

# Treaty of Amity and Cooperation in Southeast Asia

## Introduction

- 3.1 The *Treaty of Amity and Cooperation in Southeast Asia (TAC)*, as amended by the *Protocol amending the Treaty of Amity and Cooperation in Southeast Asia* and the *Second Protocol amending the Treaty of Amity and Cooperation in Southeast Asia*, promotes peace, amity and cooperation between Parties.<sup>1</sup> TAC is a foundation document for the Association of Southeast Asian Nations (ASEAN)<sup>2</sup> and has considerable symbolic importance.<sup>3</sup>

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1 TAC has 19 States Parties: Brunei Darussalam, Cambodia, India, Indonesia, Japan, Lao People's Democratic Republic, Malaysia, Mongolia, Myanmar, New Zealand, Pakistan, Papua New Guinea, People's Republic of China, Philippines, Republic of Korea, Russian Federation, Singapore, Thailand and Vietnam. Department of Foreign Affairs and Trade, *Submission 8*, Attachment: Status of the Treaty of Amity and Cooperation and the Protocols.

2 ASEAN has 10 Member States: Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam; and 11 Dialogue Partners: Australia, Canada, China, European Union, India, Japan, New Zealand, Republic of Korea, the Russian Federation, the United States and the United Nations Development Programme.

3 Ms Gillian Bird, *Transcript of Evidence*, 12 September 2005, p. 2.

## Background

- 3.2 In April 2005, ASEAN Foreign Ministers made accession to TAC one of three criteria a State must meet in order to attend the East Asia Summit.<sup>4</sup>
- 3.3 The Committee was informed by the Department of Foreign Affairs and Trade (DFAT) that the East Asia Summit is
- a new leaders grouping which has the potential to be an important mechanism to pursue closer integration on economic and strategic issues in the region.<sup>5</sup>
- 3.4 The National Interest Analysis (NIA) states that it is directly relevant to Australia's interests to have a seat at the East Asia Summit from the start in order to contribute to the Summit's development.<sup>6</sup>
- 3.5 On 13 July 2005, the Minister for Foreign Affairs, the Honourable Alexander Downer MP, wrote to His Excellency Mr Somsavat Lengsavad, Deputy Prime Minister and Minister for Foreign Affairs of Laos and Chairman of the ASEAN Standing Committee, to advise that Australia intended to accede to TAC.<sup>7</sup>

## The First and Second Protocols

- 3.6 TAC has been amended twice. The First Protocol (1987) made three changes, amending TAC to:
- allow non-ASEAN States in Southeast Asia to accede to TAC
  - allow non-Southeast Asian States to accede to TAC with the consent of the Southeast Asian States then party to TAC
  - specify the circumstances in which non-Southeast Asian States could participate in the High Council.<sup>8</sup>

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4 Two further criteria are required: a State must be a full dialogue partner of ASEAN and a State must have substantive relations with ASEAN. National Interest Analysis (NIA), para. 8.

5 Ms Gillian Bird, *Transcript of Evidence*, 12 September 2005, p. 2.

6 NIA, para. 6.

7 NIA, para. 4.

8 NIA, para. 11.

- 3.7 The Second Protocol (1998) amended TAC to expand the category of Southeast Asian States whose consent is required to permit States outside Southeast Asia to accede to TAC. This change reflects the expansion of ASEAN.<sup>9</sup>

## Key provisions

- 3.8 TAC is designed to promote peace and stability throughout the Southeast Asian region and to provide a procedure for peacefully settling disputes should they occur.
- 3.9 Article 2 of TAC provides a number of fundamental principles which will guide relations between Contracting Parties. These principles include:
- mutual respect for sovereignty, independence, equality, territorial integrity of all nations
  - the right of every State to lead its national existence free from external interference, subversion or coercion
  - non-interference in the internal affairs of one another
  - settlement of disputes by peaceful means
  - renunciation of the threat or use of force.
- 3.10 Article 10 provides that Contracting Parties shall not participate in any activity which constitutes a threat to the political or economic stability, sovereignty, or territorial integrity of another Contracting Party.
- 3.11 Article 13 requires Contracting Parties to settle disputes through negotiation and without the threat or use of force.
- 3.12 Article 14 establishes a High Council in order to resolve disputes. The High Council is made up of ministerial level representatives from each Contracting Party. This provision only applies to a Contracting Party outside Southeast Asia where that State is directly involved in the dispute to be settled. To date, the High Council has never been convened.<sup>10</sup>

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9 NIA, para. 11.

10 NIA, para. 32.

- 3.13 Where a dispute cannot be resolved through direct negotiations, Article 15 provides that the High Council shall take note of the dispute and recommend an appropriate means of settlement. With the consent of the Parties to the dispute, the High Council can also mediate, inquire into or attempt to conciliate the dispute. Under Article 16, the High Council will not involve itself in a dispute without the consent of all Parties to the dispute.
- 3.14 In addition to the text of TAC itself, Australia clarified the interpretation of key provisions through four ‘understandings’. These are set out by Mr Downer in his letter of 13 July 2005. The understandings were reached through extensive discussions between Australian officials and their ASEAN counterparts and are to be regarded as part of the context of Australia’s accession to TAC, as specified under Article 31 of the *Vienna Convention on the Law of Treaties*.<sup>11</sup>
- 3.15 The four understandings are:
- accession to TAC will not affect Australia’s obligations under other bilateral or multilateral agreements. This understanding ensures that Australia’s existing security agreements, such as the ANZUS Treaty<sup>12</sup> and the Five Power Defence Arrangements, remain unaffected by Australia’s accession to TAC<sup>13</sup>
  - TAC is to be interpreted in conformity with the United Nations (UN) Charter, and accession to TAC will not affect Australia’s rights and obligations under the UN Charter. This understanding ensures that Australia’s obligation not to interfere in the internal affairs of other TAC Parties, under Article 2, will not affect Australia’s rights and obligations under the UN Charter. In particular, Australia’s obligation to promote and encourage respect for human rights, fundamental freedoms for all without distinction as to race, sex, language or religion, and Australia’s right under Article 51 of the UN Charter to use force in self-defence<sup>14</sup>
  - TAC will not apply to, nor affect, Australia’s relationship with States outside Southeast Asia. This understanding clarifies that

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11 NIA, para. 27.

12 Security Treaty between Australia, New Zealand and the United States of America

13 NIA, para. 28.

14 NIA, paras 29 and 30.

TAC only governs the relations of each of the non-ASEAN Contracting Parties with the ASEAN Contracting Parties<sup>15</sup>

- Articles 14 and 16 provide that when a Contracting State outside Southeast Asia is directly involved in a dispute, the agreement of that Contracting State is required before the High Council can be convened. Should the High Council be convened, that Contracting State would be entitled to participate in the High Council. This understanding clarifies that the High Council could not consider or seek to resolve a dispute in which Australia was directly involved unless Australia first agreed to the convening of the High Council for that purpose.<sup>16</sup>

3.16 At the request of ASEAN States, the exchange of correspondence states that the understandings are provided on a 'non-prejudice basis to ASEAN'. This phrase does not qualify the understandings but rather reflects the fact that it is not usual ASEAN practice to record understandings of the Treaty in a public document.<sup>17</sup>

## The East Asia Summit

3.17 The first meeting of the East Asia Summit will be held in Kuala Lumpur in December 2005.<sup>18</sup>

3.18 Representatives from DFAT informed the Committee that the East Asia Summit is seen as a significant new regional grouping with the potential to make progress on regional economic issues and strategic cooperation and it is in Australia's interests to participate as an inaugural member.<sup>19</sup>

3.19 The agenda for the Summit is yet to be finalised. Representatives from DFAT informed the Committee that Australia does not want to be overly prescriptive in setting the topics for discussion at the Summit. Rather, it is more important that

leaders are able to address whatever the big issues of the day are for the region ... Terrorism is obviously a big issue.

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15 NIA, para. 31.

16 NIA, para. 32.

17 NIA, para. 33.

18 Ms Gillian Bird, *Transcript of Evidence*, 12 September 2005, p. 2.

19 Ms Gillian Bird, *Transcript of Evidence*, 12 September 2005, p. 2.

Regional pandemics are an issue that has got a lot of attention of late.<sup>20</sup>

- 3.20 Although the agenda has not yet been set, representatives from DFAT acknowledged the importance of the East Asia Summit having a distinct purpose, given the number of pre-existing regional organisations in Southeast Asia which would appear to cover some of the same issues.<sup>21</sup>

## Consultation

- 3.21 State and Territory Governments were consulted through the Standing Committee on Treaties mechanism. However, the NIA points out that TAC is unlikely to directly affect State and Territory Governments and is primarily a matter of foreign policy.<sup>22</sup>

## Implementation and costs

- 3.22 No changes to Australian legislation are required to give effect to Australia's obligations under TAC.<sup>23</sup>
- 3.23 The NIA states that there are no costs associated with Australia's accession to TAC.<sup>24</sup> However, the Committee would expect there to be costs associated with sending a delegation to attend the East Asia Summit which are not specified in the NIA.

## Future treaty action

- 3.24 Future treaty action, such as a Protocol, would be subject to Australia's domestic treaty process, which includes tabling and consideration by this Committee.<sup>25</sup>

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20 Ms Gillian Bird, *Transcript of Evidence*, 12 September 2005, p. 4.

21 Ms Gillian Bird, *Transcript of Evidence*, 12 September 2005, p. 5.

22 NIA, Consultation Annex, paras 1 and 2.

23 NIA, para. 34.

24 NIA, para. 37.

25 NIA, para. 40.

## Conclusion and recommendation

- 3.25 The Committee welcomes the opportunity to further strengthen ties with ASEAN Member States, with whom Australia currently enjoys strong and mutually beneficial relationships, both individually and collectively.
- 3.26 The Committee believes that the East Asia Summit will provide a valuable new forum for dialogue between leaders in the region.

### Recommendation 2

**The Committee supports the *Treaty of Amity and Cooperation (Indonesia, 24 February 1976)*, as amended by the *Protocol amending the Treaty of Amity and Cooperation in Southeast Asia* and the *Second Protocol amending the Treaty of Amity and Cooperation in Southeast Asia*, and recommends that binding treaty action be taken.**

