

[screen: MS-TAC&NEA-NAUTILUS.doc; 4Oct2012]

To: Colleagues

From: Don Emmerson

Re: A Northeast Asian TAC?

The Treaty of Amity and Cooperation in Southeast Asia or TAC (www.aseansec.org/TAC-KnowledgeKit.pdf) is a relevant model for a comprehensive agreement on peace and security in Northeast Asia, *were such an agreement to become feasible*. The mere relevance of a Southeast Asian text cannot reverse the rancorous splits that are so evident today in Northeast Asia. The case for a Northeast Asian TAC (NEATAC) can acquire practical impetus only if the present crisis in that region (a) abates independently, for reasons that might facilitate such a novel agreement; or (b) spawns creativity, as the mounting risks of conflict in Northeast Asia incentivize bold diplomacy. In these improbable contexts, TAC's northeastward adaptation is a road more readily imagined than taken. That said, if (a) does occur, a prior assessment of NEATAC will at least save time in road-mapping and trip selection; and by the logic of (b), life sometimes does follow art, as in the segue from the notional "BRICs" coined by Jim O'Neill in 2001 to the actual BRICS that will hold their 5th summit in 2013.

Of the six elements of a comprehensive Northeast Asian peace and security treaty proposed by Mort Halperin (in "A New Approach ..."), the one most consonant with the six principles featured in TAC is the "mutual declaration of no hostile intent" that is apparently so important to the DPRK. TAC, however, expresses this aim in old-fashioned Westphalian terms, including "mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations" and their "free[dom] from external interference, subversion or coercion." Even if "national identity" were not an issue on the divided Korean peninsula, "territorial integrity" would be—notably in light of the Dokdo/Takeshima and Senkaku/Diaoyu disputes.

What led to TAC's creation at ASEAN's first-ever summit in February 1976 was a version of scenario (b). In April-December 1975 the US had "lost" Indochina to revolutionary communism. TAC was an emergency measure motivated by fear—a rhetorical effort by still-standing anti-communist dominoes to assert sovereignty in the face of calamity, to swear cooperation among themselves, and to urge it upon outsiders, including declaring the treaty open to accession by "other States in Southeast Asia"—a euphemism for Cambodia, Laos, and Vietnam. At their summit in 1976, the five ASEAN "High Contracting Parties" whose heads of government signed the TAC on behalf of ASEAN's then-five members—Indonesia, Malaysia, the Philippines, Singapore, and Thailand—also agreed to create, for the first time, an ASEAN Secretariat, to be located in Jakarta.

The conditions that were conducive to TAC's birth in 1976 do not apply in Northeast Asia today. ASEAN had been in existence since 1967. TAC rested on nine prior years of intramural peace and acquaintance—"confidence-building," in ASEAN jargon. TAC was an extension of ASEAN, not its foundation. An Association of Northeast Asian Nations (ANEAN) does not exist. A NEATAC, this TAC-enabling context, would be disembodied. As for the TAC-signers' ranks-closing fear of external (Indochinese and Chinese) communism, the DPRK's "fear" of the ROK and the US cannot play a comparably unifying role in a NEATAC that would have to recruit—internalize—both sides of the Korean DMZ together with the US, China, Japan, and other states with diverging foreign-policy ties and priorities.

Should a NEATAC derived from TAC include a mechanism for resolving conflicts peacefully? If so, the High Council that TAC provides for that purpose is attractive. But the provision has never been invoked and the Council has never been convened, for reasons that illustrate both the empirical scarcity of intra-ASEAN conflicts and the greater appeal of extra-TAC ways and sites to resolve them, including bilateral de-escalation and the International Court of Justice.

And given, in Northeast Asia, the presence of greater mistrust and the absence of a prior ANEAN, a NEATAC would likely be more of a normative vanguard than an enforceable compact. In that more wishful than lawful context, however, the so far merely rhetorical character of TAC's High Council seems less of a drawback. By that same rhetorical token, a TAC-derived NEATAC would neither preclude sanctions by one party against another nor infringe upon rights of individual or collective self-defense. (Mark E. Manyin et al., *U.S. Accession to ASEAN's Treaty of Amity and Cooperation TAC*, Congressional Research Service, 5 May 2009.) That is bad news, however, if the plan is to make binding and enforceable the "termination of [anti-DPRK] sanctions" element in Halperin's proposal. The more a NEATAC is meant to regulate behavior rather than to build confidence, the less appropriate as points of departure are the generalities and the brevity of TAC.

That said, in a Northeast Asian context, a clear strength of TAC is the "serial multilateralism" illustrated by the lengthening of the list of parties to the treaty from the original ASEAN five to what are now the ten members of ASEAN plus 19 non-member states, for a current total of 29 signers. Some of these non-ASEAN parties to TAC, such as Brazil, may be too peripheral to the Korean peninsula to warrant priority accession to a NEATAC, let alone membership in Halperin's proposed "permanent council on security" (PCS). But ASEAN's rule that accession to TAC is a necessary but insufficient condition of membership in the East Asia Summit could be adapted to a NEATAC by limiting seats on the PCS to the NEATAC-endorsing states that were in the six-party talks, i.e., the DPRK, the ROK, China, the US, Russia, and Japan, plus France and the UK, while opening NEATAC as a text to ratification and observance by other governments as well. The same filter could apply to participation in a Northeast Asian Summit (NEAS), were one to develop, although whether such a NEAS would subsume, be co-opted by, or be blocked by the PRC-Japan-ROK summits held annually since 2008 is hard to predict. ASEAN would likely view a partly non-Asian NEAS as redundant vis à vis the already extant East Asia Summit and a threat to ASEAN's own keystone role in East Asian regionalism.

Every one of these eight would-be core "NEATAC countries" is already a party to TAC, having already agreed to its terms. Nor has the TAC been significantly diluted by the ancillary statements that have qualified the accessions of some its signers. If TAC were to become a proto-NEATAC, a first-draft consensus would already exist. Arguably that is the most encouraging (or least discouraging) piece of evidence favoring a segue from TAC to NEATAC.

Insofar as the DPRK's nuclear weapons animate the motivation for a NEATAC, however, the relevant text is not TAC but SEANWFZ. That 1995 Treaty on the Southeast Asia Nuclear Weapon-Free Zone's detailed and legalistic articles and annex—written in a more "Anglo-Saxon" than "ASEAN Way"—has still not been signed by the nuclear P-5 (China, France, Russia, the UK, and the US), whose leaders object to a number of its proscriptions and worry about their implications. The explicit inclusion of the ten ASEAN states' continental shelves and EEZs within the treaty's jurisdiction is especially problematic for China, for example. The larger question is whether, if one were to adapt SEANWFZ and TAC to Northeast Asian priorities, it would make sense to address the toughest topic—the nuclear threat—first, and only then, if successful, embed the resulting NEANWFZ in a NEATAC, or to reverse that sequence. The still larger question is whether, in either order, these things to do are promising enough, in feasibility and impact, to warrant trying to do them.