



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 3 October 2006

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NOTE

from: Secretariat
to: COREPER
Subject: ASEAN Treaty of Amity and Cooperation (TAC)
- Accession of the European Union

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Background documents:

- Treaty of Amity and Cooperation in Southeast Asia, Indonesia, 24 February 1976 (ANNEX I)
 - Note from the Legal Service doc. 11511/06: Accession of the European Union to the Treaty of Amity and Cooperation in Southeast Asia (ANNEX II)
-

**Treaty of Amity and Cooperation in Southeast Asia
Indonesia, 24 February 1976**

The High Contracting Parties :

CONSCIOUS of the existing ties of history, geography and culture, which have bound their peoples together;

ANXIOUS to promote regional peace and stability through abiding respect for justice and the rule of law and enhancing regional resilience in their relations;

DESIRING to enhance peace, friendship and mutual cooperation on matters affecting Southeast Asia consistent with the spirit and principles of the Charter of the United Nations, the Ten Principles adopted by the Asian-African Conference in Bandung on 25 April 1955, the Declaration of the Association of Southeast Asian Nations signed in Bangkok on 8 August 1967, and the Declaration signed in Kuala Lumpur on 27 November 1971;

CONVINCED that the settlement of differences or disputes between their countries should be regulated by rational, effective and sufficiently flexible procedures, avoiding negative attitudes which might endanger or hinder cooperation;

BELIEVING in the need for cooperation with all peace-loving nations, both within and outside Southeast Asia, in the furtherance of world peace, stability and harmony;

SOLEMNLY AGREE to enter into a Treaty of Amity and Cooperation as follows:

CHAPTER I : PURPOSE AND PRINCIPLES

Article 1

The purpose of this Treaty is to promote perpetual peace, everlasting amity and cooperation among their peoples which would contribute to their strength, solidarity and closer relationship,

Article 2

In their relations with one another, the High Contracting Parties shall be guided by the following fundamental principles :

- a. Mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations;
- b. The right of every State to lead its national existence free from external interference, subversion or coercion;

- c. Non-interference in the internal affairs of one another;
- d. Settlement of differences or disputes by peaceful means;
- e. Renunciation of the threat or use of force;
- f. Effective cooperation among themselves.

CHAPTER II : AMITY

Article 3

In pursuance of the purpose of this Treaty the High Contracting Parties shall endeavour to develop and strengthen the traditional, cultural and historical ties of friendship, good neighbourliness and cooperation which bind them together and shall fulfill in good faith the obligations assumed under this Treaty. In order to promote closer understanding among them, the High Contracting Parties shall encourage and facilitate contact and intercourse among their peoples.

CHAPTER III : COOPERATION

Article 4

The High Contracting Parties shall promote active cooperation in the economic, social, technical, scientific and administrative fields as well as in matters of common ideals and aspirations of international peace and stability in the region and all other matters of common interest.

Article 5

Pursuant to Article 4 the High Contracting Parties shall exert their maximum efforts multilaterally as well as bilaterally on the basis of equality, non-discrimination and mutual benefit.

Article 6

The High Contracting Parties shall collaborate for the acceleration of the economic growth in the region in order to strengthen the foundation for a prosperous and peaceful community of nations in Southeast Asia. To this end, they shall promote the greater utilization of their agriculture and industries, the expansion of their trade and the improvement of their economic infrastructure for the mutual benefit of their peoples. In this regard, they shall continue to explore all avenues for close and beneficial cooperation with other States as well as international and regional ~organisations outside the region.

Article 7

The High Contracting Parties, in order to achieve social justice and to raise the standards of living of the peoples of the region, shall intensify economic cooperation. For this purpose, they shall adopt appropriate regional strategies for economic development and mutual assistance.

Article 8

The High Contracting Parties shall strive to achieve the closest cooperation on the widest scale and shall seek to provide assistance to one another in the form of training and research facilities in the social, cultural, technical, scientific and administrative fields.

Article 9

The High Contracting Parties shall endeavour to foster cooperation in the furtherance of the cause of peace, harmony, and stability in the region. To this end, the High Contracting Parties shall maintain regular contacts and consultations with one another on international and regional matters with a view to coordinating their views actions and policies.

Article 10

Each High Contracting Party shall not in any manner or form participate in any activity which shall constitute a threat to the political and economic stability, sovereignty, or territorial integrity of another High Contracting Party.

Article 11

The High Contracting Parties shall endeavour to strengthen their respective national resilience in their political, economic, socio-cultural as well as security fields in conformity with their respective ideals and aspirations, free from external interference as well as internal subversive activities in order to preserve their respective national identities.

Article 12

The High Contracting Parties in their efforts to achieve regional prosperity and security, shall endeavour to cooperate in all fields for the promotion of regional resilience, based on the principles of self-confidence, self-reliance, mutual respect, cooperation and solidarity which will constitute the foundation for a strong and viable community of nations in Southeast Asia.

CHAPTER IV : PACIFIC SETTLEMENT OF DISPUTES

Article 13

The High Contracting Parties shall have the determination and good faith to prevent disputes from arising. In case disputes on matters directly affecting them should arise, especially disputes likely to disturb regional peace and harmony, they shall refrain from the threat or use of force and shall at all times settle such disputes among themselves through friendly negotiations.

Article 14

To settle disputes through regional processes, the High Contracting Parties shall constitute, as a continuing body, a High Council comprising a Representative at ministerial level from each of the High Contracting Parties to take cognizance of the existence of disputes or situations likely to disturb regional peace and harmony.

Article 15

In the event no solution is reached through direct negotiations, the High Council shall take cognizance of the dispute or the situation and shall recommend to the parties in dispute appropriate means of settlement such as good offices, mediation, inquiry or conciliation. The High Council may however offer its good offices, or upon agreement of the parties in dispute, constitute itself into a committee of mediation, inquiry or conciliation. When deemed necessary, the High Council shall recommend appropriate measures for the prevention of a deterioration of the dispute or the situation.

Article 16

The foregoing provision of this Chapter shall not apply to a dispute unless all the parties to the dispute agree to their application to that dispute. However, this shall not preclude the other High Contracting Parties not party to the dispute from offering all possible assistance to settle the said dispute. Parties to the dispute should be well disposed towards such offers of assistance.

Article 17

Nothing in this Treaty shall preclude recourse to the modes of peaceful settlement contained in Article 33(1) of the Charter of the United Nations. The High Contracting Parties which are parties to a dispute should be encouraged to take initiatives to solve it by friendly negotiations before resorting to the other procedures provided for in the Charter of the United Nations.

CHAPTER V : General Provision

Article 18

This Treaty shall be signed by the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Kingdom of Thailand. It shall be ratified in accordance with the constitutional procedures of each signatory State. It shall be open for accession by other States in Southeast Asia.

Article 19

This Treaty shall enter into force on the date of the deposit of the fifth instrument of ratification with the Governments of the signatory States which are designated Depositories of this Treaty and the instruments of ratification or accession.


Article 20

This Treaty is drawn up in the official languages of the High Contracting Parties, all of which are equally authoritative. There shall be an agreed common translation of the texts in the English language. Any divergent interpretation of the common text shall be settled by negotiation.

IN FAITH THEREOF the High Contracting Parties have signed the Treaty and have hereto affixed their Seals.

DONE at Denpasar, Bali, this twenty-fourth day of February in the year one thousand nine hundred and seventy-six.

**For the Republic
of Indonesia:**



SOEHARTO
President

**For the Republic
of Singapore:**



LEE KUAN YEW
Prime Minister

For Malaysia:



DATUK HUSEIN ONN
Prime Minister

**For the Kingdom
of Thailand:**



KUKRIT PRAMOJ
Prime Minister

**For the Republic
of the Philippines:**



FERDINAND E. MARCOS

**Protocol Amending the Treaty of Amity and Cooperation in Southeast Asia
Philippines, 15 December 1987**

The Government of Brunei Darussalam
The Government of the Republic of Indonesia
The Government of Malaysia
The Government of the Republic of the Philippines
The Government of the Republic of Singapore
The Government of the Kingdom of Thailand

DESIRING to further enhance cooperation With all peace-loving nations, both within and outside Southeast Asia and, in particular, neighbouring States of the Southeast Asia region

CONSIDERING Paragraph 5 of the preamble of the Treaty of Amity and Cooperation in Southeast Asia, done at Denpasar, Bali, on 24 February 1976 (hereinafter referred to as the Treaty of Amity) which refers to the need for cooperation with all peace-loving nations, both within and outside Southeast Asia, in the furtherance of world peace, stability and harmony.

HEREBY AGREE TO THE FOLLOWING:

Article 1

Article 18 of the Treaty of Amity shall be amended to read as follows:

"This Treaty shall be signed by the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Kingdom of Thailand. It shall be ratified in accordance with the constitutional procedures of each signatory State.

It shall be open for accession by other States in Southeast Asia.

States outside Southeast Asia may also accede to this Treaty by the consent of all the States in Southeast Asia which are signatories to this Treaty and Brunei Darussalam."

Article 2

Article 14 of the Treaty of Amity shall be amended to read as follows:

"The settle disputes through regional processes, the High Contracting Parties shall constitute, as a continuing body, a High Council comprising a Representative at ministerial level from each of the High Contracting Parties to take cognizance of the existence of disputes or situations likely to disturb regional peace and harmony.

However, this article shall apply to any of the States outside Southeast Asia which have acceded to the Treaty only in cases where that state is directly involved in the dispute to be settled through the regional processes."

Article 3

This Protocol shall be subject to ratification and shall come into force on the date the last instrument of ratification of the High Contracting Parties is deposited.

DONE at Manila, the fifteenth day of December in the year one thousand nine hundred and eighty-seven.

For Brunei Darussalam :



PRINCE HAJI MOHAMED BOLKIAH
Minister of Foreign Affairs

For the Republic of the Philippines :



RAUL S. MANGLAPOS
Secretary for Foreign Affairs

For the Republic of Indonesia :



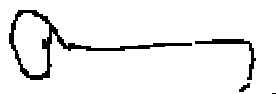
PROF. DR. MOCHTAR KUSUMAATMADJA
Minister of Foreign Affairs

For the Republic of Singapore :




S. DHANABALAN
Minister of Foreign Affairs

For Malaysia :



DATO HAJI ABU HASAN HAJI OMAR
Minister of Foreign Affairs

For the Kingdom of Thailand :



AIR CHIEF MARSHALL SIDDHI SAVETSILA
Minister of Foreign Affairs

**Second Protocol Amending the Treaty of Amity and Cooperation in Southeast Asia
Manila, Philippines, 25 July 1998**

The Government of Brunei Darussalam
The Government of the Kingdom of Cambodia
The Government of the Republic of Indonesia
The Government of the Lao People's Democratic Republic
The Government of Malaysia
The Government of the Union of Myanmar
The Government of the Republic of the Philippines
The Government of the Republic of Singapore
The Government of the Kingdom of Thailand
The Government of the Socialist Republic of Vietnam
The Government of Papua New Guinea

Hereinafter referred to as the High Contracting Parties:

DESIRING to ensure that there is appropriate enhancement of cooperation with all peace-loving nations, both within and outside Southeast Asia and, in particular, neighboring States of the Southeast Asia region;

CONSIDERING Paragraph 5 of the preamble of the Treaty of Amity and Cooperation in Southeast Asia, done at Denpasar, Bali, on 24 February 1976 (hereinafter referred to as the Treaty of Amity) which refers to the need for cooperation with all peace-loving nations, both within and outside Southeast Asia, in the furtherance of world peace, stability and harmony.

HEREBY AGREE TO THE FOLLOWING:

Article 1

Article 18, Paragraph 3, of the Treaty of Amity shall be amended to read as follows:

"States outside Southeast Asia may also accede to this Treaty with the consent of all the States in Southeast Asia, namely, Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Vietnam."

Article 2

This Protocol shall be subject to ratification and shall come into force on the date the last instrument of ratification of the High Contracting Parties is deposited.

DONE at Manila, the twenty-fifth day of July in the year one thousand nine hundred and ninety-eight.

For Brunei Darussalam :



PRINCE MOHAMED BOLKIAH
Minister of Foreign Affairs

For the Union of Myanmar :



U OHN GYAW
Minister for Foreign Affairs

For the Kingdom of Cambodia :



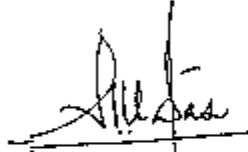
CHEM WIDHYA
Special Envoy of the
Royal Government of Cambodia

For the Republic of the Philippines :



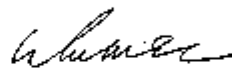
DOMINGO L. SIAZON, JR.
Secretary of Foreign Affairs

For the Republic of Indonesia :



ALI ALATAS
Minister for Foreign Affairs

For the Republic of Singapore :



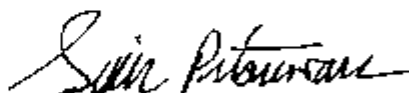
S. JAYAKUMAR
Minister for Foreign Affairs

For the Lao People's Democratic Republic :



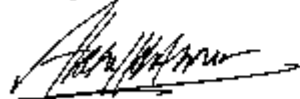
SOMSAVAT LENGSAVAD
Deputy Prime Minister and
Minister of Foreign Affairs

For the Kingdom of Thailand :



SURIN PITSUWAN
Minister of Foreign Affairs

For Malaysia :



DATUK SERI ABDULLAH
HAJI AHMAD BADAWI
Minister of Foreign Affairs

For the Socialist Republic of
Vietnam :



NGUYEN MANH CAM
Deputy Prime Minister and
Minister of Foreign Affairs

For Papua New Guinea :



ROY YAKI
Minister of Foreign Affairs



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 11 July 2006

11511/06

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CONTRIBUTION*

from :	the Legal Service
to:	the Proceedings of the COASI Working Party
Subject :	Accession of the European Union to the Treaty of Amity and Cooperation in Southeast Asia

Introduction

1. The Asia-Oceania Working Party is currently examining the question of the possible accession of the European Union to the Treaty of Amity and Cooperation (TAC) in Southeast Asia. During these discussions, the Council Legal Service was requested to analyse the legal dimension of that question. This contribution attempts to answer the Working Party's request.

* This document contains legal advice protected under Article 4(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, and not released by the Council of the European Union to the public. The Council reserves all its rights in law as regards any unauthorised publication.

The Treaty of Amity and Cooperation in Southeast Asia

2. The TAC was signed in Indonesia on 24 February 1976 by the High Contracting Parties of the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Kingdom of Thailand. The purpose of TAC is (Article 1) "*to promote perpetual peace, everlasting amity and cooperation among their peoples which would contribute to their strength, solidarity and closer relationship*".

The TAC was at that time only open for accession by other States in Southeast Asia (Article 18 of TAC). However, the TAC was amended in 1987 through a First Protocol which has amended Article 18 by providing that "*States outside Southeast Asia may also accede to this Treaty by the consent of all the States in Southeast Asia which are signatories to this Treaty and Brunei Darussalam*" (emphasis added). The TAC was then amended a second time in 1998 through a Second Protocol which has amended Article 18, Paragraph 3, of the TAC to read as follows: "*States outside Southeast Asia may also accede to this Treaty by the consent of all the States in Southeast Asia, namely, Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Vietnam*".

The opening of accession to the TAC by States outside Southeast Asia has permitted, inter alia, the accession of Australia to the TAC in 2005. **At present, however, the TAC does not provide for accession to it by international organisations** and the question has been raised (noting that the TAC contains provisions that mostly fall within the competence of the TEU¹

¹ The TAC has several provisions which resemble the provisions of the EU Treaty on the common foreign and security policy (CFSP) and which have a similar content to the objectives of the CFSP as set out in Article 11 of the TEU.

Article 2 of the TAC states that, in their relations, the following fundamental principles are to guide the Parties:

"a) Mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations;

...

d) Settlement of differences or disputes by peaceful means;

e) Renunciation of the threat or use of force;

f) Effective cooperation among themselves".

Moreover, in the body of the TAC there are also other provisions which have many points in common with the provisions of the CFSP in the EU Treaty. This is illustrated inter alia by the following provisions:

Pursuant to Article 4 *"The...Parties shall promote active cooperation in the economic, social, technical, scientific and administrative fields as well as in matters of common ideals and aspirations of international peace and stability in the region and all other matters of common interest".*

In accordance with Article 9 *"The...Parties shall endeavour to foster cooperation in the furtherance of the cause of peace, harmony, and stability in the region. To this end, the High Contracting Parties shall maintain regular contacts and consultations with one another on international and regional matters with a view to coordinating their views actions and policies".*

It is also worth noting Article 11 which states that *"The...Parties shall endeavour to strengthen their respective national resilience in their political, economic, socio-cultural as well as security fields in conformity with their respective ideals and aspirations, free from external interference as well as internal subversive activities in order to preserve their respective national identities".*

Equally, Article 12 provides that *"The...Parties in their efforts to achieve regional prosperity and security, shall endeavour to cooperate in all fields for the promotion of regional resilience, based on the principles of self-confidence, self-reliance, mutual respect, cooperation and solidarity which will constitute the foundation for a strong and viable community of nations in Southeast Asia".*

and some within competence of the TEC)² to identify the right procedure to proceed to the amendment of the TAC to allow for the possible accession of the Union.

Procedures to be followed

3. The Council Legal Service recalls that, **DELETED**
4. **DELETED**

² Some other provisions of TAC are closer, however, to the objectives of the EC Treaty. Notably, Article 6 of TAC states that "*The...Parties shall collaborate for the acceleration of the economic growth in the region in order to strengthen the foundation for a prosperous and peaceful community of nations in Southeast Asia. To this end, they shall promote the greater utilization of their agriculture and industries, the expansion of their trade and the improvement of their economic infrastructure for the mutual benefit of their peoples. In this regard, they shall continue to explore all avenues for close and beneficial cooperation with other States as well as international and regional organisations outside the region*".

In the same vein, Article 7 of TAC provides that "*The...Parties, in order to achieve social justice and to raise the standards of the living of the peoples of the region, shall intensify economic cooperation. For this purpose, they shall adopt appropriate regional strategies for economic development and mutual assistance*".

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