ASEAN's limits in conflict resolution in the region

by

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After looking at the overall picture of politics and security aspects of ASEAN throughout the 40 years since its inception, there have not been several major conflicts on interests or values that would lead ASEAN countries to fight at a level of war against one another. Furthermore ASEAN, in the early years of establishment succeeded in its cooperation in the area of politics and security in fighting against Communism during the period of the Cold War. As a result, the cooperation in the areas of politics and security among ASEAN members have often been raised and appraised by academics as an example of promoting mutual relationship and strength of one another among members. However after the Cold War, the political climate and situations in South East Asia had caused more tensions on a variety of issues to arise. A number of cases reflected the fact that ASEAN has limitations in solving its internal conflicts. This paper addresses some of the limitations that have confined ASEAN in solving conflicts among her member countries and thus has caused her to seek help from mechanisms/powers and agents outside the region to settle their conflicts. This certainly reduces the potentials of ASEAN in solving its internal conflicts. The first part of the paper addresses the constraints of ASEAN on regional conflict resolution and prevention and the latter part includes recommendations on overcoming those constraints.

I. ASEAN's Limits

1. Formal mechanism for conflict resolution in the region

Even though there are formal mechanisms for solving internal conflicts between ASEAN members which are 1) mechanism in the form of treaties and 2) various ASEAN meetings, these mechanisms are considered inefficient and are unable to solve conflicts between member countries. The analysis of the prevailing mechanisms can make it clear why they are not effective.

1.1 Formal mechanism in the form of treaties
The Treaty of Amity and Cooperation in Southeast Asia (TAC) is considered an important mechanism that prescribes approaches to solving conflicts, including how ASEAN countries relate to one another. The fundamental principles of the Treaty are as follow (Treaty of Amity and Cooperation in Southeast Asia, 2012):

(1) Mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations

(2) Non-interference in the internal affairs of one another

(3) Settlement of differences or disputes by peaceful means

(4) Renunciation of threat or use of force

(5) Promotion of cooperation among members, including the guideline for settling disputes peacefully through the functioning of the High Council in order to strengthen peace and confidence in the region.

The first four principles are for deterring the conflicts between two parties concerned and to prevent its expansion to other member countries. The fifth principle refers to the High Council’s role in implementing measures to settle disputes when concerned parties are unable to settle their conflicts by their own negotiations.

However, never once was the High Council set up since the start of the Treaty even though there were some disputes between member countries, such as disputes relating to Sabah between Philippines and Malaysia or the dispute between Thailand and Cambodia on the issue of the Temple of Preah Vihear. This situation may imply that the work of the High Council may not be in line with the principle of non-interference. It is possible that the multi-lateral approach to settle disputes could make member countries see the disputes as extensive thus causing unnecessary distrust among member countries and even negatively affecting their national interests. Furthermore there is no guarantee that the decision of the High Council would be enforced. The settlements of disputes in the past were mostly done bilaterally (Prapat, 2012). It could then be said that the concept of the High Council is neither suitable nor practical in settling disputes between ASEAN member countries.

1.2 The mechanism of ASEAN meetings on different levels

ASEAN formal meetings are considered to be at the highest level of mechanism of ASEAN. There are more than 200 meetings annually. The meetings are comprised of

- ASEAN summit
- ASEAN Ministers Meeting (AMM)
- ASEAN Economics Ministers Meeting (AEM)
- Other Ministerial meetings under the umbrella of AMM

Although there were opportunities for member countries to discuss the settling of disputes and the resolution of conflicts in every meeting, these venues still contained limitations in resolving disputes in the region. For example, at the ASEAN Summit in 2012, Cambodia in its role as ASEAN Chair, decided that the vexing issue of South China Sea would not be on the agenda for that particular ASEAN Summit (Dene-Hern, 2012). The reason of not wanting to raise this issue in that Summit could be due to Cambodia having to favor China. Cambodia had a close relationship with China, coupled with the massive direct investment coming from China to Cambodia. As a result, although the mechanism was present for settling disputes in the region, the challenge of practical constraints were always a source of interference in every ASEAN Summit. In addition, superpowers had influential roles in internal ASEAN security issues as well, thus member countries could neither resolve their regional disputes or conflicts independently nor effectively.

2. Consensus

ASEAN was established based on the strong desire to settle peace, build consensus, and promote stability, through regional cooperation and integration. Although during the early decades of ASEAN, the Association was successful in managing intra-regional tensions, yet since the end of the Cold war, ASEAN has been facing challenges and hardship in sustaining collective consensus among its member countries due to the expansion of membership, from 5 at the beginning to 10 members at present, in order to represent the whole region of South East Asia (Amitrav, 2001). Although the principle of consensus plays a key role in cooperation amongst ASEAN member countries without leading to conflicts, the principle also implies that any policy and decision within the regional context needs to be agreed by all member countries prior to the passing of any resolution. Such conditions lead to limitations in obtaining conflict resolutions. Limitations of the principle of consensus can be observed from The Protocol to the ASEAN Charter on Dispute Settlement Mechanisms.

The 2010 Protocol to the ASEAN Charter on Dispute Settlement Mechanisms was drafted in accordance with the ASEAN Charter on peaceful conflict resolution. It emphasizes the means of consultation, conciliation or mediation, and arbitration in solving disputes, excluding economic disputes. If any concerned party does not agree on setting up arbitrators, the other party can request the ASEAN Coordinating Council (ACC) to consider suggesting the litigant a mean to settle the disputes, such as appointing arbitrators.

If the above-mentioned procedure did not succeed or the ACC could not come up with any means of dispute resolution, it would lead to that particular dispute being considered as an “Unresolved Dispute” and the member nations concerned could raise the issue in the ASEAN Summit. However, till date, the ASEAN Charter on Dispute Settlement Mechanisms has never
been observed because of the lack of consensus of ratification of the Protocol document. In conclusion, ASEAN has been trying to find effective mechanisms for solving disputes and conflicts between member countries, yet the principle of consensus is like a two-edged sword that hinders ASEAN to develop effective and practical dispute resolution mechanisms (Conflict Resolution Mechanisms ASEAN, 2013).

If ASEAN could develop the Protocol to the ASEAN Charter on Dispute Settlement Mechanisms to enable the enforcement of the arbitration, then this mechanism could well be an alternative way to solve intra-regional conflicts without needing to appeal to the International Court of Justice, unlike past practices which had to take such steps which included the dispute between Thailand and Cambodia on the Temple of Preah Vihear.

3. Non-interference

The desire for peace is constrained by both ASEAN’s internal framework, which protects the sovereign rights of its members from external interference, and its reluctance on the regional level to open itself to third-party involvement, especially from non-ASEAN countries. While this is a universally recognized principle, it has been noted that ASEAN appears to deem the principle of non-interference more superior than other regional institutions. ASEAN generally perceives crises in its member states, such as the events in Myanmar, Papua and Mindanao, as domestic problems that are covered under the Treaty of Amity and Cooperation (TAC). The TAC stipulates non-interference in the domestic affairs of member countries. Therefore the principle of non-interference brings about limitations to conflict resolution in the region (Agus, 2010). The following cases are examples for such an observation.

3.1 The Haze Crisis

In June 2013 South East Asia, especially Indonesia, Malaysia and Singapore, suffered for approximately a week from a record-breaking haze pollution. The haze and toxic smog caused by fires to clear land for agriculture in Sumatra, Indonesia, exceeded almost three times the hazardous limit air quality. People in Indonesia, Malaysia, Singapore and some southern areas of Thailand had to wear face masks, schools were closed, and the economy took a dive as businesses suspended work. Events were cancelled, tourists stayed clear of the area and hospitals faced a surge of respiratory illnesses. The fires also impacted climate change since they produced large amounts of greenhouse gas (GHG) emissions from the burning of carbon-rich lands and forests. The land-clearing fires which cause trans-boundary haze are also the biggest contributor to Indonesia’s overall GHG emissions. 2013 may have been the worst haze crisis in the region’s recorded history, but similar occurrences are the norm during ‘haze season’ every year since the 1980s.

In 2002, ASEAN member countries addressed the environmental issue by adopting the world’s first regional agreement against haze – the ASEAN Agreement on trans-boundary Haze Pollution. The Agreement is a legally binding regional environmental treaty that aims to prevent and mitigate haze pollution “through concerted national efforts and intensified regional and
international cooperation’. Unfortunately, two big problems lessen the effectiveness of the Agreement. The first is that Indonesia, the only ASEAN member state yet to ratify the Agreement, is also the main polluter. The second problem concerns the design of the Agreement, which has a weak mechanism for dispute settlement and punishing non-compliance.

As it can be seen that one of the weaknesses is that Indonesia declines to ratify the Agreement and while ASEAN upholds the principle of non-interference, no member state can compel Indonesia to do so otherwise, or intervene in the administration of the Indonesian Government to implement means, measures or policies that would alleviate air pollution in Indonesia. Furthermore, there is no non-compliance penalty stipulated in the Agreement, therefore even problems that vastly affected many countries in the region that was caused by one country cannot be dealt with, because other countries are unable to intervene in the internal administration of the problem-originating country. Problems have to be solved voluntarily by the government of the country concerned even though that country alone may not be able to solve the problem. Therefore if ASEAN wants to be effective in solving the haze pollution, it should reconsider how to apply the principle of non-interference to this particular context before this haze crisis aggravates in the future (Nelly, 2014).

3.2 Disputes on the Temple of PreahVihear

As the armed conflict at the Thai-Cambodian border raged, Cambodia sent its protest to the United Nations Security Council. However, the UN Security Council sent the case back to ASEAN’s court and asked it to mediate in the squabble among two of its own members.

Sporadic gunfights continued until Cambodia took the case to the International Court of Justice. In order to prevent further violence, the Court asked both sides to withdraw their troops from the disputed areas while waiting for a verdict. Shortly afterwards, in mid-2011, the situation improved after Thailand saw a change of governments – from one led by the Democrat Party to one led by the Pheu Thai Party. The latter has a better relationship with the Cambodian government of Prime Minister Hun Sen.

However, this bilateral dispute had led to something previously unexpected by ASEAN member countries: ASEAN agreed to act as a mediator in an attempt to resolve the conflict. It is this role that is challenging to ASEAN, which has been viewed as a ‘paper tiger’ throughout the four decades of its existence due to the principle of non-interference. ASEAN is not a dispute settlement body which is why ASEAN should not be expected to sit down in judgment about issues between its member countries. It is also important to remember that many of the issues between ASEAN countries are issues that are political (internal) on both sides, and there is very little ASEAN can do about it.

As both countries did not seem to resolve the conflict bilaterally and Thailand did not agree with the mediation from ASEAN, it became very difficult to end this conflict. This is one of the reasons why Cambodia needed the World Court to settle this dispute(Sujane, 2013).
II. Recommendations

The following are recommendations to enlarge ASEAN's capacity in conflict resolution in the region.

1. Partner with civil society in the region

The reason why ASEAN should work more with the civil society is because many groups within civil society are more experienced in the field of conflict resolution than governments. Learning from the civil society on how to mediate conflicts and work with strong networks which already exist and are in their control is very important for ASEAN (Agus, 2010). Moreover, there are a number of networks of experienced experts in ASEAN countries who could be responsible as a facilitator for peace negotiations throughout ASEAN.

One example to learn from is the case of Conciliation Resources, an organization that played an effective role in resolving problems in the Lord’s Resistance Army conflict by working with civil society organizations (The Lord's Resistance Army, n.d.). The Lord’s Resistance Army (LRA) conflict affected tens of thousands of people in Africa. Originating in northern Uganda in the late 1980s, it had spread to the neighboring countries of South Sudan, the Democratic Republic of Congo (DRC) and the Central African Republic (CAR), where continuing political instability contributes to the perpetuation of violence. Conciliation Resources worked at both the community level with civil society organizations and at a national political level, to influence regional and international decision-makers. This organization had been working on the LRA conflict since 1997. Civil society organizations had a huge role to play in finding ways of dealing with the conflict and supported Conciliation Resources in helping those affected people and find innovative ways to address the day-to-day issues they experienced. Methods they used, such as encouraging abductees to leave the LRA and return home, and then supporting communities to reintegrate them, had produced a significant impact. Conciliation Resources also engaged with national and international decision-makers to encourage them to prioritize issues surrounding conflict in LRA-affected areas and looked for non-violent local solutions.

2. Build more institutions to support peace

ASEAN’s potential role in conflict mediation can be accelerated by the clear presence of regional institutions that deal with conflict mediation and prevention issues (Agus, 2010). ASEAN’s political and security blueprint has recommended the establishment of an ASEAN Centre for Peace and Reconciliation which could focus on research about social crises in the region and provide recommendations for conflict mediation activities and internal mechanisms for managing and preventing conflicts. It could also become a secretariat for the issue of peace, which would require building the capacity of the ASEAN joint secretariat in taking a proactive role in conflict prevention work.
An example of a recent established institution with a mission in peace building is the ASEAN Institute for Peace and Reconciliation (AIPR) (ASEAN 2013). The AIPR held its first Governing Council (GC) meeting at the ASEAN Secretariat in December 2013. The meeting discussed, among others, the work plan of the AIPR, the recruitment of Executive Director, funding, and reporting mechanism of the AIPR. This institute works towards fulfilling its role to provide ASEAN as well as regional and global partners with recommendations, research and analysis in the areas of peace, conflict management and conflict resolution. So, building more institutions that support peace in the region is what ASEAN needs to work for more in order to bring in the culture and the knowledge of peaceful negotiation and mediation in the region.

3. Develop a conflict mediation program

A conflict mediation program should be established with a clear allocation of resources for funding conflict mediation activities ranging from research, training and advocacy in mediation and negotiation to regular forums and strategic meetings and monitoring conflict mediation activities across South East Asia (Agus, 2010). Emphasis should be placed on initiating a peace campaign through media in ASEAN countries as well. This project should be set up for a rather long period of time, at least 5 years, in order to organize a sufficient number of activities to society. The program should focus on strategic issues relating to conflict resolution in the region; both present conflicts as well as potential ones that are likely to arise in the future. The outcomes of the program should be clearly set, measurable, as well as having high impact on preventing potential future conflicts.

4. Re-interpret the concept of ‘Non-Interference’

ASEAN should build upon the consensus model for decision-making already employed by the institution and develop a new framework on constructive engagement. If ASEAN wants to take on a proactive role in the region, it has to forge a consensus regarding its policy of non-interference in the domestic affairs of other states. ASEAN could reflect upon the principle of constructive engagement in the context of proactive engagement. Facilitating dialogue to re-interpret the concept will be crucial in adjusting non-interference approaches, which had prevented positive engagement in conflict resolution. In the case dispute on Temple of PreahVihear, Indonesia as the mediator of ASEAN could not effectively engage in conflict resolution as witnessed by a statement made by Mr. AbhisitVejjajiva on August 22 in 2010, as a former Prime Minister of Thailand who said “I am still confident that both sides will eventually talk to each other….There is no need to engage any international organization or a third country” (Sujane, 2013). Therefore re-interpreting the principle of ‘Non-Interference’ could lead to effective mediation by other ASEAN nations. If it is left as it is, ASEAN as a mediator could still be similar to ‘tiger paper’ that can barely resolve conflicts in the region.

5. Become More People-Oriented
For ASEAN to become more unified with fewer intra-regional conflicts, it must change its political paradigm to a more people-oriented entity (Agus, 2010). Improving ASEAN as a regional community, instead of a community of governments, will contribute to the development of long-term peace in the region. Therefore enhancing its links in the area of education and culture will be crucial for the promotion of peace and stability in the region. ASEAN should promote the value of connecting with one another at the people-to-people level. Due to the fact that there are vast differences in cultures, languages and religions among member countries, creating close relationships and mutual trust cannot be possible without well-thought-out schemes. The value of regional security should be promoted along with national security. Besides promotion learning of one another through media, actual people connection and interaction should be encouraged. One specific measure is to omit the requirement of visa for tourists from other ASEAN countries so that intra-travelling within ASEAN will be easy and convenient. Once people get to know one another and there is a sense of belonging to ASEAN, conflict and disputes between countries can be reduced. Transportation infrastructures that make it easy and convenient to travel are also of importance.

6. ASEAN regional development fund for regional public goods

In the region, there are many issues which ASEAN should work more closely on and develop collaborative measures to tackle issues such as human trafficking, drugs, terrorism, etc. Such measures could be considered as ‘regional public goods’ which all countries involved will mutually benefit from. In order to effectively manage such issues regionally, a regional development fund is one critical factor for such an initiative. To create more regional public goods in ASEAN, ASEAN should establish a new ASEAN regional development fund or ASEAN development bank, whose major role would be to provide funds for creating regional public goods in the region. Apart from the benefits that the ASEAN regional fund renders indirectly to the regional development through regional public goods, it can be used as an informal mechanism for conflict resolution in the region as well. It can be used as a sanction measure against member states that do not comply with mutually agreed agreements. For example, they can lower credit for receiving support from the ASEAN regional development fund, or decrease the access to regional public goods. However, the challenge of implementing this mechanism is how to ensure that the measures used will not in turn cause more or new kinds of conflicts in the region.

7. Develop informal relationships in the elite group

Informal relationships among elites from member countries should be fostered. Elites are present national leaders and potential national leaders from member countries as well as top leaders of national security agencies of ASEAN member countries. There should be systematic setups for these people to meet and interact with one another which could result in mutual trust and understanding between members of the elite group. One of the examples of systematic set up is a short-term program for ASEAN leaders, similar to executive programs in which attendants not only learn academically but also get to connect with colleagues in the same program. Cordial
relationships formed during the time spent together while attending the program should be able to make mutual efforts in cooperation and solving conflicts easier and smoother. This concept is particularly suitable for the ASEAN context due to the fact that Asians value a highly personal and informal relationship which is why it can be a key component in cooperative efforts in the future.

8. Develop constructive engagement

As we analyzed earlier that the principle of non-interference may have had hindered conflict resolutions all along, yet if the engagements are constructive and beneficial to parties concerned, while maintaining the principle of voluntary decision, this principle can be more favorable to all concerned. Countries directly involved in the conflict or dispute may be more congenial toward other member countries’ engagement. For example, keeping in mind the problem of haze pollution in Indonesia, member countries can use constructive engagement such as giving financial or technical support and providing personnel to Indonesia to fight against the problem instead of pressuring Indonesia to solve the problem alone. Constructive engagements should be something viewed favorably by the countries concerned.

9 Develop existing mechanisms to make them more effective in solving conflicts

9.1 Treaty of Amity and Cooperation

High Council is a key mechanism for settling disputes in ASEAN, yet it has never been implemented due to the condition defined by the principle of non-interference. If the aforementioned proposal of constructive engagement is to be implemented, the High Council which is comprised of senior representatives of all ASEAN countries should be able to play an important role in proposing constructive measures for conflict resolution, while maintaining its role of Good Offices or Committee of Mediation and Conciliation. An adjustment of the role of High Council should be beneficial to conflict resolution in ASEAN.

9.2 Enforcement of Arbitral Tribunal through Protocol to the ASEAN Charter on Dispute Settlement Mechanism

The reason that the Protocol to the ASEAN Charter on Dispute Settlement Mechanism can not be used to settle disputes is because there has not yet been a consensus among ASEAN members on the ratification of the Protocol. When there is even one member country which declines to ratify the Protocol, the Arbitral Tribunal which is one of the mechanisms in solving conflicts can not function. Apart from that, some countries are afraid that the mechanism of the Arbitral Tribunal may be detrimental to their countries. To overcome these hindrances, ASEAN needs to build trust among member states as well as to build an ASEAN mutual identity to the
extent that the withholding countries decide to comply to and ratify the Agreement. It is only then that the mechanism of Arbitral Tribunal can function as a tool to settle disputes in the region.

10. Monitor ASEAN conflicts by establishing conflict warning indicators

ASEAN should be able to prevent conflicts to arise in the region by having an effective conflict monitoring system. This system is based on a checklist of root causes of conflict and early warning indicators. The system will enhance early actions in order to take strategic measures to prevent conflicts from arising. ASEAN can learn from the European Commission and the EU Secretary General and High Representative that have developed a check list of root causes of conflicts and early warning indicators that increase awareness within the EU decision making forums relating to such problems. The monitoring system help increase efforts to ensure that EU polices contribute to conflict prevention and resolution. Through the monitoring system, countries receiving the highest scores would come under the attention of the authority responsible for security issues through a confidential “watch list”. However ASEAN needs to adapt the monitoring system to make it suitable to the context of ASEAN so that trust among member countries could be fostered without any agitation.

References


