



IDSS COMMENTARIES (62/2006)

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72-hour Neighbours? Designing an ASEAN crisis management mechanism

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10 July 2006

A KEY goal of the Eminent Persons' Group (EPG) tasked with developing the ASEAN Charter is to promote the institutional development of ASEAN to better respond to regional crises. Three basic principles of institutionalization should be considered:

- Usage: ASEAN does not lack institutions, but many of these institutions remain underused. For example, the High Council provided under the Treaty of Amity and Cooperation and the Dispute Settlement Mechanism under the ASEAN Free Trade Area (AFTA) are yet to be invoked. Neither is the Troika after it was formally provided for in 2001. Hence the real challenge for those drafting the ASEAN Charter is consolidating and rationalizing its varied existing mechanisms, and to promote their usage.
- Adaptability: ASEAN's rules and institutions need to be adapted to changing threats and challenges. Globalization presents ASEAN with a number of "transnational" dangers. These challenges come at short or no notice, do not respect national boundaries, and hence cannot be addressed by a single nation. Hence, institutions that go beyond the strict or narrow interpretation of non-interference, are needed.
- Automaticity: Rules and institutions should be invoked or deployed automatically in the event of a crisis, rather than waiting for the initiative of an individual leader.

Drawing from the above, the EPG could consider the following suggestions, which are especially relevant to ASEAN's crisis management role.

First, ASEAN should create a rule that its foreign ministers must convene within no later than 72 hours of a regional crisis – such as armed interstate hostilities, unlawful ouster of governments, acts of genocide or large-scale loss of lives from political conflicts, pandemics, natural calamities (earthquakes, tsunamis), terrorist attacks, and disruption of the sealanes. The meeting does not have to have any particular pre-set agenda. The important thing is that the foreign ministers must meet within 72 hours to discuss the crisis.

The Organization of American States (OAS) has a provision to convene its Permanent Council — constituted of permanent ambassadors at its headquarters — immediately, and to convene a meeting of foreign ministers or its General Assembly within 10 days of a crisis. A shorter timeframe can be considered for a foreign ministers meeting. Also, the OAS provision is aimed at dealing with political crises involving the ouster of democratically-elected

governments. The ASEAN provision could be aimed at dealing with a wider variety of crises. Such a special ASEAN ministerial meeting (AMM) can be convened by any member nation (Option A). Alternatively, it could be convened by the incumbent chair of ASEAN (Option B). Whether the crisis is severe enough to warrant a Special AMM will be determined by the chair of ASEAN (if Option A) or the relevant member nation convening the meeting (Option B). The advantage of Option A is that it takes the decision out of the particular preferences of the incumbent chair.

The venue of the Special AMM will be specified by the convening member state. To send a strong message of collective political will, it could be held in the capital of the crisis affected nation or nations if security conditions permit.

A related innovation would be to expand the ASEAN “Troika” to include the ASEAN Secretary-General (as ex-officio member). This will give the ASEAN Secretary-General greater stature and authority to carry out his responsibilities in the political and security domain. In addition, the Troika should be made into a standing body, rather than having to be “constituted” by ASEAN foreign ministers each time a crisis breaks out, as is the case under its current provisions. As a standing body, the Troika will be better placed to undertake immediate fact-finding and goodwill missions to crisis areas. The Troika could undertake a fact-finding mission within 72 hours so as to be able to report to the Special AMM. It could also play a role in carrying out further missions and follow-up measures as specified by the Special AMM.

It is tricky to decide what constitutes armed inter-state hostilities. These may be defined as armed attack by a member country on another across internationally-recognized borders; movement of troops across borders; or direct engagement between the armed forces of two nations over regional maritime or air space. At the OAS, the secretary-general can provide his good offices whenever he determines that armed inter-state hostilities are under way.

It is even trickier to decide what constitutes an unconstitutional change of government. First, the rule should apply to the unconstitutional ouster of all governments that are internationally-recognized, rather than just democratically-elected governments. This is because unlike the OAS, ASEAN is yet to adopt the democratic political system as a requirement for membership in the organization.

A minimal definition of unconstitutional change of government could include military coup d’etat; takeover of an internationally-recognized government by armed rebel movements or terrorist organizations; takeover of an internationally-recognized government by dissident groups; and an incumbent government’s refusal to hand over power to the winning party/coalition of an election determined by the international community to be free and fair.

ASEAN should also consider a few automatic rules in responding to an unconstitutional ouster of government. The first is the non-recognition by all other ASEAN states of the government set up through unconstitutional means. Second, the unconstitutional government may be given up to six months to restore constitutional order.

Third, the government concerned should be suspended from participating in the political and security processes of ASEAN (AMM, Summits) pending restoration of constitutional government. Through this, the country’s formal membership in ASEAN will continue, in keeping with ASEAN’s “once a member always a member” stance. This means only

suspension, rather than expulsion, from ASEAN membership is possible. As is the case with the OAS, ASEAN can also offer to mediate between contenders, observe a new election, or provide similar peace making services.

ASEAN's approach to inter-state conflicts should also be redesigned. ASEAN members prefer to refer their bilateral disputes to international bodies, like the International Court of Justice and the Law of the Sea Tribunal. These bodies are seen as more impartial and professional than the High Council, which, being constituted at the ministerial level, would be a political body. It is proposed that ASEAN supplements the High Council with an ASEAN Conciliation Commission (ACC). This should include eminent jurists and subject experts from both within and outside ASEAN (including retired jurists from international bodies). The ACC could study and advise on specific issues of dispute, and make recommendations for the parties to consider.

Finally, in addition to such principles as non-interference, non-use of force and respect for sovereignty, ASEAN should enshrine the principle of "responsibility to protect" into the Charter, which has gained increased acceptance at the UN. This will provide justification for collective action by ASEAN (often with the support and involvement of UN forces) to safeguard innocent lives in conflicts that involve genocide or large-scale loss of life.

The exact mechanism for this role needs to be worked out. It might require a regional peacekeeping coordination system (rather than a standing force). Recently, a regional disaster management system has been proposed by the Malaysian deputy prime minister and analysts. This could be adapted into a regional humanitarian assistance device to alleviate human costs of conflicts, such as refugee flows and mass murders.

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