

## CHAPTER TWO

### LITERATURE REVIEW

#### A. Transnational Crime in Southeast Asia

Definitions of transnational organized crime often differentiate between traditional crime organizations and more modern criminal networks. Traditional groups have a hierarchical structure that operates continuously or for an extended period. Newer networks, in contrast, are seen as having a more decentralized, often cell-like structure. Some experts also distinguish groups by their relation to the state. Many conventional organizations have interests that are aligned with countries; they depend on the state for contracts and services.<sup>15</sup> They may have repeatedly laundered their assets through legitimate businesses. Modern networks, in contrast, are seen as less likely to profit from state contracts or launder large sums of money. They often thrive on the absence of effective governance.

Mueller<sup>16</sup> in his book call transnational organized crimes as offenses whose inception, prevention, and / or the direct or indirect effects involve; more than one country. Mueller himself uses the term to identify certain transnational criminal phenomenon transcending international borders, transgressing the laws of several states or having an impact on another country.

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<sup>15</sup> Louise Shelley, 2005, "The Unholy Trinity: Transnational Crime, Corruption, and Terrorism," *Brown Journal of World Affairs*, Vol. XI, Winter/Spring, Issue 02.

<sup>16</sup> Gerhard O. W. Mueller, *Op. cit.*

1. UNTOC (United Nation Convention against Transnational Organized Crime)

The UNTOC defines a serious transnational offence as that undertaken by three or more people for an ongoing period of time and with the aim of obtaining material gain. The Convention is further supplemented by three targets, which target specific areas and manifestations of organized crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. Countries must become parties to the Convention itself before they can become parties to any of the Protocols.<sup>17</sup> Several offences have now been routinely identified and these are briefly noted:

- a. Human trafficking and smuggling, including child and sexual exploitation and also indentured work;
- b. Drug/narcotic trafficking, including the illicit, production, distribution of cannabis, cocaine, opiates (heroin, morphine, etc.), and Amphetamine Type Stimulants (ATS), and MDMA (Ecstasy);
- c. Firearms trafficking, including small arms, explosives and potentially, more sophisticated weapons or components for guided missiles (see additional protocols UNTOC);

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<sup>17</sup> United Nations Convention against Transnational Organized Crime and the Protocols Thereto, UNODC, <https://www.unodc.org/unodc/treaties/CTOC/> Accessed on October 15<sup>th</sup>, 2015 at 10:55 a.m.

- d. Environmental resource trafficking, including exotic and protected animal and plant species and protected timber;
- e. Cybercrime, particularly ID theft and unauthorized access to computers are the leading precursor offences. Web 2.0 applications also have increased the risks to users as some users may reveal more personal information on sites such as 'Facebook' than they otherwise might;
- f. Maritime piracy, which involves the seizure of vessels, cargo and crew and potentially the 'rebirth' of vessels; and
- g. Product counterfeiting/intellectual property theft (IP). This includes medicines and other proprietary drugs, digital products (e.g. DVDs) and high street fashion goods.

## 2. ASEAN Declaration on Transnational Organized Crime

ASEAN Declaration on Transnational Crime was held in Manila, 20 December 1997. The Declaration was participated by the ASEAN Ministers of Interior/Home Affairs and Representatives of ASEAN Member Countries. It concerned about the pernicious effects of transnational crime, such as terrorism, illicit drug trafficking, arms smuggling, money laundering, traffic in persons and piracy on regional stability and development, the maintenance of the rule of law and the welfare of the region's people.

The ASEAN Declaration on Transnational Organized Crime has resolved to confront the problem of transnational crime through the following measures:

- a. Strengthen the commitment of Member Countries to cooperate at the regional level in combating the transnational crime;
- b. Convene at least once every two years ASEAN Ministerial Meeting on Transnational Crime in order to coordinate activities of relevant ASEAN bodies, such as the ASEAN Senior Officials on Drug Matters (ASOD) and the ASEAN Chiefs of National Police (ASEANAPOL);
- c. Hold discussions with a view to signing mutual legal assistance agreements, bilateral treaties, memorandum of understanding or other arrangements among Member Countries;
- d. Consider the establishment of an ASEAN Centre on Transnational Crime (ACOT) which will coordinate regional efforts against transnational crime through intelligence sharing, harmonization of policies and coordination of operations;
- e. Convene a high-level ad-hoc Experts Group within one year to accomplish the following with the assistance of the ASEAN Secretariat:
- f. Encourage Member Countries to consider assigning Police Attaches and/or Police Liaison Officers in each other's capital in order to facilitate cooperation for tackling transnational crime;
- g. Encourage networking of the relevant national agencies or organizations in Member Countries dealing with transnational crime to further enhance information exchange and dissemination;

- h. Expand the scope of Member Countries' efforts against transnational crime such as terrorism, illicit drug trafficking, arms smuggling, money laundering, traffic in persons and piracy, and to request the ASEAN Secretary-General to include these areas in the work program of the ASEAN Secretariat;
- i. Explore ways by which the Member Countries can work closer with relevant agencies and organizations in Dialogue Partner countries, other countries and international organizations, including the United Nations and its specialized agencies, Colombo Plan Bureau, Interpol and such other agencies, to combat transnational crime;
- j. Cooperate and coordinate more closely with other ASEAN bodies such as the ASEAN Law Ministers and Attorneys-General, the ASEAN Chiefs of National Police, the ASEAN Finance Ministers, the Directors-General of Immigration and the Directors-General of Customs in the investigations, prosecution and rehabilitation of perpetrators of such crimes; and,
- k. Strengthen the ASEAN Secretariat's capacity to assist the Member Countries in initiating, planning, and coordinating activities, strategies, programs and projects to combat transnational crime.

## **B. The Association of Southeast Asian Nations (ASEAN)**

The Association of South East Asian Nation or ASEAN was established on August 8<sup>th</sup>, 1967 in Bangkok, Thailand. The establishment of ASEAN was by

signing the ASEAN Declaration (Bangkok Declaration) by the founding fathers of ASEAN, they are Indonesia, Malaysia, the Philippines, Singapore and Thailand. ASEAN is an alliance promoting economic and political cooperation by fostering dialogue among its ten members: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.<sup>18</sup>

ASEAN's objectives were to accelerate economic growth, social progress and cultural development in the region and to promote regional peace and stability. In doing so, it sought to abide respect for justice and the rule of law in the relationship among countries in the region and adhere to the principles of the United Nations Charter.

Since establishment, ASEAN strived for resilience, both individually as nations and as an international grouping. It spent time refining and fostering the concepts that defined ASEAN.

*a. ZOPFAN (Zone of Peace, Freedom, and Neutrality)*

The foreign ministers of the five ASEAN members signed a Zone Of Peace, Freedom, And Neutrality declaration (ZOPFAN) on 27 November 1971. ZOPFAN committed all ASEAN members to “exert efforts to secure the recognition of and respect for Southeast Asia as a Zone of Peace, Freedom and Neutrality, free from any manner of interference by outside powers,” and

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<sup>18</sup> Association of Southeast Asian Nation, Council of Foreign Relation, <http://www.cfr.org/asia-and-pacific/asean-association-southeast-asian-nations>, Accessed on October 30th, 2015 at 12:35 p.m.

to “take concerted efforts to broaden the areas of cooperation, which would contribute to their strength, solidarity and closer relationship.”<sup>19</sup>

Although ZOPFAN claimed to be the primary declaratory security policy of ASEAN, it was a highly ambiguous concept. Accordingly, the member states had their own reservations with regard to it. For Thailand and the Philippines, their existing relationship with the United States was a better security guarantee than being part of a neutralized area. Singapore preferred to trust its security to a balance of great power forces in the region. Each state had a different interpretation of what ZOPFAN meant and implied. ASEAN itself made little movement toward implementing the policy. ZOPFAN in a way was a statement of principles that were never meant to be taken seriously and represented what the ASEAN states understood to be "vague long-term aspiration."

*b. Treaty of Amity and Cooperation in Southeast Asia (TAC)*

Reduction of U.S. power in Southeast Asia and the related collapse of anticommunist regimes in South Vietnam and Cambodia in 1975 provided a powerful impetus to ASEAN's political development. The organization shifted its emphasis to the promotion of economic development as the surest way of combating the internal appeal of communism in the ASEAN nations. The

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<sup>19</sup> Introduction of ASEAN, ASEAN Secretary, Available at <http://www.aseansec.org>, Accessed on October 20<sup>th</sup>, 2015 at 8:50 p.m.

Indonesian government even wanted to redefine the organization as a military alliance, but the other states rejected this proposal. Thus the first summit meeting eventually called forth the declaration of ASEAN concord and the treaty of amity and cooperation in Southeast Asia (TAC).

The Treaty of Amity and Cooperation (TAC) in Southeast Asia agreed on the following articles: mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations; the right of every State to lead its national existence free from external interference, subversion or coercion; non-interference in the internal affairs of one another; settlement of differences or disputes by peaceful manner; renunciation of the threat or use of force; and effective cooperation among themselves. The treaty envisaged these principles as the foundation of a strong Southeast Asian community. It stated that “ASEAN political and security dialogue and cooperation should aim to promote regional peace and stability by enhancing regional resilience.” This resilience shall be achieved by cooperation among the member countries in all fields.

c. *The Dialogue System*

ASEAN did not seclude itself completely. In 1977, at the Second Summit in Kuala Lumpur the ASEAN heads of government agreed that the association's economic relations with other countries or groups of countries needed to be expanded and intensified. With such purpose, the ASEAN heads of government met with the Prime Ministers of Australia, Japan and New

Zealand, setting the first example of holding meetings with leaders of non-ASEAN countries

Dialogues were held at various levels wide ranges, and more countries joined the system after years - Republic of Korea (1991), China (1996), India (1996), and Russia (1996). The United Nations Development Program (1977) is the only dialogue partner that is not a sovereign state.

*d. Member changes*

ASEAN initiated with five original members, Indonesia, Malaysia, Philippines, Singapore, and Thailand. No members left the association, and Brunei Darussalam joined on 8 January 1984, Vietnam on 28 July 1995, Lao PDR and Myanmar on 23 July 1997. Cambodia joined the association on 30 April 1999; a political crisis in Cambodia prevented this remaining Southeast Asian country from joining ASEAN in 1997 as originally planned.

Although frequent meetings held between ministers and between senior governments officials of the member states at times resulted in joint statements, joint press releases, and joint communiques, they did not lead to firm decisions or real actions. Consultations rather than solution or formulation of specific policies were agreed upon; members of ASEAN cautiously tried to avoid any commitment to their other members.

### C. ASEAN Security Community Pillar

“Security” is, to be concise, the absence of violence and threat of violence. According to Black’s Law dictionary, security is protection; assurance; indemnification. The term is usually applied to an obligation, pledge, mortgage, deposit, lien, etc., given by a debtor in order to make sure the payment or performance of his debt, by furnishing the creditor with a resource to be used in case of failure in the principal obligation. The name is also sometimes given to one who becomes surety or guarantor for another.<sup>20</sup>

A “community,” aptly described by Acharya, is a group with a shared identity and common norms.<sup>21</sup> Community according to Black’s Law Dictionary is Neighborhood; vicinity, synonymous with locality or a society of people living in the same place, under the same laws and regulations, and who have common rights and privileges or interests.<sup>22</sup>

ASEAN Security Community or ASEAN Security Community has concern on the close co-operation and solidarity. The ASEAN has looking forward on the establishment of ASEAN Security Community which has a vision on the peace living, stability and prosperity, bonded together on partnership in dynamic development and in community of caring societies. The threat of the

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<sup>20</sup> Henry Campbell Black, 1990, *Black's Law Dictionary, Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern*, 6<sup>th</sup> Edition, U.S.: West Publishing Co. p. 1522

<sup>21</sup> Amitav Acharya, *Op.cit.* p. 89.

<sup>22</sup> Henry Campbell Black, *Op. cit.* p.350.

terrorism and its implications is the main factor why ASEAN needs to develop ASEAN Security Community.<sup>23</sup>

#### **D. ASEAN Security Community Blueprint**

The ASC Blueprint is guided by the ASEAN Charter and the principles and purposes contained therein. The ASC Blueprint builds on the ASEAN Security Community Plan of Action, the Vientiane Action Program (VAP), as well as relevant decisions by various ASEAN Sectoral Bodies. The ASEAN Security Community Plan of Action is a principled document, laying out the activities needed to realize the objectives of the ASEAN Security Community, while the VAP lays out the measures necessary for 2004-2010.<sup>24</sup> Both documents are important references in continuing political and security cooperation. The ASC Blueprint provides a roadmap and timetable to establish the ASC by 2015. The ASC Blueprint would also have the flexibility to continue programs/activities beyond 2015 in order to retain its significance and have an enduring quality

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<sup>23</sup> Bambang Cipto, *Op. cit.*, p. 81.

<sup>24</sup> Building the ASEAN Political-Security Community, The Jakarta Post, international law and policy analyst at the Cabinet Secretariat of Indonesia, See more at: <http://www.thejakartapost.com/news/2013/02/05/building-asean-political-security-community.html#sthash.W5dvBJJ1.dpuf>, Accessed on March 6<sup>th</sup>, 2016 at 3:45 p.m.