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NOTES FROM THE EDITOR'S DESK

Dear Reader,

Given the recent spate of disasters in the Asia-Pacific, the fifth issue of the Asian Journal of Public Affairs begins with a thematic commentary section on disaster management in the region. With the onset of Typhoon Ketsana in the Philippines and earthquakes in Indonesia in late 2009, and the earthquake in Haiti in January 2010, the timeliness of this issue cannot be less fitting.

The commentaries, written by Dr. Kuntoro Mangkusubroto, Head of the Rehabilitation and Reconstruction Agency for Aceh-Nias, Mr. Antonio Meloto, Founder of Gawad Kalinga, and Ms. Hailey Kim, from the Asian Disaster Preparedness Centre, provide a practitioner's perspective of how disaster management and recovery efforts take place in Asia. It is hoped that these articles will help to understand the constraints and difficulties that the region faces in terms of disaster mitigation, recovery and rehabilitation.

The discussion is taken a step further in *Environmental Challenges in Southeast Asia: Why is there so Little Regional Cooperation?* which provides an interesting discussion on the lack of inter-regional cooperation in Southeast Asia and the role ASEAN plays in creating or even inhibiting the creation of a regional environmental regime.

Two articles in this issue take a look at the issues surrounding the Mindanao region in the Philippines. The area is immersed in conflict, which is also exacerbated by the practice of clan feuds,

locally known as 'Rido'. The article on *Indigenous Conflict Resolution Mechanisms in Mindanao: Is their Institutionalisation the Answer?* provides insight into this socially accepted phenomenon and emphasises the need for indigenous and other peace-building and conflict-resolution tools. The escalating conflict in this region, also has negative implications on the country's eligibility for the Millennium Challenge Corporation (MCC), a poverty reduction program by the United States, and is dealt with in detail in *Rethinking the MCC: Conflict in Mindanao and the Republic of the Philippines*.

The roots of the Thai military's political activism are analysed in *The Thai Military: A Political Role*, while *The Challenge of Transfer Pricing in the Asia Pacific Region* considers the conflicting objectives that fiscal authorities face, in terms of protecting their tax base while promoting cross-border trade.

With this mix of articles on various policy issues across Asia, we hope that you will find this Issue interesting. We would like to thank all of the authors for their cooperation and understanding, as well as our faculty advisors, Prof. Mukul Asher and Prof. Darryl Jarvis, and Prof. Ora-Orn Poocharoen, Ms. Ruth Choe and Ms. Dorine Ong for their endless support. We look forward to your feedback as we strive to improve our forthcoming issues.

Yours Sincerely,
The AJPA Editorial Board
February 2010

MANAGING AN EFFECTIVE RECOVERY PROGRAM: THE CASE OF ACEH AND NIAS

*Kuntoro Mangkusubroto
John Paterson
Aichida Ul-Aflaha*

Five years after the devastating tsunami on 26 December 2004 and the subsequent earthquake in March 2005, Aceh and Nias have closed the chapter on the extraordinary humanitarian challenge of recovering from the worst natural disaster in modern history. For Indonesia, a nation in the midst of major political and administrative reform and with a new government just two months into its term of office, the scale of the destruction caused by the tsunami was a wake-up call that the country did not expect. The Government of Indonesia (GoI) needed a breakthrough model if it was to achieve the innovation necessary for an effective recovery. The government's decision to open its borders and adopt a leadership role in working with international agencies set an important precedent for the relief and recovery programs that ensued. It brought about a united response to the tsunami based on openness and cooperation between nations. The fact that the GoI was able to deliver on its promise to rebuild back "better" and transform these regions into a more participating part of the republic through open and cooperative policies on recovery that institutionalised urgency, flexibility and accountability, proves that such policies can become government models for disaster management elsewhere.

Tsunamis obliterated the coastline of Indonesia's western end, devastating the province of Nanggroe Aceh Darussalam (Aceh). Over 126,000 lives were lost, more than 93,000 people declared missing, and 500,000 lost their homes. The loss and damage in these regions did not end there; an earthquake struck the nearby islands of Nias in North Sumatra just months after the tsunami, resulting in the death of nearly a thousand people and the displacement of tens of thousands of survivors.

The Indonesian government, along with the rest of the world, was aware of its lack of preparedness when the tsunamis hit. Nevertheless, it responded decisively and within the first 24 hours of the catastrophe, by instigating one of the largest rescue and relief operations in history. It was followed by a massive recovery endeavour committed to "building back better". From the scale of the devastation wrought by both the disasters, it was clear that it would not be enough to simply replace the homes, schools, hospitals and roads. The rehabilitation and reconstruction programs would need to encompass the rebuilding of the social structures that once thrived along the shores of Aceh and within the hinterlands of Nias.

Dr. Kuntoro Mangkusubroto was the Director of BRR Aceh-Nias and is the founder of BRR Institute. He currently serves as the Head of the President's Delivery Unit. John Paterson was formerly the Knowledge Management Advisor for BRR while Aichida Ul-Aflaha was the Junior Advisor to the Chief Financial Officer. John and Aichida are members of the BRR Institute.

Prior to the disasters, these regions were among the poorest within the Indonesian archipelago with under-developed infrastructures and public services, and with the majority of communities living in isolation, marginalised by over three decades of conflict, corruption or neglect. The three decades-long conflict between the central government and local separatist movements in Aceh was a clear challenge in building trust and in executing the program. Internationally, there was Indonesia's reputation for corruption. At that time, out of the 145 countries ranked by Transparency International's 2004 Corruption Perception Index, Indonesia came in at 133rd with a dismal score of 2.0 out of 10.¹ Among the countries in the Asia-Pacific region, Indonesia ranked second worst, just above Myanmar.

Still, in a time of increasing numbers of natural and man-made disasters, our sense of humanity is without borders. We reach across state lines to help others in need. This generosity behooves us to find a disaster management model that accommodates an international response to humanitarian call. The domestic and international response to the disasters in Aceh and Nias was unprecedented. A surge of players poured into the region in the days following the tsunami and earthquake and continued their efforts well into reconstruction. The pledge to "build back better" by national and international players reached USD 7.2 billion, surpassing the minimum required to just rebuild the two regions to pre-tsunami levels by USD 1.3 billion.

The success of any recovery is largely dependent upon the government's commitment to take the helm and to be resolute in delivering results. The GoI welcomed with open arms the international community ready to take part in the recovery. President Susilo Bambang Yudhoyono's decision to open the country's borders to international assistance was praised by the national and international community who, in turn, responded with equal tenacity. The outpouring of generosity was met with credibility, accountability and commitment to deliver on the part of the national authority.

The GoI was well aware that a "business as usual" approach would not produce the necessary swift and effective results. After considerable deliberation the government decided to appoint a special-purpose agency for the task. Taking ownership of the reconstruction, the GoI took the cardinal step of establishing the Rehabilitation and Reconstruction Agency (BRR) of Aceh-Nias to lead the overall reconstruction efforts. BRR's mandate was to design policies, strategies and action plans, within an atmosphere of transparency and accountability, and to implement them through effective leadership and coordination of the combined domestic and international effort.

For this model to work, BRR required the right mandate, the right people and the necessary political coverage to achieve the extraordinary breakthroughs necessary to

¹ Transparency International. 2004. Surveys and indices. Corruption Perceptions Index. http://www.transparency.org/policy_research/surveys_indices/cpi/2004

fast-track a massive reconstruction program. An agency with this magnitude of responsibility is only as strong as the political support it receives. The GoI invested adequate time to design and empower BRR and ensure that it had sufficient authority to interact effectively with national and international actors. Three months were spent in clarifying the organisation's mandate and in defining its powers.

Amid several options for organising this major undertaking, the compromise of a single Central Government lead agency was an effective decision under the circumstances. It minimised direct and indirect costs, and opened direct channels for dialogue between the government and other stakeholders. The legal authority vested in BRR as a central level government agency gave the organisation the solid foundation to make decisions from Aceh and Nias and to quickly respond to the rapid changes on the ground. Over the course of its four year tenure, the agency evolved to manage the changing conditions, with BRR changing its organisational structure every six to twelve months in response to changing circumstances. Further, the agency's limited tenure instilled a crisis mindset crucial in delivering swift results.

The government provided the best possible start to the recovery program through its ownership and policy of openness and cooperation. It oversaw the development of a national plan which was developed in cooperation with international partners; appointed a special agency to represent the government as lead coordinator and execute the said plan; and established the funding mechanisms to ensure unencumbered disbursement of funds. Appointing a single agency to lead the reconstruction prevented duplication of efforts and synchronised competing agendas of numerous reconstruction actors. This enabled the host government to take the helm and drive the reconstruction objectives. It was an effective start and one that was arrived at through local, national and international cooperation. It was a credit to the newly elected government's response and strong leadership.

In addition to a sound legal foundation an agency coordinating reconstruction must demonstrate integrity to garner a sense of trust from fellow actors as well as their beneficiaries. In any government agency, integrity must be established with no compromises. The internal system of integrity should continually be kept clean from the persistent hazards of misconduct. With the support of the Corruption Eradication Commission (KPK), which opened its first branch office with full enforcement authority in Aceh, BRR developed an Integrity Pact to fight systemic corruption. The Integrity Pact served as a moral accord to eschew wrongdoing. Along with that, early in its infancy BRR set up an autonomous Anti-Corruption Unit (SAK) to guard against graft within the organisation as well as in any reconstruction projects, becoming the first Indonesian government agency to do so.

Ensuring integrity and accountability of funds was critical to give donors the confidence to deliver on their pledges. Through the signing of the Integrity Pact by all staff members (and other stakeholders as well) and the establishment of SAK and the KPK regional office, BRR demonstrated its strong stance against corruption,

reassuring the international commitment that their willingness to give was matched with a real commitment to reconstruction. In turn, 93 percent of pledges (USD 6.7 billion) were converted into commitment, a testimony of the trust in the GoI.

Similarly, local trust was another important element of the reconstruction of Aceh and Nias. It was the necessary ingredient to engage beneficiaries to assist in rebuilding their communities for the common goal of a peaceful and prosperous future. During its own internal capacity development, BRR enlisted local expertise and following the Aceh peace agreement the government encouraged ex-combatants with appropriate qualifications to directly participate in the recovery program. There were trade-offs between developing trust and promoting dependency among beneficiaries. The decision to allocate precious resources for the purpose of long-term (economic) development was as much a part of building trust as it was a part of sustaining the reconstruction efforts.

Once a single leading agency with a sense of urgency is organised, speed and pragmatism in decision-making are essential elements of the success in reconstruction. Any strategy designed must be flexible to cater to the changing environment. BRR's management model exemplified flexibility in coordinating the large number of players, responding to the needs of the people and engaging them in reconstruction to ensure sustainable development.

The large number of players responding to the large scale of destruction presented a management challenge. Swift delivery was needed in multiple sectors and multiple areas to meet the basic needs. With the government having encouraged an open-door policy, and on the basis that it was better to deliver results quickly than make disaster victims wait for the perfect implementation plan, BRR's initial strategy was to facilitate a 'free-market' approach. This decision provided non-government organisations (NGOs), whose largely private funding could be disbursed faster than funds from government donors, relative freedom to immediately respond to urgent needs in the field.

There are dynamic trade offs between speed and quality of delivery. The management model for recovery must be continually re-assessed. While effective in bringing results quickly, this free-market approach was subject to an uneven resourcing of reconstruction activities and overlaps. The flexibility on the part of donors to implement their own works, combined with a proliferation of funding, resulted in some organisations even moving beyond their conventional expertise which ultimately brought about the uneven resourcing of reconstruction activities. Aid delivery should serve the agenda of the national authority. In response to the reconstruction gaps and overlaps that emerged with a free-market approach, predictably affected by imperfection in the supply-demand equation, BRR adopted a more guided-market approach where it intervened and facilitated partners in the procurement and transportation of reconstruction materials, and began to navigate

them to work in under-funded sectors and regions. The guided-market model alone, however, was limited in its ability to address sustainability and long-term strategies and to resolve the issues on the ground.

These limitations of the guided-market model were largely anticipated by BRR and once the agency had strengthened its own internal capacity it moved away from a purely centralised project-based approach towards a decentralised region-based approach for a more effective portfolio management model. This move, which saw the establishment of six regional offices across Aceh and in Nias in the first-half of 2006, provided a more comprehensive and strategic approach to coordinating the recovery. It brought the recovery to the people, engaging local communities, their local leaders and civil servants and other agencies already in the area.

The government promised that it would “build back better”, and saw an opportunity in Aceh and Nias to hasten the nation’s reform programs through sustainable development. The engagement of communities and local government in the recovery program was an important component from the outset because the recovery program should not be implemented for communities but with communities as they were the owners and end-users of the output. The decision to engage communities in village planning was instrumental in re-enforcing social networks by bringing communities together to decide on land ownership issues and village boundaries. It also provided an expedient way to move village reconstruction forward.

At all these levels of community participation, the regional model was extremely effective in providing better channels of communication and avenues of interaction between stakeholders at each level. For the short term, this meant an improvement in reconstruction delivery and, in the long-term, an enhanced community and institutional capacity to sustain the recovery efforts and further develop the regions. The decentralisation of operations enhanced BRR’s capacity not only to address program sustainability through community participation, but also to identify areas where long-term sustainable (economic) development could be weaved into reconstruction to leverage the best possible outcome of the recovery.

Given the dynamics of the situation, BRR had to act decisively. While having a clear vision for recovery, the agency instilled a flexible management model with the courage to change course when the results were poor. The gradual shifts in the management models adopted by BRR were indicative of the dynamics facing a recovery program on such an unchartered scale. A free-market approach at the outset to initiate activity and meet urgent needs; a guided-market model to ensure all affected sectors and regions were addressed equally; a decentralised model to bring the recovery to the people, support its sustainability, and better identify the changing needs of the beneficiaries; and portfolio management to leverage resources and deliver the best possible outcome of the recovery. These were important management models that were cultivated during the recovery program. While they provided broad solutions to the coordination of the massive task at hand, there were

other support management practices required to ensure the overall effectiveness of these models.

It ensured that the resources provided for the recovery were directed transparently towards their intended beneficiaries. In turn, this provided donors, their governments and their communities with the confidence and knowledge necessary to ensure their continued commitment of their pledges and support for the recovery.

The rehabilitation and reconstruction program in Aceh and Nias was far from business as usual, and the government's open and cooperative approach to the tragedy was as unprecedented as it was effective. It enabled the government to draw on all available national and international resources and design a management model that best matched the circumstances. In turn, this provided BRR with the flexibility to approach the recovery program in a result-orientated manner. The management models described in this paper were not planned or based on a standard. Rather they were the result of continually measuring the output against the changing needs of the beneficiaries, and where there was a mismatch the model was adjusted to compensate.

The government achieved its goal to "build back better" through this capacity to respond effectively to the urgency of the situation. It was done by taking ownership, listening and searching for a solution when a problem emerged, and through its ability to adapt to the often unpredictable demands of an unprecedented disaster.

DISASTER MANAGEMENT IN ASIA: WHERE ARE WE NOW?

Hye Young (Hailey) Kim

Asia, the most disaster prone continent

Just between late September and mid-October 2009, Asia again witnessed numerous major disasters, threatening hard-won decades of development gains. Typhoon Ketsana struck the Philippines and left nearly 1,000 people dead and resulted in about US\$ 700 million in damage with many roads and bridges destroyed and buildings submerged, particularly around Manila. The Samoan tsunami caused by a strong earthquake also left about 160 people dead. Two massive earthquakes that hit the Indonesian island of Sumatra killed more than 1,000 people and approximately 1,250,000 people have been affected through the total or partial loss of their homes and livelihoods.

Asia is susceptible to a large variety of natural hazards¹ such as floods, storms, cyclones, landslides and earthquakes. One study clearly shows that Asia is the most affected continent in terms of the number of disaster-related deaths. More than 80 percent of the reported victims of natural disasters in 2008 are from Asia, whereas 40 percent of all reported natural disasters occurred in the region.² The UN's Global Assessment Report on Disaster Risk Reduction 2009 also finds that the top ten countries with the highest number of people exposed to flooding are all in Asia.³

Link between disaster and development

As the figures shown above demonstrate, socio-economic impacts of natural disasters are huge, especially on various sectors of development like agriculture, health, education, infrastructure and housing to name a few. The problem, however, is that only immediate impacts caused by natural disasters are calculated without considering the long-term developmental set-backs such as: diversion of manpower and scarce resources to rehabilitation, reconstruction, postponement or cancellation of development programs and undermining of incentives for development. The Asian region has seen its economic and social development significantly stalled or even reversed by disasters. Across the region, people have lost their assets, their livelihoods, and their lives in types of disaster that are likely to become more

¹ Natural hazard is a phenomenon which may cause loss of life, injury or other health impacts, property damage, loss of livelihoods and services, social and economic disruption, or environmental damage. biological – epidemic and insect infestation, climatological – drought, extreme temperature and wildfire, geophysical – earthquake, mass movement dry, volcano, and tsunami, hydrological – flood and mass movement wet, and meteorological – wind and storm.

² Center for Research on the Epidemiology of Disasters (CRED). 2009. Annual Disaster Statistical Review: The Numbers and Trends 2008. Brussels (Belgium), May.

³ UN. 2009. Global Assessment Report on Disaster Risk Reduction, May.

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frequent and severe as a result of climate change.⁴ To tackle this global challenge, 168 UN member countries gathered at the World Conference on Disaster Reduction in Kobe, Japan in January 2005 and adopted a 10 year plan called “the Hyogo Framework for Action (HFA)”.⁵ The HFA aims to achieve a substantial reduction of disaster losses by 2015 in lives and the social, economic and environmental assets of communities and countries. The Framework offers guiding principles and priorities for action and practical means for achieving disaster resilience for vulnerable communities.

Regional development in disaster risk reduction

Several regional and sub-regional organisations and mechanisms have been put in place and have been functioning in regional disaster management.

First, regular Asian Ministerial Conferences on Disaster Risk Reduction (AMCDRR) have been organised to harness political commitment for the implementation of the HFA priorities since 2005. Following the first Ministerial Conference held in Beijing, China in September 2005, the second Asian Ministerial Conference on Disaster Risk Reduction (DRR) in New Delhi in November 2007 reaffirmed the regional commitment to the HFA through the “Delhi Declaration” while highlighting a number of areas of specific concern to the risk reduction agenda in the region. These included mainstreaming DRR, early warning and preparedness, climate change, integration of DRR into recovery and reconstruction, the importance of public-private partnerships and regional mechanisms to enhance cooperation. The third Ministerial Conference held in Kuala Lumpur, Malaysia from 2 to 4 December 2008 promoted further action in applying advanced technology and science for DRR, empowering local governments and civil society, mobilizing resources, engaging the media and strengthening public awareness and education. Next AMCDRR will be held in Incheon, Republic of Korea between 25 and 28 October 2010 with the main theme of “Disaster Risk Reduction through Climate Change Adaptation”.

Second, established by Asian Disaster Preparedness Center in 2000, the Regional Consultative Committee (RCC) on Disaster Management provides an informal consultative mechanism for development of action strategies for disaster reduction in the region and promotion of cooperative programs on a regional and sub-regional basis. RCC comprises 30 members from 26 Asian countries⁶ that are working in key government positions in the National Disaster Management systems of countries in the Asian region.

⁴Statistical yearbook for Asia and the Pacific 2008.

⁵HFA prioritise in five areas: Ensure that disaster risk reduction is a national and a local priority with a strong institutional basis for implementation; identify, assess and monitor disaster risks and enhance early warning; use knowledge, innovation and education to build a culture of safety and resilience at all levels; reduce the underlying risk factors; strengthen disaster preparedness for effective response at all levels.

⁶ Countries include Afghanistan, Bangladesh, Bhutan, Brunei, Cambodia, China, Georgia, India, Indonesia, Iran, Jordan, Kazakhstan, Republic of Korea, Lao PDR, Malaysia, Maldives, Mongolia, Myanmar, Nepal, Pakistan, Papua New Guinea, Philippines, Sri Lanka, Thailand, Timor Leste and Vietnam.

Third, the Association of Southeast Asian Nations (ASEAN) has been involved in disaster management since its inception in 1967. Yet the significant focus on disaster management started at the establishment of the ASEAN Committee on Disaster Management in early 2003 followed by the adoption of the ASEAN Regional Program on Disaster Management 2004-2010. Recently, ASEAN also reached another milestone in terms of regional cooperation on disaster management with the ASEAN Agreement on Disaster Management and Emergency Response, which is expected to enter into force by the end of 2009.

Fourth, since 1995 South Asian Association for Regional Cooperation (SAARC) has been involved in DRR with the establishment of a Meteorological Research Centre. Its involvement in DRR, however, markedly intensified after the Indian Ocean Tsunami in 2004. In quick steps, a regional framework on disaster management was developed in 2006 followed by the inauguration of SAARC Disaster Management Centre in Delhi the same year. The Centre provides policy advice and facilitates capacity building services for effective disaster risk reduction and for the planning and coordination of a rapid regional disaster response mechanism.

Despite all these efforts made throughout the region on DRR, several challenges still exist. One of the big challenges in dealing with disaster management in Asia is rapid urbanisation of the region. Asia has witnessed the fastest growing urban population for the last two to three decades with a combination of economic and environmental pressures. A majority of Asia's urban growth will be in seven developing countries: Bangladesh, China, India, Indonesia, Pakistan, Philippines and Vietnam.⁷ The important fact is that most major cities in Asia are located in hazard-prone areas such as river deltas, coastal zones and seismically active zones, which in turn increase urban risk in the region. For instance, ranked as the most vulnerable city in Asia, Dhaka, Bangladesh sits just meters above current sea levels and suffers from regular impacts of tropical cyclones and flooding.⁸ In addition, the urban risk in Asia is configured by a variety of factors such as poor infrastructure, erratic water and electricity supply and deficient sanitation and drainage.

The region also faces growing climate change threats which will magnify the severity, frequency, distribution and unpredictability of weather-related and climatic hazards. At the same time, it erodes the resilience of poorer countries and communities through decreased agricultural production, increased water and energy stress, greater prevalence of disease vectors, and other effects. More importantly, climate change is widening the gap among countries that have coping capacity and those that do not have it or have a weak capacity, and thereby increasing the potential disaster impacts as well as overall development setbacks.

Another challenge in disaster management in Asian region is somewhat fundamental – moving away from 'disaster response' to 'risk reduction'. Since the

⁷ ADB. 2003. Urban Report.

⁸ WWF. 2009. Mega-Stress for Mega-Cities: A Climate Vulnerability Ranking of Major Coastal Cities in Asia.

extent of the shift from response to risk reduction depends largely on each country's governance capacity, socio-economic parameters and cultural behavior, the current situation varies country by country.

Future priorities for disaster risk reduction in Asia

First, it is important to incorporate disaster risk reduction in long-term development plans. Only through effectively integrating disaster risk considerations into sustainable development policies, planning and programming at all levels with a special emphasis on disaster prevention mitigation, preparedness and vulnerability reduction, can the shift from disaster response to preparedness be achieved. Second, multi-hazard approach is needed. The application of multi-hazard risk assessments in policies and development planning from comprehensive to sector-specific will allow better coordinated disaster management. Last but not least, community-based disaster preparedness should be more strongly emphasised. In many countries national efforts to date have focused upon the strengthening of national-level capacities. In fact, community action for disaster risk management is a crucial element in promoting a "culture of prevention" and creating safer communities since communities are at the frontline of disasters.

DISASTER MANAGEMENT: LESSONS FROM KETSANA AND PHILIPPINES

Antonio Meloto

Calamities often aggravate poverty and count the poor as the first victims. Sometimes they can be social levelers and opportunities for people to discover hidden strengths in their moment of weakness, find answers to age-old problems within themselves after searching elsewhere or blaming others.

What happened to us recently was our road to Damascus experience.

The worst calamity in the last half century hit the Philippines in September last year. Typhoon *Ketsana*, named *Ondoy* locally, dumped more rain on Metro Manila than hurricane *Katrina* that devastated New Orleans. Within a week, another super typhoon with killer floods hit us in the northern part of the country. Despite vast destruction to life and property, and unlike any other tragedy that had before neared such magnitude, our people were back on their feet again in a short time. No looting, no shooting, no prolonged depression despite the dire prediction that floodwaters will take three months to recede in some areas. Our people got back to the business of living, hard as it was.

We rose from the mud, buried our dead, cleaned up the debris, rebuilt our communities and resolved to cease being perennial victims to natural and man-made disasters.

We did not wait for Bill Gates or Oprah Winfrey to unleash global aid as they did for the tsunami victims and the hungry in Africa. I'm sure they would have done so with their generous spirit if our needs were a priority to them given the numerous causes begging for their attention. Not out of false pride but due to extreme urgency, we decided to help ourselves and discovered that we were not helpless as a nation after all. It seemed as if the self-reliant Filipino woke up from a coma; the hero in us came out of the closet.

That calamity, tragic as it was, gave us a sense of dignity and wholeness because we chose to act rather than beg and wait for mercy. Global philanthropy came later as icing on the cake of human kindness, after we acted as our brother's keeper in a country whose dominant religion places the highest value on love of neighbor next to God.

While generosity abounds, we may see it finally as a bridge to long-term solutions, not as a means to perpetuate present problems.

Mr. Antonio Meloto is the founding leader of Gawad Kalinga, a global movement which originated in the Philippines that attracts partnership among various sectors, including poor communities, local and international governments, the academe, business and civic organizations, and global philanthropy.

Our government agencies were overwhelmed by the immensity of the challenge, but ordinary citizens chose not to indulge in the blame game and instead engaged in acts of heroism, big and small, unseen before on a massive scale. Some lost their lives rescuing others unknown to them, exclusive villages for the rich were opened to poor evacuees, plush homes were converted into kitchens to feed the hungry, supermarket shelves were emptied in a mad rush for supplies, not to hoard for self but to help those in greater need.

The mood was not survival of the fittest, but rising together through caring and sharing. A time of doom and gloom became our shining moment. We had it in us to help ourselves all along.

Making the weak strong

This is how we built Gawad Kalinga (GK), a development movement with an Asian heart. It recognises the tremendous capacity of even the poorest slum-dwellers for self-reliance, and the infinite potential of those who control wealth and power to give and to understand that investing in making the weak strong is good politics and good economics.

The value of building intentional communities the GK way became clearer to business partners in the last two calamities. They made us the channel for their contribution to relief operations using our sites as effective distribution centers to surrounding devastated areas, which had suffered minimal damage and no casualties due to the typhoon. SingTel, through local partner Globe Telecom, gave a generous contribution to the relief effort, though their GK villages and farms were hardly affected. The community we built with Ascendas and local partner Carmelray in Laguna was spared from severe damage, their residents providing help to others rather than asking for it themselves. We credit this to the design of the homes, the alert neighborhood and the strong community spirit of not leaving any one behind.

Other groups in Singapore were quick to help. The Catholic Church of Singapore, CapitaLand Hope Foundation, and students from partner universities gave substantial donations and the efforts to help continue to this day.

Three things attract corporate partners to our work. We bridge, leverage and build – homes, lives and hope. We pursue scale and sustainability through a holistic and collaborative approach to a community-based development.

As a bridge, we connect those troubled by poverty with hearts that have the means to ease their pain. Our goals of land for the landless, home for the homeless, and food for the hungry did not only benefit the poor but created societal harmony, triggered economic activities, and increased land values for the good of many stakeholders. Media that described our cause as “radical optimism” created public awareness and opened the floodgates of land and home donations never seen in our country before.

Leveraging is our way of multiplying scant resources to give the most benefit to the neediest. A dollar of donation for house materials triggers added value of as much as three dollars from other partners including the poor who contribute sweat equity in the absence of a regular income. We place value on the dignity of the poor and recognise their willingness to build homes other than their own. We attract the expertise and resources of those with the most for the benefit of the least in society.- the best for the least.

Build, and they will come – it is not just a line from a Kevin Costner movie but a philosophy that has worked for us. Shelter for cover, farms for food and schools for enlightenment built with active community participation are evidence of presence that change lives, generate trust and gather sustained support.

We have slums to rebuild, forest covers to restore, unproductive land to till, children to educate, habits to change, and right now, floodwaters to tread but we will get there, somehow, if we start to believe that we can do it, together. If Singapore did it, we can do it too.

This is for me Asia coming of age, underdeveloped countries like the Philippines rising from mindsets of helpless slaves from a colonial past, no longer accepting that we are inferior, defining our own destiny based on our dreams and aspirations. We must see western countries as friends and partners, no longer as masters and almsgivers.

We have established GK Hope Initiative (GKHi) in Singapore registered under the Economic Development Board (EDB) to share our growth experiences with other developing countries in the region and to learn from them as well. We look forward to bringing the concept to India in 2010 in partnership with Tripura Foundation brokered by GKHi. It will be a village built with residents along their cultural and religious lines with support from successful Indians and their friends from the global community.

This is a classic case of Asians helping Asians in our corner of the world. We will visit each other's homes, trade our goods, drive poverty out of our doors and attain peace within our borders by being family and friend to one another.

If Bill Gates comes, we will applaud him for his generosity as we admire Oprah for using the power of media to make this a better world.

As we wade through our floodwaters, I have faith that in time we will learn to take stewardship of our fabulous Pearl of the Orient called the Philippines by wiping the mud of poverty that covers the true gem inside the hearts of our people.

THE THAI MILITARY: A POLITICAL ROLE

Johan Kharabi

In 2006, the Thai military stepped onto the political stage for the first time in 15 years. Its re-emergence as a political actor came in light of what, since 1992, had appeared to be a consolidated, democratically elected government. The military did so at the behest of Thailand's various elite factions – the urban middle and upper-class, military royalists, and the Monarchy – which felt threatened by Thaksin's: (1) economic initiatives, (2) confrontational and authoritarian approach, and (3) deeply personalised populist rule. In pursuing these antagonistic policies, Thaksin posed serious challenges to the interests of Thailand's well-entrenched elite. This article will explore the roots of the Thai military's political activism, the forces that were mobilized by Thaksin's controversial policies, and the means with which these various forces utilized the military to oust a government that was perceived as a threat.

Introduction

The coup on 19 September 2006 against the Government of Thaksin Shinawatra brought the Thai military onto the political stage for the first time in 15 years. Its re-emergence as a political actor came in light of what, since 1992, had appeared to be a consolidated, democratically elected government. Such a development raises interesting questions: why did the military again emerge as a political actor, and what were the motivating forces behind such a development? It will be argued that the military did so at the urging of elite factions – the urban middle and upper-class, military royalists, and the Monarchy – who felt threatened by the Thaksin Government.

In examining this issue, emphasis will be placed on the three factors that motivated various groups to pressurise the military into overt political involvement. It is argued here that many of the incentives to do so were generated by Thaksin's (1) economic initiatives, (2) confrontational and authoritarian approach, and (3) deeply personalised populist rule. In pursuing these antagonistic policies, the Prime Minister posed serious challenges to the interests of Thailand's well-entrenched elite.

The paper will examine the set of conditions that allowed for disaffected groups to utilise the military as a defence mechanism. These include the influence of royalist military officials – especially General Prem Tinsulanonda, who was able to employ strong associations among the military top brass to mobilise a coup – and mass protests organised by media tycoon Sondhi Limthongkul, which generated a crisis that appealed to the military's celebrated self-image as protector of democracy.

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The argument that the military was its own force behind the coup, likely vying for economic and political gain, will also be discussed. In fact, the military had little to gain from overt political involvement – a position that it has come to see as widely counterproductive. The military certainly reaped the benefits of direct political control in 2006 through lucrative positions in state enterprises, enhanced control over military post assignments, and an expansion of the military budget. However, such benefits were hardly motivating factors in themselves. Rather, as will be demonstrated, the advantages of overt military politicisation were outweighed by the presence of two major factors: a deeply-cultivated disapproval of military rule among an empowered civil society, and the presence of mechanisms, including business dealings, illicit activities and security threats, that provided feasible avenues for enhanced military power in the absence of direct political involvement.

Finally, the current crisis and the future of military political involvement in Thailand will be discussed. It will be posited that, in the presence of elected governments that dare not play a subordinate role to entrenched elites, and a population that places little value on the democratic process, the military is likely to serve as a prominent political actor for an undetermined future. The military cannot be sent back to the barracks as long as it can be wielded as a tool for government subversion.

The military's role

Political involvement

What does it mean to say that the military has taken on a 'political role'? Samuel Huntington (1957, 80) measures the military's political involvement against its degree of professionalism, which is reflected in part by the degree of civilian government control over the apparatus. Accordingly, we can assume 'political role' to imply *overt* political participation by the military (and consequently a proportionate lack of Huntington's professionalism and civilian oversight) through direct control over a country's governing bodies. In light of Thailand's 18 coups since 1932, subordination of the military to civilian control can be understood as a historical rarity:

Political supremacy of the military has been an outstanding feature in the modern Thai political system since 1932. An absence of strong participatory political institutions and a lack of legitimacy on the part of civilian regimes enable the politicised military to seize power and establish an authoritarian regime without much difficulty. (Samudavanija and Bunbongkarn 1986, 114)

While it has become increasingly professional over time, the Thai military has more than often acted as a formidable political force. Beginning in the late 1930s the military was politically supreme under Phibun Songkrahm. Throughout the 1950s and 1960s the military became a decisive factor in the political system under Marshall Sarit. (Bamrungsuk 2002) Although civilian rule survived from 1973 to 1976, from 1977 onward Thailand experienced strong military leadership,

particularly throughout the 1980s when the apparatus maintained a grip on politics under General Prem. The popular uprising of 1992 led to a decline in overt military political participation until the events of 2006.

History and ideology

That the military feels quite comfortable with direct political involvement stems from an institutional ideology with which it designates itself as a protector of the society, “interfering only when necessary and restoring democratic forms when possible”. (Ockey 2001, 93) The stance first became apparent during the 1932 coup, which overthrew the country’s absolute Monarchy with the expressed aim of establishing democracy, and then again through later coups that voiced similar justifications for political involvement. In 1991, for instance, the coup was justified to “clean up the political system, remove the corrupt politicians, and then return to a purified democracy”. (Ockey 2001, 206)

Military ideology has changed over time to reflect political realities, as is evident by the expressed desire among top leaders to distance themselves from politics. In the months leading up to the 2006 coup, coup leader General Sonthi Boonyaratglin continued to publicly insist that the military would not interfere in politics. (Thai News Service 2006) The subsequent coup, of course, attests to the extent to which the military’s ideology has remained largely intact. Intervention was necessary; it was reasoned, to save Thailand from an authoritarian Prime Minister who threatened both democracy and Monarchy. (Pathmanand 2008)

Thaksin’s policies and the disaffected

Support for military intervention was largely driven by Thaksin’s mode of governance, which has its roots in a noticeably anti-democratic mindset. He was, for instance, known to strongly admire the “combative stance” of Mahathir bin Mohamad, Malaysia’s semi-authoritarian leader. (Shari 2003) He even occasionally likened himself to Marshall Sarit, who had overseen a very similar process of state-led development and a comparable hard-line approach to law and order in Thailand. (Phongpaichit and Baker 2008) Believing that a powerful executive was the solution to Thailand’s problems, Thaksin once declared democracy to be the means to an end, but not the end itself. (Shari 2003)

Thaksin’s philosophy towards governing fit well within the political structure put in place by the country’s 1997 Constitution, which in attempting to curb systems of patronage among provincial politicians had centralised power in the Executive. Until 1997, Thai politics had been characterised by widespread vote buying, particularly in the countryside where local officials came to power via traditional rural-based patronage systems – a phenomenon less common throughout the country’s better educated, middle-class cities. The 1997 Constitution was intended to eliminate corruption, forcing MPs to declare their assets before and after entering office and creating an anti-corruption commission to ensure checks and balances via extensive monitoring of government officials. (Elmore 2007, and Richburg 1997) Most importantly, the document vested greater power in the hands of *elected* officials; one

provision, for example, mandated elections for “village administrators” or *phuyai baan*, individuals who had long-wielded tremendous political influence throughout rural Thailand. (Deutsche Presse-Agentur 1997)

Despite well-meaning intentions, says Erik Kuhonta (2008, 374), the 1997 Constitution provided a solid foundation for Thaksin’s eventual “stranglehold on power” under his strange breed of electoral authoritarianism. By strengthening large political parties¹, the Constitution would gradually help Thai Rak Thai (TRT) achieve near domination. The Senate, while originally designed to be politically independent², quickly became a tool for TRT policies, allowing Thaksin to control the legislative body and the independent watchdog agencies operating under its authority. Throughout Thaksin’s reign, important government watchdogs such as the National Counter Corruption Commission and the Auditor-General’s Office were increasingly infiltrated by officials close to the TRT-led government. (The Nation 2005)

These structural conditions allowed for TRT and Thaksin to “dominate the polity and emasculate the opposition”. (Kuhonta 2008, 376) Besides raising ethical concerns over the Prime Minister’s ever more unbridled abuse of power, Thaksin’s authoritarian actions posed a serious threat to the material interests of the urban elite and the palace via three main policy directions: (1) the restructuring of the Thai economy to benefit big capital and further his own business interests; (2) the adoption of a strict authoritarian stance against critics and opponents; and (3) the implementation of a distinctly populist scheme aimed at rallying rural support and engendering party loyalty. As will be demonstrated, these policies provoked powerful elite groups, prompting them to support military intervention in 2006.

Economic restructuring and power

Thailand’s 1997 financial crisis produced widespread disillusionment among the members of the country’s domestic business class towards the neo-liberal policies of the ruling Democratic Party. This eventually led to a landslide victory for TRT in 2001. The outcome was largely the result of Thaksin’s successful use of nationalist rhetoric throughout the election, during which he promised to free the country from the grips of ruinous debt and to keep privatised businesses in Thai hands. Once in office, however, he adopted a very different economic policy, often described as “post neo-liberal capitalist restructuring”, which kept earlier neo-liberal arrangements largely intact and, unsurprisingly, incited fierce opposition among the members of the urbanised middle-class. (Pye and Schaffar 2008, 40)

Policies of market liberalisation, such as the privatisation of state enterprises, most notably the attempted privatisation of Electricity Generating Authority of Thailand (EGAT) in 2004, angered many public enterprise workers who believed that they

¹ The Constitution had essentially cut down the number of political parties to three.

² The 1997 Constitution had transformed it from a body appointed by the Prime Minister to one that was elected but non-partisan.

were to be next in line for privatisation. (Macan-Markar 2006) Thaksin's 2006 tax-free sale of Shin Corp, the country's flagship company that operated the country's satellite communications, to Singapore's Temasek Holdings sparked major protests among the middle-class in 2006. On one occasion protests drew some 50,000 participants. (Pye and Schaffar 2008) The Shin Corp deal ultimately provided the impetus for the formation of the opposition - People's Alliance for Democracy (PAD), a clear indication of the resentment among urban Thais over Thaksin's divisive economic policies. (Ockey 2007)

It is no wonder that, after the October 2006 coup, economic legislation under the subsequent military junta was largely nationalist and protectionist in nature, aimed directly at limiting the power of foreign investors and businesses. The military-led cabinet pushed plans forward to decrease holdings by foreign investors in businesses considered "vital to national security", and in some cases, forced investors to sell holdings of over 50 percent. (Fuller and Arnold 2007) The government also set about redrafting Thailand's Foreign Business Act in order to use voting rights rather than shareholdings as a stricter determinant of a company's foreign ownership. (Kleinman 2007) In pursuing these policies, the military-controlled government was explicitly working to mend nominee shareholder loopholes that, due to lax restrictions of local nominee shareholders, had allowed the web of shell companies under foreign-owned Temasek to initiate the Shin Corp sale. (Holland 2007)

Throughout his premiership, Thaksin had greatly expanded his influence over a large portion of Thailand's business sector, often using his political power to protect his interests as a media tycoon. (Case 2007) From 2001 to 2003, the Shin Corporation Group had grown rapidly, greatly expanding its investments outside of the telecommunications realm, for instance, through acquiring the Thai Air Asia airline and buying iTv, a large private broadcaster. (Pathmanand 2008) It was hardly a secret that Thaksin had manipulated state regulatory agencies to approve the Thai Air Asia deal, granted the company tax breaks, and arranged for reductions in docking fees. Similarly, both iTV and Shin Satellite's iPSTAR were given tax exemptions by the state-run Board of Investment. Other Shinawatra family companies such as Advanced Info Service PCL (AIS), suspiciously released from government revenue-sharing requirements, also benefited from the premier's influence on regulatory agencies.

By 2004, "no single business group possessed Thaksin's economic power and his strong hold over state power". (Pathmanand 2008, 134) This alienated many of Thaksin's fellow businessmen, leading to intense rivalries among these domestic capitalist elites. (Studwell 2007) Important rivals included Prachai Leophairatana of the Thai Petrochemical Industry group (TPI), the country's largest petroleum and chemicals firm; Charoen Sirivadhanabhakdi of the Thai Beverage Company; and Sondhi Limthongkul, owner of the Manager Media conglomerate. In lieu of TPI's serious debt problems, the Thaksin Government had prevented a Chinese state enterprise from bailing the company out. As a result, creditors were allowed to gain

control of TPI and release Prachai as an executive, prompting TPI to advertise in newspapers making public its opposition to Thaksin. Secondly, in 2005 the Thaksin Government prevented the stock exchange listing of Charoen Sirivadhanabhakdi's Thai Beverage Company, resulting for it a lost opportunity of 300 million Baht (approximately US\$ 7.6 million) in market capitalisation. (Pathmanand 2008) It was not long before Charoen himself led massive public protests. Finally and perhaps most significantly, after one of his talk shows was taken off state television in 2005, Sondhi Limthongkul began leading large weekly protests against the Thaksin Government in a central Bangkok park. (Peck 2005)

In short, by 2006 Thaksin had succeeded in fomenting resentment among a powerful elite opposition comprising dissatisfied business groups who felt their share of political patronage slipping between their fingers. (Pye and Schaffar 2008)

Authoritarian rule and the elimination of opposition

Thaksin's neutering of disagreeable independent agencies, libel lawsuits against journalists, and the eradication of smaller political parties has been exhaustively reported. To be more specific, the TRT-controlled Senate was widely acknowledged to have appointed individuals with close ties to the party, to important positions in the Constitution Court, the Election Commission, and the National Counter-Corruption Commission. Some attempts at patronage were especially egregious. In 2003, General Chaisuek Ketudhat, the Prime Minister's own advisor, was in the running to be an anti-corruption commissioner. Two years later, a former Deputy Permanent Secretary for Finance was up for appointment as head of the Office of Auditor-General. (The Nation 2005)

The media, too, was not out of TRT's reach. It was public knowledge that the Anti-Money Laundering Office, chaired by Thaksin, had been leading an investigation into the bank accounts of journalists and activists who had been critical of the government. (Phongpaichit and Baker 2002) In 2006, months before the coup, Thaksin had filed an 800 million baht (US\$ 28 million) defamation suit against the opposition Democrat Party and three newspapers, alleging that they were "misleading" the public about policies under the TRT-led government. (Levett 2006) Television-star turned whistle-blower, Senator Chirmsak Pinthong, who had testified in court against Thaksin during his early legal battles as Prime Minister, saw his television programs pulled as a result of government pressure. (Sapsomboon and Lim 2001)

Political parties were gradually neutered through acquisition by TRT. By 2003, the prominent New Aspiration and Seritham opposition parties had already been absorbed into Thaksin's powerful party. (The Nation 2003a)

Incidents like these strengthened the support for the opposition among "politicians, academics, journalists, and middle-class Bangkokians," which then led to massive urban protests. (Ockey 2007, 133) While these public protests provided ample fuel

for dissent, the following examination will focus specifically on the extension of Thaksin's "controlling tentacles over the military" (Pongsudhivak 2003, 277), his strategic military reshuffling, which arguably played the largest role in stirring opposition among royalists and senior military officials.

Controlling the military

The Thaksin government used the annual military reshuffle as a means of promoting military allies to key positions and marginalizing those seen as problematic. The reshuffle, according to Duncan McCargo and Ukrist Pathmanand (2005, 122), constituted a "dangerous process of military politicisation" that reversed the very gradual political extrication process that was initiated in 1992. Thaksin's increased involvement posed a direct challenge to entrenched military officials, particularly military royalists close to the palace such as General Prem, who played an important role in approving the reshuffle. Since stepping down as Prime Minister in 1988 and becoming President of the King's Privy Counsel, Prem had enjoyed great influence throughout the military and sizeable Thai bureaucracy, strategically working between the palace and military to further royalist influence. In his attempt to create his own network via the appointment of close allies to key military posts, Thaksin presented a direct challenge to Prem's well-established influence within the military. The rivalry between the two came to light in 2005 when, increasingly bogged down by protests, Thaksin publicly attributed his struggles to a certain 'charismatic' individual – an obvious reference to Prem. (Ghosh 2006b)

Thaksin had worked diligently to build a support network made up of top military commanders largely drawn from a pool of his former Class 10 Armed Forces classmates and transferring officers who were perceived as being anti-government. (Pathmanand 2008) In August 2002, Thaksin repositioned various top commanders, including General Surayud Chulanont, a strong ally of Prem and with whom Thaksin had a tense relationship. The general was unceremoniously demoted from Army Commander-in-Chief to Supreme Commander without the normal consultation of Prem. (Asia Monitor 2002) In 2003, Thaksin appointed his cousin, General Chaiyasit Shiniwatra, to the post of Army Commander-in-Chief (The Nation 2003b). In 2005, he attempted to further strengthen his position within the military through the transfer of problematic officers, such as General Sonthi³ but failed due to lack of royal endorsement. A number of senior officers issued official complaints alleging government interference in reshuffling processes in July 2006. This was around the time when Thaksin was reported to have held a private meeting with former Class 10 officers, an action that was met with strong suspicion within the Army. (Lee 2006) Several of Thaksin's former classmates were expected to receive promotions in the reshuffling of October 2006. In fact, it was widely speculated that the coming round, which the coup conveniently pre-empted, would remove Sonthi and his supporters once and for all. (Beech 2006)

Thaksin's moves raised alarm among the civil servant network surrounding the

³ The general had previously taken issue with Thaksin's preferential treatment of Class 10 officers. (BBC Monitoring 2006)

King, who was yet to see any benefits from TRT's monopoly over the state. In short, it was nothing less than a direct threat to senior officials in both the military and the palace who reaped the benefits of Prem's patronage network. (McCargo and Pathmanand 2005) Needless to say, following the 2006 coup, the situation was quickly ameliorated: Officers seen as close to Thaksin were placed in inactive posts, some at Army headquarters, and Commanders seen as instrumental in the coup were promoted to honourable positions close to the Army Commander. (BBC Worldwide Monitoring 2006)

Populism

Thaksin's populist stance is reflected in his 2001 three-point electoral platform, which included a 30 Baht (approximately US\$ 0.69) universal health care scheme, easy credit to poor farmers and workers, and micro loans to small businesses through the state-backed Village Development Fund. (Shari 2003) Phongpaichit and Baker (2008, 81) observed that, while benefiting the rural population, these populist policies did much to anger both the urban middle-class and the Monarchy:

Thaksin's populist leadership challenged the Monarchy's claim to be the sole focus of political loyalty. It threatened the ability of key sections of the middle-class to influence politics – businessmen through money, bureaucrats through position and tradition, and media and intellectuals through command of public space. It promised to replace Thailand's plural, managed democracy with something akin to a personalised one-party regime.

The middle-class felt threatened by the increased political mobilisation of Thailand's poorer, less educated populace, who as a result of Thaksin's populist policies had begun to view their interests as tied to the government in Bangkok, and were electing officials accordingly. Such a fear had been a hallmark of the urban middle-class for some time. The 1997 Constitution had limited lower-class participation in national politics, among other ways to restrict the participation, by requiring that parliamentary candidates have a bachelor's degree. (Ockey 2001) Thaksin, however, had succeeded at uniting rural populations in the North and Northeast under his party. Because these groups were mobilized to vote for Thaksin, he was less accountable to traditional Bangkok interests for their electoral support. Urban elite anger towards Thaksin was largely based on a fear of losing their position to influence national politics, although such anxiety was more than often guised as a reluctance to "pay for [Thaksin's] redistributive schemes". (Phongpaichit and Baker 2008, 78)

Upon pushing Thaksin from power, the military-led government consciously set about curtailing political participation via structural changes that worked to reverse many of the democratic openings created by the 1997 Constitution. In August 2007, the country approved a junta-proposed Constitution that effectively reduced the power of political parties and strengthened the hand of unelected bureaucrats. In its most recognizable attempts to minimise the power of elected officials, the

Constitution allowed a seven person committee comprising mostly judges, to appoint almost half of the Senate. (Kate 2007) The new Constitution cut the number of seats in the House of Representatives by four percent and the Senate by 25 percent. (The Australian 2007)

A threat to the monarchy

Above all, Thaksin's populist style seriously threatened the King, whose authority over the state has long relied heavily on the successful projection of his paternalistic role. Such a role had emerged in the 1950s and grown exponentially throughout the days of Sarit Thanarat, when the King led royal development projects aimed at relieving poverty in the rural highlands. The work expanded well into the 1970s and has remained etched into the country's memory since.

A look at the degree to which the Government was reduced to first person singular in Thaksin's speeches, when the words "Government" and "I" were used quite interchangeably show how his approach to governance threatened the Monarchy's primary source of legitimacy. Thaksin's many campaign tours to the North provide further examples. He was once reported to have offered students notebook computers, alleging that he would "buy one...out of my own pocket". Other tours were characterised as "mobile cabinet meetings" where local citizens and officials could personally present petitions to Thaksin. On many occasions, the Prime Minister handed out rural land deeds or agreed to fund community projects on the spot. (Phongpaichit and Baker 2008, 67)

These events engendered massive rural support to Thaksin's personal approach towards fixing poverty - an approach historically reserved for the King. Kasian Tejapira (2008) concurs that a major source of Monarchy resentment towards the Thaksin Government was the threat it posed to the successful "liberal-communitarian project" long held under royal hegemony.

The urban elite and the monarchy: Mobilizing the military

A profile of the opposition

To see how the military was gradually persuaded to lead a coup, it is important to understand the main groups making up the opposition. Pathmanand (2008, 130) provides an extensive list: "academics, social activists, politicians, business figures, aristocrats, the middle-class, the media, Buddhist monks, Privy Council members and military leaders". Oliver Pye and Wolfram Schaffer (2008, 39) define the People's Alliance for Democracy (PAD) as a "coalition between heterogeneous powers; elite factions; grassroots organisations; social movements and NGOs". Such groups included Thailand's largest grassroots network, the *Assembly of the Poor*; the *Business Network for Society and the Environment*; the *Network of Artists for Democracy*; the *Centre for Popular Media Reform*; and the *Student Federation of Thailand*. (Ghosh 2006a) These organisations were united mainly by their dislike for the Prime Minister and opposed him for a variety of reasons. The *Business Network*, for instance, took issue specifically with Thaksin's sale of Shin Corp. The *Assembly of the Poor* had been in a

longstanding dispute with state agencies over compensation yet to be paid to rural populations displaced by government infrastructure projects. (The Nation 2005) For organisational simplicity in the article, these factions will be grouped under two main categorical units: royalists and urban elite. As the following will demonstrate, each unit of opposition had its own set of tools for mobilizing military intervention.

Royalists

The relationship between the palace and military, forged throughout the Monarchy's historical struggle for power, was an important mechanism with which the Monarchy mobilised the military in 2006. Royal support for military involvement springs from the palace's lingering distaste for elected officials and constitutionalism (Winichakul 2008), preferring instead a "re-design of semi-democracy where bureaucracy is strong, the powers of elected official are limited and, the military plays the role of 'nurturing the government'". (Pathmanand 2008, 139)

Throughout its history, a struggle for power had led the Monarchy to repeatedly join forces with the military for retaining its dominant role. Royalists first began to gain the power they had lost in 1932 under the rule of Pridi and consolidated this power through a partnership with the elite military faction that ousted him during the 1947 coup. (Samudavanija and Bunbongkarn 1986, 81) After another coup in 1951, the Monarchy struggled off and on with various military leaders, most notably Phibun, who had a fairly antagonistic relationship with the military, until the rise of Sarit in 1959. Royalists supported Sarit's rise to power and were thus granted a wide political sphere. (Ockey 2001, 194) The 1960s were characterised by a looming presence of the communist threat, forcing the King to become a stronger ally of the military, which protected him from the threats posed by revolutionary leftist forces.

The 1970s saw the palace nervous about democratic politics and forced to consistently side with right-wing forces, even supporting conservative groups behind the Thammasat University massacre of 1976. The event, during which 46 people were alleged to have died and more than 3,000 were arrested, was sparked by anger among students at the return of former military ruler Thanom Kittikachorn. Protesters deemed communist sympathisers and accused of insulting the Monarchy were viciously attacked by Thai military, police, and an assortment of right-wing paramilitary groups aligned closely with the palace. (Handley 2006)

Throughout the 1980s, the Monarchy had a dependable ally in General Prem, who was extremely accommodating to the palace during his premiership. Since then, the palace had consistently promoted military men such as Prem to the Privy Council, and worked to ensure conservative constitutional arrangements like that of 1992. Thus, while not demanding a return to absolute Monarchy, the royalists certainly worked to create political space for the palace.

Kevin Hewison (2008, 196) explains how, throughout history, palace officials learned "the lesson...that they needed to develop military, bureaucratic and business allies".

This strong relationship, manifested in Prem's influential position as President of the Privy Council and by the post-coup appointment of Privy Counsellor Surayud Chulanon as Prime Minister in 2006, has allowed the military to function as a virtual appendage of the Monarchy. The most important aspect of the military-Monarchy connection, however, lies in Prem's extensive patronage network, which extends from the top brass of the military to large capitalist groupings like Bangkok Bank and Imperial Hotel, and helped him to single-handedly serve palace interests. (McCargo and Pathmanand 2005)

The scene on 19 September 2006, of military officials donning yellow ribbons (the Monarchy's celebrated colour) on their sleeves and weapons can be understood in two ways. The first would be to view the display as military propaganda – a means with which the apparatus manipulated the King's nationally held reverence as a tool to legitimise itself. Alternatively, it can be seen as evidence of a co-dependence existing between military and Monarchy – a deep connection, steeped in history that grants the palace the power to influence political outcomes.

The urban elite

While the coup was largely a royalist event, it also depended on the massive popular movement and its use of massive public demonstrations. The upper and middle-class urban movement against Thaksin can be further divided into two groups: middle-class elite interest groups concerned over Thaksin's controversial economic policies and anti-democratic actions; and upper-class capitalist rivals threatened by Thaksin's financial supremacy. In light of the Prime Minister's electoral popularity among the majority rural population, these forces instead relied on mass protest designed to discredit the TRT government and put pressure for military or royal intervention. Mass protests thus created a visible crisis that appealed to the military's self-designated role of selfless guardian.

Arguments against military motivations

Military interests

In viewing the military's political undertaking in the context of pressures exerted upon it, this article maintains that the military had little motivation on its own to become overtly involved in Thailand's political situation. Indeed, the military's primary interest largely lies in maintaining its autonomy and it should be quite content to sit outside the political realm as long as it can do so. Unfortunately, as a virtual appendage of the Monarchy, it is unlikely that the military will not continuously be drawn into political conflicts on the palace's behalf. That being said, adopting a political role is largely counterproductive to the military's own interests for two reasons. First, the presence of a capable civil society makes such action extremely costly. Second, political intervention is greatly deterred by the presence of mechanisms such as state enterprises, illicit activities, and the southern insurgency, which provides the military with adequate means to wield its influence and power without overt political participation.

The power of civil society

The uprisings of 1973 and 1992 greatly disgraced the military and demonstrated the ability of Thai civil society to reject any overt politicisation of the apparatus. Even before the events of May 1992, the military's popularity had taken a sharp dive amongst popular discontent over the leadership's failure to restore democracy as was promised by it. (Samudavanija and Bunbongkorn 1986) The same authors (1986,) affirm that after the 1973 coup the military gradually became politically weaker. This was due, they maintain, to the ability of liberals, student groups, and politicians in limiting military political activism. A target of intense civilian resentment, after 1992 the Thai military emerged "thoroughly discredited in the political arena". (Ockey 2001, 199)

Fuelling the enhanced capacity of civil society are the forces of globalisation. Increased interaction with the international community and the norms that it holds can make military rule highly susceptible to criticism and thus mobilise domestic opposition. As James Ockey (2001, 207) writes, "continuing globalisation...further exposes the role of the military to international scrutiny and serves to limit it". That the military is sensitive to international opinion was evident in September 2006 when, within a week of the coup, Army Chief General Sonthi Boonyaratglin held numerous sessions with the international press at the Royal Thai Army headquarters to reassure them that the junta planned to hand power over to an elected Government (The Nation 2006). Despite this, Thailand still faced the reality of cuts in foreign bilateral aid. Shortly after the coup, the United States announced that it would be "reviewing" Thailand's aid in light of the coup. (Torode 2006) One US congressman explicitly called for Thailand to be stripped of its status as a non-NATO ally. (The Nation 2007)

Finally, the increased demand for technocratic expertise in managing an internationally oriented economy makes popular resistance to military rule highly likely which has a middle-class tied to global capital. Direct rule by the military establishment is increasingly subject to scorn on this account, as was illustrated in the junta's widely recognised managerial failure in the year following the coup in improving the country's economic situation. Further, inept management of the economy can have drastic consequences for a country that relies heavily on foreign investment. In December 2006, a flawed policy to increase foreign capital controls caused the Thai stock market to plummet by 15 percent. (Holland 2007)

The benefits of politicisation

There are ample opportunities for financial gains available to the military that do not necessitate its participation in the political arena. Since 1932, military officials have run many of Thailand's state enterprises, as well as private businesses in banking and finance (for example, Thai Airways International, Thai Military Bank, etc.). These business interests, and the complex patronage system they engendered, contributed to military buoyancy throughout the 20th century. (Lopez 2007) Interestingly, despite embarrassment in 1992, the military maintained its benefits well through the 1990s:

The military was active in rural development, in propagating democracy, in disseminating information through its control of radio and television states, and in foreign policy. Both the military institution and its members had extensive business interests, and some were involved in illicit activities. (Ockey 2001, 199)

The attempt to free military-run radio stations had largely failed throughout the 1990s and many state-run enterprises remained in the hands of military officers. Many generals, such as General Dumrongsak Nilkuha from the Electricity Generating Authority of Thailand (EGAT), sat on the board of directors well before the coup. (EGAT Annual Report 2006)

In addition, illicit smuggling activities flourish.⁴ Retired Generals still play rather powerful roles in all political parties, and newly retired Senior Generals are frequently recruited into these parties. Military shareholding, while gradually diluted as the assets have grown in recent years, remains present in the Thai Military Bank (TMB), one of the nation's largest banks. (Leahy 2004)

Finally, the presence of the ongoing Southern insurgency can be said to provide the military with a clear mission – one that justifies large arms purchases and a steady budget. In sum, the non-appearance of the military on the political stage hardly implies a decreased share of power or influence.

The military's motives

It cannot be denied, of course, that a return to politics certainly helped to capture powerful positions for military officers within state-enterprises and allowed the military leadership to gain control over increasing troop levels. These benefits, however, cannot be seen as motivating forces for the coup for three reasons: (1) there was a lack of economic and political ambition among coup leaders; (2) the benefits were hardly widespread enough to act as incentives in themselves; and (3) troop levels were high well before the coup.

Economic and political ambition surely provided the impetus for the 1991 coup, but this case was distinctly different from that of 2006. In 1991, Class 5 military leaders had unambiguous political objectives stemming from fighting with Class 7 over military and political positions and control of military units. Further, Class 5 had strong connections with many business leaders, while the coup team was said to lack any clearly stated political ideas, interests, or experience. Observers have noted that there really had been no long-term planning for the expansion of the 2006 coup group's political role. (Pathmanand 2008) The idea is buttressed by Sonthi Boonyaratglin's 2007 comments that officers in the governmental transition team, the

⁴ In 2001, Thai military officials were arrested for alleged arms smuggling to separatists in Aceh. On other occasions, local military units have been implicated in arms smuggling and procurement corruption. (The Nation 2001; Xinhua 2002)

Council for National Security (CNS), lacked the “[kind] of political ambition and money” to become politically involved. (Beech and Horn 2007, 29)

While some military interests were served in the immediate aftermath of the coup, these benefits were limited. After the coup, military leaders were placed in key state enterprises such as the Telephone Organisation of Thailand (TOT), Airports of Thailand, and MCOT. (Lopez 2007) It was reported that “as many as 11 Generals from the Army and two from the Police were appointed as board members of some 13 state agencies”. (Pathmanand 2008, 137) These numbers, however, fail to reflect the fact that Thailand has some 62 state enterprises (Sirithaveeporn 2002), a majority of which saw no military appointments at all. Many state enterprises had placed military generals on their boards of directors well before the 2006 coup, while others have actually seen the departure of military officials since. General Saparang Kalayanamitr, for instance, appointed Chairman of the TOT and Airport Authority following the coup, has since stepped down amidst allegations of corruption.

Finally, that the coup leaders were motivated by the desire to boost troop levels is hardly an adequate explanation of overt political intervention. Despite cuts throughout the mid 1990s, troop levels increased by 11 percent between 1990 and 2003 (Business Monitor International 2008). In fact, the Thai military remained extremely large under Thaksin, standing as the second largest in Southeast Asia. Overt political involvement was made even more unnecessary by the ongoing Southern insurgency and the border conflicts with Cambodia – both of which provide sound reasons for increased levels of military personnel. At the same time, of course, it cannot be denied that the military budget saw a drastic increase under the ruling junta. The 2007 budget set aside over 110 billion baht (approximately US\$ 3 billion) for the Defence Ministry, a nearly 30 percent year-on-year increase. (The Nation 2006) As a percentage of GDP, however, this signified an increase of merely 0.1 to 1.3 percent which was a return to its 2003 levels. (SIPRI database)

Conclusion

Much of the progress made towards military de-politicisation in Thailand by the end of the 20th century was dramatically reversed by the 2006 coup and subsequent developments. There is no doubt that civil society has come a long way in Thailand since 1973 and that long-term, overt military rule is widely viewed as entirely unacceptable. At the same time, however, it seems that Bangkok-based, urbanised Thais will sooner support military intervention than accept a democratic system that threatens their interests.

As has been shown, the 1997 Constitution created a state structure that allowed the emergence of an electoral authoritarian regime under Thaksin Shinawatra. This regime pursued drastic and unpopular economic restructuring policies, consolidated its leader’s financial supremacy, and accelerated the re-politicisation of the military apparatus. The 2007 Constitution, drafted by the military-led government, directly aimed a party system that was believed to have contributed to Thaksin’s unwieldy

reign. The document effectively weakened political parties, most notably by allowing for their dissolution if the party leader is convicted of electoral fraud. Additionally, under the notion that politicians need to be tightly controlled, the document effectively reined in the democratic process by stuffing nearly half of the Senate with unelected officials. (Kate 2007)

Since 2006, corrupt politicians have been portrayed as the greatest obstacle to successful democratic consolidation in Thailand. The 2007 Constitution was designed to ameliorate this problem by limiting democracy's reach. In lieu of Thaksin's anti-democratic tendencies while in office, of course, it is clear that unchecked accumulation of power can pose a serious threat to Thailand's political development. Under the current Constitution, however, where both members of Senate and independent watchdog commissions are appointed by a seven-person panel, power is likely to become centralised as before (The Straits Times 2007). It will not bode well for democracy if reforms undertaken give more power to institutions sitting outside of electoral control, such as military and monarchy.

While military intervention in politics certainly hinders democratic consolidation, the presence of weak political institutions makes any sustainable political development virtually impossible. Agency may be important, but structure is crucial. Thailand is in desperate need of reforms that will strengthen its governance structure and allow for power struggles among politicians to be played out within the political arena. Under the protective watch of a caretaker military and the influence of a Monarchy that is struggling to carve out its place in society, it is unlikely that such serious reforms will be undertaken.

In a 2008 examination of the Asian Barometer Survey, Satoru Mikami and Takashi Inoguchi demonstrate that the general population of Thailand is wary of the democratic process. (Mikami and Inoguchi 2008) Such sentiments most likely stem from different historical experiences: poorer, rural populations have long been neglected by the Bangkok elite, and under Thaksin's rule, the latter group saw just how quickly their grip over power can be loosened by an elected official with big ambitions.

Thais may have every right to distrust participatory political institutions. In the past they have largely worked to benefit corrupt and self-serving politicians, but until the necessary efforts are made to strengthen these institutions, the threat of rule under authoritarian populists looms. Moreover, if state institutions can be increasingly viewed as legitimate, there will be limited popular support for alternative ways of changing governments and thus little room for a military that seeks to flex its muscles as 'guardian of democracy'. Minimizing the power of elected officials is unlikely to be the solution to strengthening democracy.

Instead, Thailand's political system must be seriously restructured to guarantee the protection and growth of a substantial number of opposition parties, limit the influence of parallel, undemocratic institutions, and provide for a robust functioning

of checks and balances. Unless serious steps are taken to do so, the military will continue running the show well into the 21st century.

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RETHINKING THE MILLENNIUM CHALLENGE CORPORATION: CONFLICT IN MINDANAO AND THE REPUBLIC OF THE PHILIPPINES¹

Joshua Gross

The Millennium Challenge Corporation (MCC), a United States (US) administered poverty reduction program that aims to improve aid effectiveness, has for the past several years encouraged developing countries to adopt a series of policies that promote sustainable economic growth. The Philippines was selected for the MCC Threshold Program in 2006, paving the way for the nation, once known as the most corrupt in Asia, to gain access to additional US resources. Although the MCC was not designed with the intention of influencing a grantee state's national security policy, the Philippine government's actions in the conflict-affected island of Mindanao have negatively impacted the country's performance in several MCC indicators and inhibited economic growth. The outbreak of violence that followed an October 2008 Supreme Court decision invalidating the Philippine government's peace agreements with the Moro Islamic Liberation Front (MILF) risks undermining the State's efforts to remain compact-eligible, although this is unlikely to be acknowledged by either the government of the Philippines or the US. Both governments have downplayed the connection between protracted conflict and economic under-performance, and the conflict in Mindanao rarely factors into public dialogue about reform efforts related to the MCC. This paper argues that officials involved in the MCC compact eligibility process should explicitly make the link between economic growth and conflict management. Visible progress in Mindanao will strengthen civil liberties, shift resources from military spending to poverty reduction and attract foreign investment. Filipinos who supported the peace process in Mindanao should encourage the US to use the MCC qualification process to renew efforts to negotiate a just solution to Mindanao's decades-long conflict. Moving beyond the specific concerns of the Philippines, the US should consider expanding its MCC indicators beyond narrow economic concerns to encompass a government's commitment to peace and stabilisation.

Introduction

The Millennium Challenge Corporation (MCC) was launched in 2004 by the United States (US) government to reduce poverty by fighting corruption and creating an environment that maximises the effectiveness of economic aid. The MCC aims to accomplish this ambitious goal by providing incentives to developing countries "with a strong record of ruling democratically, investing in health and education, and implementing sensible economic policies". (Herrling, et. al. 2009, 2) Twenty-six countries have been deemed 'compact eligible' by the MCC, a status that gives them access to Millennium Challenge Account (MCA) resources. An additional 13

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countries receive development resources through the MCC Threshold Program, which was designed to encourage reform efforts in states that have not yet fully qualified for MCA compact assistance. Since its inception, the MCC has distributed over US\$ 6.3 billion. (Herrling, et. al. 2009, 3) The program, while not without its critics, is generally viewed as having succeeded in providing incentives for targeted countries to reform where other approaches have failed, a trend known as the “MCC effect”. (MCC Corporation 2005, 1)

On March 11, 2008 the Republic of the Philippines became eligible to apply for a lucrative MCC Corporation compact grant. The government, headed by President Gloria Arroyo, portrayed this event as demonstrative of their commitment to good governance and the culmination of a period of reform that began with the Philippines’ admission to the MCC Threshold Program in 2006. Following the announcement, President Arroyo issued the following statement:

This is a great day for the Philippines and the action by the MCC offers a remarkable validation of the efforts of our government and nation to invest in our people, fight corruption and encourage economic freedom. These are the hallmarks of my Administration, and I am absolutely thrilled to be so recognised for consideration by this prestigious and serious-minded corporation of the US government. (Office of the President of the Philippines Press Release 2008)

As indicated by President Arroyo’s self-endorsement, countries that earn an MCC compact join an exclusive club and governments that steer their country toward compact eligibility can exploit this seal of approval during the election cycle as an American vote of confidence in their administration.

The Philippines’ MCC Threshold Program focused on an array of good governance programs, such as increasing the conviction rate in corruption cases, enhancing the Ombudsman’s Office, and supporting Manila-based organisations like the Run After Tax Evaders (RATE) and Run After the Smugglers (RATS) units. Today the nation once known as the most corrupt in Asia works alongside the US to curb corruption and implement a multi-faceted poverty reduction strategy.

Although the March 2008 eligibility announcement was a major achievement for the government of Gloria Arroyo, the Philippines still faces serious challenges. The ongoing conflict in Mindanao, one of the Philippines poorest islands, is an unseen obstacle to the country’s recent track record of economic growth and good governance. Poverty reduction programs launched by the MCC Threshold Program have scarcely improved the daily lives of Mindanao residents, while the Philippines’ compact eligibility was unaffected by the bloodshed and mass-displacement that occurred on the island from late 2008 through mid-2009. Sensitive to their relative deprivation, Muslim insurgents in Mindanao may decide to step up an already bloody conflict, with economic and political consequences for Manila.

Visible progress in Mindanao will strengthen civil liberties, free up additional resources for poverty reduction and attract foreign investment. The MCC can be employed as a tool to pressure President Arroyo to recommit to negotiations with the Moro Islamic Liberation Front (MILF). Political elites in the Philippines should encourage the US to be more outspoken about the negative consequences of instability in Mindanao. The Philippine government should revitalise the stalled peace process in Mindanao by inviting the MILF to reconstitute the Joint Coordinating Committee for the Cessation of Hostilities, appointing a new high-profile negotiator or reach out to Malaysia to resume its role as a mediator in the conflict. Beyond the Philippines, the MCC should acknowledge the causal connection between violence and underdevelopment and formulate additional indicators for conflict-affected countries that measure the government's commitment to peace and stabilisation.

If the US, in partnership with the government of the Philippines, does not adapt the MCC's Manila-centric development framework to address the unique challenges in Mindanao, the current moment of progress, growth and liberalism could come screeching to an immediate halt.

Mindanao: Island of disparity

A nation of islands, the Philippines has struggled to forge a unified national identity from its mix of ethnicities and religions. Nowhere is this more evident than on the conflict-scarred island of Mindanao. The island is rich in natural resources and currently provides approximately 20 percent of the Philippines' Gross Domestic Product (GDP). (International Institute for Strategic Studies Report, IISS 2008) However, the inhabitants of Mindanao have seen few wide-reaching benefits from the natural resources extracted from their land, and fewer from the central government. Mindanao is both geographically isolated and culturally distinct from the central government of the Philippines. (Martin and Tuminez 2008, 7) Economic development has failed to accompany the exploitation of local resources, while anger has been fuelled by government-sponsored settlement of Christians on ancestral Moro² land and attempts to forcibly assimilate local Muslim communities into the Catholic identity of the Philippine state. (Cragin and Chalk 2003, 15)

Former US Institute of Peace (USIP) Fellow Amina Rasul-Bernardo argues that this pattern of neglect cannot be divorced from the conflict in Mindanao; "the burden of poverty lies greatest on Muslim areas... Together, poverty and conflict perpetuate a vicious cycle. Poverty fuelled conflict—by magnifying the sense of marginalisation and exclusion. Conflict, in turn, aggravates poverty—through its effects on people, institutions and the economy". (Rasul 2002, 18) The 2005 World Bank report, *'East Asia Decentralises'*, confirms the correlation of social unrest and development disparities. The study cites literacy rates as low as 61 percent and secondary school enrolment rates as low as 32 percent in Muslim-majority areas of Mindanao,

² The Moro are the Muslim-majority ethnic group in Mindanao.

statistics that are substantially lower than metropolitan Philippines, as well as areas of Christian Mindanao. (Hofman and Guerra 2005, 67, 193) Additionally, Mindanao's economic growth is lagging behind the rest of the Philippines. (Positive News Media 2008) Fourteen of the Philippines' twenty poorest provinces are found in Mindanao. (Schiavo-Campo and Judd 2005, 6) Several of Mindanao's provinces are at the bottom of the Philippines human development index, while Marawi City – with the best educated Muslim population – has the worst standards of living. (Human Development Network 2005, 19) Freedom House identifies Muslim perceptions of “relative socioeconomic deprivation and political disenfranchisement” as central factors motivating Mindanao's separatists movements. (Freedom House 2007)

Moro resistance and the MILF

The Moro struggle for independence dates back to the sixteenth century, when the Spanish colonisation engendered the pattern of Moro marginalisation from Philippine national culture, politics and economic development. Islamic sultanates resisted Spanish rule, but were eventually reined in by the American military when the island became a colony of the US. Moro leaders made an unsuccessful 1946 appeal to Washington to grant Mindanao separate status upon the Philippine nation's independence, and in the subsequent decades, millions of Christian Filipinos were resettled in Muslim-majority regions of Mindanao. The resulting demographic shift made the Moro population a minority in their own homeland. (Martin and Tuminez 2008, 2)

The history of insurrection on Mindanao dates back to 1968, when the Mindanao Independence Movement (MIM) was established. The Moro National Liberation Front (MNLF), was founded in 1969, but factionalised as various commanders with disparate ideologies and goals formed splinter groups, including the MILF in 1984 and the New MNLF in 1977. President Ferdinand Marcos' declaration of martial law in 1972 and the continued migration of Catholics facilitated the outbreak of full-scale violence. (IISS Report 2008) Ceasefires in 1976 and 1994 led to increased autonomy for Mindanao, but the island has suffered from cyclical outbreaks of renewed fighting. The government of the Philippines has made numerous agreements with insurgent groups, only to see new organisations spring up under the tutelage of renegade commanders. The various Muslim groups in Mindanao do not perceive the central Philippines as a good faith negotiator, due to withdrawn offers and unfulfilled promises. (Guerra 2008)

In recent years, the MILF has emerged as one of the most powerful militant groups, as well as one of the most likely to deal with Manila. In January 2003, MILF Chairman Salamat Hashim wrote to US President George W. Bush appealing to “the basic principle of American fairness and sense of justice,” and requesting renewed US political will to help resolve the longstanding conflict. (Martin and Tuminez 2008, 20) Citing the 'US' responsibility to its former colony, and the “inalienable right of self determination” for the Moro people, Hashim wrote, “it is our desire to accelerate

the just and peaceful negotiated political settlement of the Mindanao conflict". (Martin and Tuminez 2008, 20) An exchange of letters between the MILF and US officials led to an official MILF policy statement in June 2003 that clearly rejected terrorism as a means of achieving political concessions. Until recently, the US Department of State avoided direct contact with the MILF, due to suspicions that some MILF leaders remain in close contact with Al-Qaeda affiliates.

In early 2008, the government verbally offered the creation of a federal state in Mindanao to the MILF, which would expand the Autonomous Region of Muslim Mindanao (ARMM)³ by as many as 700 villages. This expansion would grant increased political autonomy and control over local resources to Muslim-majority areas of Mindanao, with the intention of preserving local culture and minimising support for secession. (Global Insight Report 2008, 50) These concessions, known as the Memorandum of Agreement on Ancestral Domain, aligned with Moro demands for the resolution of ancestral domain issues and the creation of a Bangsamoro Homeland.⁴

When the details of the peace plan, which had been negotiated in confidentiality and kept secret from the public, leaked in August 2008, opponents such as Zamboanga City Mayor Celso Lobregat labelled the plan a "sell-out" that would "dismember Mindanao under the guise of the Muslim ancestral domain". (Arguillas 2006) At the urging of local leaders, over 15,000 people in Christian-dominated Zamboanga took to the streets in protest and skirmishes between Mindanao's Christian and Muslim communities escalated. Religious leaders were divided, exemplified by the departure of an influential Bishop from the Bishops-Ulama Conference. (Galvez 2008) These events culminated with the Philippines Supreme Court's declaration in October that the peace agreement with the MILF was unconstitutional and illegal. A working group of former US ambassadors to the Philippines and the US Institute of Peace publicly criticised the decision, warning against the "intolerable" costs of failing to revitalise the reconciliation process. (Bosworth, et. al. 2008) Security quickly deteriorated and approximately 400,000 Filipinos were displaced in the initial round of fighting. UN human rights officials expressed concern about civilians caught in the middle of the conflict. (IRIN 2008)

As security in Mindanao deteriorated, the Philippine government pursued an ad hoc approach to peace focusing on the disarmament, demobilisation, and reintegration of militants, according to presidential peace process adviser Hermogenes Esperon Jr. (Galvez 2008) However, no comprehensive alternative plan was made public, while the sustained campaign of violence makes implementation impossible. On October 23, 2008, fifty Bangsamoro groups wrote a collective letter to the United Nations Secretary-General requesting additional UN support for a long-term resolution to conflict. (Maunlana 2008) Several days earlier, United Opposition political party leader Jejomar Binay bemoaned the Philippine government's neglect of Mindanao

³ The current autonomous region, established in 2006, encompasses 2.3 million people (of Mindanao's population of 18.1 million) in 4 provinces (of 25) (Global Insight Report 2008, 50).

⁴ Bangsamoro is the region encompassing Moro settlement and ancestral domain.

and proposed the creation of a mini-Marshall Plan to address economic grievances. (Galvez 2008) Over 200,000 people remain displaced and are scattered across the island in 127 evacuation centres. (IRIN 2009) Around 120,000 people have died in conflicts on the island since 1972. (Asia Foundation 2009, 1)

The MCC scorecard and the escalation of the conflict

In an otherwise congratulatory March 2008 press release announcing the Philippines' compact eligibility, MCC CEO Ambassador John Danilovich cautioned that the Philippines "must maintain its performance on the MCC selection criteria," and, "address the country's barriers to poverty reduction and economic growth". (MCC Press Release 2008) The deadlocked peace process with the MILF is one of the key barriers the Philippines must overcome, yet it goes unmentioned in official public discourse on the MCC. A brief examination of the criteria employed by the MCC to determine a country's compact eligibility will illuminate how the insurgency in Mindanao threatens to derail the Philippines blossoming relationship with the MCC. A 2005 World Bank conflict assessment supports the argument that, "a lasting settlement of the conflict with the Moro Islamic Liberation Front has become a pre-requisite for both economic prosperity and the suppression of the fringe terrorist groups". (Schiavo Campo and Judd 2005, 7)

Each country that has a relationship with the MCC is evaluated and awarded a 'scorecard'. The MCC scorecard consists of 16 indicators, categorised under "ruling justly", "investing in people", "establishing economic freedom" and "control of corruption" (MCC.gov) In the category of "ruling justly," the Philippines' performance on Civil Liberties was stable between 2003 and 2004, improved slightly in 2005 and trended downwards in 2006 and 2007.⁵ (ibid) This indicator is the Achilles heel of the Philippines' MCC success.

Freedom House is responsible for compiling the "ruling justly" indicators, and its methodology is based on a checklist of 15 questions derived from the Universal Declaration of Human Rights. This category includes rankings based on political rights, voice and accountability, and civil liberties. In assessing civil liberties, both constitutional guarantees of human rights and actual practice by the state are considered. Special attention is paid to the freedom of association, freedom of expression and belief, rule of law, and personal autonomy. Freedom House awarded the Philippines a score of 3 on their 1-7 scale for civil liberties, with 7 being "least free" and 1 being "most free". Countries in the 3-5 range are partially compliant with the checklist standards with evidence of more censorship, political terror, and the prevention of free association than in countries that are deemed to be "wholly free".

⁵ Additional "Ruling Justly" indicators include Political Rights, Control of Corruption, Government Effectiveness, Rule of Law and Voice and Accountability.

This is the indicator most relevant to the problems stemming from the ongoing violence in Mindanao.⁶

Continued insecurity in Mindanao has necessitated a heavy military footprint. Some analysts fear that extended deployments in Mindanao will erode civil liberties elsewhere in the Philippines. (Internal Displacement Monitoring Centre 2008) A military that has become accustomed to using coercive force on the front may be more inclined to resort to force against peaceful protest and opposition in the capital, typified by the brutal “pre-emptive calibrated response” against tens of thousands of protestors in 2006. (Ocampo et al 2007) Numerous leaders have exploited the Mindanao conflict to justify draconian measures and obscure corruption and criminality. (Shiavo-Campo and Judd 2005, 7)

The downward trend of civil liberties in the Philippines can be tied in part to President Arroyo’s February 2006 declaration of a state of emergency. During the state of emergency, opposition officials were arrested without due process, newspapers and television stations were raided, and public protests were suppressed by the military and police. Concurrently, the Philippines was hit by a wave of assassinations. The Committee to Protect Journalists and the human rights group *Karapatan* alleged that over 800 extra-judicial killings occurred since 2001, when Arroyo came to power. (Committee to Protect Journalists 2008) Mindanao has been especially vulnerable to this wave of political violence. Marlene Esperat, the ‘Erin Brockovich of the Philippines’, was killed in front of her family after investigating corruption in the Department of Agriculture in Mindanao. Election violence has been more pronounced in Mindanao than in other regions of the Philippines. (Global Insight Report 2008, 8)

The events of this period continue to have repercussions in the Philippines today. The viciously divisive atmosphere in Manila seriously impedes the government’s ability to build political consensus for the peace process in Mindanao. Opposition factions in the Congress have attempted to impeach Arroyo three times since the state of emergency. Coup attempts failed in 2006 and 2007.

The impact of the conflict is not confined to the curtailment of civil liberties; it has sent negative shockwaves through the Philippines’ economy. The wider Philippines economy is not immune to Mindanao’s neglect. The 2007 International Finance Corporation Country Assistance Strategy Progress Report cited political instability as a major impediment to private investment. (International Finance Corporation (IFC) 2007, 6) Similarly, political risk firm Global Insight identifies the Philippines’ “risky” security environment and Mindanao conflict as a “significant concern” for investors. (Global Insight Report 2008, 2) A 2005 World Bank conflict assessment

⁶ Freedom House also considers the impact that an active insurgency might have upon their ratings. The state may curtail civil liberties as part of a broader fight against groups that oppose the state. “Therefore, a poor rating for a country is not necessarily a comment on the intentions of the government, but may reflect real restrictions on liberty caused by nongovernmental actors”. (Freedom House 2007)

calculated that the conflict during 1970-2001 resulted in a direct-output loss of US\$ 2-3 billion, with an average loss of approximately US\$ 200 million, a sum comparable to the average annual cash injections currently provided by the MCC. (Schiavo-Campo and Judd 2005, 5) However, the authors of the report stress that the most excessive economic damage manifested in *indirect* economic and social costs, such as the displacement of over two million people (over 30 years), the exodus of Moros into urban “Muslim ghettos”, massive capital flight, lack of foreign investment (despite the island’s resources and strategic location), and local under-investment in agriculture. When all of the indirect costs associated with insecurity are factored in, the conflict has cost the Philippines over US\$ 10 billion. (Schiavo-Campo and Judd 2005, 5-6)

The conflict also distorts the Philippines economy by prioritising military spending over development. According to the working group of former US ambassadors to the Philippines, a just settlement in Mindanao would enable the government to reduce military expenditures and reallocate money to poverty reduction. “Right-sizing” the Philippine military could be incorporated into the Philippines Defense Reform (PDR) Program led by Defense Secretary Gilberto Teodoro Jr., which aims to professionalise the Philippine military by 2010. (Yabes 2008) In 2000, it was estimated that MILF had between 10,000 and 12,000 soldiers in its ranks, compared to the 23,000 troops deployed by the government’s Southern Command. (IISS Report 2008) With so many military and paramilitary forces concentrated in a relatively small area, there is reason to believe that the conflict could escalate further, placing even more civilians in the line of fire.

Obstacles to progress

The Philippine state has neglected its responsibility to preserve and protect its citizens’ constitutionally guaranteed civil liberties. In many rural areas, the government has proven itself unable or unwilling to protect these rights. Warlords and local bosses control a considerable amount of territory and rule with impunity. (Freedom House 2007) According to East Asia scholar John T. Sidel, Philippine politicians regularly resort to electoral fraud and political violence to entrench their power. (Sidel 1997, 948) The state bureaucracy is poorly insulated from the influence of economic elites and politicians. Sidel’s exploration of multi-generation dynasties in rural Philippines illustrates a pattern where local bosses capture “mechanisms for private monopolisation of the resources and prerogatives of the state”. (Sidel 1997, 952) Much of the local oligarchy throughout the Philippines is connected to the national government through business or kinship ties, enabling them to strategically employ violence to manipulate the local media and intimidate potential critics. A lack of high profile prosecutions for the murders of journalists has contributed to the environment of impunity identified by Freedom House and other advocacy groups, which in turn fuels the continued prevalence of extra-judicial killings.

Vested interests commonly profit from instability in war zones and the Philippines is no exception. A small clique owns the majority of Mindanao’s land, while

multinational corporations and logging interests are the primary beneficiaries of local resources such as timber and mining. (Schiavo-Campo and Judd 2005, 1) Mindanao elites with a vested interest in the perpetuation of the status quo have traditionally been suspicious of the peace process and have routinely accused the government of treason for negotiating with the MILF. These accusations are often accompanied by rumours pertaining to a deal that will sell out the Christians, leading to the confiscation of their land and the imposition of extreme Sharia law. (Martin and Tuminez 2008, 8) North Cotabato Vice Governor Emmanuel Piñol was accused of urging his Christian supporters to arm themselves and fight the MILF as peace talks began breaking down last summer. (Sun Star Network Online 2008) Zamboanga City Mayor Celso Lobregat, the wealthiest mayor in Mindanao, has significant land holdings and construction interests throughout the island. (Tarrazona 2004) In 2002, he denounced the peace process, arguing that, "The Philippines cannot live with these agreements...Instead of being an instrument of peace, these agreements will be an instrument of war". (Philippines Daily Inquirer 2002) Christian groups and landowners have consistently pressured the government to pull out of negotiations. (Martin and Tuminez 2008, 12)

Yet Christian officials are not the only elites with a stake in perpetuating the status quo in Mindanao. Numerous Muslim politicians, landowners and businessmen have embedded themselves within the power structure and many of them do not hesitate to employ violence to protect their personal fiefdoms. These local leaders have a tenuous grasp on power and are reluctant to sacrifice personal or tribal gain for collective goals benefiting common Moro welfare. (Martin and Tuminez 2008, 13) The Moro Governor of Maguindanao Andal Ampatuan directs a network of patronage that has served as a spring-board for members of his clan to gain access to lucrative government jobs at the expense of other prominent Moro families. Dozens of his progeny (he has 4 wives and 30 children) are mayors, vice-mayors or lesser officials in Mindanao, most notably his son Zaldy Ampatuan, the elected governor of the ARMM. The family's leadership style has been described as "feudal" and the tension inherent in their relations with other Moro clans is heightened by their personal army of bodyguards. (Canuday 2005 and Jimeno 2008)

In addition to sectarian violence, intra-Muslim conflicts between traditional leaders, local politicians and insurgent leaders exacerbate corruption and poor governance, enabling Manila to co-opt Bangsamoro leadership. (Martin and Tuminez 2008, 9) A 2007 Asia Foundation study of clan feuding, known as *Rido*, found that clan conflicts are more pertinent in the daily lives of the people than Muslim-Christian conflicts. (Torres III 2007, 9) The report emphasised the potential of local feuds, revenge killings and third-party actors to "frustrate the peace process," citing incidents such as the *Rido*-related June 2006 attempted assassination of Maguindanao's Governor, which in turn sparked renewed Muslim-Christian fighting. (ibid) It is still unclear to many observers if the armed groups, traditional chiefs, or elected local politicians are the legitimate voice of the Moro population. Peace will not come easily to Mindanao, and supporters of the peace process must acknowledge that an agreement with the MILF will not resolve the internecine violence that plagues many of the island's

Muslim communities. However, it would be a vital first step toward integrating Mindanao into the Philippines, without which all other efforts to stabilise the island would fail.

Developments in recent months have only reinforced the urgent need for a revitalised and holistic approach to conflict management in Mindanao. Fifty-seven people—including many women and journalists—were massacred on November 23 as they attempted to file papers on behalf of Ismael ‘Toto’ Mangudadatu, who had hoped to challenge the incumbent governor of Maguindanao Province Andal Ampatuan in local elections. (Escobedo and Ressa 2009) In January 2010, a Philippine courtroom heard testimony that the governor’s son, Andal Ampatuan Jr. (himself the Mayor of Datu Unsay), orchestrated the massacre under the direction of his powerful father. (Conde 2010)

On December 9, 2009, the MCC Board of Directors announced that they would not sign a compact agreement for economic development assistance with the Philippines after failing to achieve a passing grade in seven of the seventeen MCC indicators (down from fourteen). (Jaleco 2009) Government officials failed to recognise the influence of violence and impunity on their score. Rather, they saw themselves as “victims of their own success”, insisting that the Philippines failed because they were upgraded from a low-income country to a lower middle-income country, which are expected to meet more stringent standards. (Katigbak 2009) MCC officials emphasised the need for greater progress in the government’s fight against corruption; predictably, they failed to mention if the conflict in Mindanao and the erosion of the rule of law on the island negatively impacted the Philippines’ eligibility. (Jaleco 2009)

Moving forward

The MCC’s most powerful attribute is its reputational effect; a country that becomes compact eligible for it is, for practical purposes, receiving a stamp of approval from the US government that alerts foreign investors to a transparent and lawful business climate. Visible progress in Mindanao could have positive reverberations in four key factors considered by Freedom House (2007) in assessing the Philippines government’s commitment to civil liberties (and the corresponding MCC indicators):

- Are there free and independent media and other forms of cultural expression?
- Does the rule of law prevail in civil and criminal matters? Are police under direct civilian control?
- Is there protection from police terror, unjustified imprisonment, exile, or torture, whether by groups that support or oppose the system?
- Is there freedom from war and insurgencies?
- Is there equality of opportunity and the absence of economic exploitation?

The World Bank has identified several additional benefits that would likely register in the MCC assessment, such as improvements in agricultural innovation and aid

effectiveness, an increase in corn and poultry exports, the exploitation of Mindanao's hydro-power potential, the removal of the financial burden of protection costs on the private sector, and a massive boost in tourism. In an email message, the MCC's Associate Director of Development Policy Bradley Parks confirmed that, "In principle, the peace process could impact a number of indicators in the Ruling Justly Category, including Political Rights, Civil Liberties, Voice and Accountability, and Rule of Law". (Parks 2008)

Despite the peace dividend that would come with a calm and stable Mindanao, the Philippines government has been unable or unwilling to make the concessions necessary for a sustainable settlement with the MILF. President Arroyo's shaky grip on power and the widespread public ignorance of the roots of the conflict contribute to the perpetuation of the status quo. According to the Philippine Facilitation Project (Martin and Tuminez 2008, 7), the Philippine public perceives Moros' to be "unreasonably stubborn or fanatic[al]".

Recent developments suggest that the Arroyo administration might be backing away from its belligerent posture in Mindanao. The Philippine government ordered a halt to its military offensive on July 23. The MILF has called for the US to play a role in peace talks after meeting with Embassy officials for the first time in February 2008. (Usman 2009) The US embassy recently announced its continued support for a negotiated peace settlement, "we encourage both sides to return to the negotiating table, the only venue for achieving peace and security in Mindanao". (Xinhua 2009) However, even with increased political will from Manila, President Arroyo's ability to make tough decisions with negative consequences for the parochial interests of local elites is questionable. (Martin and Tuminez 2008, 13) Her political rivals have accused her of capitulating to the MILF in the run up to presidential elections next year. Former president Joseph Estrada announced that he would, "declare an all-out war against insurgencies to earn peace," and resist the urge to sign ceasefires. (Agence France Presse 2009) As for of the time of this writing, formal negotiations have not been resumed.

The US has considerable leverage in the Philippines as a result of the two countries' historical relationship, bilateral cooperation and now the MCC compact grant. While it would be inappropriate for the US to micro-manage the peace process, the MCC can be an incentive for the US to work alongside the Philippine to pressure the government to recommit to negotiations with the MILF in good faith. Considering the extent to which government policies are influenced by economic elites in the Philippines, the consensus and support of Mindanao's powerful players is vital to the revival of the peace process. The working group of former US ambassadors to the Philippines advise, "Political leaders on all sides will have to help their adversaries strengthen their respective constituencies for peace, while addressing the fears of those who believe the compromise agreement would imperil fundamental interests" (Bosworth, et. al. 2008)

The US is reluctant to overstep established political boundaries as a donor nation and intervene in their grantees' internal affairs. However, the scorecard can – and should – be utilised by civil society and political elites within the Philippines as a major incentive for the Philippine government to recommit itself to a speedy return to negotiations. A stronger effort will yield results in Manila, where a robust press that is well-informed about the MCC can be counted on to follow developments in the ascension process closely and report any signs of a widening rift between Manila and Washington.

Revitalizing the stalled peace process in Mindanao would be the first step to reversing the island's legacy of underdevelopment and marginalisation while contributing to a more secure and prosperous Philippine Republic. An invitation from the Philippine government to the MILF to reconstitute the Joint Coordinating Committee for the Cessation of Hostilities (JMCCCH) and other technical bodies related to the peace process would demonstrate the political will that has been lacking in the last year. The government could demonstrate its willingness to re-engage by appointing either a Presidential Advisor to the Peace Process or a chief negotiator who is acceptable to the MILF. Reaching out to Malaysia, the trusted mediator in the previous peace talks, would be another means of building trust between the parties. MILF leaders will need to demonstrate more willingness to isolate or detain 'renegade' commanders who the government claims were responsible for attacks on civilians during the summer of 2008.

The August 2008 Supreme Court ruling that invalidated the Memorandum of Understanding on Ancestral Domain as unconstitutional is a serious obstacle, but it is not insurmountable. Constructive legislation or even a Constitutional amendment could be pursued in order to insulate future negotiations from political fallout. However, the political will necessary to pursue many of these options is lacking, and while the special relationship the US has with the Philippines affords it leverage, the government will not be persuaded to make decisions that it perceives to be adverse to its national interests. Incorporating language on Mindanao into the MCC discourse will lay the foundation for ongoing engagement that alternates between reassurance and persuasion. Political elites both inside and outside the Philippine government, the US, the Arroyo administration and the leadership of the MILF will all need to change course in order to convince one another that a stable and prosperous Mindanao is not only possible but desirable.

Moving beyond the unique circumstances in the Philippines, a more ambitious policy would create new MCC indicators for conflict-affected countries that measure the government's commitment to peace and stabilisation. This would require a re-examination of the guiding principles of the MCC and potentially require widespread institutional adjustment. New indicators would need to be carefully calibrated not to single out and punish governments with the misfortune of hosting violent conflicts within their borders, especially those whose efforts at engagement have been rejected by their antagonists. However, the existence of such indicators would incentivise peace building efforts, acknowledge the causal connection

between violence and under-development and lend the moral support of the US to governments that make themselves vulnerable to partisan attacks when choosing to engage armed groups. At the very least, a frank acknowledgement of the human and economic costs of protracted conflict should enter into the discourse of MCC ascension.

Conclusion

The “MCC effect” cannot occur in an isolated bubble. Political realities will eventually intrude upon economic progress. The MCC scorecard is generally viewed as the barometer of a country’s commitment to anti-corruption measures, rather than peace building and human rights. The public dialogue about the MCC focuses on economic reform and governance while ignoring the impact of longstanding conflict. MCC partner countries are not overtly persuaded to work toward the resolution of destabilising conflicts within their borders as part of the compact eligibility process. However, this paper demonstrates that indicators that are especially sensitive to political violence are embedded within the MCC scorecard. The MCC Corporation has thus far avoided acknowledging that the conflict in Mindanao influences their decision-making process, which risks sending a misleading message that neglecting conflict management will not impact economic growth or compact eligibility. US policymakers should publicly clarify that the Philippines’ continued eligibility will not occur in a political vacuum and stress that a just resolution to the conflict in Mindanao will strengthen civil liberties, free up additional resources for poverty reduction and attract foreign investment.

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INDIGENOUS CONFLICT RESOLUTION MECHANISMS IN MINDANAO: IS THEIR INSTITUTIONALISATION THE ANSWER?

Marly Anne Bacaron

The South-western and Central areas of the Autonomous Region of Muslim Mindanao are a zone of conflict. These conflicts can be explained by the sporadic violence caused by armed encounters and hostilities between the military and the secessionist group, the Moro Islamic Liberation Front, or kidnap for ransom groups. Clan feuds, locally known as "Rido", have only recently been acknowledged as exacerbating the conflict. Although Rido is practised in some form or another throughout the country and often manifests itself in political violence, Rido in the Southern Philippines region is unique in the sense that it seems to have become legitimised as a socially accepted phenomenon anchored on social and cultural structures of the marginalised ethnic Muslim and indigenous tribes. This paper explores the various facets of Rido including its socio-political nature and impact, highlighting the indigenous conflict resolution tools used and their overall importance in current peace building initiatives and policies.

Historical and present elements of the Mindanao conflict

Mindanao is situated in the Southern part of the Philippines and like other parts of the country has multi-ethnic and multi-cultural groupings. According to Durante (2005), Mindanao is the second biggest island in the archipelagic country, with a total population of 18 million as per the 2001 Census¹, with an ethnic breakdown of the region as follows: (a) the indigenous people or Lumads² comprising 5 percent of the population; (b) the "Moros" or Muslims³, 28.23 percent; and (c) Christians, migrant settlers from other parts of the country as well as their descendants, 71.77 percent.

¹ The 2007 Census indicates a total population of 21,582,540 with a total growing population rate of 9.87 percent. However for the purposes of this essay, the 2001 Census is used since there is no clear and recent data on the breakdown of ethnic groupings as of 2007.

² For the purpose of this article, the words "Lumads" and "indigenous people" will be used interchangeably.

³ For the purpose of this article, the words "Moros" and "Muslims" will be used interchangeably. The origin of the word Moro came from the Spanish word "Moor". Spain colonised the Philippines for three centuries.

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The Muslims have 13 ethno-linguistic groups with an overwhelming majority in the provinces of Lanao del Sur, Tawi-Tawi, Sulu, Maguindanao, Basiland and Marawi. These areas make up the Autonomous Region of Muslim Mindanao (ARMM). Lumads, on the other hand, have 18 ethnic tribes with ancestral domains covering 17 provinces and 14 cities in Mindanao. This current make-up has resulted in a multi-faith and multi-ethnic population with a shared identity (“Mindanawon” literally means “from or coming from Mindanao”). However, its distinct history of migration, colonisation and secessionist clashes as well as its unstable power structures and feudal relations have contributed to its complex and fragmented environment of conflict.

These succeeding waves of migration have come from the Lumads, followed by the Muslims and, lastly, by Filipinos from other parts of the country. Earlier colonisation efforts and the later efforts of the Philippine government’s resettlement program in the late 19th and early part of the 20th century further spurred the rapid migration. The intent was to “Christianise” the region and bring it fully under state control as well as to provide new homes to already growing areas in the North. Mindanao was seen as a new frontier and migrants were initially settled into tracts of lands that Lumads and Muslims considered as ancestral domains. (Aycococho 2004) To subjugate the restive Muslims and ethnic groups, laws were created giving preference to migrants which widened the gap of distrust between the three groups.

Interwoven into this atmosphere of historical distrust are the presence of the Moro Islamic Liberation Front (MILF) and the Muslim National Liberation Front (MNLF) with their objectives to bring about the creation of an autonomous Bangsamoro (nation or community of Moros). (Kamlan, 2003, 6) While the MNLF have been able to negotiate with the government (the result of which was the creation of the ARMM), the MILF has continued with its struggle for secession through military skirmishes with the military of the Government of the Republic of the Philippines (GRP) until the present. (Kamlan, 2003, 6-9) The breakdown of the current peace process with the government has left geographic pockets of Mindanao vulnerable to open conflict and displacement. (Internal Displacement Monitoring Center, 2008)

Added to this environment are the terrorist groups or groups which resort to tactics such as kidnapping for ransom, who profess to be waging a religious war. Such groups, such as the Abu Sayaf, have turned kidnapping activities into a business. These groups (both secessionist and lawless elements) are involved in armed conflict with the Philippine Military which has led to frequent displacement of both Muslim and Christian villagers. According to the Internal Displacement Monitoring Centre (2007), it is estimated that 170,000 people were displaced by conflict during 2007 with 2.5 million people overall displaced by armed conflict since 2000.

Poverty is linked to these on-going violent clashes. While Mindanao is a resource rich region accounting for over 40 percent of the Philippines' food requirements and contributes more than 30 percent to the national food trade, its Muslim provinces in

particular have consistently been in the list of the poorest 10 provinces in the country for the last decade according to the National Statistics Coordination Board (NSCB).

Definition of Rido

According to Magno (2007 pg 1) “Rido” or feuding between families and clans are characterised by sporadic outbursts of retaliatory violence between families, kinship groups as well as communities. Rido are most often felt where State Security or Central Government is weak, the structures for social and legal justice are seemingly ineffective, and where competition over resources is high. According to Schmelcher (2007) there are three dimensions to its cause: the actual deed, the interpretation of this deed, and/or the cultural context of the offended. Rido is provoked by an offense that can be as minor as a misunderstanding or a perceived insult, to a besmirching of the honour (or *maratabat*) of the family, clan or extended family. To the Maranao⁴, the term “maratabat” stands for honour, pride and self-dignity, and determines the behavioural and social patterns of a group. Fischeder (2005) writes that “maratabat is a guiding principle for every Maranao regardless of sex, status or age. It is actually an important part of the socialisation process of children already”.

The interpretation of the offending deed is key to assessing the severity of the appropriate means of vengeance. If this results in the death of the offender, it will continue and trigger mutual killings. Filipino Muslims are clan-focused, and as a result Rido can spill over to several generations, breeding a culture of violence that is seen as normal. (Galtung 2004)⁵ Potential targets are generally the adult male and breadwinners of the family. If a series of killings has started, the next victim should be higher in position and social status than the last one. (Vitug 2005) Women, old people and children are exempted in theory as any deliberate killing would have branded the offender a coward. (Bagayaua 2005) However with the proliferation of weapons, the victims have become increasingly random.

Clan feuds as a social and political practice

A brief discussion on clan feuds will assist in better understanding its characteristics and the necessary and sustainable interventions leading to its conflict resolution mechanisms.

Kreuzer (2005) attempts to define clan and accredits the work of Collins (2004) which attempts to form a theoretical discussion that is similar to the Mindanao context.

“[The clan is] an informal organisation comprising a network of individuals linked by kin-based bonds. Affective ties of kinship are its essence,

⁴ Maranao or Meranao is one of the 13 Muslim ethno-linguistic tribes, living predominantly in Lanao del Sur.

⁵ “Wars wreak havoc with structures and cultures. And the more wars we have had, the more do we see the result as normal”. (Galtung 2004)

constituting the identity and bonds of its organisation. These bonds are both vertical and horizontal, linking elites and non-elites, and they reflect both actual blood ties and fictive kinship."

Translated into the Mindanao context, clans are then led by the traditional elite, whose legitimacy is rendered through age and genealogical status. In urban areas, however, authority is linked to the control of economic resources. The non-elites are composed of an extensive network of poorer relatives, close friends, women, youth and children. The affiliation between the two is based on the principles of mutuality. Elites are committed or obligated to providing for their poorer kin, whereas the marginalised have a duty of unconditional loyalty. As such, clan feuds then weld enormous group and social pressure fusing the non-elites to a common fate.

This is further deduced by Lewis (1961, pgs 43-54)), saying that clan feuds "are integrative on the local level, have a high degree of social legitimacy and acceptance and also characterise the economic order." The legitimacy and loyalty to one's clan ensures each member's social protection and security or not at all. This serves to reinforce that a system of terror is in place - e.g. the clan protects you against the rest of society; without the clan's protection, one is left vulnerable to retaliatory attacks by other clans or lack of protection can lead to economic marginalisation. Disloyalty can also mean one becomes an outcast from the clan and can be subject to their wrath. This explains why relatives of clans or even those targeted would not report the offenders. The power and role of the majority under a democratic system to contest the will wrought by clan feud is diminished by economic marginalisation, fear, the post-modern feudal system still in place, inadequate legal structures and the lack of political will.

Impact of Rido

A study by the Asia Foundation (Magno 2007) found 1,266 documented Rido cases which had occurred between 1930 and 2005, killing over 5,500 people and displacing thousands. Out of the total number, 65 percent remained unresolved. Most of these cases were commonly attributed to land disputes and political rivalries.

Once a Rido starts, there are great impacts on the family and the community at large. Property can be destroyed and income thus reduced. The social life of the communities and families are disrupted. Men might leave the villages, leaving the women, children and old people behind. Children may even stop going to school in order not to be targeted. (Schmelcher 2007)

On a wider scale, it even has a national dimension because it threatens the peace process between the government and the MILF. This is because members of the feuding clans will have relatives either in the military, the MILF or the government, who can then be easily dragged into the conflict. This was confirmed by, a senior member of the MILF, Von al Haq, and head of the MILF truce panel in an interview

with Reuters (2007), who admitted that "in most cases, the government troops and our own forces were only dragged into the conflict because of family ties."

Consequently, taxpayers pay the brunt of the expenses. (Newbreak January 17, 2005) Should the government support an amicable settlement, local officials will need to look for resources to raise the blood money requested by the offended party. In one province alone, the government spent about PHP 2.75 million (or around USD 60,000) in the last three years to settle family feuds. (Vitug 2005) This results in a downturn in economic activities since any violence tends to discourage business, thereby preventing economic development.

Brief analysis

Rido has underpinnings in violence, which manifests itself through structural and cultural factors that results in direct violence. (Galtung 2004)⁶ This bears similarities to Morgan (2005) in his conceptual framework for sources of human security.⁷

Utilising a constructivist approach⁸, Morgan (2005, pgs 70-75) seeks to better understand human security needs in relation to peace building efforts. A constructivist approach towards peace building implies that people "construct learning for themselves both individually and socially as he or she learns". (Hein 1991)⁹ What is lacking in most peace building initiatives according to Morgan is the inclusion of people as stakeholders rather than as a "means to an end", a space for them to reflect and learn from their experiences as well as the provision and integration of indigenous methods towards conflict resolution – which involves moving away from short-term functions such as maintaining ceasefire, demobilisation and disarmament and towards the dismantling of structures that contribute to conflict. Issues such as "cultural integrity, identity, inter-ethnic and inter-faith dialogue, social empowerment and collective intentionality are all necessary conditions for the attainment of human security". (Morgan 2005, pgs 70-75)

Reconciliatory mechanisms then are a way to help attain human security after the ruptured social fabric. This involves fostering a culture of peace based on tolerance

⁶ In Johan Galtung's book "Violence, War, and their Impact: On Visible and Invisible Effects of Violence (2004), he explains the triangle of violence to have two dimensions both visible and invisible with the base touching on structural and cultural violence which results to direct violence at the apex.

⁷ Definition according to Alkire (2003) of human security: "To safeguard the vital core of all human lives from critical pervasive threats, in a way that is consistent with long-term human fulfilment".

⁸ Constructivist approach is a theoretical framework to understand the true nature of aspects such as collective violence, class, gender, etc. It operates on an ontological assumption that actors are shaped by the socio-cultural milieu in which they live. (Morgan, 2005)

⁹ The term refers to the idea that learners construct knowledge for themselves – each learner individually (and socially) constructs meanings – as he or she learns. The dramatic consequences of this view are twofold; 1) we have to focus on the learner in thinking about learning (not on the subject/lesson to be taught); and 2) there is no knowledge independent of the meaning attributed to experience (constructed) by the learner, or community of learners.

and empathy that would deconstruct the negative efforts of violence. However in the case of Rido, where the violence is pervasive, it is of primary importance to encourage communities to critically reflect on their own socio-cultural and economic conditions, to best determine what mechanisms would be best for them to achieve social change. (Morgan 2005) This is missing in state-sponsored peace building initiatives. There is a lack of social legitimacy; not being a product of social contracts with communities but rather national interests, structures or Western ideas. (Morgan 2005)

Current conflict resolution tools

According to Magno (2007), the speedy resolution of the conflict is of utmost importance since the conflict will lead to the disruption of a community's way of life – particularly at the economic or subsistence level. Most incidents of Rido are settled by amicable settlement or mediation. There are three alternative concepts of justice: the *Taritib-and-Igma* (customary law), *Shari'ah* (Islamic law) and Philippine laws. Because Rido extends to the family and its lineage, the resolution might take time to be resolved.

In mediation, importance is given to the inclusion of the family in the process, the choice of the mediators and the process itself. Mediators need to have the required credentials in order to facilitate communication and negotiations, to appear credible and non-bipartisan to both parties, as well as assume responsibility for raising the required blood money. These mediators may be members of the council of elders, the *ummah* or religious leader, the local chief executive, a member of the military or “influential” females.

Mediators work at reaching an amicable settlement, which is a “win-win solution,” by invoking or highlighting the relations between the feuding families to include: being members of the same nuclear family, blood relatives, descended from the same ancestor, members of the same clan, community, ethnic group or brothers in faith. These examples show the need to prioritise the collective peace rather than the individual offense.

The settlement involves not only the payment for the original conflict but the results of the retaliatory act. The amount of the settlement would also be dependent on the status of the people involved which then becomes complicated if the amount agreed upon cannot be produced.

The resolution process entails the following steps: declaration of ceasefire, dialogue with both parties, an agreement on settlement, and finally a religious or community celebration or *kanduli*. The settlement agreement may entail payment of blood money, which is compensation paid to the family of the murdered person, followed by the signing of an agreement and an oath taken on the Holy Qur'an.

Critical assessment of traditional conflict resolution tools

One main driver for the selection of customary law as a traditional conflict resolution tools is the abuse and misuse of state institutions. The available literature suggests that its selection does not seem to be entirely voluntary. Customary law is seen as credible from three aspects; the procedure, the integrity of the mediators; and the result that binds all members of the conflict to accept and respect the decisions made. These are requisites in re-establishing the social capital that is damaged as a result of the feud.

However, customary law does have its short-comings. Rido can continue unabated or spring anew several generations down the line. Fischeder (2006) explained that in some cases blood money cannot be raised and the process gets stuck. Customary law in this case seems to lack flexibility because the resolution of the feud is dependent on the blood money. It can also happen that there could be no credible mediator who knows the procedures and is accepted by both groups. This could be due to two factors: should the process break down or the two parties find the resolution unsatisfactory, they may turn on the mediator or more simply, mediators may no longer exist due to the weakening of traditional cultural values and the erstwhile respect attached to them.

Fischeder (2006) further mentions that after years of resolution between the two parties, a feud might break out again because excluded members, including those not yet born at the time of the resolution, are not bound to the treaty. Customary law lacks clear guidelines on this. It also has no parameters or framework to reference its judgement on how to go about the result of the settlement vis-à-vis the offense caused. It is all dependent on the skills of the mediator and how he/she will navigate this terrain. In addition, while customary law addresses the offense caused, it does not deal with the root causes of the conflict which could range from lack of economic opportunities, land disputes, disarmament, education and governance. Codification of customary laws, its incorporation into the legal system and its availability at the village level is likewise lacking.

Morgan (2005) discusses that in indigenous conflict resolution mechanisms, both the individuals and groups should be involved in the reconciliation process. Conflict is then viewed as a communal concern with reconciliation embedded in the norms and structures of the community affected. With the omnipresent violence that is experienced because of Rido and the perception of helplessness by the majority of communities displaced by the violence, peace-building strategies, as proposed by Morgan (2005), should be based on the (a) integration of views, activities and experiences of the majority in the reconciliation process and the rebuilding of reflexive structures of governance; (b) identification of psycho-social experiences that characterises the majority; and (c) articulation of the informal, unarticulated experiences of the majority directed at the level of national and sub-national consciousness.

Dismantling or doing away with the clan structure is next to impossible as for the most part it does provide adequate social protection and legitimacy in the community. However it is best to aim at strengthening aspects of conflict resolution and minimising mechanisms. This is concretely taken up in the study by Magno (2007) wherein hybrid mechanisms of conflict resolutions integrating both formal and informal systems were documented and successfully implemented.

One NGO in Southern Mindanao works with various clans using the customary laws and has been successful in helping to settle 15 different clan feuds in the provinces of Lanao del Sur and Norte. (Mindanews 2007) This was done by strengthening the “council of elders” in reviving customary laws as well as strengthening the clans’ genealogy and training of the mediators’ skills. Intensifying the closeness of family ties also played a role in the settlement. (Mindanews 2007)

Education could also play a key role; focusing on both community education by way of grassroots theatre and on formal education by integrating Islamic values and culture. Advocacy aimed at a three tier approach: at the grassroots level, the local and state/national level is also necessary.

If some of the causes of clan feud can be attributed to the weak structures of the state related to access of justice, should the formal acknowledgement of these alternative dispute mechanisms be the solution? What are the implications to human rights when you consider the argument made by Fischeder (2006) that customary law by itself lacks inclusiveness and clear guidelines on the process of settlement?

Is institutionalisation of alternative dispute mechanisms the answer?

The existence of alternative dispute mechanisms such as the use of indigenous conflict resolution mechanisms raises questions about the role of the state. From a human rights perspective it is not the only relevant or effective legal order in people’s lives considering its weaknesses. Furthermore, these mechanisms overlap with the role of the state as primary duty-bearers in relation to human rights. Institutionalising indigenous conflict resolution may in theory resolve access to justice and serve the multicultural needs of the region. But recognition of non-state legal orders can weaken due process guarantees and other procedural protections – Fischeder (2006) talks about how the resolution of Rido is dependent on blood money whereas the resolution does not hold true for state courts. This could destabilise democratic processes because it confers power on unelected leaders to assume responsibility for the mediation process or reinforce hegemonic interpretations of custom – culture is not static after all. In addition, Fischeder points out that non-state legal orders are not always quicker, cheaper or more accessible, nor inclusive or even effective in resolving local disputes.

The solution to institutionalise non-state mechanisms may make very little difference if it is not seen within the lenses of who holds the power, the resources and the control of access. Therefore the rush to formally recognise these plural legal forms

without reviewing the issues related to human rights and inclusion may not be the solution.

One example is the sensational killings of members of a political rival clan – the Mangudadatus together with their followers, relatives and several journalists – by another – the Ampatuans last November in Maguindanao, Southern Mindanao which sparked fears that a Rido might occur. (Bagayaua 2009) The Ampatuans have ruled this part of Southern Mindanao for nearly a decade – where concerns of human rights and access to justice were unheard of and the cultivation of relationships with past and present government administrations have reinforced their power. (Bagayaua 2009) The Mangudadatus were close allies to the Ampatuans until the former asked for permission from the latter to run in the 2010 elections for the position of provincial governor. The patriarch, Andal Ampatuan had wanted his son to succeed him in that position. (Bagayaua 2006)

According to Newbreak Online, what could make the clan war between the two parties particularly bloody was the fact that the original victims were women. Both women and children are considered untouchable in “Rido”; they can be collateral damage, but never the target. (Newsbreak 2006) As a result, women have been able to penetrate places where men could not, even to retrieve the bodies of relatives who were killed. A woman’s murder in a Rido commands a higher price in blood money and a man is considered a coward if a woman is a target (Newsbreak 2006). The prospect of further clashes between the two upon discovery of a private army of Ampatuan has led President Gloria Arroyo to place Maguindanao under martial law. (GMANews.TV 2009) One of the Ampatuan members has been detained and the government has filed multiple murder charges against him. (GMANews.TV 2009)

In this case, the concept of Rido has to tread carefully into the inter-woven complex issues of warlords or “political entrepreneurs” in collusion with government representatives who shape and are shaped by the dynamics between state, clans and conflict. (Lara 2009)

Conclusion

In the report “When Legal Worlds Overlap” by the International Council of Human Rights Policy (2009), a framework was suggested to evaluate whether a plural legal order which includes the use of alternative dispute mechanisms and state law was likely to enhance access to justice and they pointed out the following areas: (a) avoidance of a single all-purpose definition of “customary laws and practices” which prevent a static viewpoint of culture; (b) infuse and secure a basic human right dimension for all community members – thereby incorporating Morgan’s suggestion of inclusion; (c) seek to identify and manage the internal pressures within the community as a result of external forces; and (d) avoid establishing distinct and conflicting systems of law that will generate inequalities and inefficiencies.

These points should be taken in a continuum rather than in isolation together with other suggestions mentioned earlier, particularly education. What is important is that these are mechanisms that are “owned” by all stakeholders and not just those involved primarily in the conflict. After all, justice is an important element of peace. Both elites and non-elites must be able to access it.

However these recommendations are secondary and this is highlighted in the case of the Ampatuan killings – the primary question that needs to be answered is how effective the state is in enabling both elites in particular, non-elites, the vulnerable and the marginalised to be able to access justice. Until that question can be answered, the use of a plural legal order is negated.

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THE CHALLENGE OF TRANSFER PRICING IN THE ASIA PACIFIC REGION¹

Alfredo (Jay) Urquidi & Jonathan Thompson

This paper introduces transfer pricing as a key issue in multinational trade and business, showing its growing importance in the Asia Pacific region. Two key court cases in the region are summarised, demonstrating that transfer pricing has real world impact. A summary of transfer pricing regulations in the region is also provided, illustrating some of the approaches taken by fiscal authorities in drafting and implementing local country regulations. By means of a sample transaction it is noted that fiscal authorities face a dual agenda, namely protecting their tax base while promoting cross-border trade. It is made clear that the current systems do not always balance these objectives well, and therefore the authors suggest some possible policy recommendations to solve this problem. Suggestions are also provided on how multinational corporations can best address the challenges of transfer pricing.

Introduction

Within the economic sub-discipline of industrial organisation the concept of 'transfer pricing' has been the subject of in depth research and analysis. Transfer pricing has also been on the agenda of practitioners and advisors within the field of corporate taxation. More recently, however, transfer pricing has become a topic of interest to a community that extends beyond these niche fields. Individuals who have an interest in public policy, public management, international relations, and international political economy have come to realise that there is a great deal of intersection between their fields of interest and the topic of transfer pricing.

There exist, however, a great many knowledge gaps between those for whom the practice of transfer pricing is a profession, and those for whom a high level understanding of the topic would be beneficial. Herein we will discuss some of the basic elements of transfer pricing with a particular focus on the Asia Pacific region by answering the following questions: (i) why is transfer pricing important?; and (ii) what public policy challenges does transfer pricing present? Throughout we will argue that the current transfer pricing systems are not necessarily sufficient, and that

¹ The views reflected in this article are the views of the authors and do not necessarily reflect the views of the Marsh & McLennan Companies or the global Ernst & Young organisation or its member firms. This article summarises complex issues and is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither the authors nor Marsh & McLennan Companies or Ernst & Young Shinnihon Tax can accept responsibility for loss to any person relying on this article.

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certain policies could be used to enhance the practice of transfer pricing from the perspective of both fiscal authorities and multinational companies.

Before proceeding, it is helpful to first define a few key terms. *Transfer pricing* refers to the pricing of cross-border transactions between members of a related corporate enterprise. This concept is best understood by first examining the pricing of cross-border transactions between two unrelated corporate enterprises.

Consider an electronics manufacturer based in Japan – “Japan Co.”. As part of its regular course of business, it must maintain a call centre to respond to queries from end users (e.g., warranty inquiries, technical assistance, etc). Historically Japan Co. has outsourced this function to a third-party company based in Singapore – “Singapore Co.”. On an annual basis, Japan Co. and Singapore Co. enter into negotiations regarding the price to be paid or received for the provision of call centre services. In this scenario, each party to the negotiation is working to achieve their own interests. Japan Co. wants to pay as little as possible, while Singapore Co. wants to charge as much as possible. Therefore one would expect the price resulting from the negotiations to represent a market rate for call centre services. In the nomenclature of transfer pricing, this market rate is known as an ‘arm’s length’ rate.

In the example above, the price paid by Japan Co. will be recorded as an expense on their financial statements. This will impact their taxable profit and the corporate taxation paid. Presently, the effective corporate income tax rate in Japan is approximately 41 percent (or 42 percent if the head office is located in Tokyo). (Ernst & Young 2009) The revenue received by Singapore Co. will be recognised as service revenue and less any applicable costs will be subject to corporate income tax in Singapore. Presently the effective corporate income tax rate in Singapore is 18 percent although there are various exemptions and reductions which are also available. (ibid)

Let us now consider the same fact pattern but assume that Japan Co. pursues a strategy of vertical integration whereby they decide to establish their own subsidiary in Singapore to perform call centre services – “Singapore Sub”. The conditions for a contract negotiation between the two parties have now been altered. In theory, both Japan Co. and Singapore Sub have in mind not their own individual objectives but the collective goals of the group. From a tax perspective, this could potentially imply that it is in the group’s interest to increase the payment to Singapore Sub, as they are subject to a lower corporate income tax rate. Japan Co. would theoretically now exercise full control over the outcome of the price negotiations, insofar as they can dictate corporate policy to Singapore Sub. Under these circumstances Japan Co. could establish an artificially high price for the call centre services and intentionally overpay Singapore Sub. This would in effect shift taxable income from a higher tax jurisdiction (Japan) to a lower tax jurisdiction (Singapore) within the same corporate enterprise.

The potential to shift profit in such a manner is central to the concept of transfer pricing and has been commented on extensively by the mainstream press. The Economist (2007) has referred to transfer pricing as a “big stick in the corporate treasurer’s tax-avoidance armoury” and as an “opaque” practice that can be used to “[elude] domestic taxation”. (The Economist 2008)

Against this backdrop we will now examine why such a seemingly mundane topic has generated so much interest among multinational enterprises (MNEs) and fiscal authorities. We will also examine the transfer pricing environment within the Asia Pacific region², identify potential difficulties within this environment, and offer potential public policy recommendations for their alleviation.

Globalisation results in more cross border transactions

Data from the World Trade Organisation (WTO) notes that in dollar terms (which includes price changes and exchange rate fluctuations) world merchandise exports increased in 2008 to US\$ 15.8 trillion; while exports of commercial services rose to US\$ 3.7 trillion. (WTO 2009) Given the estimate that up to 60 percent of world trade takes place within MNEs (Neighbour 2002), this implies that arrangements to which transfer pricing rules can apply account for an enormous volume of world trade. Recalling our example of Japan Co., tax authorities around the world are viewing transfer pricing transactions with scrutiny and are increasingly becoming concerned with the need to apply transfer pricing principles in a robust manner.

As world trade increases multinational organisations have been quick to take advantage of relatively low cost labour pools, public policies that are favourable to foreign investment, and the availability of raw supplies by setting up manufacturing units and support centres in all parts of the world. In the Asia Pacific region, for example, many MNEs have been quick to build manufacturing units and offices in countries such as China, Vietnam and Thailand in order to expand their businesses into new markets and capitalise on location savings offered in these developing business centres. There has also been global interest and investment in India for the provision of many functions within the Business Process Outsourcing industry in order to capitalise on a well-educated workforce and a relatively favourable environment for conducting business.³

Although there are certain advantages to establishing operations within developing economies, many locations are still organising their local tax administrations to deal with the international challenges presented by the expansion of MNEs into their jurisdiction. Transfer pricing is one of these challenges and represents a potential transactional cost to the MNE of global expansion. As groups expand their

² Herein defined to include Australia, China, Hong Kong, India, Japan, Singapore, South Korea and Taiwan.

³ Certain regions within India have been designated Special Economic Zones and Software Technology Parks which offer economic incentives for foreign companies seeking to establish operations.

operations into overseas locations, mechanisms are required to price the services which these departments provide to related parties. Such transactions can quickly become large in volume and complex in nature. Correspondingly the transfer pricing issues presented by these services also change and become more complex. Indeed 40 percent of the respondents to a recent survey (Ernst & Young 2008) identified transfer pricing as the most important tax issue facing their organisation. The same survey found that 74 percent of parent and 81 percent of subsidiary respondents believe that transfer pricing will be 'absolutely critical' or 'very important' to their organisations over the next two years.

The importance of transfer pricing to fiscal authorities

As the transfer prices for inter-company transactions are directly linked to the taxable revenue that must be reported in a particular tax jurisdiction, fiscal authorities have a vested interest in ensuring that such prices are arm's length in nature – i.e., that they are consistent with third-party, market results. Accordingly, fiscal authorities around the world have implemented transfer pricing legislation in order to increase the transparency of cross-border transfer prices. The goal is to ensure that MNEs properly reflect taxable income in a particular jurisdiction. It should also be noted, however, that developing and enforcing transfer pricing regulations may provide fiscal authorities with a means to increase tax revenue indirectly.

a. Transfer pricing enforcement as a source of tax revenue

Consider once more the example of Japan Co. Any additional corporate tax revenue accruing to Singapore would imply a reduction in the tax base of Japan. That is, tax gains for one country come at the expense of the tax base of another country. In this way fiscal authorities could potentially increase their tax base without having to resort to the politically sensitive issue of direct taxation of either individuals or corporations. Within such a system, some take the position that MNEs may actively seek to reduce their exposure to the risk of indirect taxation by altering their inter-company trading decisions. That is, some take the position that MNEs engage in profit shifting by taking advantage of the favourable tax profiles in certain jurisdictions. We want to ask, however, can the potential for profit shifting via transfer pricing be quantified? There are a number of academic studies that have addressed this topic.

b. The potential for profit shifting

Clausing (1998) studied intra-firm transactions between US multinationals and their foreign affiliates, and between the foreign affiliates themselves. The results indicate that tax minimising motives may be influencing intra-firm trade patterns. Collins *et al* (1998) similarly showed that foreign direct investment may be negatively impacted by high tax rates, as US companies facing relatively high foreign statutory tax rates shifted taxable income into the US.

Restricting their analysis to Japanese companies with US subsidiaries, Eden *et al* (2005) addressed the following hypothesis: if multinational firms were manipulating transfer prices to shift profits out of the US, then the introduction of US transfer pricing penalties would reduce their incentive for this behaviour, resulting in decreased cash flows in the US and lower stock market prices for their American Depository Receipts (ADRs). Performing an event study of the period⁴ from 20 February 1990 to 17 July 1997, they found that in the absence of the penalty legislation the market value for these ADRs would have been US\$ 56.12 billion, or 12.56 percent higher than it actually was at the end of the period.

Bernard *et al.* (2008) examined whether transfer prices set by multinational firms differ between independent third parties and related-party entities, and the extent to which these differences are elastic to product and firm characteristics, market structure, and government policy. Working with point of export customs documents that provide pricing information for US international export transactions occurring between 1993 and 2000, their analysis reveals that on average, third-party prices were 43 percent higher than related-party prices for similar goods transacted under similar circumstances. This gap is wider for differentiated products than for commodities, is more pronounced for firms with greater market power, and increases in instances where corporate tax rates are low and tariffs are high. Bernard *et al.* (2008) therefore argue that tax minimisation may indeed play a role in transfer pricing decisions made by firms, as firms appear to make substantial price adjustments in response to changes in country tax and tariff rates.

These studies illustrate that under certain facts and circumstances there is quantifiable evidence that some firms may use transfer pricing as a tool to shift income from high-tax jurisdictions to low-tax jurisdictions. It should be noted, however, that using transfer pricing as an analytic and strategic tool does not necessarily imply the intent to avoid taxation.

c. Protection of tax base vs. promotion of cross border trade

Fearing the risk of profit shifting, many governments have created or enhanced their tax transfer pricing legislation, including the establishment of sometimes significant compliance and documentation requirements. For example, in 2009, the People's Republic of China's State Administration of Taxation introduced comprehensive transfer pricing documentation requirements making China-based taxpayers that meet certain thresholds prepare significant contemporaneous transfer pricing documentation. Furthermore, the regulations also require taxpayers to complete detailed related-party disclosure forms detailing all intra-group transactions or dealings. The purpose of such disclosure forms is to provide transparency to the tax authorities with respect to related-party transactions involving China-based companies.

⁴ This time horizon was selected by Eden *et al.* (2005) to correspond to the period between February 20, 1990, when the Inland Revenue Service (IRS) made public its intention to audit foreign multinationals for transfer pricing-related tax underpayments, and September 17, 1997, when the first transfer pricing penalty was announced.

Furthermore, such rules are becoming common within the Asia Pacific region. Companies based in Taiwan and Korea are also required to prepare contemporaneous transfer pricing documentation covering the local functions while related-party disclosure forms are required to be submitted when filing annual corporate income tax returns in other countries in the region including Australia and Japan.

From a public policy perspective, governments must delicately manage the development and implementation of effective transfer pricing guidelines in order to satisfy two objectives that would appear to be mutually exclusive. On the one hand, by focusing attention on the economic substance of large, cross-border transactions entered into by MNEs, tax authorities are creating access to a potentially significant course of tax revenue. On the other hand, given the increased willingness of tax authorities to “raise the political stakes by litigating tax and transfer pricing issues not yet codified by final regulations” (WorldFinance 2006), MNEs may be discouraged from increasing the scope of their operations in particular geographies. That is, MNEs may face increased operational, financial, tax and reputation risks as a result of tax and transfer pricing litigation and thus may be wary of expanding their operations within certain tax jurisdictions. Therefore, the desire of tax authorities to create detailed transfer pricing requirements must be balanced with the need to encourage cross-border trade.

d. Transfer pricing court cases

One arena where the tension between transfer pricing regulations and the furthering of cross-border trade is often highlighted is during transfer pricing related litigation. Consider a recent court case in Japan, where a major multinational company has become the first taxpayer to win a Japanese transfer pricing court case. (Gruendel *et al.* 2009) The Japanese subsidiary of Adobe Systems Inc. (Adobe Japan) engaged in inter-company service transactions in financial year (FYE) 2000, FYE 2001 and FYE 2002. The National Tax Authority (NTA) asserted that these transactions were transfer priced so as to result in a shifting of taxable income away from Japan. The NTA adjusted the income of Adobe Japan for the 3 years in question, resulting in US\$ 10.2 million in additional income and over US\$ 3.2 million in additional taxes being reported in Japan.

Adobe Japan appealed the initial decision at various levels of the court system, eventually garnering a hearing with the Tokyo High Court. The High Court found in favour of the taxpayer, citing that the NTA failed to prove that the transfer pricing method equivalent to the resale price method could be applied to this transaction.

Another recent case involves the allocation of profits to a Permanent Establishment (PE).⁵ UK headquartered Rolls Royce plc maintained an India based subsidiary

⁵ This is a technical term found in tax treaties and sometimes in domestic tax law that refers to a fixed place of business or a taxable presence caused by the activities of an affiliated entity. Transfer pricing practitioners sometimes refer to this type of structure as a branch. As noted by Labrum *et al.* (2008)

whose function was to perform support services for the parent company. In October 2007 the New Delhi Income Tax Appellate Tribunal (the Tribunal) took the position that these functions had expanded to include substantial marketing activities and that therefore an additional 35 percent of parent company profits (those not related to manufacturing or research and development) were due to the India-based subsidiary.⁶

The taxpayer requested that the Tribunal reverse this decision, but in February 2009 the Tribunal reaffirmed its ruling that the marketing activities performed by the Indian subsidiary created a PE and warranted the apportionment of additional profit to that subsidiary.⁷ (Wright 2009)

Interestingly, the Tribunal explicitly sought to distinguish the facts and circumstances of this case from prior cases involving Morgan Stanley (heard before the India Supreme Court)⁸ and Sony Entertainment Television (heard before the Mumbai High Court).⁹ In those prior cases, the courts found that as long as the pricing arrangements for inter-company transactions reflected third-party, market results and (in the Morgan Stanley case) the risks assumed by the India-based subsidiary, it was not necessary to apportion additional profit into the jurisdiction. By contrast, the Tribunal took the position that inter-company remuneration to the India subsidiary of Rolls Royce did not appropriately account for risks assumed, and thus additional profit was necessary.

These court cases illustrate that transfer pricing litigation can quickly become a source of operational, financial, tax, and reputation risk to MNEs. Such risks will be taken into consideration by MNEs in determining where to establish operations and the extent to which foreign subsidiaries should engage in inter-company, cross-border transactions.

Transfer pricing in the Asia Pacific region

Overview

In an attempt to manage potential transfer pricing risk, many tax authorities in the Asia Pacific region have recently introduced specific transfer pricing regulations governing related-party transactions of MNEs operating in their jurisdiction. As noted above, the People's Republic of China's State Administration of Taxation has announced comprehensive transfer pricing regulations, the National Tax Services in

where a PE arises in a country due to sufficient presence to constitute a PE in local law or by means of a double tax convention, the amount of profit attributable to that PE raises transfer pricing issues.

⁶ Rolls Royce plc. vs. Deputy Director of Income Tax (International Taxation), New Delhi Income Tax Appellate Tribunal, No. 1496-1501/DEL of 2007, decision filed 26 October 2007.

⁷ Rolls Royce plc v. Deputy Director of Income Tax, New Delhi ITAT, ITA Nos. 1496-1501 of 2007, decision filed 13 February 2009.

⁸ Morgan Stanley & Co., Inc. v. Director of Income Tax (International Taxation), Supreme Court of India, No. 2914 of 2007, decision filed 9 July 2007.

⁹ Sony Entertainment Television Satellite (Singapore) Ptd. Ltd. v. Deputy Director of Income Tax, Mumbai High Court, No. 944 of 2007, decision filed 22 August 2008.

Korea and the National Tax Authority in Taiwan have updated their respective local country regulations, and the Inland Revenue Authority of Singapore has published a number of consultation documents regarding the application of transfer pricing principles in Singapore.

These local regulations however, are often based on the Organisation for Economic Co-Operation and Development (OECD) transfer pricing guidelines. With an interest in harmonising the activities of its member countries, the OECD released guidelines on transfer pricing in 1995 (OECD 1995), and most developed countries subscribe to these guidelines.¹⁰ The OECD guidelines are based on the arm's length principle which requires that a transfer price should be the same as if the two companies involved were two independents, not part of the same corporate structure.¹¹ The arm's length principle is found in Article 9 of the OECD Model Tax Convention and is the framework for bilateral tax treaties between OECD countries, and many non-OECD governments. By providing a globally consistent framework, the intention of the OECD guidelines is to minimise transfer pricing disputes arising from the tax authority's evaluation of related-party transactions by using different methods or approaches.

Within the Asia Pacific region, only Australia, Japan and South Korea are full OECD members. China and India are enhanced engagement countries, while the transfer pricing regulations in Singapore and Taiwan are based, to varying degrees, on the OECD transfer pricing principles. Therefore a degree of consistency in the application of transfer pricing principles around the region would be expected. While this is generally true, there is still a reasonable degree of local interpretation with respect to the application of the OECD transfer pricing principles. This is illustrated in Table 1, which summarises transfer pricing regulations for countries in the Asia Pacific region.

¹⁰ In addition to the documents published in 1995 the OECD has subsequently published a number of reports and papers. In the aggregate, transfer pricing economists generally refer to transfer pricing-related directives from the OECD as 'OECD guidance'.

¹¹ As noted by Urquidi (2008) the arm's length principle derives from the 'separate entity' approach of determining taxable income, whereby each affiliate of a multinational organisation is treated as an independent entity for purposes of determining taxable income. Hyde and Choe (2005) make the important observation that although this approach is considered the standard for transfer pricing, the 'formula apportionment' approach, whereby a formula based on the relative amount of a taxpayer's activities in various tax jurisdictions is used to divide income, remains an alternative.

Table 1: Summary of transfer pricing regulations by country

	Tax Authority	Adoption of OECD Guidelines	Documentation Requirements	Disclosure Requirements	Penalties
Australia	Australia Tax Office (ATO)	Accepts the general principles, indicating in local rulings where there are differences in emphasis or extensions of OECD principles	A four step process is outlined for preparing documentation – though not mandatory it is highly recommended	The ATO requires a Schedule 25a form to be filed with each tax return.	Various between 10 and 50 percent of tax adjustment, with a possible 20 percent increase if the tax payer “takes steps to prevent or obstruct”.
China	State Administration of Taxation	In principle, recognises the guidelines and the relevant transfer pricing methods	Contemporaneous requirements as set out in Articles 13-20 of Guoshuifa (2009) No.2	The SAT requires taxpayers to complete nine comprehensive related-party transaction reporting forms along with their annual tax filing.	Penalties for adjustments based on the base Renminbi lending rate plus 5 percent. Separate penalties for non compliance with documentation requirements
Hong Kong	Inland Revenue Department	The OECD guidelines are recognised in Hong Kong	There are no explicit formal requirements to prepare but taxpayers are recommended to prepare documentation	No specific disclosures are required.	Various corporate tax penalties for underpayment of taxation.

	Tax Authority	Adoption of OECD Guidelines	Documentation Requirements	Disclosure Requirements	Penalties
India	Income Tax Department	India transfer pricing legislation is broadly based on the OECD guidelines, to the extent they are not inconsistent with domestic law	A detailed list of mandatory documents are listed in Rule 10D (1).	Tax payers are required to provide an accountants certificate along with their annual tax return.	For inadequate documentation, the tax payer is fined 2 percent of transaction value; if efforts to determine an arm's length price have not been made a fine of between 100 percent and 300 percent of incremental tax may be levied, plus US\$ 2,200 for not furnishing an accountant's certificate.
Japan	National Tax Agency (NTA)	Domestic TP guidelines refers to the OECD guidelines, but the NTA tends to follow local interpretations of Japanese tax laws and regulations	No statutory documentation requirements but guidance is provided on the items likely to be examined during an audit. Therefore documentation is recommended.	The tax payer must submit schedule 17-4 outlining foreign related-party transactions and the TP method applied in calculating the arm's length price for these transactions.	Underpayment penalty tax of either 10 or 15 percent of additional tax and possible delinquency tax.
Korea	National Tax Service (NTS)	The Law for Coordination of International Tax Affairs (LCITA) and its associated decrees are broadly consistent with the OECD guidelines.	Contemporaneous documentation requirements.	Disclosure of transfer pricing arrangements when submitting annual corporate tax return.	In circumstances which result in additional tax penalties including under reporting and under payment may be charged along with a penalty for failure to submit documentation.

	Tax Authority	Adoption of OECD Guidelines	Documentation Requirements	Disclosure Requirements	Penalties
Singapore	Inland Revenue Authority of Singapore (IRAS)	The Singapore TP guidelines are consistent with the OECD guidelines.	There are no explicit formal requirements to prepare TP documentation but the IRAS expects taxpayers to assess transfer pricing risk and prepare documentation commensurate with that risk.	No specific disclosures are required.	Under general tax provisions relating to understatements of income, the penalty range is from 100 percent to 400 percent of the tax underpaid.
Taiwan	National Tax Administration	The NTA recognises the OECD guidelines.	Except for immaterial related-party transactions, extensive contemporaneous documentation is required.	Related party transactions must be disclosed on taxpayers' annual income tax returns.	Under certain circumstances a maximum penalty of 200 percent of the tax shortfall could be imposed by the tax authority.

Source: (Ernst & Young 2008)

Sample transaction

An example which highlights one area of different interpretation of the OECD guidelines is with respect to the compensation paid to capital used as part of a proprietary trading business. A common structure within the global trading industry is for traders to be based at various locations around the world (the 'trading locations'). These trading locations then book trades onto the balance sheet of an overseas entity (the 'booking location') and transfer pricing is required to divide the trading income earned between the trading locations and the booking location.

The compensation of the subsidiaries¹² used for booking proprietary trades has historically caused controversy as tax authorities in the region have adopted differing positions regarding the applicability of the OECD guidance on this topic. The OECD guidance provides that:

The hedge fund model may be a useful analogy for a proprietary trading business, or a trading book in which the strategy is to earn a significant proportion of the income by taking unhedged, proprietary positions to generate significant trading gains...the remuneration arrangements commonly observed in hedge funds may provide a reasonably reliable comparison for allocating profit between participants in a firm's proprietary or quasi proprietary trading arrangements. (OECD 2008, paragraph 162)

¹² It should be noted that the OECD guidance cited is not applicable in a permanent establishment/branch context. See OECD 2008, paragraph 81.

This 'hedge fund' model typically results in a '2 and 20' fee¹³ whereby investors are charged a management fee equal to 2 percent of assets under management and a performance fee equal to 20 percent of profits above a predetermined performance hurdle. In a global trading context this model is typically applied such that: (i) a management fee is paid to the trading location or (ii) the trading locations' trading costs (possibly including a profit element) are reimbursed. The trading locations will then also receive 20 percent of any profit earned on their trading positions, possibly including a performance hurdle, as the performance fee component. The booking location will receive the residual gains or losses. However, this approach has been actively rejected by certain tax authorities who take the position that there is insufficient comparability between a hedge fund group and an internal proprietary trading operation to justify the application of this model. The rejection of the hedge fund method is also likely to result in a greater level of the profits or losses of the proprietary book in question being allocated back to the trading locations. This presents a disconnect for transfer pricing purposes. While the tax authorities in the trading location dispute the hedge fund model approach, the tax authorities in the booking location may more closely follow the OECD guidelines and accept the approach on the grounds that it is a reasonably comparable price to use for benchmarking purposes.

Inconsistent interpretation of the OECD guidelines

This example is one of many where two countries that look to the OECD guidelines to develop their local tax transfer pricing regulations may come to different conclusions regarding the validity of certain economic approaches. This problem is often exacerbated in the case of developing economies who may take a position that is at odds with generally accepted international guidance. Therefore, MNEs may face difficulties as they seek to maintain consistency in their global approach to transfer pricing while also managing the potential risks of double taxation as one tax authority will have to be appeased ahead of the other. While options including Competent Authority¹⁴ may seek to help minimise double taxation resulting from transfer pricing, such options can often result in a lengthy resolution and the need to identify such issues on financial statements if and when the matters become resolved; both of which may be undesirable from the perspective of a MNE. In addition, pursuing Competent Authority as a means to alleviate transfer pricing disputes between two jurisdictions is only an option if those jurisdictions maintain a bilateral tax treaty. In developing economies this may not always be the case.

Policy recommendations

Tax authorities can assume many different postures with respect to transfer pricing regulations and enforcement. On one end of the spectrum, there is the pragmatic,

¹³ Despite recent pressure on fees, a '2 and 20' fee model is still common place within the hedge fund industry. See *The Economist* 2009.

¹⁴ This is a term used in tax conventions to identify the person who represents the State in the implementation of a tax treaty. The Competent Authority teams from the respective States involved in the dispute will negotiate and seek to resolve the dispute to minimise double taxation.

limited audit approach that seeks to actively encourage MNEs to invest within their jurisdiction. On the opposite end of the spectrum, there are highly restrictive environments whose stringent regulations may be regarded as a risk factor by MNEs considering expansion.

The current market environment has seen many tax authorities lean towards the more restrictive end of the spectrum by structuring local regulations so that the preparation of comprehensive transfer pricing documentation is mandatory along with exhaustive forms which require the disclosure of related-party transactions. The level of transfer pricing audit activity which has already increased in recent years¹⁵, is also expected to grow further under this environment.

However, is this approach reasonable? Does a highly-rigid transfer pricing environment benefit a jurisdiction¹⁶ or is it simply another cost to local businesses which serves as a potential deterrent to investment? The following discussion presents a few considerations for tax authorities seeking to develop their transfer pricing regulations to help balance their need to increase tax revenues while not discouraging local investment and expansion by MNEs. Policy suggestions for MNEs are also discussed.

From the perspective of a MNE, the need for tax authorities to develop local regulations based on globally consistent standards is a must. One of the key challenges facing MNEs is the challenge presented from differing approaches to transfer pricing. That is, a transaction subject to transfer pricing regulations will by definition involve two different tax jurisdictions. If the regulations in one jurisdiction differ substantially from those in the other, the MNE is put at risk of double taxation in the case that either tax authority disagrees with their tax position. There are also substantial costs associated with preparing and maintaining transfer pricing analyses. These costs can increase substantially in jurisdictions that adopt non-conforming approaches to their transfer pricing requirements. Therefore, the extent that local regulations are consistent with globally accepted standards should help MNEs manage potential double taxation risks arising from transfer pricing arrangements, and should also help MNEs reduce the costs of compliance.

The adoption of a proportional, logic-based approach by tax authorities when evaluating the decision to instigate a transfer pricing audit has also proved successful. By providing MNEs with clear guidance on the intra-group transactions and thresholds which are likely to attract scrutiny and/or trigger a transfer pricing audit, both tax authorities and MNEs are able to focus their time and resources appropriately.

¹⁵ Over half (52 percent) of respondents to the previously cited survey (Ernst & Young 2008) indicated that their organisations' had undergone a transfer pricing examination since 2003.

¹⁶ The interested reader is referred to Peralta *et al.* (2006) for an exploration of the theory that countries may achieve optimal economic benefits by not monitoring the profit sharing activities of multinational firms by way of strict regulations.

A transparent and efficient mechanism for dispute resolution can also be beneficial for both taxpayers and tax authorities. The financial and human capital resource commitment required by both parties in a lengthy Competent Authority dispute can be significant. Transparency and flexibility are likely to be key factors in the ability to resolve disputes efficiently which may be difficult to achieve given the increasing complexity of transfer pricing arrangements. Nevertheless, the potential benefits to all parties of providing such a mechanism could be significant.

It is important to note that there are also a number of steps which MNEs can take to help to manage transfer pricing risks. Some examples include policy design, documentation and supporting analysis.

With respect to policy design it is important for MNEs to invest sufficient time and resources into the planning stage of transfer pricing. This should include a review of how the business operates and an assessment of the potentially suitable transfer pricing methods for pricing related-party services. Investing this time upfront may help ensure that policies are well suited to the business before they are applied.

The preparation of transfer pricing documentation is also critical – indeed it is mandatory for MNEs operating in some countries in the Asia Pacific region. Even if not mandated by the local regulations, it is typically highly recommended in most other jurisdictions. Documentation should summarise related-party relationships, include business analyses outlining the functions, risks and assets of related-party transactions and describe economic benchmarking analyses testing the arm's length nature of transfer prices applied to related-party transactions. Such analyses should assist MNEs in explaining to tax authorities the basis of their transfer pricing policies and the justification for the policies applied. Often, MNEs have also found the preparation of such documentation useful for developing a better understanding of how their respective businesses operate around the world. Once documented, such information can prove useful for other strategy related projects at the corporate level.

It is also particularly important in the Asia Pacific region to maintain supporting analyses evidencing and reconciling the transfer pricing policies applied to the MNE's underlying financial data. While traditional transfer pricing documentation may explain the rationale for a transfer pricing policy, increasingly, tax authorities in the region are also seeking to verify transfer pricing calculations to ensure that the policy has been applied correctly. Therefore it is important to be able to provide calculation models and supporting data to verify internal policies.

Conclusions

This article has demonstrated that transfer pricing is increasingly becoming one of the most significant business issues facing MNEs as well as a public policy issue facing fiscal authorities. Nowhere is this truer than in the Asia Pacific region where local MNEs are expanding rapidly into new geographies at a time when many local tax authorities are expanding their transfer pricing regulations. Therefore the risk of

transfer pricing controversy and potential double taxation is increasing. While it may be appealing for tax authorities to see transfer pricing as a mechanism to raise tax revenues indirectly (without the political consequences of direct taxation), transfer pricing regulations must be balanced so as not to be seen as excessive and thus discouraging to local investment. Specifically, potential recommendations for tax authorities include: (i) developing local country transfer pricing regulations that are consistent with global standards; (ii) the adoption and clear communication of the transfer pricing audit process and transactions likely to trigger an audit; and, (iii) a transparent and efficient mechanism for dispute resolution. From the perspective of MNEs, developing sound transfer pricing policies and maintaining substantial documentation and supporting analyses can assist in addressing the challenges of transfer pricing.

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ENVIRONMENTAL CHALLENGES IN SOUTHEAST ASIA: WHY IS THERE SO LITTLE REGIONAL COOPERATION?

Henriette Litta

Southeast Asia's environmental problems are manifold. A considerable number of problems are common to most of the region's countries. Nonetheless, one can observe only a few examples of interstate cooperation in trying to solve these problems. This paper discusses reasons for the low density of environmental regime creation in Southeast Asia. Two hypotheses from regime theory are useful for the explanation. First, institutionalists argue that states as rational actors will only engage in regime creation if their expected benefits will exceed their expected costs. Countries in Southeast Asia do not value the long-term benefits of environmental protection, and natural resources are treated as commodities in the economic (export) market. Second, constructivists argue that regime creation can be enhanced by the existence of a long-standing institutional regional cooperation, which can create trust among the members. Although Southeast Asia has developed a strong regional organisation, ASEAN, its existence has not contributed substantially to regime creation. The process of mutual trust building among the ten member countries has developed slowly. ASEAN tries to keep the status quo and avoids conflict. Environmental protection measures have only been undertaken in the aftermath of major disasters that made inaction an impossible choice. ASEAN's institutional setting, the informality of negotiations, the consensus principle and the exclusive decision-making power at the national level have largely impeded the creation of effective environmental regimes.

Introduction

At a time when rapid economic development has created dynamism and wealth in Southeast Asia, the region has become dirtier, less ecologically diverse, and more environmentally vulnerable as can be read in many environmental reports. (See: ASEAN 2002; ASEAN 2006; UNEP 2001; UNEP and Earthscan 2002; UNEP 2004; UNESCAP 2006) To make matters worse, Southeast Asia's environmental problems are complex and diverse. According to the ASEAN Report to the World Summit on Sustainable Development, the major problems of the region are, "habitat loss, over-harvesting, pollution, introduction of alien species, desertification and climate change". (ASEAN 2002, 28) Environmental degradation is one of the biggest problems for the countries in Southeast Asia. On the one hand, degradation is the result of socio-economic changes in the region such as the transforming political economy and modes of production, population growth, and economic and resource pressures from outside the region. On the other hand, governance weaknesses in Southeast Asian countries have led to a lack of ability in enforcing environmental protection. Environmental risks do not only pose an immense danger for the people

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and ecosystems in Southeast Asia, but they are also a type of problem that no country can solve on its own.

Given the gravity of environmental challenges, a fair amount of interstate cooperation to solve these problems could be expected. However, as will be shown, Southeast Asia has only developed a very modest number of environmental regimes. This discrepancy between demand and creation of such cooperation regimes needs to be explored.

Southeast Asia's demand for cooperation in environmental matters

The predominant environmental picture of the Southeast Asian countries is one of degradation and decline. There is a high prevalence of diverse environmental challenges in the region. Despite ecological and economic diversity, many environmental problems are sufficiently widespread and transnational in character that they should be understood and shared across the region. ASEAN has recognised in its 2009 East Asia Summit, "that there is an urgent need to enhance our cooperation to effectively respond to natural disasters which have increased in frequency and intensity over the last twenty years". (ASEAN 2009) Six of these pressing transnational environmental problems will be presented in this section.

First, Southeast Asia has a huge potential for ecological disasters. The geo-physical and climatic conditions unleash a number of natural hazards on a regular basis. The most common are typhoons, floods, earthquakes and tsunamis, landslides, volcanic eruptions, droughts and wild fires. (ASEAN 2006, 8) Not all countries are affected equally, but there is not a single country in the region that is spared from all of these hazards.

Second, air pollution levels in Southeast Asian cities are amongst the highest in the world, "producing serious human health impacts and affecting aquatic and terrestrial ecosystems". (UNEP 2002, 221) Air pollution usually originates from the burning of solid and liquid fuels for power generation; and most industries in Southeast Asia lack efficient pollution control devices. (Rock 2002) Furthermore, forest fires have been a major cause of air pollution. The fires of 1997-98 exemplify transnational pollution par excellence, as the fires started in Indonesia but the impact and effects of the fire were felt in areas far and beyond Indonesia. The area affected by air pollutants from the fire had spread more than 3,200 kilometres East to West, covering six Southeast Asian countries and affecting about 70 million people. (Glover and Jessup 1999)

Third, the water quality in lakes, rivers and coastal areas is deteriorating. Contamination is caused by the discharge of wastewater from domestic, industrial and agricultural sources. (UNEP 2001, 25; UNEP 2004, 35) This waste is being dumped into rivers and nearby seas. Additionally, oil spills and other contaminants from shipping and other maritime activities, as well as surface run-off of surrounding areas all contribute to the contamination of coastal waters and

deterioration of marine and coastal ecosystems. (UNEP 2001, 6; ASEAN 2006, 38) Large-scale dam construction on the Mekong and other Southeast Asian rivers negatively impacts water quality. (ADB 2004, 12/13; Osborne 2004, 19; Hirsch 2007, 237) There are major concerns that the dams will increase the flow fluctuations and decrease the normal flow of nutritious sediments crucial for fisheries and agriculture production. (Dore et al. 2007, 79)

Fourth, Southeast Asia has the fastest rate of deforestation in the world. Latest available figures show an average deforestation rate in the region of 1.35 percent, whereas the world average is 0.2 percent annually. (ASEAN 2006, 56) Forest products are exported massively. For example, Malaysia is the largest and Indonesia the second largest supplier of palm oil in the world. (Everson 2007, 32; Agence France Press 2008; MacKinnon 2007) Additionally, more land is needed for the establishment of huge plantations to grow more crops for export. The loss of forests poses a big threat for climate and atmosphere. (Lee 2008) Since forests are huge deposits of carbon dioxide, their well-being is highly relevant for a stable balance of the worldwide climate.

Fifth, biodiversity in Southeast Asia is shrinking enormously. The region is home to about half of the world's terrestrial and marine biodiversity. (UNEP 2001, 4) Twenty percent of all known species live in Southeast Asia. (ASEAN 2006, 63) However, land conversion, climate change, pollution and unsustainable harvesting have resulted in a huge loss of habitat and species. Loss of their natural habitat has led to an increase in the number of threatened animals and plant species. About 24 percent (1130) of mammals and 12 percent (1183) of bird species are currently regarded as threatened. (UNEP 2002, xxi)

Sixth, fish stocks have fallen dramatically. In Southeast Asia there are estimated 2,500 species of fish. (ASEAN 2002, 34) The coastal countries in the region are significant producers of captured and cultivated fish that accounted for 15 percent of global fisheries trade in 1998. (ASEAN 2002, 34) As a consequence, since the 1990s, fish stocks have reached full exploitation and overfishing has threatened diversity and quantity. Fish stocks have fallen by 50 percent. To enlarge their catch, fishermen throw explosives and chemicals into the water. (UNEP 2001, 29; ASEAN 2006, 48)

Regime creation

Ideal typical distribution of cases

Given the described transnational environmental problems in Southeast Asia, two consequences are possible: the creation of environmental regimes to solve these problems or no regime creation. Regimes are a patterned form of cooperation between states. (See: Ruggie 1975, 570; Keohane and Nye 2001 [1977], 19; Krasner 1983, 2) Regimes can take the form of written or customary international law, cooperation agreements between states, or organisations. Common to all regimes is the existence of formal or informal norms, principles, rules and decision-making

procedures. (Krasner 1983, 2) Basic assumption is that regimes represent engines for behavioural change of state actors and develop a dynamic of their own. Regimes mediate, constrain, or influence behaviour and thus induce policy change. (Young and Zürn 2006, 121)

Research on regime creation confirms that there is no automatism between the demand for cooperation and the creation of cooperation regimes. (Osherenko and Young 1989, 241) However, strong regulatory demand is a major stimulus for regime creation and huge discrepancy between demand and creation requires explanation, especially if this kind of discrepancy is not observed in other regional settings, like Europe. Southeast Asia is often compared with Europe, because the development of regional integration is similar. (Forster 1999; Nicolas 2005; Litta 2009) A high prevalence of transnational environmental problems should foster regime creation. Regime creation is the expected outcome, whereas no regime creation is a puzzling outcome that requires explanation. In the ideal distribution of cases, more cases of regime creation are expected than cases of no regime creation.

Table 1: Ideal typical distribution of cases

Outcome	No regime creation	Regime creation
Cases	X	Y(Y>X)

Real-world distribution of cases

The distribution of cases in reality differs substantially from the ideal distribution. First of all the paper attempts to estimate the outcome of no regime creation. However, since no result can be observed this is not an easy task. For a rough estimation mathematical combinatorics will be used. There are ten countries in Southeast Asia, a regional organisation (ASEAN), and at least six transboundary environmental problems that were described earlier.

Table 2: Real-world Distribution of Cases

Outcome	No regime creation	Regime creation
Cases	XXX	5

In a very modest estimate it can be assumed that ASEAN will create at least one multilateral regime on one of the issues. In its forty-two years of existence ASEAN has produced 243 treaties and agreements on various issues. The rate of regulatory activism of the organisation is constantly increasing. (Stubbs 2004) Therefore it is not implausible to assume at least one agreement on the management of an environmental issue. In addition, it is assumed that there is only a modest rate of bilateral and outside-ASEAN multilateral regime creation for two reasons. First, the region is notorious for its reluctance of mutual cooperation and its long-standing mistrust. This has been discussed as a historical legacy from the times of external colonisation and domination of European doctrines that created a region with a “fundamentally diminished sense of regional identity and belonging”. (Elson 2004, 28) However, many similarities in the economic and political development after

independence (mid-twentieth century) as well as the shared experience of successes and failures have tied the region together and made cooperation more likely.

Second, it is assumed that there are similarities between cooperation behaviour of Southeast Asian countries outside and inside the region. Southeast Asian countries are not at all reluctant when it comes to signing and ratifying major international environmental agreements like the *Cartagena Protocol on Biosafety* (7 of 10 countries signed or ratified), the *Convention of Biological Diversity* (9), the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (7), the *Convention on Persistent Organic Pollutants* (10), the *Convention to Combat Desertification* (10), the *Plant Protection Agreement for the Southeast Asia and Pacific Region* (8), and the *UN Framework Convention on Climate Change* (9). (Mitchell 2002-2009)

If only half of the ten countries adopt one bilateral agreement on one of the environmental issues it results in ten possible combinations. Assume also that from half of the ASEAN countries three (10 possibilities), four (five possibilities) or five (one possibility) countries adopt one multilateral agreement. Taking into account at least three of the six different thematic fields, the combinations for possible regime creation easily exceed two-digit numbers. In sum, the high prevalence of transnational environmental problems might have led to the creation of dozens of regimes (hypothetically estimated). However, only five cases could be identified in which a regime has been created (Table 3).

Table 3: Environmental regimes in Southeast Asia

Created by	Regime Name	Year
ASEAN	Agreement on the Establishment of the ASEAN Centre for Biodiversity <i>(not yet entered into force)</i>	2005
ASEAN	Agreement on Disaster Management and Emergency Response <i>(not yet entered into force)</i>	2005
ASEAN	Agreement on Transboundary Haze Pollution <i>(entered into force in 2003)</i>	2002
Cambodia, Laos, Thailand, Vietnam	Mekong River Commission <i>(entered into force with establishment)</i>	1995
ASEAN	Agreement On The Conservation Of Nature And Natural Resources <i>(entered into force in 1999)</i>	1985

Source: material from the databases www.ecolex.org; <http://faolex.fao.org>; www.aseansec.org/ratification.pdf

Four of these regimes have been created by ASEAN and one is a joint endeavour of four stakeholder countries. The Mekong River Commission is an international organisation. The other four regimes are in the form of agreements. Two of these four ASEAN agreements have not yet entered into force and thus do not unfold regulatory power. The Agreement on the Establishment of the ASEAN Centre for Biodiversity should facilitate cooperation and coordination among the parties on the conservation and sustainable use of the region's biological diversity. The Agreement

on Disaster Management and Emergency Response is expected to provide a framework for the development of operational procedures to respond collectively and rapidly to disasters. The Agreement includes provisions for movement of relief assistance, expedited customs and immigration clearance. The Agreement on Transboundary Haze Pollution has the goal to prevent and monitor transboundary haze pollution resulting from land and/or forest fires. Cambodia, Laos, Thailand, and Vietnam founded the Mekong River Commission for the sustainable management of the River and its resources. The two main goals of economic development and ecological sustainability of the River and its resources are jointly implemented and monitored by the riparian countries. The Commission is a full-fledged international organisation whose creation was mainly initiated by the United Nations. The Agreement on the Conservation of Nature and Natural Resources is the oldest environmental agreement in the region. Its goal is to maintain essential ecological processes and life-support systems. Its scope is extremely broad and its provisions are kept very general. No concrete measures have developed out of this agreement. In sum, from the perspective of regime effectiveness only two of the five regimes are eligible for detailed analysis.

Analytical framework

Common problems need collective action. The coordination of collective action between states is difficult to realise. Actors' interests might be negatively correlated causing a collective action dilemma. Collective action dilemma means that by realising one actor's preference, the realisation of another actor's preference is impeded. States' willingness to engage in binding arrangements might not be high. Rational state actors try to free-ride on institutional successes without paying the price for implementation. Authors such as Mancur Olson, Garrett Hardin and Elinor Ostrom have analysed the potential of institutions to solve dilemmas of collective action. (Olson 1998 [1965]; Hardin 1968; Ostrom 1990) Regime theory is building on this knowledge and attempts to examine the capacity of institutions to solve these kinds of problems. Research on regime creation asks the questions under what conditions regimes arise, how long the process of creation takes, and whether there are differences among international regimes? (Haas et al. 1993; Young and Osherenko 1993; Rittberger 1995) The main argument of regime theorists is that regimes have an independent impact on the behaviour of actors: "policymakers and other actors in the international arena have some room for manoeuvre, delimited by power structures, national interests, and other non-choice variables, for designing and operating institutions that increase the welfare of their participants". (Bernauer 1995, 354) This means that the described demand for environmental cooperation is only part of the story. High or low demand does not sufficiently determine the level of regime creation. Instead, the crucial variable to explain the existing level of regime creation is the behaviour of important actors. In Southeast Asia, actors play on two levels, the national and the regional. These two levels and the actors therein will be analysed.

National level

States are rational actors that seek to maximise their gains and minimise their costs. States create regimes only under the condition that they cannot solve a specific problem on their own. Regimes have specific characteristics that can be conducive to joint problem solving. Keohane summarises that regimes are advantageous if they “improve the quantity and quality of information available to actors; or reduce other transaction costs, such as costs of organisation or of making side-payments”. (Keohane 1983, 154)

Essentially, states are sceptical about cooperation, because it entails a reliance on other states and their adherence to regime provisions. “Governments always need to compare the risks they run by being outside a regime with the risks they run by being within one”. (Keohane 1989, 122) States overcome this hesitation if the expected gains from a regime exceed the expected costs. This reduces uncertainties about the positive impact. States calculate their costs and benefits on the basis of the state’s preferences and capacities. States are not equally affected by environmental problems. Some countries are victims of environmental damage, others are producers of damage, and some countries are both. A country’s individual position towards a specific environmental problem defines its preference towards problem solving. This position results from a country’s capacity and willingness to abate environmental problems. In general, environmental protection is a costly matter. From a short-term perspective, abatement costs exceed the benefits from protection. Sustainable environmental protection only unfolds its (economic) benefits in the long run.

Factors typical for the developing world (to which Southeast Asia belongs) such as limited state budgets and a lack of skilled personnel impede the realisation of benefits by escalating the costs of cooperation. Sprinz and Vaahantoranta (1994, 80) define four groups of countries according to their position towards regime creation: pushers, intermediates, draggers, and bystanders. Victim countries push for joint regulation among all stakeholders. Intermediates have incentives to participate in a regime but are not willing to shoulder the costs, draggers oppose joint regulations, and bystanders have little ecological interest but take more ambitious positions than draggers because of the low costs of abatement. In a small regional setting like the one in Southeast Asia (10 countries) only a small number of states can participate in a regime. Therefore, the constellation of different positions among the involved nations is of utmost importance. If, for example, only three countries are involved in an environmental problem and one is a pusher and another country is a dragger, no matter the category of the third country, regime creation is highly unlikely.

From these theoretical assumptions a first hypothesis can be deduced: *the more positive actors’ interests are correlated, the higher the chances for regime creation.*

Regional level

The decisions of states to engage in cooperation mainly derive from rational weighing of costs and benefits. However, in Southeast Asia a second important

factor needs to be analysed. It is assumed that states are able to learn and adapt their behaviour. (Haas 1990, 68) Cooperation is affected by perception and misperception, and the capacity to process information. Knowledge, beliefs and ideology, including the knowledge provided by regimes, can alter actor interests. Mutually advantageous experience with past regimes induces prospective partners to be more cooperative in the building of new regimes. Positive experiences with cooperation might be a factor to seek cooperation for a second time even if the short-term benefits are not so obvious. In a regional setting with an existing permanent cooperation organisation, states usually do not only realise their individual gains, but also attempt to maintain a positive reputation within the institution. In Southeast Asia, past environmental regimes are either rare or non-existent. However, the region engaged in a process of regional integration since the establishment of the organisation ASEAN in 1967. From the beginning, member countries (since 1995 all countries in the region are members) explicitly devoted time and energy to enforce trust among neighbours and support intra-regional exchanges. Member countries commit themselves to long-term cooperation in various fields. Therefore, it is assumed that the existence of ASEAN can foster cooperation and thus enhance the possibility of regime creation.

From these theoretical assumptions a second hypothesis can be deduced: *the existence of a political community with long-standing experience in collective decision-making will support the negotiation process leading to regime creation.*

Applying regime theory to the Southeast Asian context

There is no generally applicable explanation for the puzzle of why there is a low environmental regime density in Southeast Asia. For every specific issue area it has to be analysed why or why not a regime has been created. There are still too few case studies that examine this topic. Nevertheless, some more general considerations will increase the understanding of region-specific settings. Environmental activism in Southeast Asia started after the 1972 Stockholm Conference on Human Environment. The picture of environmental activism in Southeast Asia is a picture of four actors: nation states, the regional organisation ASEAN, international organisations, and local environmental groups. As regimes can only be created by states, the relevant actor groups are the nation states and ASEAN. The other two groups, however, can contribute to regime creation and facilitate the negotiation process.

Nation states

Most environmental projects and programmes are focused on nation states or sub-national regions. (UNEP 2001, 71) In the last decade, governments have enacted a remarkable package of specific legislative initiatives including land laws, regulations on protected areas, water pollution, waste management, environmental impact assessment, national forestry plans, biodiversity and wildlife inventories, targets to phase out lead in petrol, and clean river programmes. Furthermore, environmental

auditing and labelling are being promoted. In most countries there are awareness programmes and environmental education. However, environmental degradation in Southeast Asian countries is continuing with great speed as the world's highest deforestation rates or the decrease in marine species exemplify. Except for the affluent city-state Singapore, various policy plans and programmes have not resulted in effective environmental protection. Governments in the region often regard economic development and environmental protection as a zero-sum game. The countries' socio-economic situation is precarious, which has implications for how the environment is managed. Governments in the region have different priorities, most of all economic growth. The general attitude of Southeast Asian countries has been to foster economic development first and consider environmental aspects later. Economic policies subsidise the use of dirty fuels, pesticides and fertilisers. Rapid industrialisation has proceeded against a background of poor environmental management. Governments openly acknowledge that a "raft of legislative initiatives and action plans has had limited success in halting or overcoming environmental degradation". (Elliott 2004, 179)

The policy failure has two key reasons. First, a lack of expertise and resources, and second a general weakness of governance. Governments in Southeast Asia lack the capacity to fight environmental degradation. Protection of the environment is a costly and time-consuming effort. Often, environmental ministers only have a restricted mandate (in contrast to other ministers). More often, there are no competent administrators in the field of environmental protection. (UNEP 2001, 65) The available bureaucracy is not cohesive, technocratic, pragmatic and goal-directed. There are gross coordination problems. Effective environmental agencies with legal authority to impose significant sanctions on polluters still have to be created. Funds for environmental protection are reduced or used elsewhere. "Experience in the last 25 years, since the Stockholm Conference, reveals the fact that the environment sector has been under-funded and under-staffed". (UNEP 2001, 51) Also, there is inadequate compliance and enforcement of national and regional obligations. Political measures often lack accountability, transparency, education and information. (UNEP 2001, 65) The channels of communication do not work well. Despite the fact that some nations adopted environmental regulations, they are ineffectively designed and inadequately implemented. Too often countries neither monitor nor enforce standards and regimes. Both the institutional capacity and the political will to enforce real implementation of the policies are lacking.

Policy-makers also play a role in the degradation processes. Corruption and bribery often dominate decision-making. Resources have become a convenient currency for governments in pursuit of political objectives. Natural resources are treated as commodities. Governments share the attitude of ignoring environmental problems. For a long time, policy makers ignored environmental impacts of economic development. A lifestyle of sustainability is almost completely unknown to Southeast Asians. Wasteful use of resources is seen as a sign of prosperity. On the other hand, poor people desperately try to make use of resources to sell them. Nature and environment are not regarded as a common pool resource for which

there is a shared benefit and also a shared responsibility to take care of. Problems of degradation are supposed to be solved by other people. The public is not putting pressure on the politicians to implement environmental policies. Public discussions about environmental problems and measures are rare. There is a general lack of ownership and responsibility for the environment. Finally, statehood in Southeast Asia is young. Often, governments are not stable and are often forced to resign. The political development of Southeast Asia after colonial independence is rich of autocratic rule, transitional struggle and military interference. Most striking examples are Thailand's suspension of its constitution together with a ban of elections and parties in 1958; Indonesia's revocation of its democratic constitution in 1959; Singapore's security sweep against the opposition in 1963; Malaysia's declaration of emergency rule after ethnic rioting in 1969; and the Philippines' imposition of martial law in 1972. With the violent conflicts during the democratic elections in Timor Leste (2002), the military coup in Thailand (2006), and the violent break down of the monks' uprising in Myanmar (2007), the picture of a peaceful group of states is definitely shattered. Executive-level abuses and frequent turnovers, institutional rivalries and deadlocks, bureaucratic and judicial corruption, and electoral irregularities contribute to state inefficiencies and policy ineffectiveness. (Case 2004, 77) Environmental protection and sustainability is a long-term project that needs stable political conditions, otherwise the chances for enforcement and implementation remain minimal.

ASEAN

ASEAN has implemented several environmental projects in collaboration with international organisations and foreign countries. Examples of such projects are the Environment Education Action Plan with funding from the German Hanns Seidel Foundation and UNEP, and the Waste Water Treatment Technology Transfer and Cleaner Production Demonstration Project funded by Australia. (ASEAN 2000) Four of the five identified regimes have been created by ASEAN (See: Table 3). Thus, it is assumed that ASEAN obtains a critical role in environmental protection in Southeast Asia. However, the created regimes have not contributed to an amelioration of the environmental situation. Mainly, institutional failures account for the low level of problem solving. ASEAN's soft mode of governance that relies on unanimous decisions and consensual discussion outcomes has often been criticised and made responsible for shortcomings in effective outcomes in various fields of engagement. (Kahler 2000; Acharya 2001; Ikenberry and Tsuchiyama 2002; Beeson 2004) The informal ASEAN mode of decision-making is responsible for its inability to tackle critical problems. ASEAN has difficulties initiating reforms on its own. Usually, it takes major environmental disasters to trigger action, like in the case of massive haze pollution or of the tsunami. ASEAN does not devote many resources to its environmental unit. No decision-making competencies can be found at the ASEAN level. Implementation and monitoring of provisions is left to the good will of the member states. The listed remedies in the four ASEAN regimes are comprehensive, coherent and wisely chosen. They clearly reveal the existence of a knowledge-based understanding about the problem, its cause and adequate solutions. The problem analysis and the sophistication of proposed measures are impeccable. However, it is

left completely open how the proposed measures should be translated into action. A closer examination of the agreements' provisions reveals well-known patterns of the ASEAN decision-making style, resulting in largely deficient material obligations and lacking enforceability. Provisions are generally weak and lack the capacity for implementation. The so-called ASEAN way does not serve well in dealing with environmental challenges. Effectiveness suffers from weaknesses in monitoring, assisting, and ensuring state compliance that are endemic to the ASEAN way and its preference for non-interference in the domestic affairs of member states, non-binding plans instead of treaties, and central institutions with relatively little independent initiative and resources. In sum, it is doubtful whether these regimes are anything more than paper tigers.

International organisations

The presence and work of international organisations in Southeast Asia is of special importance. In the context of developing regions, external actors can contribute to the fulfilment of tasks that would otherwise – in the developed world – be managed by the state. Financial means, skilled personnel and longstanding experience are the assets that they bring to the region. Also, countries in Southeast Asia have long regarded environmental protection as a stumbling block to economic development. As a consequence, it has been the work of international organisations that triggered first environmental projects and raised public awareness for these issues. Almost all early projects on environmental protection were conducted in joint effort with international organisations. Without the support and initiative of international actors, the problem of environmental degradation would not have made it on to the agenda of Southeast Asian states. UNEP was the catalysing force in the drafting of the first ASEAN Environmental Programme in 1977. (Aviel 2000, 20) Two of the five identified regimes, the Biodiversity Centre and the Mekong River Commission, have been initiated by the United Nations. Until today, various international donors are the major providers that keep these regimes alive. The UN Economic and Social Commission for Asia and the Pacific, UNEP and UNDP are very active in the region. Each of these institutions has spawned a range of regional programmes, including the Partnership for Environmental Management for the Seas of Southeast Asia, UNEP Coordinating Body on the Seas of East Asia, Southeast Asia Fisheries Development Centre, the Southeast Asia Water Partnership, and the Regional Action Plan for Environmentally Sound and Sustainable Development. ASEAN has generally forged cooperative arrangements with several UN agencies. ASEAN aims to “intensify such collaboration with the UN agencies and extend collaboration with other regional and other inter-governmental organisations as well as other donors”. (ASEAN 2000)

Local environmental groups

After the 1972 Stockholm Conference grassroots community movements arose in order to improve specific local environmental conditions. (Clad and Siy 1996, 61) Since the 1980s, especially in Indonesia, Thailand, the Philippines and Malaysia, environmental NGOs “have mushroomed in number and diversified in character”. (Hirsch and Warren 1998, 7) There is a considerable amount of local activism for

diverse topics in the region. These groups reflect increasing environmental awareness, as well as the increasing civil responsibility for ecological balance. Many authors stress the importance of local environmental groups. NGOs have emerged as partners in development and conservation activities, “performing a multitude of roles including education and raising environmental awareness among the public”. (UNEP 2001, 83) NGOs are increasingly articulating open criticism against governmental weaknesses in environmental protection. (Aviel 2000, 17) Their influence on national politics has to be evaluated critically. Civil society activism is dependent on the local political conditions. This includes the nature and degree of civil liberties, the relative tolerance of the state towards popular protest, and the extent of civil society cohesion and organisation. The role of the state is crucial in this process. Governments retain a critical role. (Badenoch and Dupar 2001, 196) Thus, the ability of NGOs and grassroots organisations to protest against resource practices that lead to environmental degradation is “contingent upon the state’s willingness to allow such protest in the first place”. (Bryant and Parnwell 1996, 10) Typically, local environmental groups are not transnationally organised.

Conclusion

This paper explores the reasons for paucity of environmental regimes in Southeast Asia. It has been shown that there is an urgent need for interstate cooperation due to a high prevalence of transnational environmental problems in the region. However, out of a high number of transnational environmental problems and of uncountable possibilities of the 10 states in the region to create regimes, the paper summarised empirical examinations that only five transnational environmental regimes have been created – two of which have not entered into force yet.

To explain the huge discrepancy between environmental problems and regime creation, two hypotheses from regime theory have been used for this paper. First, states as rational actors will only engage in regime creation if their expected benefits will exceed their expected costs. Countries in Southeast Asia do not or cannot value the long-term benefits of environmental protection. Budgets are very tight and compete with “more important” priorities such as economic growth and industrialisation. Environmental protection as such does not have an inherent value. In contrast, natural resources are treated like commodities on the economic (export) market. Since the political systems in the region are not very stable, governments tend to concentrate on immediate successes. Second, regime creation can be enhanced by the existence of a long-standing regional cooperation institution that has created trust among the members. Although, Southeast Asia has developed a rather strong regional organisation, ASEAN, its existence has not contributed substantially to regime creation. The process of mutual trust building among the 10 member countries is only slowly developing. Moreover, ASEAN functions are rather reactive than proactive. It tries to keep the status quo and avoids conflict. Environmental protection measures have only been taken in the aftermath of major disasters that made inaction an impossible choice. Lastly, ASEAN’s institutional setting, the informality of negotiations, the consensus principle and the decision-

making power at the national level have largely impeded the creation of effective environmental regimes.

Since none of the five regimes have contributed considerably to an amelioration of the environmental situation there is no model to follow. From the observations of this paper two points for improvement appear. First, the work of international organisations in the region cannot be overestimated. They have triggered major activism in the field. International organisations should find ways to cooperate with stakeholder governments and initiate tighter cooperation. Second, local environmental groups have a huge potential for expertise. Their input has largely been ignored by closed government circles. Their knowledge should be used to move from reactive to proactive measures.

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