

## MANAGING BORDER DISPUTES IN SOUTHEAST ASIA

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*Rencana ini mengkaji bagaimana konflik sempadan yang melibatkan negara-negara Asia Tenggara diuruskan. Kajian melibatkan penganalisaan perjanjian-perjanjian yang telah dicapai untuk menyelesaikan konflik-konflik ini. Kajian ini juga melihat secara umum konflik-konflik yang belum diselesaikan. Rencana ini juga melihat apakah mekanisme pengurusan konflik yang telah disediakan dalam Pertubuhan Negara-Negara Asia Tenggara (ASEAN), disamping peranan yang telah dan boleh dimainkannya. Mekanisme-mekanisme rasmi dan tidak rasmi dibincangkan sebagai contoh kepada peranan yang dimainkan oleh ASEAN. Akhir sekali, beberapa cabaran kepada peranan ASEAN dalam menangani konflik sempadan yang melibatkan anggotanya juga timbulkan.*

### PURPOSE AND STRUCTURE

The main purpose of this study is to examine how the border disputes between the Southeast Asian countries are managed. The analysis involves both an overview of the agreements reached relating to border disputes and an overview of the unsettled border disputes. Another dimension of the analysis encompasses a discussion relating to the possible role and impact of the framework for conflict management of the *Association of South-East Asian Nations (ASEAN)* and the mechanisms encompassed therein on the way in which the disputes are, or can be, managed.

The aim of this study is not to test existing theories or general lines of explanations relating to conflict management and conflict resolution. Nor is any attempt made at drawing general conclusions from the findings of the study and observations made in relation to these findings. General conclusions should be understood as relating to the situations or developments taking place outside the Southeast Asian context be it in other regions or on a global scale.

Geographically the study encompasses the ten countries of Southeast Asia, i.e. the member-states of ASEAN – Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and, Vietnam. In terms of territorial disputes both bilateral and multilateral disputes are addressed.

The study encompasses three main parts. The first part examines how the border disputes have been and are handled between the Southeast Asian countries. The disputes are divided into settled and unsettled ones thus highlighting the degree of progress made thus far. This part also highlights the diplomatic developments relating to some of the unsettled disputes. Finally, a broader discussion on the current situation relating to the border disputes is carried out.

The second part identifies the conflict management mechanisms for handling inter-state disputes within the ASEAN framework as seen in the Declarations and Treaties adopted by the Association since it was established in 1967 and it examines the negotiation and decision-making processes within ASEAN.

The third part discusses and assesses how the management of the border disputes can be made more efficient thus enhancing the possibility of settling the disputes by peaceful means. This concluding part also includes a discussion relating to the possible role of ASEAN's conflict management in the processes of managing the territorial disputes as well as the challenges for ASEAN with a focus on how the Association's conflict management approach can be further strengthened in order to facilitate the resolution of the remaining territorial disputes within the Southeast Asian region.

## **BORDER DISPUTES WITHIN SOUTHEAST ASIA**

### Introduction

The border disputes in Southeast Asia can be studied from various perspectives; in this study the focus is on the current status of the disputes, i.e. are the disputes settled or not. Attention is focused on the political aspects rather than on legal aspects. 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 those that are still unresolved. The alternative outlining all the disputes that once existed and then discussing if they are settled or unsettled could be confusing for the reader and would lack clarity.

The following overview of how territorial disputes between the member-states of ASEAN have and are being handled is divided into three sections. The first deals with the border disputes which have been formally settled through agreements or through joint-development arrangements. These settled disputes are examined in chronological order based on the year when they were settled. The second examines the border disputes which have yet to be resolved. The third focuses on the recent diplomatic developments relating to some of the unsettled disputes. In the fourth section a broader discussion relating to progress and challenges of managing the border disputes is carried out.

### Settled Border Disputes

- The first agreement settling a border dispute was reached on 27 October 1969 between Indonesia and Malaysia delimiting their continental shelf boundary in central and southern parts of the Strait of Malacca and in areas to the west and east of the Natuna Islands in the South China Sea. On 17 March 1970 they signed an agreement delimiting their territorial sea boundary in the Strait of Malacca. Finally, on 21 December 1971 an agreement was reached relating to the continental shelf boundary in the northern part of the Strait of Malacca (Forbes, 1995: 18-19, 21-24, 40-41, Annexes E1 and E2; Charney and Alexander Vol.2, 1993: 1019-1037).
- Also on 21 December 1971 an agreement was signed between Indonesia, Malaysia and Thailand relating to the establishment of a "Common point" (Tri-junction point) on the continental shelf. This enabled the three countries to link the point to their pre-existing maritime boundaries (Forbes, 1995: 18-19, 35-36, 44, Annex I; Charney and Alexander Vol. II, 1993: 1443-1454). Four days earlier (17 December) Indonesia and Thailand had signed an agreement delimiting a part of their continental shelf boundary in the northern part of the Malacca Strait and Andaman Sea. On 17 December 1975 they agreed on a continuation of the boundary in the Andaman Sea (Forbes, 1995: 18-19, 35-36, 39, Annexes H1, H2; Charney and Alexander Vol. II, 1993: 1455-1463, 1465-1472).
- Indonesia has also reached an agreement with Singapore on delimiting their territorial sea boundary in the Strait of Singapore on 25 May 1973 (Forbes, 1995: 18-19, 24-25, 41, Annex G; Charney and Alexander Vol. I, 1993: 1049-1056).
- Laos and Vietnam have delimited their border through a series of agreements reached between 1977 and 1990. On 18 July 1977 Laos and Vietnam signed a treaty delimiting the land boundary between the two countries. A complementing treaty was signed on 26 January 1986. A final agreement of the status of the border was signed on 1 March 1990 and ratified on 8 November the same year.<sup>1</sup>

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<sup>1</sup> It can be noted that during the Second Indochina Conflict some areas of Laotian territory were put at the disposition of the Democratic Republic of Vietnam by the Lao People's Revolutionary Party; these areas have been restored to Laos in accordance with an agreement dated 10 February 1976. 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 *British Broadcasting Corporation, Summary of World Broadcasts, Part Three, Far East, 2975 B/6-7* (19 July 1997) (hereafter "BBC/FE").

- On 21 February 1979 Malaysia and Thailand signed a Memorandum of understanding on the delimitation of their continental shelf boundary in the Gulf of Thailand. The Memorandum did not specify the exact location of the boundary but it stipulated that negotiations should continue to complete the delimitation of the boundary. In this context another Memorandum of understanding reached by the two countries on the same day is of relevance, a Memorandum of understanding on the establishment of a joint authority for the exploitation of the sea-bed in a “defined” area of the continental shelf in the Gulf of Thailand. This Memorandum recognised that there was an area of overlapping claims on the adjacent continental shelves and that negotiations should continue to complete the delimitation of the continental shelf boundary. The two countries agreed to exploit the resources of the sea-bed in the disputed area through mutual co-operation and they decided to establish a Joint Authority to be known as *Malaysia-Thailand Joint Authority* (Charney and Alexander Vol. I, 1993: 1099-1110; Kittichaisaree, 1987: 100-103, 189-194). Malaysia and Thailand also signed a Treaty on 24 October 1979 relating to the delimitation of the territorial seas between the two countries in the Strait of Malacca and in the Gulf of Thailand.<sup>2</sup> Finally, on 13 May 1990 they reached an Agreement on the constitution and other matters relating to the establishment of the *Malaysia-Thailand Joint Authority* (Charney and Alexander Vol. I, 1993: 1111-1123; Ong, 1991: 57-60, 64-72; Ong, 1999: 207-246).
- Myanmar (then Burma) reached an agreement with Thailand relating to the delimiting of the maritime boundary between the two countries in the Andaman Sea on 25 July 1980 (Kittichaisaree, 1987: 47-48, 52, 74-75; Charney and Alexander Vol. II, 1993: 1341-1352).
- In June 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: 306).
- Laos and Myanmar have reached two agreements related to their land boundary, i.e. along the Mekong river. A “Convention” was signed between the Laos and Myanmar on 11 June 1994 relating to the “fixation” of the international boundary between the two countries. The “Convention”

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<sup>2</sup> The text of the agreement has been reproduced as “Appendix 5” in Kittichaisaree, (1987: 186-188); and, “Malaysia-Thailand (Territorial Sea) (1979)” in Charney & Alexander (Vol. I, 1993: 1091-1098). It seems that the delimitation of the territorial sea boundary in the northern part of the Strait of Malacca between Malaysia and Thailand is identical to the continental shelf and EEZ boundaries “Figure 16. Maritime Boundaries in the Andaman Sea” in Kittichaisaree, (1987: 98).

was ratified by the government in Myanmar on 21 December 1994 and by the National Assembly of Laos on 15 September 1994 and by the President of Laos on 13 March 1995. Already on 8 April 1994 the two countries and China signed a "Convention" relating to the delimitation of a Tri-junction point where the borders between the three countries meet.<sup>3</sup>

- 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 on 9 August 1997 (*BBC/FE/2996 B/4-5*, 13 August 1997; Nguyen, 1997: 74-79; Nguyen, 1998: 7-10).

#### Unsettled territorial disputes

- Brunei Darussalam has territorial disputes with Malaysia. Their unsettled maritime boundaries in the South China Sea are due to overlapping claims to continental shelf and EEZ areas. Brunei also claims Louisa Reef which is under Malaysian control (Prescott, 1995: 227-228; Valencia, 1991: 48-54, 66). There is also a dispute relating to the land boundary between Brunei and Malaysia over the Limbang valley which is currently part of the Malaysian state of Sarawak (Clearly and Francis, 1994: 67-68; Huxley, 1987: 240; Thambipillai and Sulaiman, 1995: 121). Brunei's claim to Louisa Reef also overlaps with a Vietnamese claim.<sup>4</sup>
- Indonesia and Malaysia still have to reach an agreement on delimiting their continental shelf boundary in the western Celebes Sea. There is also the unresolved question about sovereignty over Pulau Sipadan and Pulau Ligitan off the eastern coast of Borneo. In addition they have overlapping claims to EEZ in the Strait of Malacca, parts of the South China Sea located north of Tanjong Datu and in the western Celebes Sea (Valencia, 1991: 46-48, 80-84, 135; Prescott, 1985: 226-230; Ong, 1999: 400-414). In recent years tension along the border between the Malaysian States of Sabah and Sarawak and the Indonesian part of the Island of Borneo (Kalimantan) has highlighted that the border is "poorly" demarcated (Ganesan, 1999: 30).

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<sup>3</sup> For details on the settlement and demarcation of boundary between Laos and Myanmar see Gay and Phommachack, (1999). The "Convention" between Laos and Myanmar of 11 June 1994 entered into force following the exchange of the instruments of ratification on 8 May 1995, see Gayana Phommachack (1999:18).

<sup>4</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: 48-50, 66-67).

- Indonesia and the Philippines have to agree on maritime boundaries in the Celebes Sea in the area between Miangas Island on the Indonesian side and Mindanao on the Filipino side in the north-eastern part of the Celebes Sea (Prescott, 1985: 230; Forbes, 1971: 37, 45, 47).
- Indonesia and Vietnam have a border dispute relating to overlapping claims to continental shelf areas in the South China Sea to the north of the Natuna Islands (Forbes, 1971: 20, 37-38; Amer, 1995: 304-305).
- Malaysia and the Philippines have to agree on maritime boundaries in the Sulu Sea, Celebes Sea and in the South China Sea proper. They have overlapping sovereignty claims to parts of the Spratly Archipelago in the South China Sea (Prescott, 1985: 218-221, 230; Valencia, 1991: 54-66, 80-85, 136-137). These parts of the Archipelago are also claimed by Vietnam. It should also be noted that Malaysia and the Philippines have not yet formally settled the Sabah.
- Malaysia and Singapore have two territorial disputes to resolve. First, there is the question of ownership of Pedra Branca/Pulau Batu Puteh and the boundaries relating to jurisdictional zones in the area. Second, the two sides have to agree on the offshore boundary in the Strait of Johor and the Singapore Strait to the south of Singapore (Valencia, 1991: 31-35, 37, 136). In the Singapore Strait the boundary would link up with the boundaries agreed upon by Indonesia and Malaysia and Indonesia and Singapore, respectively.
- Between Malaysia and Thailand maritime boundaries are not the major preoccupation since they have been settled through the Treaty on the territorial seas or are managed through the Joint-Development agreement (see above). However, the dispute relating to an area of overlapping claims in the Gulf of Thailand which is also claimed by Vietnam remains to be settled.<sup>5</sup> With regard to the land border between Malaysia and Thailand disputed areas along the border remains to be settled.<sup>6</sup>
- Between Malaysia and Vietnam the major dispute relates to Vietnam's sovereignty claims to the whole Spratly archipelago which overlaps the Malaysian claim to the southern part of it (Amer, 1995: 305-306; Prescott,

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<sup>5</sup> For an overview of the maritime conflicts and co-operative agreements in the Gulf of Thailand, see (Prescott, 1998).

<sup>6</sup> Author's discussions with researchers in Kuala Lumpur in December 1996 and in August 1998. It can be noted that following talks between the Malaysian and Thai Prime Ministers in late February 1997 it was reported that they had agreed to resolve the "demarcation problem" relating to the land see (*BBC/FE/2856 B/4-5*, 1 March 1997).

1985: 54-56). These parts of the Archipelago are also partly claimed by the Philippines.

- Between Thailand and Laos there are disputed areas along the land border. The border is partly made up of the Mekong river.<sup>7</sup>
- Between Thailand and Cambodia there are disputes relating to both the land border and to the maritime borders in the Gulf of Thailand where claims to maritime zones overlap.<sup>8</sup>
- Between Thailand and Myanmar the 2,400 kilometres land border is mostly not demarcated and the area of dispute that has caused most tension in recent years is along the Moei river. Furthermore, despite the 1980 agreement (see above) there are still two disputes to be resolved in maritime areas. One relates to overlapping claims to some small features and the other to a the delimitation of the territorial seas of the two countries in a limited area of the Andaman Sea.<sup>9</sup>
- The Philippines and Vietnam have 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: 306-308; Prescott, 1985: 218-222; Valencia, 1991: 54-66). These parts of the Archipelago are also partly claimed by the Malaysia.
- The territorial disputes between Vietnam and Cambodia encompass both areas along the land border and overlapping claims to maritime areas in the Gulf of Thailand (Amer, 1997: 80-91; Amer, 1995: 299-301).
- Cambodia and Laos have to settle their differences relating to the demarcation of their land boundary.<sup>10</sup>

#### Highlights of some on-going border disputes

##### *Laos-Thailand*

There are on-going talks between Laos and Thailand relating to border issues. In August 1996 the two countries agreed to set up a Joint Border Committee, to be chaired by the Foreign Ministers of the two countries, to deal with the

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<sup>7</sup> Author's discussions with Officials in Bangkok in December 1998.

<sup>8</sup> Author's discussions with Officials in Bangkok in December 1998. See also (Prescott, 1998).

<sup>9</sup> Author's discussions with Officials in Bangkok in April 1999.

<sup>10</sup> This was acknowledged by the then Cambodian First Prime Minister Ung Huot in early June 1998 (*BBC/FE/3250 B/1*, 11 June 1998)).

demarcation of the common border.<sup>11</sup> According to press reports an agreement was reached on a two-year time-frame for the demarcation of the border on land before proceeding to the Mekong river at a meeting of the Joint Boundary Committee on 4 September 1997 (*Boundary and Security Bulletin*, 1997: 41). During 1997 and into early 1998 the two sides seemed to be making progress with two phases of survey and demarcation being carried out, the first from May to July 1997 and the second from November to late January 1998 when Thailand reportedly announced that the work was suspended. The Laotian reaction came on 3 February when the Director of the Treaty and Laws Department of the Ministry of Foreign Affairs stated Laos' willingness to continue with the survey and demarcation. Subsequent talks have indicated a mutual willingness to pursue the survey and demarcation process. In November 1998 the two sides agreed to continue with the border demarcation process for a period of eight months between December 1998 and July 1999. The two sides are aiming to settle the boundary by two deadlines. The first is by 2000 and relates to areas which are not along the Mekong River. The second is by 2003 and relates to the Mekong River as such (*BBC/FE/3146 B/5*, 9 February 1998); (*BBC/FE/3195 B/6-7*, 7 April 1998); (*BBC/FE/3207 B/4-5*, 22 April 1998); (*Boundary and Security Bulletin*, 1997: 51).

#### *Myanmar-Thailand*

The situation along the border between Myanmar and Thailand, which has regularly been the scene of cross-firing and incursions into Thai territory, is mainly due to the conflict between the central authorities and the Karen and Shan minorities in Myanmar and not directly related to territorial disputes between the two countries. However, the border disputes are at times aggravated by military actions along the border involving troops from Myanmar and/or groups allied to the central authorities operating against opposition groups based in the border area or in camps in Thailand. The most recent developments include fighting between the authorities in Myanmar and the Karens causing refugees to flee into Thailand as well as fighting between the authorities and the so-called "God's Army" (reportedly made up of Karens). In early February the tension between Myanmar and Thailand increased further following the arrest of six Myanmar soldiers who, according to Thailand, had

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<sup>11</sup> Author's discussions with Officials in Bangkok in December 1996. See also (*BBC/FE/2713 B/4*, 10 September 1996); and, (*BBC/FE/2770 B/4*, 15 November 1996).



intruded into Thai territory. This was followed by reports about a military build-up by Myanmar along the border area.<sup>12</sup>

Recent incidents causing tension along the land border also include the events taking place in early October 1999 at the Myanmar Embassy in Bangkok with exiled-Burmese taking control over the Embassy. This led to the closing of the border by Myanmar and reports of military-build up along the border. The Myanmar side effectively tried to freeze all cross-border co-operation and interaction between the two countries and suspended the fishing concessions of Thai fishing trawlers in Myanmar's waters.<sup>13</sup> On 24 November Thailand's

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<sup>12</sup> For information on clashes, refugee movements and the level of tension along the border in January, February and in early March 2000 see *BBC/FE/3739 B/1* (17 January 2000); and, *3740 B/1* (18 January 2000); *3749 B/1* (28 January 2000); *3751 B/1* and *B/6* (31 January 2000); *3752 B/7* (1 February 2000); *3753 B/1* (2 February 2000); *3759 B/7* (9 February 2000); *3760 B/6* (10 February 2000); *3761 B/5* (11 February 2000); and, *3779 B/8* (3 March 2000). Earlier periods of fighting and refugee flows include the one from January to March 1997 when there was an increase in cross-firing and incursions into Thai territory, for details see *BBC/FE/2809 B/4* (6 January 1997); *2832 B/5* (1 February 1997); *2833 B/2* (3 February 1997); *2836 B/4-5* (6 February 1997); *2840 B/5* (11 February 1997); *2854 B/1* (27 February 1997); *2861 B/4* (7 March 1997); *2866 B/4* (13 March 1997); *2867 B/1-3* (14 March 1997); and, *2877 B/6* (26 March 1997). See also the whole section on "Myanmar (Burma)-Thailand", (*Boundary and Security Bulletin*, 1997, pp. 52-54). Another period was in March 1998 when Karen refugee camps in Thailand came under renewed attack, for details see *BBC/FE/3173 B/7* (12 March 1998); *3175 B/1* (14 March 1998); *3183 B/6* (24 March 1998); and, *3186 B/10* (27 March 1998). Yet another was in May 1998 when the Thai press reported that troops from Myanmar had crossed into Thailand in pursuit of forces of the "Shan State liberation" and refugees, see (*BBC/FE/3221 B/6-7*, 8 May 1998); and, (*BBC/FE/3222 B/6*, 9 May 1998).

<sup>13</sup> *BBC/FE Reports*: *3655 B/1* (2 October 1999); *3657 B/1-2* (5 October 1999); *3658 B/1-2* (6 October 1999); *3660 B/1-6* (8 October 1999); *3661 B/1* (9 October 1999); *3663 B/1* (12 October 1999); *3666 B/5-6* (15 October 1999); *3678 B/6* (29 October 1999); *3684 B/1-2* (5 November 1999); *3688 B/4* (8 November 1999); and, *3689 B/1* (11 November 1999). Another incident occurred in late January 2000 when gunmen belonging to the so called "God's Army" occupied a hospital in the town of Ratchaburi which is located close to Thailand's border with Myanmar. In this incident that Thai authorities responded by a military action, carried out by a combined force from the National Anti Terrorism Centre, which killed all ten of the gunmen

Foreign Minister visited Yangon to discuss issues in bilateral relations, including the border issues, and to ease tension between the two countries. Following this visit Myanmar re-opened the border. During a subsequent visit by Myanmar's Foreign Minister to Thailand he reportedly stated that there was a need to review the fisheries agreements between the two countries (Viet Nam News, Nov. 25, 1999: 9,10; Ibid., Nov. 26, 1999: 10).

Along the Moei river the boundary issue in its own right has caused periods of tension in recent years and there have been talks within a Joint Boundary Committee established by the two countries. The disputed area along the river used to be under Myanmar's control but heavy flooding in 1994-1995 caused the river to change course and the area shifted to Thai control. Another source of dispute are newly formed islets in the river which both parties are trying to take control over (*Boundary and Security Bulletin*, 1997-1998: Vol. 5, Nos. 1-4). More recently tension has increased at sea with clashes between naval units reported to have taken place in December 1998, in January 1999 and in March 1999.<sup>14</sup>

There have been bilateral efforts aiming at managing the border disputes. In February 1999 the two Foreign Ministers met to discuss measures to promote the settlement of the maritime disputes and measures to avoid clashes in the disputes areas<sup>15</sup> (*Boundary and Security Bulletin*, Vol. 7, No. 1, 1999: 47). In early March the Prime Minister of Myanmar visited Thailand. The border issues were addressed during the talks and the two sides reaffirmed their commitment to turn their common border into a "border of friendship, harmony, and prosperity" (*BBC/FE/3481 B/6*, 12 March 1999). In mid March a meeting of the "Myanmar-Thai Regional Border Committee" took place in Phuket and the two sides reportedly agreed on measures to prevent future naval clashes.<sup>16</sup> (*BBC/FE/3488 B/6*, 20 March 1999). In late August the fifth meeting of the

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and freed the hostages. The response from the authorities in Myanmar was positive to the action carried out by Thailand (*BBC/FE Reports*: 3746 B/5-6 (25 January 2000); 3747 B/7-8 (26 January 2000); 3748 B/1 and B/6-7 (27 January 2000); 3749 B/6-7; and, 3754 B/5-6 (3 February 2000)).

<sup>14</sup> Author's discussions with Officials in Bangkok in April 1999. See also (*BBC/FE/3434 B/1*, 16 January 1999) for a Myanmar report on developments in January. See also (*Boundary and Security Bulletin*, 1999: 47)

<sup>15</sup> "Joint Efforts to Stop Clashes" in Ibid., p. 47.

<sup>16</sup> This report was carried by the web site of the Thai newspaper *The Nation* on 18 March 1999. For an official report from Myanmar which does not mention such an agreement see (*BBC/FE/3487 B/1*, 19 March 1999).

“Myanmar-Thailand Joint Commission for Bilateral Cooperation and Senior Officials Meeting” was held in Myanmar. The two sides agreed to prevent the escalation of “naval conflicts” pending the “demarcation” of the boundary in the area (*BBC/FE/3624 B/6*, 27 August, 1999).

### *Cambodia's borders*

During the 1990s Cambodia has openly accused Laos, Thailand and in particular Vietnam of violating Cambodia's borders. Further complicating relations with Vietnam is the recent history of armed conflicts and the issue of the Vietnamese minority in the country (Amer, 1994: 210-238). Cambodian-Vietnamese relations were at times very tense prior to the demise of Prince Norodom Ranariddh and the election of Ung Huot to the post of First Prime Minister in 1997. Prince Ranariddh was the main accuser of Vietnam during the crisis relating to the land border dispute during the first half of 1996. It seems as though Ranariddh's accusation against Vietnam was motivated more by the internal struggle for power within the coalition government rather than by activities carried out by Vietnam (Amer, 1997: 83-88).

Following Ung Huot's appointment as First Prime Minister a more constructive Cambodian policy towards Vietnam was implemented. This was displayed by the initiation of talks on the maritime disputes following Cambodian complaints that the Thai-Vietnamese boundary agreement of August 1997 encroached on Cambodian waters. During high-level discussions in connection with Huot's visit to Vietnam in late May and early June 1998 both parties agreed that they would strengthen co-ordination to resolve the “remaining” bilateral problems “before” the year 2000.<sup>17</sup> Upon his return from Vietnam Prime Minister Ung Huot expressed his full commitment to solving the border problems through “peaceful dialogue” (*BBC/FE/3250 B/1*, 5 June 1998). This was followed by expert level talks in Phnom Penh on June 18-20 which resulted in an agreement to set up a joint border commission to handle the border disputes. This prompted Huot to state that he was confident that the border issues could be resolved “before” the year 2000 (*BBC/FE/ 3260 B/2*, 23 June 1998; *BBC/FE/ 3264 B/1*, 27 June 1998). The elections in Cambodia on 26 July 1998 and the long process in forming a new coalition – an agreement was reached on 25 November – implied that the dialogue with Vietnam on border issues was put on hold. The bilateral dialogue was resumed in connection with the visit by Cambodia's Prime Minister Hun Sen to Vietnam in December 1998. In his talks

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<sup>17</sup> For Cambodia's complaints about the Thai-Vietnamese agreement see *BBC/FE/ Reports: 3223 B/2-3* (11 May 1998); and, *3228 B/14* (16 May 1998). For the Vietnamese response see *Ibid.*, *3228 B/14*. For reports about the visit to Vietnam see *Ibid.*, *3241 B/1* (1 June 1998); *3242 B/5-6* (2 June 1998); *3243 B/6* (3 June 1998); and, *3245 B/1-2* (5 June 1998). The information relating to the agreement was carried by the *Voice of Vietnam*.

with Vietnamese leaders both sides expressed hope that the border issues would be settled "before" 2000 and they agreed to convene an "inter-governmental" commission for the border issue for a meeting in Hanoi in January 1999 (BBC/FE/ 3411 S1/4-5, 16 December, 1998). The January meeting did not take place, but a "Joint Border Commission" has been established and held its first meeting in Ho Chi Minh City in March. At this meeting it was agreed to speed the next rounds of negotiations to settle the border problems by the "end" of 2000. This was welcomed in the "Vietnam-Cambodia Joint Declaration" issued on 10 June 1999 in connection with the visit by Le Kha Pieu, Secretary-General of the Communist Party of Vietnam, to Cambodia on 9-10 June (BBC/FE/ 3559 B/1-2, 12 June 1999). The second meeting of the "Joint Border Commission" was held on 23 to 28 August 1999 in Phnom Penh. The discussions were, reportedly, "frank, forthright and permeated with an atmosphere of friendship, understanding and mutual respect". The two sides agreed to conduct a joint field survey of a number of areas along the land border. They agreed to promote co-ordination between the border localities in both countries to solve "quickly and objectively" problems arising along the border. Both sides "affirmed" that outstanding cases would be solved on the basis of principles and mechanisms "already" adopted by the two countries. Furthermore, it was agreed to send working groups to assess the facts in any dispute arising locally along the border. This would help avoid the spread of "distortions of the truth" and misunderstandings which could hamper the process of resolving the border issues. Finally, it was decided that the third meeting of the Committee will be held in Hanoi during the first quarter of 2000 (*Vietnam Law & Legal Forum*, August 1999: 20). The most recent negotiations on the border issues was the first round of talks of the joint working group at the expert-level on the land border held in Ho Chi Minh City on 10 to 13 January 2000. The meeting, reportedly, took place in an atmosphere of "friendship, frankness and mutual understanding". The two sides discussed and agreed on the "work details" for a joint technical team to conduct a "joint exploration" in some areas. This was deemed necessary for "mapping techniques". Both sides pledged to fulfil their "tasks" in an effort to help achieve the "high-level" agreement to settle the border issues between the two countries "before" the end of 2000 (BBC/FE/3744 B/8, 22 January 2000). It can also be noted that in connection with the visit to Cambodia by the Chairman of Vietnam's National Assembly, Nong Duc Manh, in late February, Cambodia's Prime Minister expressed his wish that the two countries will "cooperate in solving" the border issues in order to create favourable conditions for co-operation in other fields (BBC/FE/3772 B1, 24 February 2000).

It seems as though Cambodia is paying more attention to its border disputes since the formation of the new coalition government. The most obvious indication of the importance devoted to the border issues was the decision by the Council of Ministers to set up three joint committees – the "Cambodia-

Vietnam, the “Cambodia-Laos” and the “Cambodian-Thai”. This decision was made public by the *National Voice of Cambodia* on 1 March 1999 (BBC/FE/3473 B/1, 3 March 1999).

It can be noted that following that decision by Cambodia talks on land border dispute with Thailand has been initiated with the first meeting of the “Joint Commission on Demarcation of the Land Boundary” being 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> Also in early July the Cambodian Prime Minister Hun Sen met with Thai Deputy Prime Minister Kon Thappharangsi in Phnom Penh. Both sides expressed their readiness to discuss the border issues and Hun Sen made reference to the land border talks. Hun Sen also “took the initiative to renew negotiations” relating to the maritime disputes in the “interest of oil exploration” in the Gulf of Thailand<sup>19</sup> (BBC/FE/3580 B/1, 7 July 1999).

It should also be noted that Cambodia and Laos are engaged in negotiations relating to their disputed land border. In early July 1998 the then Prime Minister of Cambodia Ung Huot stated that the border dispute with Laos was “quietly being settled”. He also said that the two parties had had many discussions on the issue and also “an agreement” (BBC/FE/3250 B/1). The Cambodia-Laos Joint Boundary Commission (CLJBC) and the Laos-Cambodia-Joint Boundary Commission (LCBJC) met for the first time in Vientiane on 20 to 22 November 1995. The second meeting was held in Phnom Penh on 2 to 6 June 1997 and the third meeting in Vientiane on 12 to 16 January 1998 (Gay and Phommachack,

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<sup>18</sup> Reports carried by the Thai newspaper *The Nation* (internet version) on 28 June 1999 and on 5 July 1999, and by *Bangkok Post* on 1 July 1999 (information derived from “Land Boundary Commission to Meet” in section “Cambodia-Thailand”, *Boundary and Security Bulletin*, Vol. 7, No 2 (Summer 1999), p. 46; and, “Boundary Talks” in section “Cambodia-Thailand”, *Ibid.*, Vol. 7, No 3 (Autumn 1999), p. 37).

<sup>19</sup> In March a Cambodian press report highlighted that tension still exists along the border between Cambodia and Thailand. The report based on information from the Royal Cambodian Armed Forces (RCAF) referred to an incident when 300 Thai soldiers “stormed” into Cambodian territory in early February 2000. The report stated that according to Officials of the RCAF a “well-fortified” border could be the “only means that would give the Thai authorities some reluctance to violate Cambodia’s territory” (BBF/FE/3800 B/1, 28 March 2000). Report carried by the Cambodian newspaper *Kaoh Santepheap* on 12 March 2000, pp. 1 and 10.

1999: 9). The third meeting was held in late May 1999 and it did not lead to a formal settlement of the boundary dispute, but the two sides have agreed on legal issues and “technicalities” (*Boundary and Security Bulletin*, Vol. 7, No 2, 1999: 45). The fourth meeting was held on 21 to 25 February 2000 in Phnom Penh. The two sides agreed the two countries’ Technical Joint Boundary Sub-commission (TJBSC) would “discuss and prepare the “terms of reference” for the inspection and demarcation of the common border. After finalising this task the programme for inspection of the common border would be set-up and then the TJBSC would start the inspection from the west to the east along the common border from a point below the intersection of the Cambodian, Laotian and Thai borders going eastwards along the Ropeou River. The inspection is scheduled to start in May 2000”<sup>20</sup> (*BBC/FE/3776 B/1*, 29 February 2000).

### Observations

There is no clear-cut trend relating to the success or lack of success in settling the various border disputes among the ASEAN members. Some countries have settled more border disputes than others but none of the member-states has settled all its border disputes. Indonesia and Thailand, respectively, have been among the more successful in settling border disputes with other members, but the tension and clashes between Thailand and Myanmar over their border disputes display that some disputes are in urgent need for a settlement or at least conflict management to defuse the periods of acute tension. Another observation is the problems that Cambodia is encountering in handling its border disputes with its three neighbours – Laos, Thailand and Vietnam – in particular with Vietnam. Overall, the Southeast Asian region is witnessing a trend towards resolving border disputes be it on a temporary basis in some cases; e.g. the agreements between Malaysia and Thailand and Malaysia and Vietnam, respectively.

A most interesting evolution in recent years relates to some of the remaining territorial disputes among the original ASEAN-members. Malaysia and Singapore and Malaysia and Indonesia, respectively, have decided to bring their disputes over islands to the International Court of Justice (ICJ) in The Hague. Between Malaysia and Singapore the two Prime Ministers agreed on the principle of deferring the matter to the ICJ on 6 September 1994. Three rounds of talks have been carried out to discuss the formal submission of the case of

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Information carried by *Television Kampuchea* on 25 February 2000. According to a report by the same source on 24 February 2000 the common border is 540 km ranging from the Cambodian Province of Preah Vihear to Ropeou River in Laos (*BBC/FE/3774 B/1*, 26 February 2000).

Pedra Branca/Pulau Batu Puteh to the ICJ. At the third round of talks in Kuala Lumpur on 14 April 1998 an agreement was reached on the text of the Special Agreement to refer the issue to the ICJ. The agreement has yet to be signed and ratified by the two Governments.<sup>21</sup> Between Indonesia and Malaysia the Indonesian President and the Malaysian Prime Minister agreed on the principle of deferring the matter to the ICJ on 6 October 1996. The formal written agreement to forward the issue of Pulau Sipadan and Pulau Ligitan to the ICJ was signed by the Foreign Ministers of the two countries on 31 May 1997 and ratified by both countries during the year.<sup>22</sup> This agreement entered into force on 14 May 1998 upon the exchange of the ratification instruments (Ong, 1999: 399). A "joint notification letter" was signed by the two Foreign Ministers in New York on 1 October 1998<sup>23</sup> (*BBC/FE/3347 B/4*, 2 October 1998). Finally, on 2 November 1998 Indonesia and Malaysia jointly "seised" the ICJ of their dispute (Ong, 1999: 399). It can also be noted that at the sixth Ministerial Meeting of the Malaysian-Indonesian Joint Commission in mid August 1997 the two sides decided to postpone bilateral talks on the Sipadan-Ligitan issue and maintain the "status quo" pending a ruling from the ICJ (*BBC/FE/2998 B72*, 15 August 1997; *BBC/FE/3001 B/4-5*, 19 August 1997).

This is a novel pattern of behaviour in the management of border disputes among the ASEAN-members. To bring such disputes to the ICJ can be seen as positives moves in situations when the parties to the disputes can not reach a compromise. However, it can also be seen as a shortcoming of the ASEAN framework for conflict management, or at least an indication that there is still room for enhanced co-operation between the ASEAN states in the field of conflict management. Before assessing if bringing territorial disputes to the ICJ is an indication of the shortcoming of the ASEAN framework it is necessary to take a closer look at this framework and the mechanisms it encompasses.

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<sup>21</sup> Author's discussions with officials in Kuala Lumpur in August 1998. See also (*BBC/FE/2098 B/2*, 12 September 1994); and, *Joint Press Statement*, 1998.

<sup>22</sup> Author's discussions with officials in Jakarta in December 1996. Author's discussions with researchers in Kuala Lumpur in December 1996 and with officials and researchers in Kuala Lumpur in August 1998. See also *BBC/FE/2738 B/3* (9 October, 1996).

<sup>23</sup> Report carried by *Radio Republic of Indonesia*. The "joint notification letter" is necessary in accordance with the procedures of the ICJ.

## **MECHANISMS FOR CONFLICT MANAGEMENT WITHIN ASEAN<sup>24</sup>**

### Conflict management within the ASEAN framework

There are two basic aspects of ASEAN's approach to dispute/conflict management, first the mechanisms as formulated in different ASEAN declarations and treaties, and, second, the way in which the ASEAN-members negotiate and how they reach a common understanding on various issues. In the following both these aspects will be subject to attention, first the mechanisms and then the ASEAN negotiation and decision-making processes.

The *ASEAN Declaration (Bangkok Declaration)*,<sup>25</sup> adopted on 8 August 1967 when the Association was established, did not include specific references as to how this main goal should be reached. More attention is devoted to the promotion of social and economic co-operation among the member-states of the Association than to conflict management. The references to conflict management in the Preamble of 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”<sup>26</sup> (Sukrasep, 1989: 96);

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” (Sukrasep, 1989: 97);

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<sup>24</sup> The information contained in this part of the study is derived from relevant sections of Amer, (1998: 33-56) and Amer, (1999: 1031-1048).

<sup>25</sup> The terms ASEAN Declaration and Bangkok Declaration will be used interchangeably throughout the study.

<sup>26</sup> The text of the Declaration can also be found on the web site of ASEAN (<http://www.asean.or.id/>).



Thus, the ASEAN Declaration spells out the overall goals and aims of ASEAN and set the stage for a process aiming at refining the way in which the Association should function and the mechanisms by which the goals and aims should be achieved.

The evolution that followed during the so-called “formative years”; i.e. 1967 to 1976, which led to the signing of the *Declaration of ASEAN Concord* and the *Treaty of Amity and Co-operation (TAC) (Bali Treaty)*<sup>27</sup> on 24 February 1976, in connection with the First Summit Meeting of ASEAN held in Bali, can be seen as operationalising the overall goals and aims as expressed in the Bangkok Declaration<sup>28</sup> (Askandar, 1994: 68).

The Declaration of ASEAN Concord relates to the member-states of ASEAN whereas the Bali Treaty is open for accession also to non-members. The Declaration of ASEAN Concord contains both general principles relating to the overall goals of the Association and principles relating to the specific goals of managing disputes and expanding co-operation among the member-states. One of the stated overall objectives is the strive for the establishment of a *Zone of Peace, Freedom and Neutrality (ZOPFAN)* in Southeast Asia.<sup>29</sup> Also of interest among the general objectives and principles is the linkage between the internal stability in the members-states of ASEAN and the stability in the whole grouping and the achievement of peace and security. The Declaration stipulates that in order to meet this goal all members should strive to eliminate threats posed by “subversion” to their stability, thus strengthening national and ASEAN resilience. Emphasis is put on the respect for the principles of “self-

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<sup>27</sup> The terms TAC and Bali Treaty will be used inter-changeably throughout the study.

<sup>28</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 Bali Treaty marked the beginning of the “second phase”.

<sup>29</sup> Already on 27 November 1971 ASEAN had adopted the *Kuala Lumpur Declaration* which called for the creation of a ZOPFAN in Southeast Asia. The Declaration of ZOPFAN states ASEAN’s peaceful intentions and its commitment to build regional resilience free from interference from external powers. The full text of the “Zone of Peace, Freedom and Neutrality Declaration. Kuala Lumpur Declaration” has been reproduced as “Appendix III” in (Sukrasep, 1989: 103-104). The text of the Declaration can also be found on the web site of ASEAN (<http://www.asean.or.id/>).

determination, sovereign equality and non-interference in the internal affairs of nations” (Rajendran, 1985: 270).

Since inter-state disputes are at the centre of attention in the context of this study the focus will be on the section of the Declaration of ASEAN Concord directly dealing with that issue, namely the section devoted to the political field. Paragraph four of that section deals directly with the settlement of intra-regional disputes and it states that such disputes should be settled by peaceful means “as soon as possible” (Rajendran, 1985: 271). Among the other political measures are the following: Meeting of the Heads of governments when necessary, the signing of TAC, to take steps to recognise and respect ZOPFAN, and, to improve the ASEAN machinery to strengthen political co-operation (Rajendran, 1985: 271).

The Bali Treaty provides more specific guidelines in the field of conflict management particularly so in relation to the peaceful settlement of disputes.<sup>30</sup> According to Article 18 of the Bali Treaty it “shall be open for accession by other States in Southeast Asia”; i.e. in addition to the five founding members of ASEAN – Indonesia, Malaysia, the Philippines, Singapore, and, Singapore (Rajendran, 1985: 278). The Bali Treaty is divided into a Preamble and five Chapters. In terms of co-operation and settlement of disputes Chapters I, III and IV are most relevant (Rajendran, 1985: 275-278). In Chapter I, dealing with “Purpose and Principles”, Article 2 outlines the fundamental principles which 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;
- 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” (Rajendran, 1985: 275).

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<sup>30</sup> See text of the “Treaty of Amity and Co-operation in Southeast Asia” reproduced as “Appendix C” in Rajendran, (1985: 275-278). The text of the Treaty can also be found on the web site of ASEAN (<http://www.asean.or.id/>).

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 later 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" (Rajendran, 1985: 277).

In Chapter IV, devoted to "Pacific Settlement of Disputes", the first 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. The Article 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" (Rajendran, 1985: 277).

Articles 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 and its role should be to take "cognizance" of existing disputes or situation which could potentially threaten regional "peace and harmony". The High Council is envisaged as "a continuing body", i.e. this indicates that it should have been established in 1976 (Rajendran, 1985: 277).

Article 15 deals with the mediating role of the Council and such a role can be assumed by it in the event that no solution to a dispute is reached through "direct" negotiation between the parties to the dispute. The role as mediator can be assumed by recommending to the parties to a dispute appropriate means of settlement; i.e. good offices, mediation, inquiry, or conciliation. The Council can also "constitute itself into a committee" of mediation, inquiry or conciliation (Rajendran, 1985: 277).

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”. If this understood literally it 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 and that the parties to the dispute can not bring the matter to the High Council. However, among some officials and researchers in the Southeast Asian region another interpretation is being put forward namely that the High Council can only assume role of mediator in a dispute if the parties involved agree on bringing the dispute to the Council.<sup>31</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” (Rajendran, 1985: 277).

The Declaration of ASEAN Concord and the Bali Treaty provide ASEAN with the broad goals and aims of the Association and with the more specific mechanisms and code of conduct to achieve enhanced regional co-operation and to manage inter-states relations in general and the existing and potential disputes in particular.

Since 1976 the only notable revisions of the Bali Treaty are the two protocols amending it. The first protocol was adopted on 15 December 1987 in connection with the Third Summit Meeting of ASEAN in Manila (Viraphol and Pfenning, 1995: 277-279). The second protocol was adopted on 25 July 1998 in connection with the 31st ASEAN Ministerial Meeting (AMM) in Manila.<sup>32</sup>

In Article 1 of the first protocol the amendment deals with the provisions relating to which states that can accede to the Bali Treaty and reads as follows:

“States outside Southeast Asia may also accede to this Treaty by the consent of all States in Southeast Asia which are signatories to this Treaty and Brunei Darussalam” (Viraphol and Pfenning, 1995: 277-278).

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<sup>31</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.

<sup>32</sup> See text of the “Second Protocol Amending the Treaty of Amity and Cooperation in Southeast Asia” (hereafter “Second Protocol”). Obtained by author from the Ministry of Foreign Affairs of Malaysia, Kuala Lumpur, in August 1998.

Article 2 contains an amendment to Article 14 in the Bali Treaty and relates to the formation of a High Council with representatives from all the signatories. The amendment is the following text added to the original one:

“However, this article shall apply to any of the States outside Southeast Asia which have acceded to the Treaty only in cases where that state is directly involved in the dispute to be settled through the regional processes” (Viraphol and Pfenning, 1995: 277-278).

In the second protocol the amendment to the Bali Treaty relates to Article 18, Paragraph 3 of the Treaty and it is amended to read as follows:

“States outside Southeast Asia may also accede to the Treaty with the consent of all States in Southeast Asia, namely, Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People’s Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Vietnam” (Second Protocol Amending the Treaty of Amity and Cooperation in Southeast Asia).

These two protocols and the amendments in them imply that the Bali Treaty is open for accession also by non-Southeast Asian states, provided that the Southeast Asian signatories give their consent. The non-Southeast Asian states can also be represented in the High Council if they are directly involved in disputes to be settled through the “regional processes”. By adopting such amendments the ASEAN-members have agreed to expand the conflict management process and mechanisms of the Bali Treaty to countries outside the Southeast Asian region and to disputes involving not only Southeast Asian states but also other countries. However, it is noteworthy that countries from outside the Southeast Asian region are not allowed to be members of the High Council when it deals with disputes involving only Southeast Asian states. This is, presumably, to prevent outside interference in intra-regional disputes.

#### Conflict management in ASEAN’s negotiation and decision-making processes

The ASEAN states have managed to build confidence, familiarity and understanding of each others positions on different issues through a system of informal and formal meetings between the leaders, ministers and senior officials of the member-states. Achieving a high level of interaction, co-operation and understanding between the original member-states of ASEAN was a gradual process during the formative years leading up to the First Summit Meeting in 1976. ASEAN is also known from its decision-making process which requires

that all decisions be reached by consensus. Particular emphasis has been put on promoting and achieving regional resilience based on the internal resilience of each of the member-states through economic development which would result in greater political support for the governments and lead to enhanced political stability.

ASEAN's approach specifically to conflict management has primarily been geared towards avoiding that conflicts emerge and preventing existing conflicts from disrupting inter-states relations. In the context of ASEAN's conflict management approach a central element is the consultation process called *musyawarah* which is informal in character and aims at settling differences by preventing them from arising. The practice has evolved from the practices applied in villages in Indonesia, Malaysia and the Philippines. The aim of the process of *musyawarah* is also to achieve unanimous decisions; i.e. consensus, known as *mufakat*. This has become a crucial part of decisions-making process within ASEAN. The consensus approach is an important mechanism in the conflict management process since it aims at preserving peaceful relations between the member-states of ASEAN by such measures as avoiding, defusing and containing issues which could lead to open inter-state conflicts (Askandar, 1994: 63-65; Caballero-Anthony, 1998: 51-55, 57-62).

#### What is the importance of conflict management in ASEAN?

The ASEAN approach to conflict management through the negotiation and decision-making processes as well as the mechanisms and provisions provided by the Declaration of ASEAN Concord and the Bali Treaty certify to the importance placed by the member-states of ASEAN on the need to manage inter-state disputes through peaceful means and that resolving such disputes is a high priority issue. However, achieving formal resolution of inter-state disputes within ASEAN should not be carried out in such a way as to disrupt the relations between the parties to the disputes. This implies that conflict resolution is both desirable and a goal for the ASEAN-members, but not at the expense of maintaining stable inter-state relations within the Association.

#### Expanding ASEAN's conflict management framework in Southeast Asia

During the 1990s ASEAN's framework for conflict management has gradually been expanded to encompass all ten countries in Southeast Asia. Already in 1984 Brunei joined ASEAN. In the 1990s the process of improved relations between ASEAN as an association and between its individual member-states and the other four Southeast Asian countries – Cambodia, Laos, Myanmar and Vietnam – led to a gradual expansion of the acceptance of not only the conflict management framework but also of membership in the Association itself.

Vietnam was the first of the four countries to complete the formal integration. Vietnam acceded to the Bali Treaty in 1992, became an ASEAN Observer the same year and was granted full-membership in ASEAN in 1995. Laos and Myanmar followed. Laos acceded to the Bali Treaty and became an ASEAN Observer in 1992 and was granted full-membership in the Association in 1997. Myanmar acceded to the Bali Treaty in 1995, became an ASEAN Observer in 1996 and was granted full membership in ASEAN in 1997. Finally, Cambodia completed the formal process after its accession to the Bali Treaty in 1994, became an ASEAN Observer in 1995 and was eventually admitted as ASEAN's tenth member through a decision taken at the Sixth ASEAN Summit in Hanoi in December 1998.<sup>33</sup>

The gradual process of expanding relations between ASEAN and the Indochinese countries and between ASEAN and Myanmar, the accession to the Bali Treaty of all the countries of Southeast Asia and the gradual expansion of ASEAN-membership within the region has brought the whole region in line with one and the same framework for conflict management. This evolution is a major achievement and provides for a situation which is conducive to the peaceful management of the existing inter-states disputes and of potential future inter-disputes throughout the region.

#### ASEAN's mechanisms for conflict management and bringing border disputes to the ICJ

As noted above Singapore and Malaysia and Malaysia and Indonesia, respectively, have brought their disputes over islands to the ICJ. This raises the question if this is an indication of shortcomings of the ASEAN framework for conflict management, or at least an indication that there is still room for enhanced co-operation between the ASEAN states in the field of conflict management.

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<sup>33</sup> On the timing of decision to admit Cambodia as a member of ASEAN the following information is carried by the web site of ASEAN: "At the Sixth ASEAN Summit, The ASEAN Leaders decided to admit the Kingdom of Cambodia as the tenth member of ASEAN and instructed the Foreign Ministers to organise special ceremonies of admission in Hanoi." ("History and Background", <http://www.asean.or.id/>). The "special ceremonies of admission" were organised in Hanoi on 30 April 1999 (*The Strait Times*, 1 May 1999: 3) and (*Philippine Daily Inquirer*, 1 May 1999: 12).

If the interpretation of the provisions of the Bali Treaty that the parties to the disputes are able to take a dispute to the High Council is made, then it is noteworthy that the two conflicts were not brought to the High Council before being brought to the ICJ. However, if the interpretation is made that only the High Council can decide on mediating in a dispute then the procedure applied by the parties to the two disputes under consideration has been in accordance with the provisions of the Bali Treaty.

If the first line of interpretation is pursued it should be noted that the High Council has yet to be established and thus, it might not have been seen as an option by the parties to the two disputes.<sup>34</sup> This seems to have been the case in the dispute between Malaysia and Singapore. However, in the Indonesian-Malaysian dispute Indonesia had earlier proposed that the issue should be settled through the framework of the Bali Treaty and the High Council, but Malaysia favoured the alternative of referring the matter to the ICJ.<sup>35</sup> The reluctance to bring the conflicts to the High Council can possibly be explained by the fact that Malaysia is involved in other unsettled border disputes with several other ASEAN-members and thus Malaysia could fear that the other members would allow such disputes to influence their attitude in a negative way seen from the Malaysian perspective.<sup>36</sup>

Seen from the perspective of making the ASEAN framework for conflict management more efficient the ASEAN-members ought to bring their disputes to the High Council and exhaust the regional mechanisms for conflict management before turning to the international arena and to organisations such as the ICJ. Alternatively, the High Council ought to decide on whether to mediate or not in disputes before the parties bring such disputes to the ICJ. This would by necessity imply that the High Council has to be established.

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<sup>34</sup> As indicated in author's discussions with officials in Kuala Lumpur in August 1998.

<sup>35</sup> Author's discussions with officials in Jakarta in December 1996. See also (*BBC/FE/2098 B/2*, 12 September 1994) and (*BBC/FE/2103 B/2*, 17 September 1994). For the Malaysian position see for example *Ibid.*, 2098 B/2; 2103 B/2; and, 2134 B/2 (24 October 1994).

<sup>36</sup> Malaysia has unsettled territorial disputes with all other original member-states of ASEAN as well as with Brunei and Vietnam, but not with Cambodia, Laos and Myanmar.



## **TOWARDS ENHANCED PEACEFUL MANAGEMENT OF BORDER DISPUTES IN SOUTHEAST ASIA<sup>37</sup>**

If the achievements in conflict management among the ASEAN-states is examined from the perspective of the prevention of military conflicts the track-record of ASEAN is impressive since no dispute has led to a militarised inter-state conflict between the original member-states since 1967. However, this does not imply that all the territorial disputes have been resolved nor that disputes in general do not occur. Some territorial disputes have been resolved while others remain unresolved. The unresolved disputes have been contained and defused through various conflict management mechanisms.

The expansion of ASEAN membership in the 1990s has brought additional territorial disputes into the Association, thus further complicating the task of managing such disputes. The overview above has displayed that among the disputes involving the new member-states, some have been settled while others remain unsettled. It has also illustrated that the level of tension relating to the unsettled border disputes varies considerably.

The preferred way to handle territorial disputes between the various Southeast Asian countries is through bilateral dialogue and negotiations. However, in recent years two border disputes – between Malaysia and Singapore and between Indonesia and Malaysia, respectively – have been brought to the ICJ. This displays a willingness among some ASEAN members to seek international arbitration when the bilateral efforts to resolve territorial disputes are not sufficient to bring about a solution to the disputes.

The bilateral efforts to manage and settle the border disputes can be facilitated by the mechanisms for conflict management created by ASEAN and by enhancing the effectiveness of these mechanisms. 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 is enhanced as long as it is within the limits set by the ASEAN framework for conflict management and that there is a political consensus among the parties concerned that ASEAN should play such a role.

In this context the possible role played by the ASEAN framework for conflict management is important and the question is how to make it even more suited to meet the challenge of the border disputes and the tension which some disputes cause today as well as the risk of tension in the future. The first step in such a

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The discussion in this section is partly derived from Amer, (1998: 33-56).

process could be to establish the High Council. This seems to be difficult judging from the fact that it has yet to take place more than 20 years after the signing of the Bali Treaty. This state of affairs 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 fellow member-states.

The reasons why the High Council has not yet been established needs more scrutiny. Apart from the persisting lack of trust among the ASEAN-members there is also the fact that a High Council created on the basis of the provisions of the Bali Treaty could have considerable power, due to the decisions and judgements it could make relating to territorial disputes in which the Council decides to mediate, or which might be brought to it by the parties to such disputes, depending on the interpretations made of the relevant provisions of the Bali Treaty. This would also imply that bilateral disputes could become multilateralised. 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. The multilateralisation impact of establishing the High Council would not be an attractive scenario for member-states who are also involved in disputes with other ASEAN-members and/or states which would fear that the opposing party to a dispute has a higher degree of diplomatic influence or leverage within the ASEAN grouping.

These are legitimate concerns and they should be given careful consideration if a High Council is eventually established by ASEAN. To shape the Council into a constructive mechanism for conflict management it has to be seen as more of a confidence building forum rather than a decision making body. Thus, the High Council should not be given the full range of powers as envisaged in the Bali Treaty. This would have a mitigating impact on the fears of too much institutionalisation, biased decisions and rulings, and harmful multilateralisation of bilateral disputes.

A High Council established along the lines suggested above could contribute to fulfil the vision, expressed by the ASEAN leaders at the second Informal Meeting of ASEAN Heads of Government in Kuala Lumpur in December 1997, that the causes of conflict in the region have to be eliminated and that territorial disputes and other kind of disputes within Southeast Asia are resolved by peaceful means by the year 2020.<sup>38</sup> It is also in line with the provisions of the

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<sup>38</sup> This is stated in the document adopted at the second Informal Meeting of ASEAN Heads of Government entitled *ASEAN Vision 2020*. The text has been reproduced in *ASEAN Economic Bulletin*, March 1998: 325-328.

*Hanoi Plan of Action (HPA)* adopted in connection with the sixth ASEAN Summit in Hanoi in December 1998. Article 7.5 of the HPA sets out the task for ASEAN to “formulate draft rules of procedure for the operations of the High Council as envisioned” in the Bali Treaty. This is a clear indication of the resolve among the ASEAN member-states to move forward and make the High Council a workable instrument. The HPA also displays the importance placed by the ASEAN members on the need to settle the border disputes. This can be seen in Article 7.6 through which ASEAN wants to “encourage greater efforts towards the resolution of outstanding problems of boundaries delimitation” between the member-states of the Association. This is further elaborated on in Article 7.8 through which ASEAN wants to “encourage member countries to cooperation in resolving border-related problems” (*BBC/FE/3413 S1/1-8*, 18 December 1998).

To bring about a positive role for the High Council along the lines suggested above it is important that it is set up as a forum to which the member-states could turn for assistance in resolving border disputes if negotiations between the parties to the disputes fail. A High Council, if established, with a strong focus on mediation, may be attractive as an alternative to the ICJ. This line of argumentation is based on the interpretation that parties to a dispute can bring such a dispute to the High Council.

In this context it is not argued that parties to a dispute should not bring such border 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 border dispute which is acceptable to the parties to a dispute.

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