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An 'ASEAN Way' of Combating Transnational Crime

RIDDHI SHAH

The United Nations Office for Drugs and Crime (UNODC) believes that organized crime groups roughly earn \$250 billion per year. Moreover the annual turnover of transnational organized criminal activities such as drug trafficking, illegal arms trade and the smuggling of immigrants is estimated at \$ 870 billion annually¹. Transnational crime, like several other security threats such as terrorism, maritime terrorism and piracy has no universally accepted definition.² United Nations (UN) defines a crime as transnational in nature if:

- “(a) It is committed in more than one State;*
- (b) It is committed in one state but a substantial part of its preparation, planning, direction or control takes place in another State;*
- (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or*
- (d) It is committed in one State but has substantial effects in another State.”³*

The United Nations (UN) has provided eighteen categories of transnational crime. The list includes: 1) money laundering; 2) illicit drug trafficking; 3) corruption and bribery of public officials as defined in national legislation and of party officials and elected representatives as defined in national legislation; 4) infiltration of legal business; 5) fraudulent bankruptcy; 6) insurance fraud; 7) computer crime; 8) theft of intellectual property; 9) illicit traffic in arms; 10) aircraft hijacking; 11) terrorist activities; 12) sea piracy; 13) hijacking on land; 14) trafficking in persons; 15) trade in human body parts; 16) theft of art or cultural objects; 17) environmental crime and 18) other offences

committed by organized criminal groups.⁴

The concept of transnational crime is not be confused with that of international crime.⁵ Although international crimes are those that are committed ‘across’ international borders; they may not necessarily have repercussions for more than one state. Transnational crime, on the other hand, itself involves ‘crossing’ a border and much more significantly, the effect of the crime is not limited to a single state.⁶

Opium as well as heroin travel from Western Myanmar to India’s north eastern states of Nagaland, Manipur and Mizoram. From here the drugs travel to Kolkata via Assam and are finally shipped to the rest of the Indian subcontinent.

Transnational crime has become an issue of increasing concern for India. The last decade has seen a rise in the production and consumption of narcotic drugs in Southeast Asia and India. Southeast Asian nations have become one of the leading producers of narcotics such as opium, heroin and amphetamine-type stimulants (ATS). An estimated two-thirds of the world’s opium is produced here.⁷ Thailand used to be the main route for trafficking heroin in Southeast Asia but with the commercial opening up of China and India, new routes have come into existence.

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the drugs travel to Kolkata via Assam and are finally shipped to the rest of the Indian sub-continent.⁸ Drug distribution commonly occurs on the way to the final destination. In 2010 - 11 Manipur and Nagaland were the top two states in India in the matter of drug abuse. While Manipur had an estimated 40,000 to 50,000 drug addicts, Nagaland closely followed with 35,000 to 40,000 drug addicts.^{9,10}

The activities of transnational criminal groups are not limited to the sphere of crime. There is sufficient evidence that suggests the existence of strong links between transnational criminal networks and terrorist organizations. Southeast Asian criminal networks were known to supply arms and ammunitions to the Liberation Tigers of Tamil Elam (LTTE) when the organization existed and presently continue to supply the same to groups in the Northeast.¹¹ Additionally, provision of travel documents, of

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funds and safe havens are other areas wherein terrorist outfits have often received support from transnational criminal groups.¹²

The two have social, economic and political repercussions in their own right and with the passage of time are transforming into increasingly perilous malignant institutions by fortifying each other with logistical support and training. Energy and supply chain security is another factor that has become the source of India's

anxiety with reference to terrorism and transnational crime in Southeast Asia. India has been attempting to reduce its dependence on the Middle-East for some time now.

In this process, India has turned to North and Southeast Asia, especially Russia and Indonesia. Supplies headed for India from these areas have no choice but to travel through the Southeast Asian waters, infested with terrorist groups with maritime capabilities in the Philippines and pirates in the Bay of Bengal and the Strait of Malacca.¹³ Currently, efforts are being made by the Indian government to curb the growing menace of transnational crime within its borders. However, measures to counter transnational crime cannot and will not prove to be effective without a combined regional effort.

ASEAN's Framework for Combating Transnational Crime

The Association of Southeast Asian Nations (ASEAN), a 10 member regional grouping comprised of Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei Darussalam, Viet Nam, Lao PDR, Myanmar and Cambodia. ASEAN has been promoting cooperation between Southeast Asian states to combat transnational crime for more than three decades. The struggle against transnational crime began with the Declaration of the ASEAN Concord signed on 24 February 1976. Initially concerned only with combating abuse and trafficking of narcotic drugs, ASEAN has expanded its fight against transnational crimes by including terrorism and other crimes such as arms smuggling, money laundering, illegal migration and piracy under its purview.¹⁴

Various ASEAN bodies are directly or indirectly

involved in creating policies and in taking initiatives against transnational crimes. The ASEAN Ministerial Meeting on Transnational Crime (AMMTC) is the chief policy making body within ASEAN.¹⁵ The AMMTC is responsible for coordinating activities of other relevant bodies established within the ASEAN framework for combating transnational crime convenes.¹⁶ During the 2nd AMMTC, a Plan of Action to Combat Transnational Crime was initiated and adopted. The Plan's central aim till this day remains to strengthen regional commitment and capacity to combat transnational crime.¹⁷

The ASEAN Regional Forum (ARF) which emerged from 1994 post-ministerial conferences of ASEAN,¹⁸ focuses on preventive diplomacy and confidence building among the member nations. The ARF comprises 27 countries including ASEAN member countries and India, Pakistan, Sri Lanka, Bangladesh. Maximum counterterrorism activities of ARF take place under the inter-sessional meeting on counter terrorism and transnational crime (ISM-CT/TC).¹⁹ Currently, work plans have been established under ARF in the areas of counterterrorism and transnational crime, disaster relief, maritime security and non-proliferation and disarmament.²⁰

The ASEAN Senior Officials on Drugs Matters (ASOD) was set up in 1984, a period during which ASEAN merely dealt with one element of transnational crime. The activities of the ASOD are guided by the ASEAN Plan of Action on Drug Abuse Control, adopted by ASOD during its 17th meeting in 1994. Preventive drug education, treatment, rehabilitation, enforcement and research are the four areas that are dealt with under this plan.²¹ The

ASEAN Vision Document 2020 adopted in 1997 at Kuala Lumpur aimed at creating a drug free Southeast Asia by 2020. However, the 33rd ASEAN Ministerial Meeting, governments of the member nations set the year 2015 as the target for achieving a drug free Southeast Asia.²² On 28th May 2011, ASEAN introduced the latest body within the ASEAN framework for combating transnational crime - the ASEAN Convention on Counter-Terrorism (ACCT). It aims at deepening cooperation among the enforcement agencies of its member nations in counter terrorism and also provides a framework for regional cooperation to counter, prevent and suppress terrorism in all its forms.²³

ASEAN Finance Ministers Meeting (AFMM) and the ASEAN Chiefs of National Police (ASEANAPOL) are the two remaining consequential members within ASEAN's framework for countering transnational crime. ASEANAPOL looks after the enforcement and preventive dimension of cooperation against transnational crime. The AFMM have agreed to strengthen cooperation to combat trafficking in narcotics and psychotropic drugs and to assist joint efforts in anti-smuggling and customs control.²⁴

Assessing ASEAN's Efforts

ASEAN appears to have presented all the stakeholders within a government with a voice. However, on closer inspection reality tends to differ. Regardless of ASEAN's presence in Southeast Asia, bilateral treaties dominate regional security actions.²⁵ Yet neither the presence of bilateral treaties nor that of multilateral forums such as the ARF have proved to be sufficient for the resolution differences and conflicts between member nations resulting in serious obstacles in the efforts for countering

transnational crime.

The ARF was created to ensure long-term peace and stability in the region by developing mutual trust. A three stage evolution was conceptualized that would permit the forum to achieve its objectives by which the relations among member nations would be “*permanently improved*”.²⁶ The three-stages includes 1) confidence building measures (CBMs), 2) preventive diplomacy and 3) elaboration of approaches to conflicts. The ARF has been unable to proceed beyond the first stage, let alone achieve the apex of its self-imposed objectives.

Regional security measures in the region have consequently suffered.²⁷ The prime reason for such laxity is that the forum is not a collective security arrangement nor was it designed to resolve regional disputes.²⁸

The forum cannot begin direct conflict management without reaching the third stage of its evolution but to get to the third stage, conflict management to some extent is necessary.

Secondly, since it was not designed to be a collective security arrangement, the ARF at the primary level has no mandate to monitor compliance of voluntary commitments made by the ARF member countries on matters related to transnational crime and counterterrorism. At a much higher level, the forum has not adopted a mandate for itself and/or the chair to undertake preventive diplomacy that would help resolve disputes.^{29,30} Based on ASEAN’s principles of “unanimous consensus decision-mak-

ing” and the “non-interference principle”, ARF does not resolve conflicts, rather it simply manages them.³¹

Southeast Asia’s obsession with sovereignty and the principle of non-interference stems fundamentally from the region’s experience with colonialism and attempts made by former colonial powers to influence them even after independence. More importantly, great emphasis is laid on the principle of non-interference be-

cause it is easy to take advantage of the substantial diversity that is to be found within their territories. There is a need to reassure each other that diversity in their respective territories will not be exploited.

These principles have at times directly prevented the implementation of preventive diplomacy in Southeast Asia. While ARF countries have reached a

general agreement on modest preventive diplomacy related measures, serious disagreement still prevails among the members over the good offices or mediation role of the chair in regional conflicts. Southeast Asian nations and China have constantly objected to this idea, arguing that such powers would mean and entail interference in the internal affairs.³²

The 1976 Declaration of ASEAN Concord had envisaged an ASEAN Mutual Legal Assistance Agreement and an ASEAN Extradition Treaty.³³ Mutual Legal Assistance Treaties (MLATs) generally involve the right to summon witnesses, obligation to produce evidence and issuing of search warrants among other things, while an Extradition Treaty obliges the

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country in which a suspected or convicted criminal may have taken refuge to deliver him to the nation in whose jurisdiction the crime may have been committed.

MLATs together with Extradition treaties could increase, ease and regularize judicial assistance and procedures between countries leading to effective law enforcement cooperation at the regional level.^{34, 35} Even though negotiations have been going on since the past thirty-six years, both the agreement and the treaty are still in the process of being framed.^{36, 37} On the other hand, most countries in Southeast Asia have signed bilateral Extradition Treaties with the United States of America.³⁸

ASEAN's failure to combat transnational crime at the regional level must partly be blamed on domestic factors of corruption, poverty and lack of resources. Persons involved in drug trafficking, piracy and human trafficking often use porous sea borders to gain access mainland. Within Southeast Asia, gaining entry to the mainland via the sea is relatively easy. Quite a few ASEAN member countries have large maritime territories that they are unable to adequately secure and patrol.³⁹ Till date Singapore, Brunei and Malaysia have been the only countries in Southeast Asia that have been able to satisfactorily secure their maritime areas.⁴⁰

To add to the woes of the Southeast Asian nations, lack of resources has translated into poorly financed enforcement agencies, which further compromises attempts to control organized crime at the national level.⁴¹ Widespread poverty is yet another factor that has a signifi-

cant impact on the proportion of criminal activities in a country. Studies show that the motivation to pursue illegal activities is likely to be found in those sections of the populace, who have relatively more to gain but little to lose.⁴²

Corruption is another facet that aids transnational crime. All the ASEAN member nations with the exception of Singapore and Brunei, have achieved a low rank Transparency International's 2012 corruption perception index.⁴³ Transnational criminal groups minimize

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the risk of prosecution through corruption and therefore no longer fear state institutions. In many cases, such groups have actually become of service to the state having corrupted or developed collusive relations with the state institutions.⁴⁴

Exploring Alternatives

Contradiction of ASEAN's principles with its own goals and objectives; differing national interests of member nations; varying levels of national resilience; external elements such as poverty and corruption; and inadequate funding for domestic armed forces together have culminated into an inability to adopt common policy responses to challenge the increasing levels of transnational crime at the regional level. Unsurprisingly, ASEAN has been nicknamed an "ineffectual talk-shop" with minimal influence on crucial security issues.⁴⁵

Challenges such as environmental, financial and transnational crime cannot be faced alone. An inter-regional and an intra-regional approach must be developed in this fast-paced global era. The ASEAN Concord of 24 February 1976 called for "*the intensification of cooperation among*

member countries of ASEAN and relevant international bodies to prevent and eradicate narcotics abuse and the illegal trafficking of drugs".⁴⁶

Such coordination and understanding is yet to be developed between ASEAN and other major international organizations like the United Nations, which has several bodies under it to counter narcotics trafficking. Interaction must also be extended to other areas of transnational crime such as trafficking of people, cyber crime and environmental crime. The regional organizations such as ASEAN have a tendency to learn or adopt norms from other global organizations.

In ASEAN's case, the principles of non-interference and the non-use of force are not unique to the organization; they have long been enshrined in the United Nations charter and in the founding documents of various other organizations. The difference lies in the way these norms are interpreted by Southeast Asian countries. Many countries in this region are socially,

Re-criminalising transnational crime would allow the police to assume control. Thus permitting the issue of sovereignty - a concern of all ASEAN nations to remain unchallenged.

politically and economically weak. Understandably, their main concern is to maintain peace and stability within their jurisdiction before focusing attention on external issues.

Primary threats being domestic in nature, Southeast Asian nations have developed a regional security approach i.e. passive, inward looking and non-militaristic; in direct contrast to the Western conceptualization of collective

defence, which by maintaining and developing military capabilities aim to deter attack from external sources.⁴⁷ ASEAN's principles of non-interference and non-use of force have maintained regional stability by liberating member nations from the threat of interference from their neighbours and leaving them free to address domestic issues of political and economic stability and development.⁴⁸

Discourse within international relations and security studies often promote the belief that a complete renouncement of the "ASEAN Way" is the sole path to successfully countering transnational crime in Southeast Asia. This belief holds true as long as one chooses to adopt a 'Western approach' to combating transnational crime. Within Southeast Asia a 'middle path' or an 'ASEAN Way' must be created for this purpose. The issue of transnational crime has been intentionally 'securitized' over the years in the process of replicating the 'Western' model to limit and prevent the spread of transnational crime.

ASEAN's rhetoric of transnational crime states as a threat to state sovereignty; to state and regional security; to the rule of law and finally to economic development.⁴⁹ By having 'securitized' the subject of transnational crime, the issue in lieu of being handled by the state police forces as all crimes and criminal activities usually are, it carries into the domain of the military forces. This creates a gap between ASEAN's method of resolving the dilemma and its core principles leading to further neglect and evasion of dealing with the problem along with increasing pressure on ASEAN to 'liberalize'. The issue of transnational crime must be de-securitized

and instead be re-criminalized.

Re-criminalising transnational crime would allow the police to assume control. Thus permitting the issue of sovereignty - a concern of all ASEAN nations to remain unchallenged. This step is also logical because ASEAN already has a mechanism i.e. ASEANPOL to look after cooperation between the national police forces of its member nation. Such a coordination agency is yet to be devised for the armed forces. Strong judicial institutions at the national level and efficient coordination amongst them at the regional level are a necessity for effectively addressing transnational crime.

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