

Chapter 1

New Dimensions in China-ASEAN Relations

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On account of China's dynamic economic growth, its relations with the Association of Southeast Asian Nations (ASEAN) states to its south have expanded rapidly in recent years, culminating in the conclusion of the landmark China-ASEAN Comprehensive Economic Cooperation Agreement in 2002. Beyond trade and economic activities, China-ASEAN cooperation has been broadened to cover environment, science and technology, non-traditional security areas and related legal issues. Thus, China's relations with ASEAN have reached a new era where the two sides have established an economic, political and legal framework for their comprehensive cooperation.

Closer cooperation between China and ASEAN is mutually beneficial economically, providing them with an additional source of economic growth and catalyzing the process of economic integration in the whole East Asian region. In the longer run, the process will also bring about significant geo-political and geo-economic transformation of the region. Cognizant of such new developments, the East Asian Institute, hub of China studies in Singapore, and Xiamen University, hub of Southeast Asian studies and international economic law, jointly organized a symposium, which was held in December 2004 in Singapore, to encourage and promote studies on new developments in the China-ASEAN relations. This book is based on the papers generated from this joint symposium.

The papers selected for this book cover the five most important areas in China-ASEAN relations for examination and discussion. They include the general framework of this bilateral cooperation; non-traditional security issues; free trade area arrangements; regional economic development; the South China Sea and maritime security; and regional perspectives on ASEAN-China relations.

General Framework of China-ASEAN Relations

The China-ASEAN relations are characterized as economic cooperation at first hand. Such relationship has been developing from economic cooperation to other areas of cooperation. As manifested by the recent developments of the bilateral relations between China and ASEAN, a comprehensive cooperative framework has gradually evolved and been formulated, thus extending such relations from economic to political, security and legal fields and touching on many areas of cooperation between the two sides.

Of course, economic cooperation is most important in China-ASEAN relations. As shown in John WONG's paper, the economic cooperation and integration between China and ASEAN members is most remarkable in terms of trade volume as well as depth of cooperation. Since the economic reform and open-door policy in the late 1970s, China's economy has become more closely integrated with its neighboring economies, including ASEAN. As China continues its export-oriented economic development, there is competition between China and ASEAN countries in attracting foreign direct investment (FDI) and in exporting manufactured products to the same third-country markets. In order to avoid any disruption in China-ASEAN cooperation, China initiated the arrangement for a free trade area (FTA) agreement with ASEAN that was designed to turn competition into complementation for the benefits of both sides. The details of the FTA arrangement will be further discussed in the other chapters. While addressing the general framework of China-ASEAN cooperation from an economic perspective, the author also touches on geo-political implications of the economic rise of China. In his conclusion, China's fast-growing economy, averaging at 9.3% for the past 25 years, has become a new engine of economic growth not only for ASEAN but for the whole East Asian region. It has also catalyzed the process of integration among East Asian economies.

The other paper in this section contributed by ZENG Lingliang deals with the general framework of the China-ASEAN relations and cooperation from a legal perspective. The author lists several important documents between China and ASEAN as a legal basis for their bilateral general framework, including the 1994 Exchange of Letters; the 1997 Joint Statement; the 2002 Framework Agreement on Comprehensive Economic Cooperation; the 2002 Joint Declaration on Cooperation in the Field of Non-Traditional Security Issues; the 2002 Declaration on the Conduct of the Parties in the South China Sea; and the 2003 Joint Declaration of Strategic Partnership. In addition, China acceded to the Treaty of Amity and Cooperation in Southeast Asia. Being guaranteed by these documents, China and ASEAN are able to develop their cooperative relations smoothly and rapidly. On the other hand, according to Zeng, there is still room for improvement in the China-ASEAN relationship. For example, there are a few hard-law sources regulating the

China-ASEAN relations. The documents listed above can only be categorized as soft-law in the legal sense. Therefore, it is desirable that these soft-law documents be converted into hard-law so as to consolidate the legal framework of China-ASEAN relations. It is also necessary to lay down the implementation measures in order to realize the goals and objectives embodied in these existing documents.

Non-Traditional Security Issues

Non-traditional security issues come to the forefront of the world community after the September 11 terrorist attack in USA. Naturally, they also become subject-matters to be dealt with within the China-ASEAN cooperative framework. In November 2002, the Joint Declaration of ASEAN and China on Cooperation in the Field of Non-Traditional Security Issues was adopted, which initiated full cooperation between ASEAN and China in the field of non-traditional security issues and listed the priority and form of cooperation. The priorities at the current stage of cooperation include “combating trafficking in illegal drugs, people-smuggling including trafficking in women and children, sea piracy, terrorism, arms-smuggling, money-laundering, international economic crime and cyber crime.” As to multilateral and bilateral cooperation, it aims to “strengthen information exchange, strengthen personnel exchange and training and enhance capacity building, strengthen practical cooperation on non-traditional security issues, strengthen joint research on non-traditional security issues, and explore other areas and modalities of cooperation”.¹ While there are a number of non-traditional security issues existing in this region, this section includes two papers dealing with pandemic disease and piracy at sea respectively.

The most salient pandemic in recent years is, of course, the severe acute respiratory syndrome (SARS), as discussed by LAI Hongyi. The SARS outbreak occurred in early 2003 in southern China and then spread to other regions of China as well as other countries. While it posed a serious health crisis for human beings, it also marked a new avenue of cooperation between China and ASEAN in fighting epidemics. In order to make up for its early mismanagement of SARS and repair its damaged ties with ASEAN, China from April 2003 onwards initiated vigorous measures to fight the epidemics jointly with ASEAN, which was also receptive to China’s olive branch for epidemic cooperation. Forums, coordination measures and funds were launched; and cooperative mechanisms were established and further developed. The joint efforts made by ASEAN and China in their common fight

¹ See Joint Declaration of ASEAN and China on Cooperation in the Field of Non-Traditional Security Issues, Sixth ASEAN-China Summit, Phnom Penh, Cambodia, 4 November 2002, <http://www.aseansec.org/13185.htm> (accessed 2 May 2005).

against the SARS set a good example for future cooperation against the spread of epidemics, which are not limited by national boundaries. As Lai has pointed out, when an outbreak of avian flu hit Southeast Asia and some Chinese provinces in 2004, China re-opened the established cooperation avenues with ASEAN. Hence, the two sides have made unprecedented progress in pandemic disease control. The experiences in this respect no doubt can be instructive for handling other non-traditional security issues between China and ASEAN nations.

XU Ke's paper turns to the maritime security by addressing the prominent issue of piracy in Southeast Asia. It is generally accepted that piracy, though having a long history, has become one of the most serious non-traditional security issues in the post-Cold War era. According to Xu, since piracy in Southeast Asian waters is a trans-national crime, any unilateral or bilateral anti-piracy action is not sufficient to suppress piracy, and suppression of piracy requires consistent and comprehensive multilateral and international cooperation. He devoted his discussion mainly to anti-piracy cooperation between ASEAN and China. While they have made important progress in their joint anti-piracy efforts, there are still a number of difficulties existing in this anti-piracy cooperation.

With the recent conclusion (still subject to ratification) of the Regional Anti-Piracy Agreement among 16 Asian countries, including Bangladesh, Brunei, Cambodia, China, India, Indonesia, Japan, Laos, Malaysia, Myanmar, the Philippines, Sri Lanka, Singapore, South Korea, Thailand and Vietnam, regional cooperation in anti-piracy has indeed entered a new phase. The agreement obliges contracting states: to prevent and suppress piracy and armed robbery against ships; to arrest pirates or persons who have committed armed robbery against ships; to seize ships or aircraft used for committing piracy or armed robbery against ships; and to rescue victim ships and victims of piracy or armed robbery against ships.² For cooperation purposes, the contracting parties should endeavor to render mutual legal assistance as well as extradition for piracy suppression and punishment. In addition, the Agreement establishes an Information Sharing Center to be located in Singapore.

Free Trade Area Arrangements

The free trade area (FTA) arrangements mark one of the most important breakthroughs in China-ASEAN economic cooperation. There is abundant literature about it; but papers from a legal perspective are rare. Accordingly, this section of

²Article 3 of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia.

the book serves to fill important gaps in the existing literature dealing with the legal aspects of the FTA activities.

ZENG Huaqun's paper addresses this legal subject matter in the context of the relevant rules of the World Trade Organization (WTO) and attempts to compare the 2002 Framework Agreement on Comprehensive Economic Cooperation between ASEAN and China with the WTO rules, as many provisions of the Framework Agreement are governed by the latter. Within ASEAN, there are WTO and non-WTO members whose legal rights and obligations are different. However, after all the non-WTO members in ASEAN acceded to the WTO, the rules laid down by this international organization can be more widely implemented in this region. As the author concludes, the Framework Agreement is a milestone in the development of China-ASEAN comprehensive economic cooperation and also groundwork for the establishment of the China-ASEAN FTA. At the same time, WTO rules provide the legal basis for and have a close link to the development of the Framework Agreement and the China-ASEAN FTA process.

The paper contributed by Jiangyu WANG deals with the same subject matter but from a different angle. He discusses the international legal personality of ASEAN and its impact on the negotiation and implementation of the China-ASEAN Free Trade Agreement first, and then turns to address the legal nature of the China-ASEAN free trade agreement. As he perceives it, the proliferation of regional (free) trade agreements — often known as “trade regionalism” in the past decade — has posed serious challenges to the multilateral trading system and raised significant questions in international law. In East Asia, one of the most salient developments in trade regionalism is the negotiation on a free trade agreement between China and ASEAN, known as the China-ASEAN Free Trade Agreement (CAFTA). This chapter examines the CAFTA in the context of international law and provides a brief introduction to the development of the CAFTA proposal and the current negotiating process as well as the results achieved. The author regards the CAFTA as a multilateral agreement signed by 11 nation-states. In its nature, it mainly contains bilateral obligations between China and individual ASEAN countries. This legal reality will have a profound impact on the enforcement of treaty obligations as well as on the resort to the dispute settlement mechanism in the implementation of the CAFTA.

The last paper in this section deals with the FTA issue by focusing mainly on the investment field. The CAFTA negotiations between China and ASEAN began with the investment issue, which becomes an integral part of the CAFTA negotiations. As CHEN Huiping rightly points out, international economy has two pillars: transnational trade and transnational investment, which are mutually complementary as well as growth-promoting. The concept of comprehensive economic

cooperation naturally incorporates both free trade and free movement of FDI (foreign direct investment). And that is well reflected in the China-ASEAN FTA. The real purpose of the investment regime as contained in the CAFTA is to facilitate intra-Area FDI flows and also foreign investment into the Area, so as to promote economic development of both China and ASEAN. Thus, the chapter ends with the observation that the CAFTA is expected to increase intra-regional trade and intra-regional FDI flows, and to improve the economic efficiency of the region through greater scale economies as a result of market and resources. Ultimately, this will lead to greater opportunities for business for all.

Regional Economic Development

Apart from the comprehensive economic cooperation centered on the FTA arrangements between China and ASEAN members, bilateral or sub-regional economic cooperation has been also developing rapidly and smoothly in China-ASEAN relations. This section contains three papers, focusing specifically on the less well-known but no less important area of border trade between several of China's southwestern provinces and the newer ASEAN members, cooperation and conflict between China and riparian ASEAN countries of the Mekong River, and FDI in China and ASEAN countries.

China shares land borders with several ASEAN countries, including Vietnam, Laos and Myanmar, and the border trade between China and these ASEAN countries is deeply rooted in history. LIAO Shaolian's paper deals specifically with this subject matter by looking at the favorable factors, development process, characteristics and positive aspects of the border trade between China and newer ASEAN members. While border trade has been developing very rapidly in recent years, there remain some problems, such as the weak mechanism of administration, different policies of neighboring countries having different implementation results, irregularity of accounting settlement, and the burdens of taxes and fees. However, as stressed by the author, existing problems may not prevent the development of the border trade, as countries in the region are likely to step up their trade liberalization and facilitation, including the unification of trade policies implemented in different regions. The author concludes by saying that although border trade has benefited both sides, it is undergoing changes including the expansion from exchange market trade and small-volume trade to various other forms of economic relations, including entrepôt trade, transnational economic and technological cooperation. Border trade will continue to contribute to the comprehensive development and advancement of the border regions in China and new ASEAN members.

LU Xixi's paper addresses a different issue from a different perspective but within the same border area between China and ASEAN member countries. The Mekong River runs 4,800 kilometers from its headwaters on the Tibetan Plateau through Yunnan Province of China, Myanmar, Thailand, Cambodia, Lao PDR and Vietnam. Being the 12th longest river in the world,³ it is regarded as the heart and soul of mainland Southeast Asia. The upper stream of the river within the Chinese border is called Lancang River, which is an international river. Lu's paper is focused on some environmental issues resulting from the construction of the dams along the river. Environmental impacts can be found in water discharge and water level fluctuations; sediment concentration and sediment flux; channel and river bank stability; and aquatic ecology. These environmental issues are trans-boundary in nature, involving riparian countries sharing a single resource. For example, China's hydropower projects on the Lancang River are likely to create extensive environmental effects on lower river basin of the Mekong River. There are also political and social consequences resulting from such environmental impacts. Therefore, as the author concludes, cooperation among all the countries in the Mekong River basin is imperative in order to avoid any potential conflict as a result of the trans-boundary environmental issues.

CHEN Wen's paper tries to answer a recent hotly-debated issue on whether China is competing with ASEAN for FDI after China's entry into WTO. By analyzing the sources and the extent of China's FDI inflow, China's "round-tripping" phenomenon of investment, factors for the decrease of ASEAN inward FDI, and Chinese outward direct investment in ASEAN, the author finds that there is no obvious evidence that the rise of China has squeezed out the FDI inflow to ASEAN. However, the author admits that the competition for FDI between China and ASEAN does exist and suggests that in order to be more attractive to FDI, ASEAN economies should improve their overall investment environment and expedite the regional economic integration process within ASEAN. Economic integration between China and ASEAN, on the other hand, can also bring about more opportunities to ASEAN in terms of attracting FDI from China as well as from other countries.

The South China Sea and Maritime Security

The South China Sea, a semi-enclosed sea surrounded by a number of South-east Asian countries as well as China, is one of the most important areas in

³In terms of water capacity and volume, it is the tenth largest river in the world and the third largest in Asia, see Ed Lee, "The Mekong River Basin Agreement", *Asia Pacific Journal of Environmental Law*, Vol. 1, pp. 134–139 (1996).

China-ASEAN relations in terms of political and security cooperation as well as the maintenance of regional peace and security. It is also a major disputed area in China-ASEAN relations. There are maritime and territorial disputes in the South China Sea, in particular around and regarding the Spratly Islands, which have been claimed by five countries and six parties (Brunei, China, Malaysia, Philippines, Taiwan and Vietnam). Such multiple claims have caused tensions between/among relevant claimants on the one hand and make cooperation difficult on the other.

Under international law, States in dispute should resolve their problems through peaceful means. This is embodied in the Charter of the United Nations and many other international political and legal documents, including the 1955 Bandung Declaration (which included the principles of Pancha Shila for promoting international peace and security). While resolution cannot be reached at present, countries concerned should seek cooperative measures to defuse tensions and to conduct joint programmes. The 1982 United Nations Convention on the Law of the Sea, which has been ratified by all South China Sea countries, also requires coastal States adjacent to a semi-enclosed sea to carry out regional cooperation. In compliance with international norms, ASEAN countries and China signed the milestone Declaration on the Conduct of the Parties in the South China Sea in 2002,⁴ promising to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, and pledging to explore or undertake cooperative activities in the South China Sea. For that purpose, resource use and management could be one of the most feasible cooperative areas between China and ASEAN countries.

Kuen-chen FU's paper is focused on such cooperation in fisheries resources. As he puts it, conservation and management of the South China Sea fishery resources is a complicated issue, which is not possible for a single State among the South China Sea countries to resolve alone. A joint effort is thus essential, particularly in consideration that the state of the South China Sea fisheries gets worsened but the demand for fisheries has escalated. He suggests that there is an urgent need of a more effective regional cooperation scheme for fishery resources conservation and management. Based on the 1982 United Nations Convention on the Law of the Sea and the 1995 Straddling Fish Stocks Agreement, and the theory of the "Three-Level South China Sea", Fu discusses the possible ways of creating such a scheme and the basic structures of such a cooperation scheme. His discussion is also expanded to include a possible model for cooperation between China and Taiwan. According to him, if the proposed scheme could be realized, it would constitute a sound

⁴Text is available at <http://www.aseansec.org/13163.htm> (accessed 28 April 2005).

basis for a more comprehensive cooperation scheme among all the South China Sea countries.

On the other hand, ZOU Keyuan's paper is focused on non-living resources, i.e., oil and gas and a possible cooperation mechanism between China and ASEAN countries. He uses the legal concept of joint development as a basis to argue that a joint development arrangement should be made for the South China Sea mineral resources exploration and exploitation. As illustrated by his paper, there are quite a few precedents of joint development arrangements around the world and some of them are in fact in existence in the East Asian region. They are good examples that the South China Sea countries can learn from, and their useful experiences can be transferred to facilitating the China-ASEAN cooperation in this regard. It is strongly suggested that a preferable joint development scheme, once established, should be multilateral in nature, rather than bilateral, due to the fact that multilateral claims exist in the South China Sea, involving all the interested ASEAN members.

Related to the South China Sea is the critical issue of maritime security. Though the issue of piracy has been discussed in the section of non-traditional security issues above, CHEN Haibo's paper is concerned more with the safety of sea-lane navigation. She argues, quite rightly, that maritime safety could only be assured by cooperation among all the interested countries in line with international law, including the 1982 United Nations Convention on the Law of the Sea and numerous International Maritime Organization conventions, guidelines and directives. However, by examining the status of ASEAN states and China (including Hong Kong) in this global cooperation framework, Chen points out four disadvantages, e.g., non-enforcement of some international treaties in Southeast Asia, which can block maritime safety cooperation in Southeast Asia. She also provides three forms of regional cooperation on maritime safety, such as regional bilateral cooperation, as the foundation for ASEAN-China regional maritime safety cooperation. She also discusses the process of such cooperation and suggests in the end that certain maritime safety cooperation measures and projects should be given priorities.

Regional Perspectives on ASEAN-China Relations

How China and ASEAN's neighbors and countries in other regions perceive the China-ASEAN relations is important. This section accommodates two papers respectively from Korean and Japanese perspectives. It is natural for South Korea and Japan to take a close look at every development in the China-ASEAN relations, bearing in mind particularly that South Korea and Japan are members of the ASEAN+3 process.

Moon-Soo CHUNG's paper examines the China-ASEAN FTA and Korean FTA policies. As he perceives it, the China-ASEAN FTA can have indirect but significant impact on the Korean economy. In the long run, the FTA will accelerate the pace of industrial restructuring and add further economies of scale to China's economy. On the other hand, the free access to the vast Chinese market will induce more FDI to ASEAN and also facilitate its industrial restructuring. The interaction between China and ASEAN will also affect the globalization process in East Asia. Chung concludes that FTAs are only second best options to multilateralism based on the principle of most favored nations. In that sense, an FTA in East Asia can be viewed as a defense against rampant regionalism in the rest of the world and hence the author urges the promotion of multilateralism, which has proven beneficial to all.

The paper by LAM Peng Er is about the Japanese perspective on China-ASEAN relations. This paper first examines why China's relations with Southeast Asia was not perceived to be a serious challenge to Japan's position in the region during the Cold War era. Then, it analyzes the changes in the post-Cold War environment that led to Beijing's offer of an FTA to ASEAN and this, in turn, has triggered off Tokyo's bid for a closer partnership with the Southeast Asian region. In addition, the chapter examines Japan's multi-faceted responses to China's growing ties with Southeast Asia. These include not only the counter-offer of an economic partnership but also new Japanese initiatives to play a key political role in peace-building in areas suffering from ethnic conflicts, such as Aceh and Mindanao, and in combating piracy in the Southeast Asia seas, especially the Straits of Malacca. Lam concludes with an overall assessment of Japan's responses to China's diplomatic overtures to individual ASEAN countries and their implications for Tokyo's quest for a political leadership role in the region. According to Lam, the Japanese should feel reassured by the continuing presence of its ally, the United States, the dominant military power in the region and the balance diplomacy played by the ASEAN countries in their relations with great powers. He argues that Japan is likely to remain much more affluent and technologically more advanced than China and thus still an important actor in Southeast Asia in many years to come.

The Way Forward

It is sufficiently clear that China-ASEAN relations will continue to develop in greater breadth and depth. Economically, China has set forth the target of US\$200 billion annual trade with ASEAN countries by 2010 — their two-way trade in 2004 had already breached the US\$100 billion level — and of steady progress towards the goal of the China-ASEAN FTA. This goal was reiterated by Hu Jintao when he made a speech before the joint session of the Philippine Congress on

27 April 2005.⁵ The latest data from the Chinese Customs shows that for the first time, ASEAN has become China's fourth trade partner in 2005 in the first two months of 2005, with a total turnover of US\$17 billion.⁶ Related to this is the establishment of the China-ASEAN FTA. According to the agreement signed by the two sides, China and ASEAN would launch tariff cuts process as of 1 July 2005 and a zero tariff will be offered for bilateral trade by 2010.

In the political and security arena, the 11th China-ASEAN High Rank Official Consultation held in Shanghai on 29 April 2005 deliberated the implementation of the Action Plan to Implement the Joint Declaration of China-ASEAN Strategic Partnership, and identified five new areas, i.e., transport, energy, culture, tourism and public health, as important cooperative priorities. In addition, the meeting also agreed to hold the first working group meeting to implement the Declaration on the Conduct of the Parties in the South China Sea.⁷ However, in comparison with the level of cooperation in the economic sphere, cooperation in the political and security areas have been lagging behind. As shown by relevant chapters in this book, most of the documents signed between China and ASEAN still remain to be effectively implemented.

Finally, in the context of the China-ASEAN relations, the question of whether the "peaceful rise" of China could benefit ASEAN countries should be addressed. The term "peaceful rise" was first introduced by Zheng Bijian (former executive vice president of China's Central Party School) in his speech at the Boao Forum in November 2003, and was later endorsed by the Chinese top leaders Hu Jintao and Wen Jiabao, as a national development strategy, particularly relating to China's link to the international arena.⁸ According to this, China is to pursue its soft power in the world by mainly using its economic leverage and seeking a peaceful environment for its economic development.

Clearly, the doctrine of "peaceful rise" is used to counter-balance the prevailing perception of "China threat", a notion that has been actively promoted by many Western journalists and some Western scholars. To ease the concerns of its neighbors, China has on many occasions reiterated that it will never become hegemonic. China's leadership has often taken great pains to explain to its neighbors that China has historically never harboured territorial ambitions beyond its present borders.

⁵ See Qin Jize, "14 Agreements Signed in Manila", *China Daily*, 28 April 2005, p. 1.

⁶ "ASEAN Becomes China's 4th Trade Partner", 12 April 2005, http://www.chinadaily.com.cn/english/doc/2005-04/12/content_435584.htm (accessed 5 May 2005).

⁷ See "The 11th China-ASEAN High Rank Official Consultation Held", *People's Daily* (in Chinese), 30 April 2005, p. 3.

⁸ For more details, see Bo Zhiyue, "Elite Politics and the 'Peaceful Rise' of China", *EAI Bulletin*, Vol. 6(2), pp. 1 and 10 (2004).

However, while taking China's gesture as embodying a good intention, China's rise, whether peaceful or not, still worries its neighbors as its military capability has been fast expanding along with the pace of its economic growth.

This can be seen from Japan's ambivalence to China's rise. On the one hand, Japan has benefited from China's economic growth through trade and investment; but on the other, Japan is truly concerned about China's rise, particularly under the circumstances when the two countries have not yet reached reconciliation towards the issue of history. For China, peaceful rise is really a good term, favorable for its economic development; but for its neighbors, particularly the smaller ASEAN countries to its south, China has already become their "peaceful" rival in competing for markets and FDI. In this sense, a more comprehensive cooperation and a more progressive integration between China and ASEAN, such as embodied in the CAFTA scheme, is crucial for a "win-win" future for both, especially in terms of peace and economic prosperity.