is still cheaper to dig up coal and burn it than to invest significant amounts in solar thermal power stations (Greenpeace & EREC, 2007, p. 33).

In addition, the particular historical development of capitalism has led to fossil fuel industries dominating the commanding heights of industry. This leads to a concentration of capital and of political power in industrial conglomerates which have an inbuilt interest to resist a shift away from fossil fuels, as their business is in selling more oil, cars etc.<sup>4</sup> This can also be seen by the way in which oil- and coal, automotive, energy and mining corporations form coalitions to prevent climate

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4 See for example Lohmann (2006, p. 121): „Major oil corporations such as BP and Shell, both enthusiastic initiators of internal trading schemes, have never voiced any serious intention to curb their main activities of oil exploration or production at any time. Although it has changed its name to ‘Beyond Petroleum’, BP committed itself in 2002 to expand its oil and gas output by 5.5 percent per year over the succeeding five years. Its emissions in 2001 were equivalent to almost two years’ carbon dioxide emissions from the UK.“

policies which could restrict future profits.<sup>5</sup> In Germany, industry lobbying led to the (cost-free) allocation of emission permits of 44 million tonnes above the total emissions of the industries involved in the emissions trading scheme (Brunnengräber, 2009, p. 410).

These interests are then reflected in the negotiating positions of national states within the climate negotiations of the UNFCCC and in their national policies. For example, Germany, although rhetorically in favour of measures to mitigate climate change, resisted attempts within the European Union (EU) to impose more restrictive emission targets for newly built cars and responded to the financial crisis by introducing the so called *Abwrackprämie*, which subsidises car-owners to trade-in their old car and buy a new one. A visionary and carbon-neutral transport strategy is something else, as the *Abwrackprämie* is not based on CO<sub>2</sub> emission rates of cars. Rather than using the economic crisis and state investment to encourage the conversion of the automotive industry towards electric cars or public transport, the government is thereby “unnaturally” extending the lifeline of the car industry. The bottom line of climate change policies corresponds to the role as “national competition states” (Hirsch, 1995).

These three inter-related dynamics explain the emergence of the “biofuels agenda” in Europe leading us to the first transnational connection to South-East Asia. In December 2008, the European Parliament agreed upon a new Renewable Energy Directive (European Parliament, 2008), in which a mandatory target of 10 percent renewable energy for the transport sector was adopted. Although the definition of “renewable energy” has been broadened, most of the 10 percent target will be met by so-called “biofuels”<sup>6</sup>, i.e. petrol made from alcohol (i.e. from sugar cane or maize) or diesel made from vegetable oils (including palm oil).

The agrofuel agenda was developed by a corporate-dominated commission that was initiated by the EU: the *Biofuels Research Advisory Council* (BIOCRAF). In 2006, BIOCRAF put forward a report which called for an expansion of “biofuels” to 25

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5 One example is the dominant influence of the Australian Industry Greenhouse Network (AIGN), a group of coal, oil, chemical, mining and automotive companies, on Australian climate change policy. The group gave itself the name “Greenhouse-Mafia” (Mazure, 2009).

6 The critics of biofuels, to whom I belong, use the term “agrofuels” which captures the large-scale industrial agriculture nature of petrol and diesel made from food crops better than the term “biofuels,” which has ecologically sustainable connotations that are unjustified. In this article, therefore, I use the term agrofuels, unless I am referring to statements by proponents of agrofuels, in which case I use biofuels in inverted commas.

percent of transport sector fuel by 2030. The commission (which has subsequently been reformed as the *European Biofuels Technology Platform*) was made up of three automotive companies (Peugeot, Volkswagen and Volvo), three oil companies (Neste Oil, Shell and Total), representatives of the biotechnology and food industries, and various associated research institutes (Corporate Europe Observatory [CEO], 2007). For these fossil fuel industries, agrofuels offer a way of reaching EU emission reduction targets whilst continuing with the same basic transport system (combustible engines, petrol, roads). Agrofuels are simply added to the 90 percent standard diesel or petrol, thereby ensuring that oil production, refineries, petrol stations, car manufacturing etc. can all remain in place. Rather than scaling down and ultimately breaking with the fossil fuel transport system, therefore, agrofuels contribute to expanding its life expectancy.

Furthermore, the political creation of a huge and politically guaranteed market for agrofuels is having repercussions around the world, particularly in South-East Asia. The palm oil industry calculates that the 10 percent target could translate into a volume of nine million tonnes<sup>7</sup> of “biofuels” which would need to be imported, and is keen to fill the gap with biodiesel from palm oil (Basiron, 2008a, p. 14). EU climate policy is thereby contributing to an unprecedented expansion of oil palm plantations across South-East Asia.

### ***The Palm Oil Industrial Complex and the Double Environmental Crisis***

Even before the advent of a “biofuels” market, the palm oil industry had seen enormous growth. In Malaysia, the area devoted to oil palm doubled during the pre-1997 boom to nearly three million hectares. Since the economic crisis of 1997, the key area of expansion has been Sumatra and Kalimantan in Indonesia, with plantations expanding from 2.5 to nearly 6 million hectares in 2005. The prospect of agrofuel markets in the pre-2009-crisis years induced a frenzy of investment and mergers and to predictions of a further expansion of up to 25 million hectares for the region by 2020 (Colchester et al., 2006, pp. 24-26).

The expansion of oil palm plantations is driven by two distinct groups of companies

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<sup>7</sup> A considerable amount, when compared to a total Malaysian production of 17 million tonnes.

in Indonesia and in Malaysia, in which transnational corporations play a leading role. In Indonesia, these tend to be large-scale conglomerates which were formerly involved in logging as well as pulp and paper plantations, and for whom palm oil is a relatively simple continuation of the business of cutting down forests and replacing them with industrial tree plantations. For this reason, the Indonesian corporations tend to focus more on the “upstream” side of production, with plantations and palm oil mills, refineries and the production of Crude Palm Oil (CPO).

Key Indonesian players include Astra, Sinar Mas, Raja Garuda Mas, Musim Mas, and the Salim Group/Indofood, many of which had close links with former Indonesian president Suharto and his family, leading one analyst to write of „palm oil nepotism“ and of „Suharto’s palm oil oligarchy“ (Aditjondro, 2001). According to Aditjondro (2001), these political-economic linkages also extended to Malaysian and Singaporean corporations who formed joint ventures with “companies controlled by four Suharto siblings, namely Bambang Trihatmodjo, Tommy Suharto, Titiok Prabowo, and Siti Hutami Adiningsih.” Ten years after the overthrow of Suharto, a similar oligarchy (minus the Suharto clan) controls the production and trade of palm oil through the state corporation PTPN I-XIII (the largest plantation company with over 600.000 hectares of plantations) and private plantations.

After the Asian economic crisis in 1997 and the International Monetary Fund (IMF)-prescribed liberalisation of investment in the palm oil sector (Ginting, 2005), the transnational regional expansion of palm oil accelerated. A key role is played by Malaysian palm oil corporations. Casson (2000, pp. 41-43) lists 45 Malaysian investors who, together with their Indonesian partners, already controlled 1.3 million hectares – nearly half of the total area at that time – in 1998. Currently, the share of Malaysian companies in the Indonesian palm oil plantation area is estimated at between 30 and 40 percent.

Key Malaysian players are the state corporations Sime Darby and the Federal Land Development Agency (FELDA), and the private corporations IOI<sup>8</sup>, Kuala Lumpur Kepong Berhad and the Ganteng Group (Asiatic Development Berhad). The Malaysian palm oil corporations have a longer and slightly different history than their Indonesian counterparts. In contrast to Indonesia, the Malaysian industry emerged from the

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<sup>8</sup> IOI derives its acronym from Industrial Oxygen Incorporated, when the company was founded as a distributor of industrial gas, but is now just known as IOI.



colonial rubber plantation industry which was nationalized during the “New Economic Policy” of the late 1970s. They also tend to have a much deeper control of transnational production chains: apart from their regional investment in plantations in Indonesia (and more recently in Africa and Latin America) they also dominate “downstream” production, for example in oils and fats, oleochemicals and cosmetics.

The palm oil industry is a key plank in Malaysia’s development strategy and the influence of the state surpassed the kind of corrupt nepotism found in Indonesia. The state not only controls significant investment and some of the biggest companies directly, it has also actively intervened to forge a kind of “Palm Oil Industrial Complex,”<sup>9</sup> linking state and private corporations, ministries and palm oil sector organizations in the national interest. Under the Ministry for Plantation Industries and Commodities, the Malaysian Palm Oil Board (MPOB) not only regulates the industry, but it is also heavily involved in research and development with hundreds of scientists working on improved plant material, processing technology and pioneering work in the “biofuels” industry (Malaysian Palm Oil Board [MPOB], n.d.). Another key institution is the Malaysian Palm Oil Council (MPOC), which was set up in response “to a campaign against tropical oils in the USA in the 1980s” (Teoh, 2002, p. 106) in order to “promote the positive image of Malaysian palm oil in order to maximize returns to the Malaysian palm oil industry” (Malaysian Palm Oil Council [MPOC], 2007, p. 2). The MPOC embodies the global reach of the Malaysian Palm Oil Industrial Complex (with offices in Beijing, Cairo, Chicago, Dhaka, Durban, Lahore, New Delhi, Sao Paulo and Vienna,) and the close nature of this “public-private-partnership”: board members include Haji Sabri Amad (the former chairman of Golden Hope), Carl Bek-Nielson (United Plantations) and Lew Yeow Chor (IOI Corporation) (MPOC, 2007, p. 6). Its chairman is Lee Oi Hian, the owner of Kuala Lumpur Kepong Berhad and one of the richest men in Malaysia.

Epitomizing the Palm Oil Industrial Complex is the recent merger of the three biggest state palm oil corporations – Golden Hope, Kumpulan Guthrie and Sime Darby – to form one of the two biggest palm oil corporations in the world. The merger was politically instigated and had the backing of the Ministry for Plantation Economics

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9 The term is an adaptation of President Eisenhower’s “military-industrial complex.” In his farewell address to the US nation in 1961, Eisenhower warned against “the grave implications” of the “conjunction of an immense military establishment and a large arms industry” whose “total influence (economic, political, even spiritual) is felt in every city, every state house and every office of the federal government”, arguing that “we must guard against unwarranted influence, whether sought or unsought, by the military-industrial complex” (Eisenhower, 1961).

and Commodities and of the then Prime Minister Abdullah Ahmad Badawi, who gave the key-note speech at the ceremony at which the new name of the company – Sime Darby – was revealed (Sime Darby Plantation, 2008, p. 3). The new Sime Darby has assets of around ten billion USD and produces around 6 percent of global palm oil. Over half of its 545,000 hectares of oil palm plantations are in Indonesia. It also owns the former Unilever oils and fats processing plant Unimills B.V in Holland and the oleochemical company Cognis.

An important role in the emergence of a transnational palm oil industry is played by Singapore, which functions as a financial and trading hub for the sector. The Singapore-based corporation Wilmar is a good example. Wilmar was formed in 2007 as a merger between the palm oil operations of the powerful Malaysian agribusiness Kuok Group, the Indonesian millionaire Martua Sitoris, and the US corporation Archer-Daniels-Midland (ADM). Aside from its 570,000 hectares (the greater part of which are in Indonesia [Milieudefensie, Lembaga Gemawan, & KONTAK Rakyat Borneo, 2007, p. 15]) it can process around 10 million tonnes of crude palm oil in its 33 refineries. In the financial year 2007, Wilmar accounted for one quarter of global trade in crude palm oil (Wilmar International, 2008, p. 19).

The symbiosis of economic and political power located within the Palm Oil Industrial Complex has important ramifications for the way in which palm oil expansion is conducted across the region. State and corporate interests are combined in such a way that environmental or social concerns are subjugated beneath a general strategy of development and accumulation linked to a continuous growth of the sector. So, although both Malaysia and Indonesia have ratified the CBD and the UNFCCC, the expansion of the palm oil sector usually overrides the goals of both conventions, exacerbating the double environmental crisis of climate change and biodiversity loss.

The contribution of palm oil to global warming is primarily connected to the conversion of peatland forests. Peatland, which can reach a depth of up to 12 metres in South-East Asia, is a huge carbon sink. When drained for conversion to plantations, peat is exposed to aerobic decomposition, and burning drained peatland can lead to smouldering fires that can last for days. An influential report by Wetlands International, Wageningen University and Delft Hydraulics (Hoiijer et al., 2006, p. 29) estimated the total area of peatland in South-East Asia at over 20 million hectares and the total amount of carbon stored at 42,000 megatons. The report calculated

a total annual carbon emission rate from draining and burning peatlands of 2,000 megatons, putting Indonesia “in 3rd place (after the USA and China) in the global CO<sub>2</sub> emission ranking” (Hoijer et al., 2006, summary). Rather than reducing carbon emissions, agrofuels from palm oil therefore contribute to increased emissions. A recent report (Danielson et al., 2008, p. 353) calculated that it would take 75 to 93 years for the emissions caused by converting rainforest into palm oil plantations to be compensated by avoided emissions from fossil fuels. In the case of peatland forest, this would take up to 600 years.

In addition to contributing to climate change, the conversion of forests to palm oil plantations is worsening the biodiversity crisis. Despite claims by the Malaysian palm oil industry that oil palm is only established on former rubber and coconut plantations, much of the more recent expansion in Sabah and Sarawak has converted rainforests. According to a report by Friends of the Earth (2008, p. 29) on Sarawak, “the new area opened up for oil palm plantations in the 1990-2005 period (929,000 ha) nearly matches the reported natural forest cover loss in Malaysia over the same period (913,000 ha).” The planned expansion of up to 15 million hectares of additional plantations in Indonesia will invariably take place by converting forestland.

Even though much of this forestland has been logged and is degraded, the biodiversity implications are still tremendous. Research has shown that the conversion of formerly logged or degraded forest into oil palm plantations can lead to a reduction of bird and butterfly species by 60 to 80 percent (Danielsen & Heegaard, 1995; Wilcove, 2008). The impact of many and large plantations in changing the totality of a landscape and the resulting fragmentation of forests has even more severe effects on the long-term viability of populations of larger mammals such as the orang-utan (Buckland, 2005; Goossens et al., 2006; Nellemann et al., 2007).

The transnational nature of the palm oil industry is often neglected, particularly in the discussion of the environmental consequences of the palm oil boom. This is evident in the way the recurring problem of forest fires and haze is framed. Although haze is seen as a transboundary problem this is understood as a regional or *inter-national* problem, i.e. the fires occur mainly in Indonesia but affect Malaysia and Singapore (e.g. Quadri, 2001). The role of transnational corporations is not acknowledged, with the result that mitigation efforts are expected from the national policies and measures of Indonesia (albeit with regional support), and this could be one reason why Indonesia

has not ratified the Association of Southeast Asian Nations' (ASEAN) Agreement on Transboundary Haze Pollution. The role of Malaysian and Singaporean companies in forest burning has been documented. For example, a recent police investigation into three Wilmar subsidiaries in Landak, West Kalimantan, found that they "were guilty of burning land intentionally and systematically with the intent to clear land for plantation development" (Milieudefensie, Lembaga Gemawan, & KONTAK Rakyat Borneo, 2007, p. 26).

### ***Palm Oil and the Development Crisis***

The Malaysian Palm Oil Industrial Complex is particularly proactive in responding to environmental criticisms firstly by comparing palm oil with other oils (i.e. palm oil compares favourably with soy and rape seed because it has a longer life-span and is more productive) and secondly by asserting the right to development. At a recent conference on "sustainable palm oil," the CEO of the Malaysian Palm Oil Council, Yusof Basiron, claimed that "attacks from overzealous NGOs on palm oil may damage the oil that has served the world to provide food oil and income for the poor in producer countries" (Basiron, 2008b, p. 10). At the same conference, S. Paramanathan (2008), a retired official from the Ministry of Agriculture, argued that the development of peatland was necessary in order to eradicate rural poverty and to uplift the standard of living of indigenous peoples. The right to development is often framed in an anti-colonial discourse.

In contrast, many NGOs criticise oil palm plantations for worsening rural poverty, and agrofuels in particular have been linked to the food security crisis. In 2008, a World Bank report linked speculation around agrofuels to 75 percent of the increase in food prices (Mitchell, 2008, p. 17). In her detailed study of three Dayak communities in Central Kalimantan, Orth (2007) shows a significant reduction of food sovereignty for those villages in the vicinity of a recently established oil palm plantation.

The expansion of oil palm plantations is frequently accompanied by land conflicts. Small-scale farmer groups organized in the *Serikat Petani Indonesia* (SPI) oppose large-scale plantations because of food sovereignty issues. Indigenous groups organized in the *Aliansi Masyarakat Adat Nusantara* (AMAN) reject the further expansion of oil palm plantations because they encroach on their forestlands. In a recent conflict

in West Kalimantan, for example, one indigenous group issued a declaration which stated “the Semunying Jaya community call upon you to respect the sovereignty of our land, the protection of our water and forest resources as we inform you that we still refuse any oil palm plantation in our area, in whatever form or shape it may be” (Marti, 2008, p. 50).

At the same time, many local communities accept oil palm plantations to their area because they hope that they will be able to generate a higher income as smallholders and because of the promise of new jobs. In theory, subsistence and forest-based livelihoods are exchanged for higher income through cash crop production and for salaried positions, and this is the development paradigm that is being offered by government and the palm oil industry. However, many of these expectations are not met. In 2006, smallholders formed a union called the *Serikat Petani Kelapa Sawit* (SPKS) because of ongoing problems of indebtedness, low prices paid by the company and land issues (Serikat Petani Kelapa Sawit [SPKS], 2006, pp. 16-17). Since the collapse of palm oil prices at the end of 2008 these problems have become more severe.

As for the jobs created by the new industry, the low wages are not conducive to eradicating rural poverty but rather to cementing it. According to Marti (2008, p. 79), workers doing back-breaking work as harvesters or health-impairing work spraying herbicides usually earn the minimum wage or less, i.e. in 2006, 66 percent earned less than 400,000 Indonesian Rupiah or around 30 Euros a month. Although official wages in Malaysia are significantly higher at around 70 to 180 Euros a month (Malaysian Palm Oil Association [MPOA], 2005), official figures have been contradicted by the Indonesian Consulate, who claimed that Indonesian workers were often receiving less than two Euros a day (Marti, 2008, p. 83).

Indonesian plantation workers and their networks contribute to the formation of a transnational social space made up of migrant workers from (predominantly) Indonesia in the Malaysian plantations. Foreign workers now make up the bulk of the 500,000 plantation workers (MPOA, 2005, pp. 16-17), because local Malaysians do not want to work there. The main reason is that although the wages are attractive from an Indonesian perspective, they hardly provide for a decent living wage in Malaysia.

But low wages are not the only problem faced by the migrants. They have the status of “guest workers,” i.e. they are supposed to work for a period of three years (with an employer option to extend twice with a one-year contract) and then go

back home. Accordingly, they have no rights as a citizen, cannot organize, and are dependent on the employer who owns their work permit and who in some cases retains their passport as an additional measure to stop them “absconding” (Daud, 2006, p. 46). The newly amended Immigration Act of 2002 prohibits family members from joining the workers, leading to intense loneliness. When workers do bring their families (often in quiet agreement with management who see this as a stabilizing influence) they now face the problem that their children are now prohibited from going to Malaysian schools.

It is ironic that the palm oil industry uses an anti-colonial rhetoric to justify a development strategy that was introduced by colonialists. Indeed, many practices in the industry today are reminiscent of colonial times, from the recruitment strategy of workers through agents (under the British, this used to be called the *kangany* system), to their temporary status and limited political rights through to the “primitive accumulation” involved in taking land – often by force – from indigenous peoples. Scepticism towards this kind of development strategy seems justified. Serge Marti, for example, who has conducted research into the labour conditions of plantation workers in Indonesia, asks “whether Indonesia’s policy-makers intend to keep a large labouring class in low-paid, low-skill jobs as the rest of the country develops, or whether the country anticipates inviting millions of workers from even less fortunate countries to work on their plantations in future” (Marti, 2008, p. 84).

### ***A Crisis of Legitimacy***

The double environmental crisis of climate change and biodiversity loss and the development crisis connected to palm oil have all given rise to various social movements and NGO campaigns. Because of the specific links between South-East Asia and Europe, economically along the global supply chains and politically because of the EU’s agrofuel policy, these activities occur in a transnational political space in which the palm oil controversy takes centre stage. Important protagonists in this transnational political debate are the Palm Oil Industrial Complex, large European end-users of palm oil such as Migros, Sainsburys and Unilever, large international environmental NGOs such as the WWF, Greenpeace and Friends of the Earth, the European Commission’s Directorate-Generals for Energy and Transport (DG TREN)

and for Environment (DG ENV), and a wide range of local and transnational activists from both South-East Asian and European countries.

Two key transnational campaigns have emerged. The first was initiated by the larger environmental NGOs such as the WWF who used consumer awareness campaigns to put pressure on the larger brands and banks in Europe, who then negotiated with the palm oil suppliers in Malaysia to develop more sustainable management practices. The result was the foundation of the “Round Table on Sustainable Palm Oil” (RSPO) in 2002 as a stakeholder initiative dedicated to propagating “sustainable palm oil.” As a stakeholder initiative, the RSPO was singularly successful in integrating a large part of the industry and a few NGOs around a set of principles and criteria embedded within the paradigms of sustainable development and corporate social and environmental sustainability. The criteria include the commitment to “zero-burning,” the conservation of “High-Conservation-Value Forest,” the respect of land rights and the right to union representation.

However, lack of implementation of RSPO criteria and the fact that the RSPO supported the agrofuels agenda has undermined the legitimacy of the RSPO and given rise to a second campaign called the “Campaign Coalition for a Moratorium on Agrofuel Targets in the EU” (Econexus, 2007). Rather than targeting companies in the hope that they could become sustainable, the campaign focused on the political decision at the European level to set a mandatory target for agrofuels in order to stop a demand-driven further expansion of oil palm plantations.

This new coalition is not led by NGOs but involves a large number of different social movements, networks and local initiatives. In South-East Asia, most of the local initiatives and struggles arise from the social issues connected to palm oil expansion, particularly land rights but also labour conditions etc. and are therefore mainly located in Indonesia. As mentioned above, local groups of indigenous peoples, small scale farmers and workers are organized in national federations, some of which are members of Transnational Social Movement Organizations (TSMOs, see Smith, 1997, pp. 42-58) such as *La Via Campesina* and the *International Union of Food Workers* (IUF) which are important in the controversy surrounding palm oil.

Despite the palm oil industry’s depiction of the environmental NGOs as a kind of neo-colonial (protectionist) intervention from the North, forest destruction and biodiversity loss are key concerns in South-East Asia, and the Indonesian



environmental network *Wahana Lingkungan Hidup Indonesia* (WALHI) plays a central role in the transnational campaigning around palm oil. WALHI operates as a network of different local NGOs and activists but is at the same time a member of Friends of the Earth International, and has direct links with sister organizations in the Netherlands, Germany and the UK.

On the European side, Friends of the Earth member organizations are also important, but there is a whole number of smaller forest NGOs such as the Brussels-based FERN, or the German *Rettet den Regenwald* involved as well. The environmentalists are joined by citizen initiatives such as the *Bürgerinitiative „Kein Strom aus Palmöl!“* in Saarlouis-Dillingen or the *Arbeitskreis Heckenschutz* in Lüchow Dannenberg, by various North-South solidarity groups and by local chapters of the *altermondialist* network attac. The European groups were quite successful in influencing public opinion, with media coverage shifting against agrofuels within a two-year period<sup>10</sup>. However, although some of the modifications in the European Directive might be a result of campaigning work, the coalition did not manage to stop the 10 percent target.

Interestingly, however, the range of actors involved in the campaign brings together different paradigms, combining concerns over biodiversity loss and a critique of the fossil fuel economy with the demand for climate justice and food sovereignty. This has politicized the debate around palm oil beyond the single concern for the rainforest and orang-utans. Whereas the RSPO is firmly within the dominant paradigm of Global Environmental Governance, sustainable development, stakeholder initiatives and corporate responsibility, the new campaign coalition rejects it. Indeed, it has even given birth to a new declaration criticizing the RSPO for “greenwashing” the palm oil industry (“International Declaration,” 2008).

The key role played by environmental activists in WALHI and Friends of the Earth ensure that the forest issues are not framed in terms of conservation project management but within a frame that stresses social issues and human rights. The involvement of small-scale farmer organizations and *La Via Campesina* ensure that

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10 Media was particularly critical in the United Kingdom and in Germany. For example, German television aired a whole series of palm oil-critical films by Altemeier and Hornung in 2007 and 2008, including “Hier Bio - dort Tod: Vom Sterben des Orang Utans”, NDR, Phoenix; “Der Palmöl-Skandal - Wie Stromkunden Umweltvernichtung finanzieren”, BR Report München; “Der letzte Wald der Orang Utans”, ARD - W wie Wissen 2007, “Umweltsünde Biosprit”, ORF - Weltjournal; “Mogelpackung Biodiesel”, ARD - Monitor; “Ohne Rücksicht - Brandrodung für Biodiesel”, ARD-Tagesthemen 13.12.07; “Die Biosprit-Falle”, SWR-Auslandsreporter (see <http://www.globalfilm.de>). The negative publicity was seen as a serious threat by the Malaysian palm oil industry. For example, Errol Oh (2009) argued in the Malaysian tabloid *Star*, that “Fuelled by a cocktail of environmental issues, the anti-palm oil lobby in the West is gaining traction, and failure to counter this well can be costly.”

a perspective of food sovereignty (small-scale production for subsistence and local and regional markets rather than industrial production for a global market) is part of picture. Organizations involved in the globalization-critical movement such as attac bring their critique of corporate-led neoliberal globalization into the campaign. As these movements fuse together, they could lead to a crisis of legitimacy for the current model of action – or lack of it – regarding climate change.

### **Conclusion**

The palm oil boom in South-East Asia represents a multiple crisis, linking the crisis of climate change to that of biodiversity loss, of development, and ultimately, of legitimacy. This multiple crisis unfolds in South-East Asia through a number of transnational processes. Firstly, the rapid expansion of palm oil across the region is fuelled in part by European climate policy and particularly the role that agrofuels are hoped to play in reaching Kyoto and post-Kyoto emission reduction targets. Secondly, transnational corporations (TNCs) from Malaysia, Singapore and Indonesia have created global supply chains that link plantations with refineries and manufacturing. These TNCs are driving the spatial expansion of palm oil in the region. Thirdly, migrant networks of Indonesian palm oil workers are creating a new transnational social space between Indonesia and Malaysia. And fourthly, the controversies surrounding the rapid expansion of palm oil plantations have given rise to a political space connecting South-East Asia to Europe in which transnational campaign alliances intervene.

These transnational linkages are important for an assessment of the controversy surrounding the palm oil boom. Rather than resulting from conflicting interests between nation states, with a contradiction between conservation goals of Europe versus development goals of South-East Asia, two *transnational* alliances have emerged which unite protagonists in both Europe and South-East Asia around opposite agendas. The first alliance, linking TNCs in Europe (i.e. BIOCRAF) and South-East Asia (i.e. the Palm Oil Industrial Complex) promotes palm oil based agrofuels as a solution to the crisis of climate change, and as a viable development model. The second alliance, linking civil society groups in both regions, sees agrofuels as exacerbating climate change and the related expansion of palm oil as underwriting a development model which undermines indigenous land rights and which is based on a low-wage flexible

labour regime.

The renewed politicization of palm oil in connection with the agrofuel agenda shows that the attempt to incorporate criticism of the practice of palm oil production into a governance model based on corporate social and environmental responsibility – in the Roundtable on Sustainable Palm Oil – has failed to defuse the conflict. In the run-up to the Conference of Parties of the Climate Convention in Copenhagen, the transnational campaign alliances around palm oil are using the experience from South-East Asia to challenge the “false solutions” put forward by the European Union. In turn, this is contributing to the formation of a global movement around the paradigm of “climate justice” which links the double environmental crisis of climate change and biodiversity loss to the dominant development model of the North, and its repetition in the South. Alternatives being explored within this movement, around concepts such as food sovereignty, decentralized renewable energy, indigenous rights, negative growth etc. could provide a different and more viable solution to the multiple crisis represented by the current palm oil boom.

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**Aktuelle Südostasienforschung / Current Research on South-East Asia**

## ***Continuity in a Changing World: Malaysia's Coercive Security Apparatus in the Age of Terror and Beyond***

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*The Malaysian government's use of its repressive security legislation has had a significant impact on Malaysia's modern political history. The focus of the present article is on the government's use of its coercive security apparatus since the terrorist attacks of 9/11. My argument is that the apparatus is largely unchanged by the current global climate of the 'War on Terror.' Notably, Malaysia's use of coercion has become increasingly less criticized by other governments, notably those in the West. Perhaps as a consequence, the government has become increasingly bold in its crackdowns against opposition elements. Following the political upheaval of the 2008 election, however, the future of the security apparatus is in question.*

**Keywords:** *Malaysia, Security, Terrorism, War on Terror, Political Opposition*

*Der Einsatz repressiver Sicherheitsgesetze durch die malaysische Regierung beeinflusste die moderne politische Geschichte Malaysias in nicht unerheblicher Weise. Dieser Beitrag analysiert den Einsatz des Sicherheitsapparates durch die malaysische Regierung seit den Terroranschlägen des 11. September 2001. Ich argumentiere, dass dieser Apparat im gegenwärtigen weltweiten Klima des "Kriegs gegen den Terrorismus" größtenteils unverändert blieb, dass jedoch gleichzeitig Malaysias Einsatz von Gewalt von anderen (vor allem westlichen) Regierungen weniger kritisiert wird als früher. Eine mögliche Konsequenz dessen ist die zunehmend rücksichtslosere Vorgehensweise der Regierung gegen oppositionelle Strömungen. Als Folge des politischen Umschwungs nach der Wahl 2008 steht die Zukunft des Sicherheitsapparates jedoch in den Sternen.*

**Schlagworte:** *Malaysia, Sicherheit, Terrorismus, Krieg gegen den Terror, politische Opposition*

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It is a cliché to state that the terrorist attacks on New York and Washington on 11 September 2001 (9/11) changed the world. This statement is certainly true when the adoption of repressive security laws in countries the world over and the wars in Afghanistan and Iraq are taken into account. In Malaysia, however, the difference is less noticeable. The Malaysian government's response to the events of 9/11 has been a swift, though often controversial, application of its well-established coercive security apparatus, namely the Internal Security Act (ISA). The security apparatus refers to the implementation of legislative policy by the institutions of the state, namely the police, and the coercive force utilized in support of the regime and its ideology and interests. With regard to the 'War on Terror', arrests of suspected terrorists began in the months prior to 9/11 and have continued in the months and years since. The apparatus has continued to perform its primary function: the survival of the Barisan Nasional (BN) coalition, dominated by the United Malays National Organisation (UMNO), a Muslim-Malay party, in power since Malaysia's independence. The consistency in security policy is remarkable given that in the post-9/11 period Malaysia underwent a leadership transition from the Prime Ministership of Mahathir Mohamad to Abdullah Badawi. There is little distinction to be made between the application of the coercive apparatus by either Prime Minister.

In general, I argue that internal security policy in Malaysia is calibrated to ensure regime – rather than national – security. Security policy is a political tool used to support the status quo favoured by the BN and UMNO and weaken any opposition forces, be they a legitimate physical threat or not. Security policy is designed to support the political interests of the elites and the political system as a whole, which itself is calibrated to ensure the BN remains the dominant political player. When Malaysia's politics is viewed through the framework of its security policy the power and paranoia of the regime can be witnessed. In Malaysia the regime and the state emerged at approximately the same time and the same regime has remained in power since independence. This has meant that the institutions and instruments of the state have become synonymous with the regime which uses them – one reinforces the other. All state power is vested in the Executive, itself composed of members of the ruling BN regime, thus guaranteeing complete control of the apparatus of the state. Many aspects of state power have been established and developed by the regime for

the specific purpose of reinforcing its power (for example, the New Economic Policy [NEP], an essentially pro-Malay affirmative action programme). The line between regime and state is blurred. This has resulted in a security policy which regards a threat to either the state or the regime as a threat to both. Malaysia's security policy is thus state and regime-centric, with little consideration given to the issues of human/individual security.

The Malaysian security apparatus has been in place since the Emergency period (1948-1960), during which Malayan forces, supported by the British, fought against Communist insurgents. During this period, the British centralized significant power in the hands of the government, notably through the creation of a number of Emergency Regulations, out of which evolved the ISA, the Sedition Act and the Printing Presses and Publications Act, among others. The ISA provides for preventive detention of those seen by the government as threats to national security. The Act allows the government to extend the period of detention by a period of two years, though this can continue indefinitely, with minimal judicial review. Under section 73 of the ISA, any police officer may arrest and detain without warrant any person who has 'acted or is about to act or is likely to act in any manner prejudicial to the security of Malaysia or any part thereof.' This provision is so vague that many legitimate activities, including criticisms of government policy, could fall within its scope. Complementing the ISA, the Sedition Act prohibits virtually all activities seen as causing disaffection towards the government or communal ill will. Given the preventive nature of such legislation, Francis Loh Kok Wah has likened the use of the coercive apparatus to internal "pre-emptive strikes" (F. Loh Kok Wah, personal communication, August 13, 2007).

Although the Emergency was concluded in 1960, the government did not repeal the Emergency Regulations. Instead, the national government retained and used its authoritarian powers whenever it felt the interests of national security and racial harmony were threatened. Indeed, in 1960, the government amended the Constitution, namely Articles 149, 150 and 151 to allow for preventive detention. Broad terms were used here to pre-empt the revival of a communist insurrection, though no evidence was provided to justify such a move.

In the decades that followed, numerous justifications were provided to legitimise the use of the ISA and other repressive acts. For example, the threat of Communism

was used to justify crackdowns in the aftermath of the 1969 race riots. The riots themselves occurred in the tense aftermath of the 1969 general election and led to the deaths of hundreds of people. The government did not see its failure to cater to its constituencies as a motivation behind the rioting. Instead, the Prime Minister, the *Tunku*, placed most of the blame on the Communists. It was however later admitted by government officials that the Communists had nothing to do with it. Nonetheless, in response to the riots, the coercive apparatus was amended and expanded, the powers of the ISA increased, the Emergency Ordinance and Official Secrets Act (OSA) established. The threat of ethnic violence, derived from the events of 1969, was utilized to legitimise the detention of political opponents in 1987's Operation Lalang and in the era of *reformasi* in the 1990s. Following the Islamic revival of the 1970s, interpretations of Islam that differed from the state's Islamisation project were either co-opted by the government – for example, Anwar Ibrahim in the early 1980s – or forcefully disbanded by the government via the ISA – as in the case of al Arqam and Al-Maunah. The regime's claim of upholding the 'true' interpretation of Islam was used to justify a series of crackdowns against rogue Islamic groups, generally labelled as 'deviants.'

This article examines Malaysia's security policy in the contemporary context of the 'War on Terror.' I argue that, on the whole, the apparatus remains largely unchanged, with few amendments to the government's security legislation. However, Malaysia's security approach has become increasingly endorsed at the international level. Perhaps as a consequence of this, the government has moved more boldly to curb threats to its political power. Many of those arrested in these crackdowns could hardly be characterized as a threat to national security, traditionally defined. Instead, those arrested are often threats to the status quo favoured by the BN. With the 2008 election bringing about substantial political upheaval, though, this article also contends that a drastic change to Malaysia's longstanding security policy is becoming increasingly likely. The continuity and consistency in Malaysia's security policy may soon be at an end.

### ***9/11 and the Malaysian Response***

In the months prior to the attacks on Washington and New York, the Malaysian

government had begun cracking down on groups allegedly affiliated with international terrorism, notably the so-called 'jihad gang' or *Kumpulan Militan Malaysia* (KMM), a group linked to the murder of a state assemblyman and a botched bank robbery.<sup>2</sup> Despite this, in the aftermath of the 9/11 attacks Malaysia was described by US officials as a springboard state for al-Qaeda operations, including its operation on 9/11 (Abuza, 2003, p. 123). Malaysia responded strongly against terrorism in both the short and long-term, at least in part to dispel this view, and establish itself in the new world climate as an anti-terror government.<sup>3</sup> By early 2002, the government claimed to have arrested 62 terrorists and militias with 'global and regional links' under the ISA. A number of those arrested were Malaysian citizens, although several were foreigners with alleged associations with external terrorist groups.<sup>4</sup> That said, compared to previous periods, the number of ISA crackdowns is comparatively small. In the entire year 2001, the number of ISA arrests was 70, while in 2002 the number of arrests decreased to 53. In every year since, the number of arrests and detention orders under the ISA has fallen drastically. The average number of arrests in the five-year period between 2002 and 2006 is 37 persons. By comparison, the average number of arrests in the previous five-year period, 1997 to 2001, totalled 126. In fact, the entire first five years of the War on Terror has featured, on average, less ISA arrests than any previous five-year period (*Suara Rakyat Malaysia* [SUARAM], 2007, p. 13). Thus, statistically, this current era has not brought about an increase in government-sponsored repression through its use of the ISA – if anything it has been marked by a statistical decrease.

The only major legislative change to Malaysia's security policy since 9/11 is the

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2 There is some suggestion that the KMM itself was a fabrication of the government, a cover for the arrest of opposition members such as Nik Adli (Liow, 2004, p. 251). Alleged members of KMM, while under detention, continuously denied the existence of the group, claiming the whole organisation was a creation of the police and that the government had distorted their legitimate participation in a loose network of Malaysian alumni of Islamist schools in India and Pakistan ("In the Name of Security," 2004, p. 15). The belief in such a notion among certain segments of Malaysian society is primarily – if not solely – the fault of the government. The government weakened its own case in two main ways. First, the government detained the KMM members and Nik Adli without trial under the ISA. Thus, the public – and the political opposition – did not see the charges against the group proven in a court of law. Second, the government, without explanation, changed the name of the KMM from *Kumpulan Mujahideen Malaysia* to *Kumpulan Militan Malaysia*, both of which had the same initials, lending support to the thesis that the organisation's existence was fabricated (Cotton, 2003, p. 156).

3 It should be noted that Islam itself formed part of Malaysia's counter-terrorism strategy. The pro-development, pro-BN version of Islam promoted by the government was increasingly promoted as the 'true' interpretation of the faith. Any interpretation which differed could thus conceivably be labelled as 'deviant.' Official Islam was ultimately used, then, to demonstrate what was and was not acceptable, and thus limited the ability of more radical strands to take root. Abdullah's *Islam Hadhari* approach was a repackaging of this strategy.

4 An example of the latter is Ahmed Ibrahim Bilal, an American who had been detained and deported in October 2002 after it was alleged that he was a leader of a terrorist cell in Portland, Oregon. He had been studying at Malaysia's International Islamic University (Abuza, 2003, p. 213).

2003 amendment to the Penal Code. The amendment provides a sentence of up to life imprisonment for ‘anyone who harbours or interferes with the arrest of terrorists, recruits members into a terrorist group or provide them with explosives or facilities such as meeting places.’ This could potentially affect lawyers and journalists as the confidentiality of clients/sources is a major part of their occupations. Although Minister in the Prime Minister’s Department Rais Yatim conceded that present laws were sufficient to tackle terrorism, he contended that the amendment was “appropriate” (Beh Lih Yi, 2003). The amendment has yet to be enforced.

A major difference between the contemporary era and previous periods is that, presently, Malaysia’s security policy – namely the ISA – is now implicitly or explicitly endorsed by other countries, most notably those in the West who themselves have adopted vaguely similar legislation in response to the terrorist threat, such as the Australian Anti-Terrorism Act (2005), the Canadian Anti-Terrorism Act (2001), and, most infamously, the 2001 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act). A key element of many new counter-terrorist laws has been the emphasis on preventive detention. Although these countries still operate according to a more stringent interpretation of the rule of the law than Malaysia does, and terrorism suspects would thus be more likely to receive a fair trial, an essential component of much of Malaysia’s security legislation has nonetheless now become more accepted in the West. Although this has not led to an increase in arrests, it nonetheless has strengthened the Malaysian government’s own justifications for continuing to use the ISA and other repressive Acts, as I will later demonstrate.

Days after September 11, Deputy Prime Minister Abdullah stated that the ISA had served its purpose in combating terrorism and that the government had made the right move in acting against the KMM. Later that month, Prime Minister Mahathir declared that countries which once accused Malaysia of being undemocratic because of its use of the ISA were now adopting similar legislation. After the Marriott bombing in Jakarta in 2003, Mahathir further enunciated that, prior to 9/11, “Malaysia was criticized and people said that we were cruel for detaining suspects. They don’t know which is better, to have bombs explode first before making arrests, or to arrest first before bombs explode” (“No adverse impact on economy,” 2003). Firm support for the ISA was continued in the Prime Ministership of Abdullah.

The United States, in particular, has praised ISA detentions in recent years as contributing to the global counter-terrorism effort. Public statements by US officials against Malaysia's human rights record dwindled in number, with President Bush, for example, making no comment on this issue at the October 2001 APEC summit in Shanghai. Instead, praise was heaped upon the Mahathir administration. US Trade Representative Robert Zoellick stated, "Malaysia is a model", "a force in regional stability in both political and economic terms" and "an Islamic country that provides leadership" ("Malaysian objections," 2001). Assistant Secretary of State James A. Kelly, though noting that the continued imprisonment of former Deputy Prime Minister Anwar Ibrahim was a matter of concern, called Malaysia a "beacon of stability." The US Attorney-General allegedly even expressed support for the ISA, endorsing its significance in the context of the Patriot Act. In May 2002, a US official stated that Malaysia had not used the ISA for political purposes since 9/11, further sanctioning its usage (Cotton, 2003, p. 162). In May 2002, Malaysia's Defence Minister Najib bin Tun Abdul Razak revealed the depth of the defence relationship during a visit to Washington D.C. Describing the relationship as a "well-kept secret," Najib noted that the level of defence cooperation between the two countries, though strong in the decades prior, had "elevated" after 9/11 (Najib, 2002).

There are two main reasons for the US backflip. First, the US wishes to legitimise the ruling BN regime, seeing it as a source of stability in South-East Asia specifically and the Muslim world generally. Second, America's own conduct in the 'War on Terror' in terms of human rights has harmed its credibility when it comes to human rights advocacy. In particular, the US practice of indefinite detention without trial of terrorist suspects at Guantanamo Bay under President Bush draws parallels to Malaysia's ISA practices and thus puts America in no position to criticize ("In the Name of Security," 2004, pp. 43-44). Indeed, Minister in the Prime Minister's Department Datuk Mohamed Nazri claimed the US no longer criticises the ISA because of the Guantanamo issue.

Despite the above-mentioned cooperation with the US, it must be emphasized that Malaysia forcefully maintained an independent and critical stance against US hegemony and power. Malaysia's vocal criticism of the US-led invasions of Afghanistan and, most prominently, Iraq are the most public examples of Malaysian opposition to American power. Mahathir went so far as to describe the US-led invasion of Iraq



as “cowardly and imperialist” (“Malaysian PM condemns Iraq war,” 2003). Malaysia’s criticisms of US actions may seem a contradiction when cooperation between the two appears so entrenched. The reason for Malaysia’s stance lies not only in its leading role in the Islamic world, but also in domestic factors. For example, Editor-in-Chief of Malaysian online newspaper *Malaysiakini* Steven Gan states, “I think as a rule the Malaysian government would not [admit] that the US government influences [it]... That would be political suicide. Most Muslim voters would not accept that” (S. Gan, personal communication, July 20, 2007). Academics Diane K. Mauzy and Brian L. Job argue, “Malaysian leaders have offset the quiet cooperation of their military intelligence agencies with American counterparts with vocal public opposition to US actions” (Mauzy & Job, 2007, p. 639). Confirming this argument, US Assistant Secretary of State James A. Kelly pointed out that cooperation with the US, on a variety of efforts, remained close despite Malaysia’s strong opposition to the Iraq conflict (Nesadurai, 2004, p. 21). Opposition to American policy is essentially a political tool used by the government to appease domestic – namely Muslim – audiences.

Malaysia’s relationship with the Association of Southeast Asian Nations (ASEAN) also notably expanded in the aftermath of 9/11. This marked a departure from a security policy which historically has been limited to domestic concerns and mostly has not tolerated outside opinions let alone joint-policy making. Illustrating this shift, the ASEAN states have formulated a common rhetorical position, signing a number of joint declarations, including the Declaration on Joint Action to Counter Terrorism (2001) and, with the US, the Joint Declaration for Cooperation to Combat Terrorism (2002). Regional meetings on terrorism have become a regular occurrence. The military intelligence directors of Malaysia, Singapore, Indonesia, Thailand and Brunei held an informal meeting in Kuala Lumpur in January 2002 to discuss intelligence sharing and the threat posed by regional terrorist networks. This marked the beginning of a series of such meetings. ASEAN’s foreign ministers likewise met in February 2002 to discuss regional collaboration on the issue. In May 2002, the 22<sup>nd</sup> meeting of the ASEAN Chief’s of National Police in Phnom Penh focused on addressing terrorism and other transnational crimes – a focus which was then repeated at consecutive meetings in 2004, 2005 and 2007. Moreover, Malaysia encouraged the development of ISA-style laws in Indonesia and Thailand, thereby demonstrating a growing common regional consensus on the appropriateness of Malaysia’s security approach.

The foreign endorsement of the ISA has created trouble for actors in Malaysia's civil society. Josef Roy Benedict of the Malaysian branch of Amnesty International, for example, has stated:

*It's been harder for civil society to challenge [the government] now when countries like US/UK are putting in laws like this ... In the past Malaysia was in a way a part of a minority compared to other countries who had these kinds of laws ... Western countries don't have the moral high ground [they] used to have. That's the hard part now. Whereas in the past we'd say 'look at this country', use as a model, now these countries have undermined human rights, renditions in the EU, Guantanamo Bay in the US (J. R. Benedict, personal communication, July 19, 2007).*

A core feature of many civil society groups in Malaysia has been their opposition to the ISA. By legitimizing the ISA and other similar pieces of legislation, the BN regime has been further legitimized and Malaysia's growing civil society consequently weakened.

### ***Overstretch: Abuse of the Security Apparatus after 9/11***

While, security-related arrests have declined in recent years, unjust repression has certainly continued, a fact not helped by the abovementioned international support for Malaysia's policies. However, this repression is now defined in different terminology. Whereas before the label 'communist' was applied liberally by the government, the term 'terrorist' has firmly replaced it. The terrorist label had been applied to so-called threats before 9/11 – often in reference to 'communist terrorists' – but in modern times the term has a whole new meaning and brings up certain feelings. Thus, when the government defines an issue in terms of 'terrorism' now, it is provoking a different reaction than in years past.

One of the most notable examples of this new vocabulary and discourse being utilized is in the government's crackdown on the Malaysian internet blogging community. In February 2005, blogger Jeff Ooi was questioned by police for a comment somebody else had posted on his weblog *Screenshots*. The comment had stated it was contradictory for Abdullah to promote *Islam Hadhari* when UMNO itself was ripe with corruption. In early 2007, the government announced it was setting up a group of 500 writers to counter bloggers' claims as well as track and monitor content that could be deemed 'anti-government.' Subsequently, bloggers Nathaniel Tan and Raja

Petra Kamarudin were, like Ooi, investigated for comments that had been posted on their blogs. Bloggers were thus being questioned by police on the basis of statements that were not even made by them.

In the lead up to the 2008 election, with the political blogging community becoming increasingly influential amongst Malaysia's 11 million internet users, the government began expanding its campaign against them. Information Minister Zainuddin Maidin accused bloggers of being "dangerous", "pro-West" and supporting "foreign elements bent on destroying our beloved country" ("Fresh round of gov't attacks on bloggers," 2007). The government warned that it would use its anti-terror laws and apparatus – including the ISA – against bloggers and was looking at the possibility of formulating new laws to allow better monitoring. This is a clear example of the government utilizing the fear and images associated with the concept of 'terrorism' to justify the proposed implementation of its security policy. According to Nazri Aziz, Minister in the Prime Minister's department, such action was designed not to stifle internet freedom but "to put a stop to the freedom to lie in the blogosphere" ("Nazri warns bloggers face harsh laws," 2007). A proposal to introduce a 'code of ethics' for internet users was also floated. It is perhaps then not surprising that in 2007 Malaysia fell to its worst ever ranking in the *Reporters Sans Frontieres'* press freedom index, dropping 32 spots to 124<sup>th</sup> position, behind Cambodia (85<sup>th</sup>), Timor Leste (94<sup>th</sup>) and Indonesia (100<sup>th</sup>). Ultimately, the government's threats are designed to make people think twice not only about using blogs to criticise the government but about creating a blog in the first place.

In a further example, the issue of ethnic stability has also been placed within the context of terrorism. In the contemporary context, the 'bogeyman' of ethnic violence has been blended with the new 'bogeyman' of international terrorism. In an era where the 'terrorist' and 'religious extremist' label now has certain connotations, it is perhaps no surprise that, when threatened, the BN has chosen to utilise such terms to undermine its detractors. This became apparent in its 2007/2008 skirmish with the Hindu Rights Action Force (Hindraf).

Hindraf was established in December 2005 by Waytha Moorthy and was originally designed as a coalition. Moorthy had attempted to forge an inter-religious alliance with Malaysian Christians. The Christians however feared government retribution and declined his invitation. Hindraf was initially concerned with the issues of

religious freedom and the freedom to challenge religious rights in civil society but eventually the scope of the movement broadened to include other Hindu rights issues such as education and culture. Moorthy, the Chairman of Hindraf, stresses that the movement is concerned not just with Hindu rights but human rights alone, though it is often portrayed as simply a Hindu organisation in the media (W. Moorthy, personal communication, July 15, 2008).

On 25 November 2007, Hindraf held a rally in Kuala Lumpur in protest of what they saw as discriminatory government economic policies. Hindraf's attempts to obtain a police permit for the march were denied but, citing the constitution's guarantee of freedom of assembly and expression, the movement proceeded with the protest. Police eventually dispersed the rally with force. On 13 December 2007, the government arrested five Hindraf leaders. Notably, days before the arrests, Hindraf was accused by Inspector-General of Police Musa Hassan of "trying to seek support and help from terrorist groups" ("IGP: Hindraf linked to terrorist groups," 2007). Though Musa did not name the terrorist groups, it is assumed from accusations by the attorney-general in court that the IGP was referring to the Liberation Tigers of Tamil Eelam (LTTE). After their arrests, one of the Hindraf detainees claimed he was being pressured by police into admitting involvement with terrorist activities, stating:

*The government and the police have no evidence to substantiate their accusations on our alleged terrorism links. As such they are now using the back way to obtain a confession from me by forcing me to admit of having terrorism link (Kabilan, 2008).*

The Inspector-General of Police also raised the commonly used spectre of racial conflict, stating, "[Hindraf's] actions are potentially explosive in sparking racial clashes" ("IGP: Hindraf linked to terrorist groups," 2007).

In the weeks following the Hindraf detentions, Prime Minister Abdullah utilized the term 'extremist' in an attempt to continue sidelining the Hindraf movement. On 25 December 2007, in a clear reference to Hindraf, Abdullah warned Malaysians against religious extremists pulling the country apart. Abdullah urged Malaysia to continue with its "middle position" ("PM warns about religious extremism," 2007). Following the February 2008 Hindraf Rose Protest – in which some 200 people were arrested – Abdullah explicitly labelled the group as 'extremists' who were attempting to disrupt the 8 March 2008 election ("Rose violence: Global demo against M'sia,"

2008). In an attempt to counter claims of racism, Abdullah pointed out that the ISA had also been recently used against Muslim groups, such as Al-Maunah and Jemaah Islamiyah. Abdullah said, "They are my people, who believe in the same religion. But I had a duty to carry out. What is wrong is wrong. The law is colour blind" (Hong, 2007). By using these two organizations as examples, Abdullah had again linked Hindraf to religious extremism and international terrorism. However, his assertion of the law being 'colour-blind' has not gone unchallenged. Dean Johns, writing for Malaysiakini, pointed out that, while several arrests had resulted from the Hindraf rallies, the government had not brought to justice the police responsible for the high rate of deaths in custody, particularly amongst Indian detainees. Nor did the government reprimand UMNO members who at the 2006 general assembly "threatened to bathe the keris in the blood of fellow Malaysians" and ex-Malacca Chief Minister Rahim Thamby Chik for his statement that "The Malays have never taken to the streets so do not force us to do so as we will draw our parang to defend the Ketuanan Melayu in this country" (Johns, 2007).

### ***The Ongoing Battle for Islam: UMNO versus PAS***

At the political level, the rhetoric of international terrorism has also increased the stakes in the conflict between the two major Islamic parties, UMNO and the Pan-Malaysian Islamic Party (PAS). The competition between the two has been defined anew in the contemporary era, with UMNO effectively capitalizing on PAS's political missteps.

One such instance occurred with the US-led invasion of Afghanistan. Commenting on the invasion, PAS leader Fadzil Noor declared the US a 'terrorist state' and openly called for a 'jihad' against it. The jihad was justified on the grounds that Afghanistan was attacked without strong proof of its involvement in the 9/11 attacks and terrorism, with Noor viewing the conflict as one against all Muslims. Noor claimed the call for jihad was not in defence of Afghanistan's Taliban regime, but in defence of "an Islamic nation being attacked by an enemy of Islam" (Bakar, 2005, p. 115). To many in Malaysia, the distinction was unclear. Such a view was reinforced in early October when PAS Youth Leader Mahfuz Omar launched a jihad fund, called on the government to break off diplomatic ties with the US, and declared his willingness to

raise an army to fight in Afghanistan.

The BN in general and UMNO in particular capitalized effectively on PAS's political faux pas, utilizing the image PAS had unwittingly constructed to score political points for the ruling coalition. The government claimed PAS's call for jihad was 'a gimmick' aimed at scoring political points within Malaysia's Muslim community ("PAS backing for jihad against the US 'a gimmick'," 2001). PAS was now portrayed as 'Malaysia's Taliban', the government embarking on a television campaign which inter-spliced images of PAS leaders with the murder of a woman by the Taliban. Deputy Prime Minister Abdullah stated that 'practically' all the militants arrested in the period between September 11 and the end of January 2002 were members of PAS, noting:

*We don't want to be very quick in drawing conclusions, but we are saying that the presence of these people among the PAS people can create a kind of PAS politics which may not be in the long-term interests of Malaysia ("Terror investigations strain Malaysian politics," 2002).*

However, this remained a political level attack – those arrested were simply members within the admittedly broad PAS organization, effectively political non-entities, and none were in the leadership circle. As Fadzil Noor said, "As far as we know there is no connection at all. If there is, it is based on the actions of individuals" (*ibid.*).

The 2004 general election testified to PAS's lost ground, the opposition's failure to capitalize on *reformasi*, and the BN's success in linking PAS to radical Islam and itself to 'moderate', progressive Islam. UMNO performed well in Malay-majority constituencies, with an average 10 percent increase in its support in these seats, though admittedly less than what it had received in 1995 pre-*reformasi*. By contrast, PAS dropped from 27 seats to just seven. PAS had clearly misunderstood the type of Islam desired by its Malay-Muslim constituency, with the elections instead reflecting an embrace of the *Islam Hadhari* agenda of the incumbent Prime Minister Abdullah Badawi.

Overall, the 'terrorist' discourse has certainly been utilized by the government for its own decidedly political purposes. The implicit and explicit support of other countries for Malaysia's security approach has certainly emboldened the government with the use of coercive legislation fast becoming the 'norm' in international politics. However, this has not corresponded with a rise in arrests – rather the opposite is true.

Nonetheless, it can be deduced that the motive of the government in characterizing and dealing with threats in these ways is a function of its continued emphasis on regime – particularly BN and UMNO – stability. The hypocrisy of the government noted by Johns above illustrates this clearly, as the law is not being applied consistently – it is only being applied in situations where there is a direct challenge to the Malay-dominant *regime* not to society as a whole. When members of this regime make racially provocative remarks they are not reprimanded – when outsiders to the regime make similar comments or protest, they are arrested or branded as ‘extremists’ or ‘terrorists.’ This policy helps protect the regime by not only eliminating political threats but, through the emphasis on racial elements, allowing the government to divide the people and score political points in various constituencies.<sup>5</sup>

### ***Beyond 9/11: A Chance For Change?***

Since the March 2008 election, however, the Malaysian political system, and the security policy which protects it, is facing the most significant challenge in its history. The election did away with many of the preconceptions which have plagued Malaysian politics since Independence. For the first time, the BN regime could potentially be defeated at the next election. The election saw the opposition parties gain considerable ground at the BN’s expense. In the lead-up to the elections, while it was believed the opposition had its best chance in over a decade to gain electoral ground, the probability of it breaking the BN’s two-thirds majority in parliament was considered slim. The opposition parties, PAS, the Democratic Action Party (DAP), and the Parti Keadilan Rakyat, campaigned primarily on non-racial issues, such as human rights and combating corruption. The opposition also campaigned on the issue of reforming the police, which it viewed as dominated by political interests. The Islamic party PAS notably dropped from its agenda its push for an Islamic state, an issue which had both plagued and defined the party for decades. With the mainstream media beholden to the government, the opposition effectively utilized the medium of the Internet to campaign, a move which was particularly successful

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<sup>5</sup> The government contends that, as part of nation-building, some racial division is necessary, for example the affirmative action policies favouring the Malays (beginning officially with the New Economic Policy). While this may be less true today as it was following the 1969 race riots, I argue that the government’s use of racial discourse and division has been primarily utilized to justify the political *status quo* in which the Malay-dominant UMNO is the centre of political power and the other ethnically-based political parties within the BN act as peripheral partners.



in reaching urban audiences (“Winning hearts and minds in cyberspace,” 2008). By contrast, the BN regime under Prime Minister Abdullah Badawi was weighed down by rampant corruption, broken electoral promises, and the growing re-emergence of ethnic tensions, particularly from minority ethnic groupings. Much of this was admittedly inherited from Abdullah’s predecessor as Prime Minister and leader of UMNO, Mahathir Mohamad, who ironically has become a vocal critic of the Abdullah administration in his retirement. The arrests of several Indian leaders in the months prior to the elections also delegitimized the BN’s main ethnic Indian party, the Malaysian Indian Congress (MIC) (Welsh, 2008).

Voter turnout for the 8 March election was the highest for any election, with approximately 80 percent of eligible voters casting their votes. (Malik Imtiaz Sarwar, 2008, p. 50). The elections saw the BN win just 51.2 percent of the vote, giving it enough seats to remain in power but losing its two-thirds majority in parliament for the first time since 1969. The state governments of Selangor, Penang, Kedah and Perak fell to the opposition parties while Kelantan remained in opposition hands. All of the main leaders of the MIC were “wiped out” (“2008 polls – interesting facts,” 2008). The opposition’s gains were highly significant given the fact that the political and electoral system is biased in favour of the ruling regime (Johns, 2008). There was some concern that the results may lead to ethnic rioting, like that witnessed in the aftermath of the 1969 elections, an election in which the ruling coalition likewise suffered a considerable loss. However, unlike in 1969, all the major ethnic groups had abandoned the government and Malaysia’s streets remained calm (“Malaysian politics turned upside down,” 2008).

Monumental changes swept through Malaysian politics in the aftermath of the election. The opposition parties formed a formal coalition, *Pakatan Rakyat* (People’s Alliance), on 1 April 2008. Although comprised of diverse parties with divergent interests, opposition leader Anwar Ibrahim claimed the parties had united on the basis of the common principles of ‘freedom, justice and democracy.’ For arguably the first time, a genuine two-party (coalition) system had begun emerging in Malaysia (Kuppasamy, 2008). Anwar announced plans to dismantle the NEP, an affirmative action programme and ideological tool biased in favour of the Malays that had been the foundation of the BN’s nation-building project. The state governments of Penang and Selangor, now in the hands of the opposition, also announced plans to prohibit

the spread of Abdullah's *Islam Hadhari* concept, a broad ideology which had been central to his administration's nation-building strategies and security policies. For the most part, the government reacted to these developments in typical fashion, utilizing the instruments of the state to thwart the political gains of the opposition. The government banned Tamil daily *Makkal Osai*, a move believed to be related to the publication's coverage of the opposition ("Tamil daily Makkal Osai banned," 2008). Anwar was charged with sexual assault, widely considered to be politically motivated. The charge inspired a sense of déjà vu within the country, a consequence of the government having arrested Anwar on similar grounds in 1998 ("Here we go again," 2008, p. 40). Implicitly defending his earlier actions against Anwar, Mahathir disputed that Anwar's recent arrest was politically motivated. The former Prime Minister stated:

*Yet can it be that the present Government is so stupid and unimaginative as to use the same 'ploy', especially after it was so happy over the release of Anwar? Surely it could come up with another story which would be more credible if it is deliberately plotting or conspiring against Anwar. The probability is that the story is the same because it is genuine (Mahathir Mohamad, 2008).*

Mahathir's statement could be regarded as a rare defence of the Abdullah administration though it was more likely a defence of his own legacy.

With such dramatic changes sweeping Malaysia's political landscape following the election, it appears the current format of the security approach could be approaching its end. The leadership transition from Abdullah to Najib Abdul Razak on 3 April 2009 is unlikely to bring about such a change. However, an electoral defeat of the BN at the next election, for the first time a reasonable prospect, would almost certainly bring about some, if not major, alterations to security policy. The current opposition parties, organized in the Pakatan Rakyat coalition, are all inherently antagonistic toward Malaysia's internal security policies. Many of the key figures and leaders in the opposition have been subject to detention under the ISA, DAP leader Lim Kit Siang and Keadilan leader Anwar Ibrahim being the two most famous examples. Should the BN regime lose the next election, it would logically follow that the security policy that has formed an intrinsic part of the BN state project would also be discarded.

However, this may not necessarily be the case. At least three different scenarios are possible. If faced with an electoral defeat, the BN regime may use the security

apparatus to cling to power. This I contend is unlikely. Although the BN has certainly manipulated the electoral process to its advantage, particularly via the Electoral Commission, with the exception of the 1969 elections it has generally respected the results of the polls, conceding defeat in a number of state elections for example. Another scenario is that Pakatan Rakyat secures a federal victory but does not significantly alter the security approach. A number of the main instruments may be discarded or amended, such as the ISA or the Printing Presses and Publications Act. Given that the security approach has become an ingrained element of the Malaysian state, some parties in Pakatan Rakyat may believe or claim it to be too destabilizing to abolish it completely.<sup>6</sup> Indeed, it should be noted Anwar himself was a leader in the BN during a time when the ISA was continually deployed against political opponents. A further scenario is that a Pakatan Rakyat government retains the basic structure of the security approach but completely overhauls it, utilizing less overt or repressive coercion and less manipulative or limiting ideological tools. In other words, the essential elements of the policy may be brought more into line with international human rights standards, human rights being a key element of Pakatan Rakyat's election agenda.

### ***Conclusions***

Malaysia's security policy has remained largely consistent in the years following 9/11, with minimal legislative amendments. While the number of ISA arrests has declined, the government has become increasingly willing to launch crackdowns against its opponents. Backed by growing international endorsement of its security approach, the rhetoric of 'terrorism' has been used to legitimate government policies against bloggers, as well as more traditional 'threats' such as ethnic instability and political opposition. The term 'terrorist' has been used by the government in prior periods – most significantly, the 1948-1960 Emergency era – but its usage in the post-9/11 climate brings up a whole new set of feelings to both domestic and international audiences and thus provokes a different reaction. The War on Terror has therefore

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<sup>6</sup> A suggested possible alternative is that a new government may attempt to change the ISA but that the security apparatus itself might be strong enough to *de facto* boycott any reforms. However, I regard this as unlikely. While the security apparatus is deeply embedded in the Malaysian political system, it remains primarily a political tool of the ruling government. To date, there has been no evidence that it acts on its own accord – it always acts according to directions from the government. This is unlikely to change, even if the Pakatan Rakyat forms a national government.

provided a new set of justifications for the continued existence of Malaysia's security approach. The 2008 elections herald the possibility for a change in this context, though this is far from guaranteed. After all, this security policy has helped sustain the regime and the state for over 50 years and is therefore something which will not be easily discarded.

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## Aktuelle Südostasienforschung / Current Research on South-East Asia

### Singapore-India Relations: A Return to History

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ASEAS - Österreichische Zeitschrift für Südostasienwissenschaften / Austrian Journal of South-East Asian Studies  
SEAS - Gesellschaft für Südostasienwissenschaften / Society for South-East Asian Studies - [www.SEAS.at](http://www.SEAS.at)

*Michael Leifer observes Singapore-India relations to be 'diplomatically distant'. This observation was correct during the Cold War when differing political ideologies made it difficult for these two countries to develop close relations. With the end of the Cold War, bilateral relations improved rapidly, especially on the economic front. Consequently, most literature focuses on the economic interaction between them, at the expense of other significant developments on the political, military as well as social and cultural fronts. In order to better understand Singapore-India relations in the present, a well-rounded approach is necessary. Hence, this article addresses this lacuna in the present scholarship by providing a comprehensive overview that takes into account developments in both the areas of high and low politics. In so doing, this article argues that Singapore-India relations are now no longer 'diplomatically distant', but instead mirror the close relations they had during the colonial period, and so represent a 'return to history' instead.*

**Keywords:** International Relations, Cold War, Collaboration, Singapore, India

*Michael Leifer beschreibt die Beziehungen zwischen Singapur und Indien als „diplomatisch distanziert“. Diese Beobachtung war während des Kalten Krieges korrekt, als unterschiedliche politische Ideologien eine enge Zusammenarbeit dieser beiden Länder erschwerten. Mit dem Ende des Kalten Krieges verbesserten sich bilaterale Beziehungen – vor allem im wirtschaftlichen Bereich – rapide. Aus diesem Grund konzentrieren sich die meisten Publikationen auf die wirtschaftliche Interaktion der beiden Länder und vernachlässigen gleichzeitig weitere wichtige Entwicklungen in der politischen, militärischen, sozialen und kulturellen Sphäre. Um die Beziehungen zwischen Singapur und Indien besser zu verstehen, ist ein vielseitigerer Ansatz notwendig. Der vorliegende Artikel versucht diese Lücke gegenwärtiger Forschung zu schließen und einen umfassenden Überblick der Entwicklungen in den Bereichen high politics und low politics zu geben. Dabei wird argumentiert, dass die Beziehungen zwischen Singapur und Indien nicht mehr länger „diplomatisch distanziert“ seien, sondern – im Gegenteil – die enge Beziehung der beiden Länder während der Kolonialzeit widerspiegelt. Demnach repräsentieren sie eine „Rückkehr zur Geschichte“.*

**Schlagworte:** Internationale Beziehungen, Kalter Krieg, Zusammenarbeit, Singapur, Indien

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## ***Introduction***

Michael Leifer's authoritative work on Singapore's foreign policy describes Singapore-India relations to be 'diplomatically distant' (Leifer, 2000, p. 129). A survey of works on Singapore's foreign policy also supports Leifer's belief since 'India' only appears sporadically in the indexes (Ganesan, 2005; Latif, 2007; Regnier, 1991; B. Singh, 1999). This lack of scholarly interest was understandable during the Cold War, when differing ideologies prevented the two countries from developing warm bilateral ties even though they were historically very close. However, with the Cold War over, both states are now making up for lost time as demonstrated by the great strides made in their bilateral relations, especially on the economic front. Predictably, most scholarly attention has focused on this issue (Asher & Raja, 1994; Yahya, 2008), at the expense of significant developments in other aspects of their bilateral relations. This article addresses this lacuna in the literature by presenting a comprehensive overview of their bilateral relationship that takes into account not only developments on the economic front, but also developments on the political, defence, as well as social and cultural fronts. Arguably, such rapid improvements are possible because they are congruent with Singapore's objectives of achieving a hospitable regional order through the establishment of a balance of power, and distancing itself against allegations of being a Sinic outpost. Singapore's present engagement of India therefore echoes the previously close links between them, and so represents a return to history.

## ***India-Singapore Relations: A Primer***

Singapore's present closer links with India are not unexpected as their ties have 'ancient and deep roots' (Shanmugaratnam, 2007, para. 2). Britain founded Singapore to service the lucrative India-China trade route. As was to be expected, during British rule, Singapore's government, as well as its penal code, were based on the Indian model. Furthermore, due to the presence of economic opportunities, many ethnic Indians sought employment in Singapore. Hence, it is clear that Singapore had close links with India since its founding. Singapore did not forget its 'debt' to India after becoming independent in 1965. On Indira Gandhi's 1966 visit to Singapore,

Prime Minister Lee Kuan Yew affirmed the important similarities between them. Correspondingly, in 1970, when V. S. Giri visited Singapore, the first by an Indian President, Singapore's President Benjamin Sheares also emphasized their historically close links. However, even though bilateral relations at the official level remained correct, they were neither substantial nor warm during the Cold War due to ideological differences.

Bilateral relations only improved after the Cold War as both states made a conscious commitment to increase their interactions. Hence, George Yeo, in his former capacity as Singapore's Minister for Trade and Industry, was able to emphasize the close historical links between Singapore and India and stated it was logical for them to cooperate in the contemporary context (Yeo, 2004, para. 3). Elaborating on Yeo's observation, Raymond Lim, Singapore's Minister of State for Trade and Foreign Affairs, provides a more detailed explanation as to why Singapore and India are developing closer bilateral relations so rapidly after the Cold War by outlining Singapore's '4C' value proposition – Capital, Connectivity, Capabilities, Comfort – to India.

As a regional financial hub, Singapore's banking and financial markets are well-developed and make it easier for Indian companies to raise capital. Given Singapore's excellent geographical position, it has extensive transport links with many states, making it a good transport hub for Indian exports. Furthermore, Singapore also has a dense network of Free Trade Agreements (FTAs) that stretches from Asia to Europe and to North America, providing Indian firms in Singapore access to major markets. Without any natural resources except for the human variety, Singapore has invested much attention into improving its human capital, a move that complements India's role as a major actor in a knowledge-based economy.

The above three factors are very important. However, they can also be found or replicated in neighbouring states. Comfort, therefore, holds the most value. Comfort arises due to the long history of contact between Singapore and India during the colonial period. Consequently, Indian culture, values and cuisine have taken root in Singapore and this high level of familiarity is a big pull factor (Lim, 2004, Comfort, para. 1). "Just as India has looked east, Singapore has looked west towards India. Our ties are intertwined through history, language and culture" (Goh, 2004, para. 5). Hence, this new wave of interaction between India and Singapore after the Cold

War can be characterized, in Kagan's parlance (2008), though out of context, as an optimistic 'return to history'.

### ***India's Cold War Foreign Policy***

The current close relations between Singapore and India are in sharp contrast to their distant relations during the Cold War. When India became independent in 1947, it regarded non-alignment as a manifestation of its sovereign ability to implement its foreign policy that was formerly under British control. With India's professed commitment towards non-alignment, it had strong reservations against policies that entailed involving foreign powers in Asia. Consequently, India opposed the establishment of multilateral institutions such as the Southeast Asia Treaty Organization (SEATO). India perceived SEATO, which was modelled after NATO as a continuation of Western presence in Asia and was anathema to what India stood for (Ayoob, 1990, p. 10; Jain, 2008, p. 31). This was because Western states such as Australia, France, New Zealand, the United Kingdom and the United States were members of this organization. SEATO's primary objective was to block communist gains by establishing a system of collective defence. With Pakistan as a member, India naturally felt threatened. At the same time, India's Soviet links also meant that inherent antagonism was present. During this period, although Singapore was not a member of SEATO, it identified more closely with Western states such as the United States and Britain, which India did not have good relations with. Due to such differences, it was politically difficult for India to have close diplomatic relations with newly independent South-East Asian states such as Singapore that was pro-West during the Cold War.

Apart from political considerations, India's inward looking economic policy further reduced interaction between India and South-East Asian states. Upon its independence in 1947, India used import substitution to start the industrialization process and be less economically dependent on Western states (Desai, 1972). India's decision to do so resulted from its experience with the British East India Company (EIC) during the colonial period. Then, large-scale importation of British manufactured goods undermined the viability of small-scale Indian enterprises (Clark, 2007, pp. 319-327; Hagerty, 2005, p. 14). In the words of Karl Marx, "England has broken down

the entire framework of Indian society, without any symptoms of reconstitution yet appearing” (Marx, 1965, p. 25). Elaborating, Marx notes that the “hand-loom and the spinning wheel ... were the pivots of the structure of that society... [and it] was the British intruder who broke up the Indian hand-loom and destroyed the spinning wheel” (Marx, 1965, p. 27). Furthermore, dependency theory, which advocated newly-independent states to decouple their national economies from the world market was en vogue then. Due to the combination of these two factors, it was unsurprising that India developed reservations towards integrating itself with the global economy, one that Western states dominated.

Ironically, India needed external assistance as it lacked the indigenous capacity to develop its heavy industries. Given its wary attitudes towards the West, India sought assistance from the Soviet Union instead, whose help was instrumental in India’s establishment of the steel and heavy machines plants in Bhilai and Ranchi. A sign of the closer bilateral relations was that the Soviet Union became a major destination of Indian exports during the 1960s and 1970s. During this period, the percentage of Indian exports to Britain fell drastically, from 26.9 percent in 1960 to 11.1 percent in 1971, while its exports to the Soviet Union increased from 4.5 percent to 13.7 percent within (Nayyar, 1976, p. 29), which was unsurprising since they signed a Treaty of Peace, Friendship and Co-operation in 1971. The objective of this treaty was to allow the Soviet Union to establish a strong geopolitical presence in South Asia, which checked American and Chinese involvement in the region, most notably during the conflict between India and Pakistan in the same year. These closer links between India and the Soviet Union came about after the United States supplied arms to Pakistan during the 1965 Indo-Pakistan war. To counter Pakistan’s offensive, India looked towards the Soviet Union for the sale of advanced weaponry. Over time, India developed a ‘weapon dependence’ on the Soviet Union (Jain, 2008, pp. 110-111).

### ***India’s Political Alignment with the Soviet Union***

Through aligning with the Soviet Union, India was attempting to minimize British and American influence in the sub-continent. In addition, India also sought to prevent China developing closer ties with the Soviet Union and Pakistan. India’s objective of cultivating ties with the Soviet Union was therefore to deny or restrict China’s

diplomatic presence in South Asia, which India regards as its traditional sphere of influence (Jain, 2008, p. 21).

However, India's Soviet links were detrimental to its relations with South-East Asian states such as Singapore. During the Cold War, the threat of Communist expansion, as reflected by military situations in Cambodia, Laos and Vietnam, meant that South-East Asian states considered India, with its Soviet relations, to be politically suspect. In December 1979, the Soviet Union's invasion of Afghanistan became another obstacle for the normalization of relations between India and South-East Asian states as Soviet action went against the Association of Southeast Asian Nations' (ASEAN) commitment to non-intervention and respect for sovereignty (Koh, 1978).

India's formal recognition in July 1980 of the Vietnamese-backed Heng Samrin regime that overthrew the Khmer Rouge government in Cambodia also strained its relations with South-East Asian states (Latif, 2008, pp. 72-73). Although the Khmer Rouge government committed genocide against its own people, Singapore consistently maintained that the lack of effective internal governance standards did not justify Vietnam's military intervention that infringed upon Cambodia's sovereignty (Koh, 1980). India's recognition of the Heng Samrin regime was therefore a serious political faux pas that led to a further deterioration of their ties (Warbrick, 1981, pp. 238-239; Yong & Rao, 1995, pp. 28-29).

Senior Singapore diplomats such as Tommy Koh and Sinnathamby Rajaratnam officially condemned these "aggressive" acts in various multilateral organizations such as the United Nations and the Non-Aligned Movement. As a miniscule state, Singapore has heightened sensitivity towards any challenge to a state's sovereignty. Given Singapore's stance against external intervention (Rajaratnam, 1979, pp. 637-638; Koh, 1978; 1980), India's association with, and tacit approval and support of Soviet policies minimized any opportunities for constructive engagement between Singapore and India; relations were therefore mutually "uncomfortable and insecure" during this period (Devare, 2006, p. xi).

### ***India's 'Look East' Policy***

However, this period of poor bilateral relations, in hindsight, proved to be an interlude. With the Soviet Union's dissolution, the Cold War ended. India was, according to C.

Raja Mohan, “in deep mourning” (Mohan, 2007, p. 102). It lost a valuable and long-time political and economic ally. A stark choice confronted India. It could either “persist with an inward-looking policy that marginalizes the country and slides it inexorably into increasing international irrelevance. Or it can take a good hard look at itself and at other former developing countries that have achieved success essentially by dint of their own efforts” (Thakur, 1992, p. 165). Hence, Manmohan Singh, the then-Finance Minister, introduced economic liberalisation to overcome the problems associated with the previously autarkic policy. One of the most significant new initiatives introduced in the wake of India’s changing orientation was the ‘Look East’ policy that sought to increase India’s economic interaction with South-East Asian states through pursuing economic liberalization

The ‘Look East’ policy was not entirely new. Before the Cold War ended, India had already begun to make overtures to South-East Asian states through its ‘Look East Destiny’ policy (Shaumian, 1988, p. 1167). During the late 1980s and early 1990s, South-East Asian states such as Singapore, Malaysia and Indonesia were experiencing rapid and sustained economic growth. In contrast, India’s economic performance was very poor. Prime Minister Narasimha Rao then launched the ‘Look East’ policy in 1992 to increase India’s engagement with these economically dynamic states, especially Singapore, so as to learn from their economic and development experiences (Mahbubani, 2008). Apart from reaping economic benefits, India also wanted to improve its bilateral relations with them as well so as not to remain diplomatically isolated after the Cold War. China was increasing its presence in South-East Asia after Deng Xiaoping introduced economic reforms in 1978. Having lost a major ally in the Soviet Union, it was not in India’s interest to have China dominate the region, especially one that is so geographically close. Furthermore, China also gained significant diplomatic momentum and by the early 1990s, it had established formal relations with economically vibrant Asian states such as South Korea, Indonesia and Singapore. India had to respond to such geopolitical changes.

At the end of the Cold War, apart from membership in the South Asian Association for Regional Cooperation (SAARC), India was not party to any other economic blocs. By implementing the ‘Look East’ policy, India planned to leverage on its new ties with South-East Asian states to gain membership in various groupings such as the Asia-Pacific Economic Co-operation (APEC) and the Asia-Europe Meeting (ASEM) that

would be economically and politically beneficial for India (Gupta, 1997, p. 307; Institute of Southeast Asian Studies [ISEAS], 2003, p. 42). India's fundamental objective was to first establish an economic presence in the region, a conduit that could then lead to an increased political presence at a later stage (Mohan, 2003, pp. 211-213).

When India first implemented its 'Look East' policy, it focused most attention on Singapore. Apart from Singapore's excellent geographical location and its national role conception as a trading state, it is also the economically most developed state in South-East Asia, and so it was natural for the city-state to be India's focal entry point into the region. Manmohan Singh believed that to "market New India, [we] would have to begin in Singapore" (M. Singh quoted in Goh, 2008, para. 23), India's post-Cold War interaction and engagement with Singapore provided the former with access to the region, and laid the foundations for the later establishment of the Mekong-Ganga Cooperation and the BIMSTEC Forum, which entrenched India's presence in South-East Asia. With deepening levels of interactions, India is rapidly becoming a major actor in South-East Asia. Hence, Manmohan Singh believes "the 'Look East' policy is more than a slogan, or a foreign policy orientation. It has a strong economic rationale and commercial content. We wish to look east because of the centuries of interactions between us" (M. Singh, 2004b, para. 4).

### ***Economic Developments***

Michael Leifer (2000, p. 14) observed that: "Singapore is primarily about the business of business", and for Singapore to carry on with its business, Yusuf Ishak, Singapore's first President, opined that:

*[I]n the long run, our viability depends upon having the widest spread of economic links with the largest number of countries, that is, the world, so that the economic levers will not be in the hands of a few governments (Ishak quoted in B. Singh, 1999, p. 26).*

This observation is hardly surprising since Singapore is a trading state. Apart from not wanting a rising China to dominate the region politically, Singapore also does not want China to dominate the region economically. This is because China implemented its economic reforms before India did and so enjoys a substantial advantage. Furthermore, Singapore's attempts at breaking into the Chinese market have not



been very successful. Singapore's experience in cooperating with China to set up the Suzhou Industrial Park (SIP) is instructive. Despite having the professed support of the Chinese government as well as perceived cultural affinity between them, the project did not pan out the way Singapore envisioned. Despite receiving endorsement and support from the two governments, Singapore discovered that China's business, as well as its political climates, were very different from Singapore's. Cooperation was difficult due to the diffusion of control over the project from the central government to the local government. The SIP was supposed to receive preferential treatment but the local Suzhou government set up a similar industrial park – Suzhou New District – modelled after the SIP nearby, and competed directly with the SIP for investments and funding, which caused Lee Kuan Yew to admit that this joint project was 'a chastening experience', and at best, 'a partial success' (Lee, 2000, pp. 723-724).

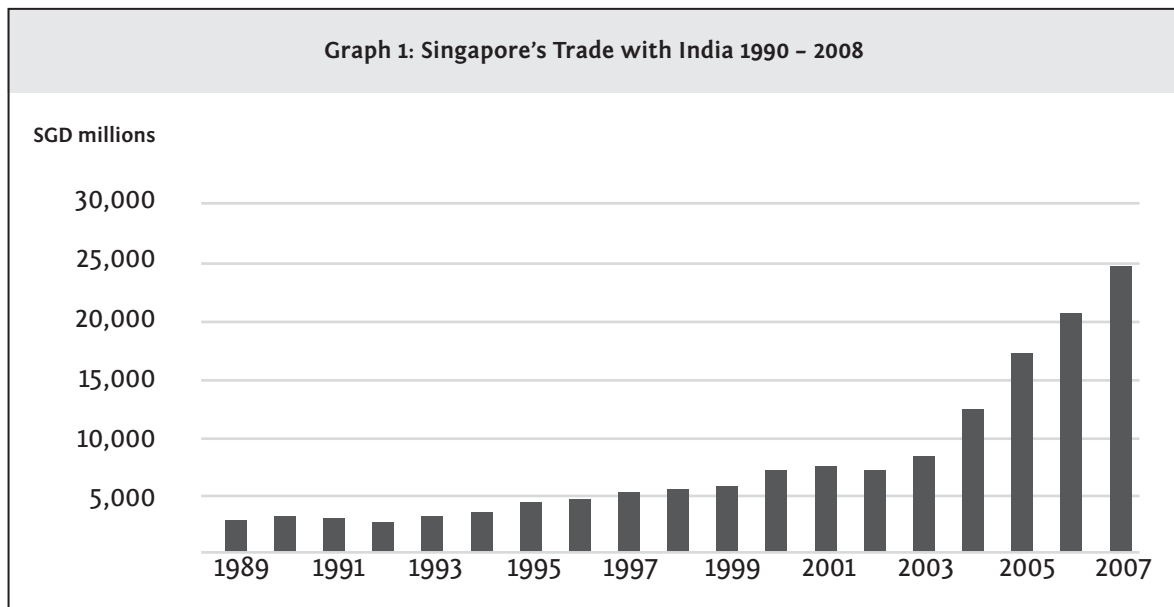
Even though Singapore had close links with China, Singapore was still not as close as either Hong Kong or Taiwan were – their *guanxi* with Chinese businesses are more developed as compared to Singapore (Kumar, Siddique, & Hedrick-Wong, 2005, pp. 29-63). Consequently, Singapore does face significant barriers in its entry into the lucrative Chinese market. Furthermore, as economic competition increases in major Chinese cities, it becomes increasingly difficult for Singapore to differentiate itself from the competition. At the same time, Singapore is also unable to match the pace and size of investments from Hong Kong and Taiwan into major Chinese markets, and so it is difficult for the city-state to play a prominent role in the rapidly maturing, and therefore increasingly competitive, Chinese economy (Okposin, 1999, p. 177).

Given the problems Singapore faced in China, it has been active in exploring new and emerging markets. During the early 1990s, India was one such market. Apart from gaining economic benefits through closer commercial links with India, these also play a significant geopolitical role in promoting a hospitable regional order for Singapore. It allows Singapore to project a multi-ethnic image rather than a mono-ethnic image, which re-assures neighbouring Muslim states that it is not overly enthusiastic in capitalizing on the Chinese economic bandwagon. India is a good candidate as it has the second largest number of Muslims in the world after Indonesia, which allows Singapore to distance itself from the regional perception that it is a "Third China" (B. Singh, 1994, p. 122) By cultivating closer relations with India, Singapore is thus not only able to re-assure its own Malay minority, it is also able to reduce tension with

Malaysia and Indonesia, making for a win-win situation (Asher & Raja, 1994, p. 1).

With the introduction of India’s ‘Look East’ policy, Singapore recognized and seized the opportunity to increase economic interaction with it. Expectedly then, economic links constitute the foundation of Singapore-India relations, and on May 27, 2003, Prime Ministers Vajpayee and Goh Chok Tong commissioned a joint study group to examine the viability of the two states in signing a Closer Economic Cooperation Agreement (CECA) to foster greater economic cooperation. After 13 rounds of formal negotiations, it was concluded on June 29, 2005. This agreement was significant as it represented the first time India had entered into such a comprehensive economic agreement with another state; likewise, it was Singapore’s first such agreement with a South Asian state.

A sign of the rapidly developing economic integration after signing the CECA is that India became Singapore’s eleventh largest trading partner in 2007, and the 2007 bilateral trade figures stood at SGD 23.9 billion, which were almost 20 percent higher than the 2006 trade figures (Singapore Government, 2008, para. 4), and the general upward trend can be seen in Graph 1.



Source: Own compilation from the Singapore Department of Statistics

The Singapore-India CECA therefore represented the first step in economic integration between South and South-East Asia. As Prime Minister Lee Hsien Loong

noted, “CECA is a strong signal that India is committed to continuing economic liberalization and market reforms. It heralds further moves by India to engage the outside world, not just ASEAN, but also with major partners” (“The Inside story,” 2005).

Vivian Balakrishnan, Minister of State for Trade and Industry for Singapore, regards the CECA as “a pathfinder for the ASEAN-India FTA” (Balakrishnan, 2003, Singapore-India CECA, para. 2), representing a step in the right direction as India aims to increase and formalize its economic interaction with the region. Signing an India-ASEAN FTA is important. It establishes the framework for future economic activities and allows all states involved greater ease into the respective markets, thereby increasing mutual interaction within a rules-based environment that makes for enhanced regional order and stability in the long-term.

### ***Political Developments***

Apart from tapping into economic opportunities present in India’s vast domestic market, Singapore’s early engagement of India was a reiteration of the city-state’s consistent belief of having a balance of power in the region. In order to achieve this objective, all legitimate actors must be present. Given India’s territorial size and its geographical proximity to South-East Asia, it is one such actor. Hence, it is imperative for Singapore that India is able to participate meaningfully in regional affairs as China is becoming increasingly influential in South-East Asia through adroit diplomacy and the lure of access to its vast domestic market, as well as that of the Greater China region.

The Association of Southeast Asian Nations (ASEAN) is the pre-eminent regional multilateral institution, and India’s participation in the regional structures constitutes a concrete step to realize the aim of a stable balance of power. Singapore, as India’s former Country Co-ordinator, was to act as a sponsor for India’s involvement with the region. Singapore has therefore

*played a leading role in ensuring India’s inclusion in ASEAN, first as Sectoral Dialogue Partner (at the Singapore Summit in 1992) and then as Full Dialogue Partner (Bangkok Summit, December 1995), which in turn ensured India’s membership in the ASEAN Regional Forum (ARF) and in India’s inclusion in the East Asia Summit (EAS) [in 2005]. Singapore has also supported India’s participation in the APEC Working Groups and India’s candidature in other multilateral fora, including UN organizations” (High Commission*

*of India in Singapore, 2008, para. 5).*

Due to Singapore's efforts in involving India with the region, its links with ASEAN have improved considerably. For instance, India proposed holding annual ASEAN-India summits to increase the number of communication channels between them. South-East Asian states welcomed India's initiative and the first such summit was held in Phnom Penh in 2002. As Devare (2002, p. 71) notes, the venue for the first ASEAN-India summit in Cambodia is very significant. After all, it was India's stance on the Cambodian issue that was responsible for the delay in normalizing relations between them. Hence, holding the inaugural session in Cambodia effectively demonstrated that South-East Asian states and India have moved on, which augurs well for their future relations. These annual ASEAN-India Summits have fostered greater interaction and cooperation between ASEAN states and India in a number of diverse areas, and is in sharp contrast to their relations during the Cold War period. Judging from the rapid pace in the improvement of their bilateral ties, the prognosis for future bilateral ties is optimistic. Despite China's head start in engaging the South-East Asian states, India's recent success indicates that it is possible for the latter to close the gap and catch up with China, and serve as a counterweight to the latter.

In a highly symbolic act to demonstrate India's geographical continuity with South-East Asia, "draw dramatic attention to [their] geographical proximity" (Vajpayee quoted in Ong, 2004, para. 3), as well as to "rediscover the essential oneness of our integrated region" (M. Singh, 2004a, para 4), India proposed an ASEAN-India overland rally. This idea was welcomed by the South-East Asian states, and it was held in 2004 to coincide with the third ASEAN-India Summit. The rally started in Guwahati, capital city of Assam, traditionally India's gateway to South-East Asia, and went through Laos, Vietnam, Thailand, Malaysia, Singapore, and concluded in Indonesia, via a ferry ride to Batam. The rally demonstrated the pace and extent of the improvement in bilateral ties since India implemented its 'Look East' policy.

### ***East Asia Summit***

As a hedge against possible Chinese domination, Singapore lobbied for India's inclusion in the inaugural East Asia Summit (EAS) in 2005. ASEAN states, as the

primary proponents of this new grouping that also included China, Korea and Japan, as well as Australia, New Zealand and India, outlined the three main conditions for inclusion. Firstly, states must have substantive relations with South-East Asian states; secondly, they must have already achieved Full Dialogue Partner status in ASEAN; and lastly, they must have acceded to the Treaty of Amity and Cooperation (TAC). Directly supporting India's membership in the EAS, Singapore's Foreign Minister George Yeo stated that "India obviously qualifies on all three counts and it will be included in the first EAS". Yeo also reiterated that ASEAN states retained the prerogative to decide on the membership of this regional bloc "to ensure that [it] remains in the driver's seat of the EAS process" ("India included," 2005). More importantly, India's inclusion signals to China the ASEAN states' collective commitment to stand firm against domination by any one state within this grouping (Malik, 2006a, p. 208).

The EAS was intended to be a regional institution that fostered interaction and cooperation in Asia-Pacific. However, Mohan Malik argues that given the historic rivalry between states such as Japan, China, and India, this new regional organisation "created more discord than accord" (Malik, 2006b, p. 1), as demonstrated by China's behaviour at the inaugural summit. Then, China attempted to reduce India's potential influence in the EAS by proposing that the existing members of the ASEAN Plus Three (APT), of which it was a member, and not the newly-expanded 16-member EAS grouping to "control the formation of any Asian community-building exercise" (Malik, 2005). China's objective was to undermine India's ability to dilute Chinese influence within this fledgling regional organization, and to confine India to an outsider role in East Asia, an area China perceives to be its historical sphere of influence (ISEAS, 2004, p. 37; ISEAS, 2008, p. 52; International Institute for Strategic Studies, 2005, p. 1).

Just as China wants to consolidate its position, India is also very keen to establish a strong presence in South-East Asia "because of the uncertainties in the future, and especially out of her deep concern towards China's role, the Indian government wants to see a multi-lateral security order in Asia-Pacific region through building partnerships with ASEAN" (Latif, 2004). India therefore attaches much importance to its participation in the EAS, which Prime Minister Manmohan Singh describes as "one of the most ambitious exercises of community building and integration ever attempted in Asia" (Ministry of External Affairs, 2007, para. 4).

From Singapore's perspective, it was important for India to be involved in the EAS

from its inception. For a balance of power to be present, no single state can be the preponderant power. Without a hegemonic power, inter-state interactions are more likely to be regulated in a manner acceptable to all states involved. By insisting on India's participation at the outset despite Chinese opposition, Singapore has sent a clear message that regional states did not wish for China to dominate the grouping. Lee Kuan Yew elaborated:

*It happened in an unplanned, almost accidental, way. Abdullah Badawi, the Prime Minister of Malaysia, offered to host an East Asia summit: ASEAN plus three – the three being China, Japan and South Korea. China's premier Wen Jiabao, then offered to host the second summit. That would move the center [sic] of gravity away from Southeast to Northeast Asia and make some countries anxious. We agreed that we should also invite India, Australia and New Zealand and keep the center [sic] in ASEAN; also India would be a useful balance to China's heft. This is a getting-together of countries that believe their economic and cultural relations will grow over the years. And this will be a restoration of two ancient civilizations: China and India. With their revival, their influence will again spread into Southeast Asia. It would mean great prosperity for the region, but could also mean a tussle for power. Therefore, we think that it best that from the beginning, we bring all the parties in together ... It's a neater balance (Lee Kuan Yew quoted in *Elegant & Elliott*, 2005, para. 2).*

Hence, it is clear that bilateral relations improved so rapidly due to the dovetailing of their respective strategic interests, which was also aided by their historically close links during the colonial period.

### ***Defence Developments***

Apart from increased economic and political links between Singapore and India, bilateral defence relations have also shown rapid improvements, which also demonstrate the strides made in bilateral ties. They are significant, as high levels of trust are needed prior to their establishment. As early as 1994, Singapore and India have conducted annual naval training operations codenamed Anti-Submarine Warfare (ASW) as part of the Singapore-India Maritime Bilateral Exercise (SIMBEX). On the tenth anniversary of the ASW, Singapore Ministry of Defence affirmed the exercise's importance as a "platform for the IN (Indian Navy) and the RSN (Republic of Singapore Navy) to interact professionally" and in the process, has also managed to "foster closer relations, mutual understanding and goodwill between the two navies" (Ministry of Defence, 2003). Given the two nations' mutual interest in maintaining the security of the regional sea lanes, naval cooperation has proved to be

mutually advantageous. The close naval collaboration between them was therefore a confidence-building mechanism that later became a model for cooperation among other branches of their militaries.

In 2003, the conclusion of the Defence Cooperation Agreement again improved bilateral defence ties as it facilitated the ensuing establishment of the annual India-Singapore Defence Policy Dialogue. The dialogue aims to provide a regular forum for both sides to discuss defence cooperation as well as regional and defence issues. The first such meeting was conducted in Singapore in March 2004. Due to the presence of these confidence-building mechanisms, Singapore and India were able to further their defence cooperation. In 2004, SINDEXT 04 was held in central India. In 2005, new grounds were broken when both militaries conducted their first joint artillery and armour exercises codenamed 'Ex Bold Kurukshetra' and 'Ex Agni Warrior' that were held at Deolali and Babina respectively.

Another sign of the maturing defence ties between them was the signing of the 2007 Joint Military Exercises agreement. It allows the Singapore air force to train at Indian military bases in Kalaikunda, West Bengal, for five years, in return for payment and the understanding that the Singapore air force maintains and upgrades the Indian facilities provided (Shekhar, 2007). This military agreement is significant because it is the first time the Indian government has allowed the stationing of foreign troops on its soil. In November 2008, a three-week long joint air force training exercise was conducted, which Singapore's Ministry of Defence considered as yet another significant milestone in bilateral defence relations (Saad, 2008).

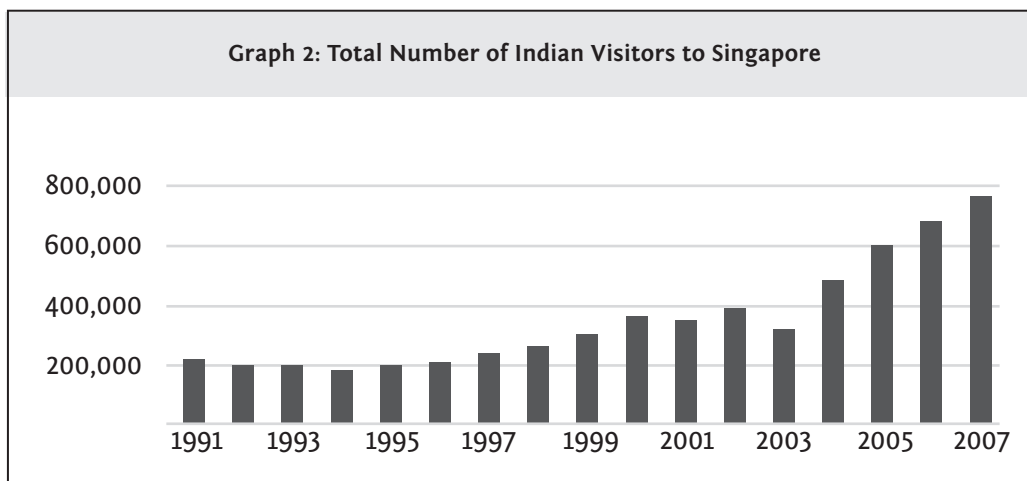
In August 2008, both states entered into another bilateral defence agreement that allowed their infantry forces to undertake joint training exercises in India (Ministry of Defence, 2008). More significantly, India's willingness to allow all three branches of the Singapore military to train there is a strong indicator of this rapidly developing bilateral relationship. In less than 30 years, Singapore-India defence relations have gone from virtually non-existent to being characterized by close and enduring cooperation between all three branches of their military in the present. The establishment of close defence ties indicates the presence of a high level of trust between the two states, and augurs well for even better Singapore-India relations in the future.



### Social and Cultural Developments

Improved bilateral ties are not just confined to areas of high politics discussed in previous sections; they are also evident in areas of low politics as there are now more people-to-people contacts between the two states. For instance, there is increased demand for Indian education by Indian expatriates in Singapore, which made it necessary to establish Indian international schools. The establishment of Indian international schools is significant – it not only indicates the sizable presence of Indian nationals in Singapore, but such high demands also indicate that Indian expatriates expect to be based in Singapore for extended periods. As of September 2009, there were three Indian international schools in Singapore. Furthermore, in December 2008, Singapore Press Holdings launched a new weekly newspaper- *tabla!* - that targets Indian nationals based in Singapore. With the global trend of newspapers companies shutting down due to falling readership, the launch of an Indian weekly therefore provides strong evidence of high levels of people-to-people interaction between Singapore and India in the present context.

Apart from an increasing expatriate population, the number of Indian tourist arrivals to Singapore has also increased as reflected in Graph 2.



Source: Own compilation from the Singapore Department of Statistics

Likewise, just as there are increasing numbers of Indian nationals in Singapore, there are increasing numbers of Singaporean nationals in India as well (Teo, 2008).

In 2005, the Indian High Commission issued 60,000 business and travel visas to Singaporeans, and this figure increased by more than 30 percent in just two years to 80,000 in 2007. These healthy numbers indicate that the people-to-people links between Singapore and India are very strong, and augurs well for the future of their official bilateral ties.

Singapore's Asian Civilisation Museum staging of the 'Nalanda Trail' exhibition in 2007 also supports the above argument that there is increased social and cultural interaction between the two states. The exhibition was a landmark event as it was the first time since 1947 that India had sent such priceless historical artefacts abroad (Ramesh, 2007). This exhibition was possible as the two governments concluded an agreement in 2003 for the loan of such artefacts from the Archaeological Survey of India and the National Museum, New Delhi. Singapore, once again, was the first state to have concluded such a long-term agreement with India (High Commission of India in Singapore, 2003, p.1 ; Ministry of Information, 2003).

As another sign of their rapidly developing bilateral ties on the social front, the Indian government invited Singapore's deputy Prime Minister Jayakumar to be the chief guest of the 2007 Pravasi Bharatiya Divas conference for Indian diasporas and he expressed an interest in hosting the event. Just a year later in 2008, India selected Singapore to be the host – the first time the event had been held in another Asian country. To choose Singapore as the host for this international conference ahead of other Asia-Pacific states provides more evidence that bilateral ties between Singapore and India are rapidly becoming closer (Ramesh, 2008).

Aware of such improvements in their bilateral relations, the Singapore and Indian governments established the India-Singapore Joint Ministerial Committee in order "to take stock of bilateral initiatives, exchange views on regional and international issues, as well as to identify new areas for cooperation" (Ministry of Foreign Affairs, 2008, Bilateral Relations, para. 2). This joint initiative shows that political elites from both states attach much importance to exploring new ways to consolidate and increase the present levels of cooperation between them. Given the developing diplomatic, economic and people-to-people contacts between Singapore and India, it is more accurate to describe their interactions in the present context as "deep and multifaceted" (Lim, 2004, para. 2), and not as 'diplomatically distant'. In a concrete sign of Singapore's devoting more importance to the Indian sub-continent, the National

University of Singapore set up the Institute of South Asia Studies in July 2004. This new institution “reflects the increasing economic and political importance of South Asia, and the strong historical links between South Asia and Southeast Asia” (Institute of South Asian Studies, 2009, Background, para. 1). In another bid to strengthen ties with the region, this institute set up a new project in November 2009 – South Asia Link –, the brainchild of President Nathan to “make Singapore the focal point for the 30 million members of the South Asian diaspora around the world” (“Project to link South Asians,” 2009).

### ***Conclusion***

During the Cold War, Singapore and India did not have substantive contact with one another. Therefore it is fair to argue that they were not vital to each other since the more than 40 years of political divergence between them did not affect either state. The sustained period of division indicates that Singapore and India were not inherently pre-disposed to having excellent bilateral relations in the post-colonial context. The current reversal means improvement in their bilateral relations arises from the conscious efforts of both states.

Advancements in the bilateral relations mainly arise from their joint recognition that they share common interests that could be furthered through conscious cooperation. The potentially negative developments arising from China’s rise is arguably the fundamental factor that causes the convergence of their national interests. This is because both states are desirous of establishing a stable and durable balance of power to promote order in Asia: Singapore does not want to be dominated by a hegemonic state; India does not want to be marginalized. Concurrently, Singapore’s closer engagement of India also allows Singapore to distance itself from the image of being a Sinic outpost that identifies with China. Given the regional ethnic composition, such a policy that distances itself from its ethnic identity is necessary to maintain a hospitable regional environment for Singapore, which is the only South-East Asian state to have an ethnic Chinese majority.

China implemented its economic reforms in 1978, more than a decade before India’s ‘Look East’ policy and so the former had a significant lead over India and has a more prominent economic presence in South-East Asia. Singapore is aware of this

development. Thus, it has consciously worked on improving its bilateral relations with India after the Cold War. Through closer ties with India, Singapore seeks to dilute Chinese influence on itself and in South-East Asia as well. To increase India's presence in the region, Singapore has been keen in not only developing channels to increase its interaction with India, but also to ensure that these channels, once formed, become permanent. Likewise, India has been keen to reciprocate. This is because India benefits from its ability to leverage on its closer ties with Singapore to improve relations with other South-East Asian states, thereby increasing its regional presence.

Both states are aware that collaboration is mutually advantageous. Consequently they have concluded various agreements in diverse areas, ranging from high to low politics, to ensure that their nascent interactions become regular, predictable, and permanent. Through such agreements, they consciously affirm their commitment to conduct their dealings within a rules-based framework, thereby allowing their interaction to become orderly and mirroring the close links they had during the colonial period, which signals a return to history.

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**Im Dialog / In Dialogue**

***Institutionalizing Human Rights in South-East Asia:  
The birth of ASEAN's Intergovernmental Commission on Human Rights***

***An Interview with Param Cumaraswamy***

CHRISTIAN BOTHE

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*Param Cumaraswamy is a Malaysian member of the Regional Working Group for an ASEAN Human Rights Mechanism. He is also the former UN Rapporteur on the Independence of Judges and Lawyers. Together with his colleagues in the Regional Working Group, he worked on proposals and recommendations on the design of the projected human rights body, its principles, composition and powers. The Working Group describes itself as a coalition of national working groups from ASEAN states which are composed of representatives of government institutions, parliamentary human rights committees, academia and NGOs.<sup>1</sup>*

*The interview consists of two parts: a first part was conducted in summer 2009 while the deliberation and negotiation on mandate and power of a to-be institutionalized human rights body was still in process. On October 23, 2009 in Cha-am & Hua Hin, Thailand, the ASEAN heads of states and governments concluded an agreement, i.e. the Terms of References and respectively inaugurated the so-called ASEAN Intergovernmental Commission on Human Rights (AICHR). This latter part of the interview therefore deals with the final outcome of this strongly politicized process.*

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<sup>1</sup> <http://www.aseanhrmech.org/aboutus.html> (20 Dec 2009)

PART 1 (JULY 2009)

BOTHE: Mr. Cumaraswamy, why does South-East Asia as a region need a human rights mechanism? Why are national human rights mechanisms not enough?

CUMARASWAMY: If we go back in history and if you look at the regions in the world, Asia is the only region which has no regional mechanism of human rights. With the Vienna Declaration of 1993 the United Nations member states agreed, that regions and sub-regions should try to set up regional mechanisms to address human rights violations in the particular region. Now insofar ASEAN is concerned – ASEAN, as you may recall was founded in 1967 as a very loose economic caucus by five ASEAN members: Singapore, Malaysia, Indonesia, Philippines and Thailand. They are what we call the senior ASEAN members. But it was a very loose economic arrangement. It was not rights-based. There was no formal institution as such, no charter, no treaty, no whatsoever. Subsequently ASEAN expanded. Now we have ten countries forming the ASEAN caucus. As a result of the Vienna Declaration in 1993 the ASEAN foreign ministers met in Singapore and said that ASEAN would consider setting up a human rights mechanism. But that was in 1993. It was in the period after this, that we formed a group of NGOs in that region, a grouping among ourselves, very informally, to realize a human rights mechanism for ASEAN. We call it regional Working Group for an ASEAN human rights mechanism. It formed in 1995. The process started gradually and this regional working group began to interact with state representatives, reminding them of their promise made in Singapore and following the Vienna Declaration. Finally it got materialized. What happened was that ASEAN realized that it needed to institutionalize itself as a rule-based body. So it needed a charter or a kind of treaty. Hence an eminent persons group was set up to draft a charter. First to study the contents of the charter and thereafter a group was set up to draft the charter. Finally the charter was adopted by the heads of governments of ASEAN in 2008. It is now in force. But this regional working group of NGOs calling for an ASEAN human rights mechanism interacted with this eminent persons group and the people who drafted the charter to already provide in the charter for the establishment of a human rights mechanism.

BOTHE: So the establishment of the human rights mechanism would go hand in hand with a steady process of political integration?

CUMARASWAMY: ASEAN is already a political institution as such. The charter provides for a real political institution, as a rule-based body now. It can now speak with one voice in international forums. Before this, ASEAN did not have a single voice. They had to speak individually. Now they can speak as ASEAN, under the ASEAN umbrella. The charter provides among its purposes and principles for recognition of democratic values and good governance, rule of law and especially international humanitarian law. It is due to these notions in the charter for strengthening democracy, and the notion and protection of human rights that a human rights body is now going to be set up. For that purpose, last year a ten member group, one from each country was set up to draft the terms of reference. And those terms of reference are now finished. Next week we will have a meeting in Bangkok. The foreign ministers will be meeting one week later and it is expected, that the terms of references for the human rights mechanism body will be approved by the ten foreign ministers and then by the heads of government in September or November. Thereafter the body will be set up. For the purpose of the human rights mechanism, the two groups, the eminent persons group and the group who drafted the charter, had a lot of access to the European Commission in Brussels and also in Strassbourg and recently they also went to Geneva to the Human Rights High Commissioner's Office to discuss various matters, related to the setting up of this body. Hence, there is some European influence in this whole process and we expect the human rights body to be established by the end of the year. Unfortunately, it will not be the kind of body that we would like to see. Though the charter provides a notion of promotion and protection of human rights we feel that it is just going to start off as a promotional body. With for instance educational programmes to be integrated but without the power to investigate. That is our concern. But some of the ASEAN governments like Burma, Laos or Vietnam, they feel that they will not reach a comfort level as the others, Malaysia, Singapore and so on.

BOTHE: Do you think that considering the human rights situation in countries such as you mentioned, the human rights mechanism can still be regarded as a success?

CUMARASWAMY: I think we need to start off. What we see is that, if we, if the civil society groups oppose this, because it does not have investigative powers or protective powers as such, we will not be able to further keep a foot in the door. It took a long time for this body to be set-up. It has been established now and we will over the years give it the teeth. The charter also provides that the body and its processes will be reviewed after five years. Hence, we will see how it functions, we will see how the appointment processes will be made, who will be the commissioners, whether they will develop credibility, whether they will have a human rights background and not be diplomats or civil servants sitting there keeping the seats warm. Hence we feel that this process – using the ASEAN language – will be implemented “step by step”. But it is indeed a step forward, because human rights were never on the agenda of ASEAN for nearly 45 years. Different from its founding in 1967, ASEAN is now a rule-based body, and has a human rights body, which is rule-based as well, with proper terms of reference. And in addition to this, what is going to emerge is also a commission on women and children because the ten ASEAN countries feel a little uncomfortable on the rights of women and children because they all have ratified the UN treaty on women and also the convention of the rights of the child. Whereas many of the ten have not ratified the convention against torture, the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights [i.e. two of the most basic human rights conventions; C.B.].

BOTHE: Taking in mind the overall very inhomogeneous human rights situation in the region, could we expect that some nations would bi- or multilaterally expand their human rights commitments, in other words form a coalition of the willing? ASEAN also has its formula for this, the “3plusX”.

CUMARASWAMY: No, that will not be acceptable to ASEAN. ASEAN goes by consensus – also for human rights. I cannot possibly imagine them going in any other way. As far as ASEAN is concerned till now, everything has to be by consensus. And we heard that even over the terms of reference for the body there has been a lot of what you call

horse-trading which went on. Some governments are very firm and you can imagine that Burma will never do certain things. And if Burma does not agree, there is no ASEAN agreement as well, because there is no consensus. This is a small set-back with regard to decision making processes. The suggestion that those who are ready to start a process and others catch up later is not an option for ASEAN. But if there are serious shortcomings they will be exposed by the civil society. And there is one good thing that is happening now: there is consultation with civil society groups. Though, many of the civil society groups are not very happy with the kind of body that is going to be set up. And as you see in the charter, this document provides promotion and protection, and I say there can be no protection without investigation because without investigation, we do not know, whom to protect. Gradually there will be a process that the human rights body will write to the governments concerned and asking for an explanation. This is of course a very diplomatic way of calling for some accountability of the governments but this is how it will start. I do not think that this will be made public so we will only partly see how it will develop. But the important thing is that it takes off.

## PART 2 (DECEMBER 2009)

**BOTHE:** For the first time in its history ASEAN institutionalized a human rights body, called the ASEAN Intergovernmental Commission of Human Rights (AICHR). Much attention has been drawn to the final decisions on the Terms of Reference (ToR)<sup>2</sup>, the working guidelines of this Commission, which specify its mandate and powers. How pleased are you with the outcome?

**CUMARASWAMY:** Though the ToR is not a perfect document to meet the needs of such a regional mechanism, yet in the context of ASEAN it is a beginning. I am quite pleased.

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<sup>2</sup> ASEAN. (2009, September 09). Terms of Reference of ASEAN Intergovernmental Commission on Human Rights. Retrieved December 22, 2009, from <http://www.aseansec.org/DOC-TOR-AHRB.pdf>

**BOTHE:** Although the preceded ASEAN Charter, which in its Art.1 specifically identifies “respect for and protection of human rights” as one of its core purposes and “respect for fundamental freedoms, the promotion and protection of human rights, and the promotion and protection of social justice” as a core principle under Art.2, the AICHR has not given powers to monitor, investigate or report on human rights records, it rather has a mandate to “promote” than to protect human rights. Its role is therewith in a way limited to an advisory body for the ASEAN Secretariat, its influence and work will presumably be conducted on an informal level and behind closed doors  
Hence, how much the issue of human rights will be strengthened will depend on the personal skills and endeavour of the Commission’s members who will be selected by the ASEAN member states. What can you say about the way the selection process was done and the credibility these representatives will receive?

**CUMARASWAMY:** Yes, the ToR does not provide for investigation and protection. However, the terms of the charter could over the years be read into the ToR. That will depend on the quality, character and personality of the commissioners. The selection of commissioners was left entirely to the states with no uniform guidelines on the process. Save for Thailand and Indonesia, the process of selection was not transparent and credible.

**BOTHE:** Considering the Commission’s present mandate and powers, its budget, its routine of only meeting twice a year and its consensus-based approach to any decision-making, what can be expected as likely matters the Commission will deal with and what would you suggest as a focus for its start?

**CUMARASWAMY:** The initial focus will largely be on promotion which will be more educational and creating awareness of rights and responsibilities.

**BOTHE:** Due to several unique provisions deriving from the ASEAN Charter and the AICHR Terms of Reference, the mode of operating of the AICHR will be quite different to other regional or global human rights mechanism. How do you expect cooperation between the AICHR and other institutions will take place and how much interaction or influence with and from other bodies can be expected?



CUMARASWAMY: Despite the shortcomings in the AICHR, yet I am quite positive that there will be considerable interactions with other regional mechanisms and the UN. AICHR has a lot to learn from the other regions and the UN.

BOTHE: How is the mood and stance of the majority of the South-East Asian Human Right Civil Society towards this body? Will they consider it a credible partner and will there be enough venues for cooperation or can it rather be assumed that the Commission as in its present form will be largely conceived as an object of criticism and opposition? What could however be strategies for the civil society to strengthen the commission?

CUMARASWAMY: It is the civil society organizations (CSOs) in the region who will be the key players in giving teeth to the AICHR. Though the ToR does not meet with the expectations of the CSOs in the region yet, there will be space for the CSOs to express and work with the AICHR. The commissioners who ignore CSOs' concerns will do damage to the credibility and integrity of the AICHR.

BOTHE: Could you imagine a possible link between the dogma of economic development and cooperation, which is still by far the most prominent driving force in the ASEAN integration process and on the other hand the strengthening of a human rights regime? A situation when one becomes crucial or at least spurring for the other?

CUMARASWAMY: No doubt economic development will continue to have priority among the governments. However, with the establishment of AICHR there will be attention drawn to indivisibility, interdependence and interrelatedness to all human rights. Hence promotion of political and civil rights will have to be given equal importance with promotion of economic rights.

BOTHE: Although the set-up of a human rights mechanism and therewith securing the issue of human rights on ASEAN's agenda can be regarded an important step forward, many observers are reluctant to cheer the new Commission, describing it as a toothless tiger. Even Thai Prime Minister and ASEAN chair Abhisit Vejjajiva called

it (only) “a start” and said the commission’s “teeth” would be strengthened down the road. What would be your hope for the development over the next years? How could the council become a tiger with teeth? What would be future milestones in the development of this commission to establish itself as a credible regional mechanism and help close the gap between human rights rhetoric and the reality on the ground?

**CUMARASWAMY:** The ToR does not provide any negative terms. In five years it can be reviewed. In the meantime, the vibrant CSOs in the region would remain vigilant and eventually give the required teeth to the toothless tiger. Remember, the first preamble to the charter describes it as the peoples’ charter. Though intergovernmental, yet governments must meet with the aspirations of the ASEAN people.

**BOTHE:** Mr. Cumaraswamy, thank you for this interview.

**Südostasien sehen / South-East Asia Visually**

**Images of Hans Manndorff's Anthropological Research  
on the 'Hill Tribes' of Northern Thailand (1961-1965)**

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**Manndorff's anthropological research in Northern Thailand (1961-1965)**

In the years 1961 and 1962, the Austrian anthropologist who later became director of the Museum of Ethnology in Vienna, Hans Manndorff, was working on behalf of the United Nations on a research and development project in the highlands of Northern Thailand. The project, titled 'The socio-economic survey of selected hill tribes in Northern Thailand', was the first government-supported study of the so-called hill tribes of Thailand. Officially conducted by the Public Welfare Department of the Ministry of Interior, several other organizations, such as the Asia Foundation that provided financial support, assisted in the project. The field survey took place from

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October 1961 to May 1962 and covered five ethnic groups: the Akha, Hmong, Mien, Lisu and Lahu. 18 sample villages were studied rather intensively and 20 to 30 villages more briefly. The aim of the project was to collect scientific data and information on these five ethnic groups in order to provide suggestions and recommendations for the operating institutions and agencies (Manndorff, 1967).



Start of the expedition: As soon as the road ends, the research team is hiking up the hills with the help of small horses. Manndorff (middle) in company of a Lahu man (back), a representative of the Public Welfare Department (left) and a member of the Border Patrol Police (BPP). Chiang Mai, 1961.

From 1963 to 1965 Manndorff continued his field trip to Northern Thailand, Laos and Burma (now Myanmar). He was sponsored by the Asia Foundation to advise the Thai Government in establishing a Tribal Research Institute (Buadaeng, 2006; Manndorff, 1965).

At the end of his field trip in 1964/1965, Manndorff was able to conduct a long-planned movie project, documenting immaterial and material culture, techniques



and ritual elements of various selected ethnic minority groups. With the support of the IWF (*Institut für den wissenschaftlichen Film*/Institute for Scientific Film) in Göttingen, Germany, he and his film team shot 54 reels of 16 mm documentary films<sup>3</sup> (Manndorff, 1972).



Establishing contact: This voice recorder did not only serve as an instrument to record songs and oral recitations, it also became a crucial medium for getting access and gaining rapport to the ethnic community. The research team plays a tape recorded at another village. The villagers listen highly interested and astonished to the recorded voices and greetings from the other village which is a seven hours' walk away. Hmong village, Tak Province, 1961.

During this research (1961-1965) Manndorff build up an archive of approximately 800 ethnographic slides documenting economic, social and ritual activities of the five selected ethnic minority groups. The ethnographical photographs deal in general with the same topics and cultural settings as the 54 ethnographical IWF documentary films. The photos also show scenes in far more remote villages and hill

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<sup>3</sup> The documentary films were digitalized by the IWF and can be obtained through its website (<http://www.iwf.de>).



Political issues: Manndorff emphasizes that he had no interest to get involved in any political affairs. In the geo-political struggles in the context of the east-west conflict, however, where Thailand feared political and military influences and disturbances from neighbouring countries, every action seemed to have a political connotation. The research team, therefore, sometimes was accompanied by a member of the Border Patrol Police. Black Lahu village, Tak province, 1962.

ranges since the heavy and complicated film equipment necessary for making IWF-movies could hardly be brought into the very distant interior of the ethnic minority areas. Furthermore, the slide collection includes about 40 photographs that display the anthropologist Hans Manndorff himself.

### ***Digitalization of the photographic archive***

Until recently, the photo collection taken in northern Thailand was rarely used, both by Manndorff and others. However, the photo archives are still useful for younger scholars and students who study ethnic minority groups in Northern Thailand. Also, villagers who are descendants of those people in the photos should get opportunity to





Puch-Haflinger (type of Austrian off-road car). The car became an object of interest in the visited villages. Hmong village, Tak Province, 1964.

have them for family collections. The slides, though, were not properly protected and could thus be gradually damaged. In a collaboration project between the Social Research Institute (SRI) of Chiang Mai University and the Sirindhorn Anthropology Centre



Cameraman Hermann Schlenker of the IWF. Hmong village, Tak Province, 1964.





Hans Manndorff (left), dressed in Hmong clothing, and two villagers. Hmong village, Tak Province, 1964.



Hans Manndorff today at the age of 83 years. Vienna, 2009.

(SAC) in Bangkok, Thailand, as well as the Department of Geography and Regional Research (DGRR) of the University of Vienna, Austria, the slide archives were taken to Thailand and scanned by the Thai partner institutions. After the process of digitalization, Manndorff





Seeding cotton: Cotton is put into the machine between two rollers which revolve in opposite directions. The cotton fibres are transported through these rollers and are thus separated from the seeds which had remained on them. Akha village, Chiang Rai Province 1965



collaborated with Prasit Leepreecha (SRI), Alexander Trupp (DGRR) and the SAC in order to identify precisely the slides and to complete captions<sup>4</sup>. This photo essay offers some insights into ethnographic fieldwork of half a century ago<sup>5</sup>.



Hmong children take a keen interest in cameraman Schlenker's work. Hmong village, Tak Province, 1964.

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4 Manndorff's digitalized photographic archive is soon planned to be online at SAC's website: [www.sac.or.th](http://www.sac.or.th)

5 The documentation and contextualization of Manndorff's photo collection was conducted by Alexander Trupp with financial support from "Kulturabteilung der Stadt Wien, MA 7 - Kultur, Wissenschafts- und Forschungsförderung", funding period: 05.10.2009-06.11.2009.

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**Call for Papers**

**5th Viennese Conference on South-East Asian Studies:  
Human Security in South-East Asia  
May 28 & 29, 2010 - Vienna Austria**

*While traditional military conflicts have declined since the end of the Cold War, new non-traditional menaces, such as poverty, migration, people smuggling and environmental degradation, have increased. Major events like the 1997 Asia Financial Crisis, the SARS epidemic in 2003 and the tsunami in 2004 demonstrated that individuals felt and experienced a much deeper impact from these incidents than the state. The United Nations' 1994 Human Development Report defines human security as both "freedom from want" and "freedom from fear". The UN focuses on seven threatening areas: economic, food, health, environment, personal, community and political security. Yet, human security remains a vague inter-disciplinary concept. A concept that is consequently still contested, both theoretically and politically.*

*The upcoming 5th Viennese Conference on South-East Asian Studies invites submissions from various disciplines to dissect the main question of 'how the broad spectrum of human security challenges has been conceptually and politically addressed on the transnational, national and/or local level?' Panel 1 examines how human security is defined in South-East Asia. Panel 2 looks at the concrete implementation of human security in South-East Asia.*

**Panel 1: The human security discourse in South-East Asia**

In our first panel, we aim to analyze both the official security discourse of the Association of Southeast Asian Nations (ASEAN) and selected member states as well as the human security agenda of South-East Asian nongovernmental organizations (NGOs) and civil society groups. Some of the questions we seek to appraise during this session are: How has the notion of people-oriented security evolved in the last decade? How does ASEAN and how do selected NGOs define human security? Autocratic nations view the democratic elements of human security as a potentially disruptive element for their regime security. How can these elements, consequently, interact with the traditional regime-legitimizing understanding of security?

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In this panel, we want to compare case studies for the implementation of human security occurring on different territorial levels. We would be exploring on the following questions: What are the main obstacles for a successful implementation? Which concept of human security has been promoted? What are the key policy areas? Who are the main actors? How much influence do NGOs or the local population have? What role can foreign organizations or Official Development Assistance play in improving human security? Can the implementation of human security on a local level lead to a democratization of the whole political system from above etc.?

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In our open Panel we offer researchers from all disciplines the opportunity to present analyses that are relevant to South-East Asia.

***Keynote speaker***

Prof. Donald Emmerson, Director, Southeast Asia Forum, Stanford University

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# ASEAS

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