

Evolving ASEAN and Changing Roles of the TAC

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Introduction

The Treaty of Amity and Cooperation in Southeast Asia (TAC) was the first treaty the Association of Southeast Asian Nations (ASEAN) leaders signed at the first ASEAN Summit Meeting in Bali, Indonesia in February 1976. Five original member countries of ASEAN concluded this significant agreement less than a decade after ASEAN's inception. To understand the changing nature of ASEAN since its establishment correctly and comprehensively, it seems most appropriate to shed light on the TAC.

To be more precise, it is crucial to understand the changing roles of the TAC. Why was ASEAN created in the mid-1960s? The answer became clear when the TAC was signed a decade later. Behind the ostensible objective, i.e. economic and functional cooperation, there was a real objective, which became concretised in the TAC. How did ASEAN enlarge in the 1990s? The TAC played a critical role in the enlargement process because accession to the TAC was required in advance. Why has ASEAN-centred regional architecture been successful this century? The TAC had been agreed on as a cornerstone of that architecture.

This chapter reviews the multifaceted role of the TAC retrospectively. In doing so, the utility of the TAC for the survival and development of ASEAN will be delineated. This author has been interested in the nature and developments of ASEAN since the 1970s, and has often been impressed by the way ASEAN has overcome various obstacles and difficulties. He hopes to confirm the importance of the TAC not only for ASEAN Member States (AMS), but also for their partners outside the region. The TAC will remain important beyond the 50th anniversary of ASEAN.

The Common Utility of ASEAN in the First Decade

To be frank, ASEAN used to be a misleading institution. According to the Bangkok Declaration that proclaimed the establishment of ASEAN, the objective was cooperation in economic and social fields. However, the only ministerial meeting, known as the ASEAN Ministerial Meeting (AMM), consisted not of economic ministers, but of foreign ministers. Moreover, the five original member states happened to be anti-communist at least in terms of internal security policy. Hence, ASEAN was sometimes described as an anti-communist alliance. Because ASEAN countries did not want to be seen in that way, they must have limited the objective of ASEAN strictly to cooperation in economic and social fields. But the real reason for establishing ASEAN can be found elsewhere.

In fact, those governments that agreed to establish a new institution to be known as ASEAN had their own needs for it. Indonesia, for instance, had to come back to the region after the confrontation over the formation of Malaysia. Having reluctantly become independent, Singapore needed to have its sovereignty recognised by neighbouring states. Thailand was desperate to dissociate itself from the battlefield in Indochina. In short, they all wanted a more secure Southeast Asia to be able to concentrate more on their own nation building and national integration. A new institution, it was hoped, would help them pursue their individual needs. In other words, political stability and economic development of individual nations were inseparable from regional peace and stability.

The founding fathers of ASEAN were aware of the utmost importance of mutual security. ASEAN had been confronted with critical situations, especially between Malaysia and the Philippines, in the initial few years, but it survived with the institutionalisation of an informal session to discuss regional affairs back to back with the AMM as well as unofficial meetings of foreign ministers. As a result, they held regular meetings to keep mutual conflicts under control and reduce mutual distrust. It did not take much time for the ASEAN states to reach an agreement committing themselves to the peaceful settlement of mutual conflicts. The real objective of ASEAN became clear in the form of the TAC.

The TAC was at last concluded in 1976. Fundamental principles of the TAC included 'settlement of differences or disputes by peaceful means' and 'renunciation of the threat or use of force' (Article 2). Although it was not officially related to ASEAN, it was signed by the five ASEAN leaders at the first ASEAN Summit Meeting. A close and inseparable relationship between the TAC and ASEAN was undeniable.

The TAC soon became regarded as providing ASEAN with its foundational basis. For the spirit of the TAC was to create a ‘no-war regime’ in the region to achieve development and prosperity, which was also the goal of ASEAN, and there was no foundational or fundamental treaty of ASEAN.

The TAC turned out to be more symbolic than instrumental. The rule to set up a ministerial council for conflict resolution, the High Council according to Article 14, was not formulated until this century. In fact, there has been no serious incident threatening regional peace since the TAC was signed. It is also noteworthy that the International Court of Justice (ICJ) has been used for the settlement of conflicts between AMS, e.g. Indonesia vs. Malaysia, Malaysia vs. Singapore, and Cambodia vs. Thailand. Especially, when Indonesia and Malaysia agreed to submit their territorial dispute to the ICJ, the existence of a spirit of amicable relationship between them based on the TAC was explicitly pointed out.

‘ASEAN-isation’ of Southeast Asia and the TAC

The TAC worked in the way that the ASEAN leaders had wanted – ASEAN countries enjoyed mutual peace, and they experienced economic development and growth. The accomplishment is more impressive when one compares the ASEAN region with the other part of Southeast Asia. When the Cold War ended globally and when at last peace came to Cambodia, a sea change occurred in the relationship between ASEAN members and non-members in Southeast Asia. In the eyes of war-torn countries in Indochina, by that time, it had become apparent that ASEAN was providing its members with political stability and economic prosperity. They began to express their desire to join ASEAN one after the other and the enlargement of ASEAN was no longer unrealistic.

Facing the possibility of enlargement, ASEAN leaders assigned a new role to the TAC. While the TAC was a symbol of good neighbourly relations between ASEAN countries, it also came to be regarded as the foundation of the institution’s regional cooperation. In other words, the TAC began to be treated as a necessary condition for joining ASEAN and when Viet Nam expressed its desire to join, it was asked to accede to the TAC beforehand. The enlargement process that ASEAN considered consisted of the following three stages:

- (1) Those states wishing to join ASEAN had to accede to the TAC to express their willingness to accept the spirit of the TAC and good neighbourly relations between ASEAN members;

- (2) ASEAN gives the status of ASEAN Observer to those countries that acceded to the TAC so they can become familiar with the practice of the various ways of cooperation and consultation within ASEAN; and
- (3) As ASEAN observers, those countries that have become accustomed to the practices of ASEAN are to be offered full membership on the condition that they accede to all agreements and declarations of ASEAN since its inception.

In this way, the TAC was being deployed as the first checkpoint on the road to ASEAN.

In the early 1990s, ASEAN leaders seemed to believe that the three-stage process of enlargement would take many years. Some argued that all the non-members in the region should complete the accession to the TAC by the turn of the century. But the process turned out to be much faster than many had expected. Viet Nam and the Lao PDR acceded to the TAC in 1992, and Viet Nam officially joined ASEAN only 3 years later. The enlargement of ASEAN (the ASEAN-isation of the entire region) was agreed to be accomplished by the end of the century, and the schedule was then shortened from 2000 to 1997, or the 30th anniversary of the establishment of ASEAN. The Lao PDR and Myanmar joined ASEAN in 1997. Due to political turmoil, Cambodia's accession was postponed, but the ASEAN-10 came into being in 1999. Having become independent in 2002, Timor-Leste (East Timor) acceded to the TAC in 2007, and may become the 11th member of ASEAN in 2017, according to some reports.

Towards ASEAN Centrality

ASEAN countries used to be reluctant to create larger institutions including themselves because they were afraid that ASEAN solidarity might be weakened. Hence, they favoured ASEAN-centred institutions. In the 1970s, ASEAN started dialogues with external partners primarily on economic issues. Based on those experiences, ASEAN began to invite foreign ministers of dialogue partners to the AMM with a view to institutionalising ASEAN Post-Ministerial Conferences (PMC). The invited partners were Australia, Canada, the European Economic Community, Japan, New Zealand, and the United States.

When Australia, and later Japan too, proposed a ministerial meeting for economic cooperation with ASEAN countries in early 1989, however, some ASEAN countries opposed this idea even though the prospective members were six AMS and six external countries, i.e. Australia, Canada, the Republic of Korea (henceforth, Korea), Japan, New Zealand, and the United States, which were already external dialogue partners of ASEAN except for Korea. Although they finally agreed to set up the ministerial meeting

for Asia Pacific Economic Cooperation (APEC), ASEAN members insisted that one of them should host the meeting every other year, that decision-making should be done in the way ASEAN had been doing, i.e. through consultation and consensus, and that the ASEAN Secretariat should be included. Obviously, they were successful in making APEC similar to ASEAN.

In 1994, ASEAN launched another ASEAN-centred ministerial institution – the ASEAN Regional Forum (ARF) for dialogue and cooperation on political and security issues in the Asia–Pacific region. The ARF was convened back-to-back with the AMM and the PMC. In addition to ASEAN and PMC members, countries such as China, Russia, and Viet Nam (which was not a member of ASEAN yet at that time), participated in the new institution. While PMC consisted of like-minded countries, ASEAN made the ARF more inclusive to deal with security issues.

Furthermore, ASEAN succeeded in hosting an ASEAN-centred annual meeting at the summit level. In the latter half of 1990s, the ASEAN summit meeting began to be held every year – an official one every 3 years and an informal one in between. In early 1997, the Government of Japan proposed to have an annual Japan–ASEAN summit meeting. ASEAN’s response was a counter-proposal of summit meetings between ASEAN, on the one hand, and China, Japan, and Korea, on the other. The meeting, known as ASEAN Plus Three (APT) Summit, was at last held in late 1997. Various ministerial meetings of APT were soon institutionalised one after another.

At the second APT Summit in 1998, Korea proposed an East Asia summit meeting as the first step towards the creation of an East Asia community. It took some years to reach agreement on the establishment of the East Asia Summit (EAS), but the TAC was given a new role in the run-up to the agreement. ASEAN stipulated three conditions for membership of the EAS: (1) a country has acceded to, or is willing to accede to, the TAC; (2) the country is a full-fledged dialogue partner of ASEAN; and (3) the country has substantial cooperative relations with ASEAN.

ASEAN had already been asking those countries outside the region that had expressed a desire to accede to the TAC to strengthen cooperative relations with ASEAN. Firstly, China and India acceded in October 2003, followed by Japan and Pakistan in July 2004, and Korea and Russia in November 2004. The 13 APT members, which all had acceded to the TAC, agreed on the above-mentioned conditions, and agreed to establish EAS including India (which had already acceded in 2003), New Zealand, and Australia (which acceded in July and December 2005, respectively), in addition to the APT members. The first meeting of EAS was held in late 2005. Russia and the United States (acceded in 2009) joined EAS in 2011.

In short, the TAC has played a role connecting ASEAN with countries outside the region on a 'hub and spoke' basis. Based on the set of bilateral relations between ASEAN and its external partners, such ASEAN-centred institutions as EAS have been operated and ASEAN has the privilege of being in 'the driver's seat'. This privilege is now called 'ASEAN centrality'. This status is not only what ASEAN has pursued, but also what its partners recognise.

'New ASEAN' and the TAC

ASEAN has been experiencing a sea change this century because of the creation of the ASEAN Community and the adoption of the ASEAN Charter. Compared with ASEAN in the olden days, the ASEAN Community whose institution is specified in the ASEAN Charter may be called 'New ASEAN'. 'Old ASEAN' was a mere accumulation of various declarations and agreements in various fields of regional cooperation and consultation amongst its members as well as between them and partners outside the region over 4 decades, which could be described as inappropriate architecture built without blueprint. 'New ASEAN', on the other hand, is better structured, more transparent, and being developed according to blueprints.

In the early 2000s, it seemed natural for member states to look for a further objective in economic cooperation/integration because the ASEAN Free Trade Area (AFTA) would be realised in 2003 for the original six countries. As a result, the idea of an ASEAN economic community was launched and gained support. It was unexpected, however, that ASEAN decided to create not only the ASEAN Economic Community (AEC) but also the ASEAN Security Community (ASC, later renamed the ASEAN Political-Security Community, APSC) and the ASEAN Social and Cultural Community (ASCC) in the Declaration of ASEAN Concord II in 2003. The year when the ASEAN Community would be created was 2020, but this was later changed to 2015.

The original spirit of the TAC was repeatedly specified in the Declaration as follows.

...4. 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 the use of force, and peaceful settlement of differences and disputes.

...7. The High Council of the TAC shall be the important component in the ASEAN Security Community since it reflects ASEAN's commitment to resolve all differences, disputes and conflicts peacefully. (Section A. ASEAN Security Community)...

'New ASEAN' was undoubtedly to be founded in the spirit of the TAC.

In 2009, an 'ASEAN Political–Security Community Blueprint' was issued for the period up to 2015. The document set out that the APSC was to promote renunciation of aggression and of the threat or use of force or other actions in any manner inconsistent with international law and reliance of peaceful settlements of dispute, and in this regard it upholds existing ASEAN political instruments including the TAC (II.9). Furthermore, for 'the shaping and sharing of norms', 'strengthening cooperation under the TAC' was specified (A.2.2). Lastly, the roles of the TAC were emphasised to make Southeast Asia 'a cohesive, peaceful and resilient region with shared responsibility for comprehensive security' (B.2).

Now ASEAN is moving further to substantiate the APSC according to the new blueprint for the period up to 2025. In the document, the TAC was referred to as a key element to 'respect the principles of independence, sovereignty, equality, territorial integrity, non-interference, and national identity' (A.1.4). Another key element was to 'strengthen respect for and recognition of the purposes and principles of the Treaty of Amity and Cooperation in Southeast Asia' (A1.7). In addition to the reference to the traditional role of the TAC (B.4.3), a new role for the TAC was also specified – to 'strengthen ASEAN centrality in shaping the evolving regional architecture that is open, transparent, inclusive and rule-based' (C1.1).

Compared with the previous blueprint towards 2015, the current blueprint specifies the role of the TAC that ASEAN has been resorting to this century in contributing to strengthening ASEAN centrality.

The other aspect of 'New ASEAN' is the ASEAN Charter, which was signed in 2007 and entered into force in 2008. It took 40 years for ASEAN to obtain its legal basis. Given the importance of the TAC for ASEAN, it is surprising that the TAC appears only once in the charter, as follows:

Disputes which do not concern with 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 procedure (Article 24.2).

On one hand, the TAC is considered to remain an important instrument for the APSC. On the other, it is to be deployed only for disputes on non-ASEAN matters according to the ASEAN Charter. How should this discrepancy be understood? The straightforward and logical answer is that the TAC is simply different from ASEAN as a legal entity founded by the ASEAN Charter. However, it does not mean at all that ASEAN discarded the spirit of the TAC. Amongst the 15 purposes of ASEAN stipulated in the charter, the first two are exactly what AMS have been pursuing through the TAC:

- ...1. (t)o maintain and enhance peace, security and stability and further strengthen peace-oriented values in the region;
- ...2. (t)o enhance regional resilience by grater political, security, economic and socio-cultural cooperation;... (Article 1).

As regards disputes on ASEAN matters, the charter sets out the mechanisms of conflict resolution (Chapter VIII: Articles 22 to 28). Therefore, the TAC was to deal primarily with disputes between AMS on such non-ASEAN matters as territorial issues. In short, it can be said that ASEAN integrated the spirit of the TAC into the organisation as ‘member states shall endeavour to resolve peacefully all disputes in a timely manner through dialogue, consultation and negotiation’ (Article 22.1).

While the APSC explicitly attempts to utilise the TAC, ASEAN proper seems to try to separate itself from the TAC. Nonetheless, the spirit of the TAC is reflected in a legalised ASEAN. ‘New ASEAN’ is now the institution that no longer depends on the mutual commitment of its member states to peaceful relationships under the TAC, but is now a legal entity that includes the spirit of the TAC as its integral part.

Concluding Remarks

This year (2016) is the 40th anniversary of the TAC, and ASEAN Foreign Ministers issued a statement marking the occasion in July. They reconfirmed multifaceted important roles for not only AMS but also for other High Contracting Parties to promote peace and stability in Southeast Asia, and to maintain and strengthen ASEAN centrality in regional architecture. In addition to 10 AMS, 25 countries all over the world have already acceded to the TAC as of September 2016.

The TAC has helped AMS establish and maintain a mutually peaceful relationship based on good neighbourly relations policy. It became the first checkpoint for the enlargement of ASEAN in the 1990s. It helps member states obtain the commitment of countries

outside the region to a friendly and cooperative relationship. It will play a role in regional peace and stability in the years to come.

According to the statement above, ASEAN Foreign Ministers agreed to '(e)xplore a legally binding instrument building upon the TAC for the wider region.' Certainly, such an endeavour will further help promote peace not only in Southeast Asia but also in 'the wider region', which may be primarily East Asia or Asia Pacific.

Another role for the TAC is conceivable, too. While its principle applies to the relationship amongst all the countries in the region, it only applies to the relationship between ASEAN member countries in the region and non-ASEAN countries outside. On the other hand, it does not apply to the relationship between High Contracting Parties outside Southeast Asia. To put it differently, the TAC has expanded the 'hub and spoke' relations between ASEAN and its external partners. Now, it seems time for ASEAN to take initiatives towards the multilateralisation of the TAC. When the spirit of the TAC applies to the relationship between High Contracting States outside the region, ASEAN's contributions to peace and stability in 'the wider region' will be more impressive than they have been so far.

In any case, there is much room for the TAC to promote peace and stability. The TAC will remain important beyond the 50th anniversary of ASEAN not only for the AMS but also for countries outside Southeast Asia.