

Combatting Terrorism in South-East Asia: ASEAN's 'Soft' Approach

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Abstract

The Association of South East Asian Nations (ASEAN) is a regional organization of South-East Asia which comprises of ten South-East Asian countries such as Thailand, Singapore, Myanmar, Philippine, Vietnam, Malaysia, Laos, Cambodia, Indonesia, and Brunei. It was formed in 1967 with a view to promote economic, political and security cooperation among the member countries. ASEAN is perhaps one of the strongest free trade regimes outside of the European Union (EU).

The threat of terrorism in South East Asia spans the global, national, and regional arenas. This growing threat cannot be eradicated by any single state as it is a transnational threat that requires a multilateral response. However, despite the increasing dimensions of the threat, the coordination and capacity building amongst the states leaves a lot to be desired. The ASEAN principles of non-interference and emphasis on state sovereignty have to an extent hampered regional coordination. The paper outlines the current existing terror threat in the South-East Asian region and traces the initiatives undertaken by ASEAN to counter terrorism. The author attempts to highlight and pinpoint the drawbacks in the approach adopted by ASEAN to counter the terrorist threat.

Keywords: terrorism, ASEAN, South-East Asia, counter terrorism, non-interference

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1. Introduction

The Association of South-East Asian Nations (ASEAN), is a regional organization of South-East Asia, formed in 1967. It comprises of ten South-East Asian countries i.e. Thailand, Singapore, Myanmar, Philippines, Vietnam, Malaysia, Laos, Cambodia, Indonesia and Brunei. The objective of ASEAN is to promote economic, political and security cooperation among the member countries. ASEAN is perhaps one of the strongest free trade regimes outside of the European Union (EU).¹ As one of the most successful regional organizations, ASEAN has tried to provide solutions to various regional problems. Terrorism is one of the primary concerns which has impacted peace and security in the ASEAN region. It is through cooperation and joint effort that ASEAN seeks to fight international and transnational terrorism.²

The threat of terrorism in South-East Asia is global, regional, and national. Looking at the history of this region, terrorism as a threat became palpable after the September 11 attacks and the Bali bombings on 12 October.³ As a consequence ASEAN declared a war, but this act did not arise out of a consensus amongst the members. The varied domestic interests especially between Indonesia, Malaysia, Philippines, and Singapore was a setback to the regional agreement and cooperation.⁴ It is a fact that the threat of terrorism which is transnational in nature, cannot be tackled by a single state. As has been witnessed, terrorists usually operate across borders and attach themselves with other terror groups.⁵

Terrorism as a crime violates the human rights of the people.⁶ ASEAN as a regional body opposes terrorism and all its forms. It supports the United Nations in the fight against terrorism by providing adequate support and coordination at different levels. It has initiated the platform for the implementation of the 2030 Sustainable Development Agenda, which necessitates the

¹ Noah Beal, 'Terrorism and ASEAN: Noninterference vs Security' (2019) LIII (1) *Towson Univ. J. Intl. Affairs* 39.

² Shaibal Das & Priyotosh Sharma, 'A Study on the Role of ASEAN in Combating Terrorism' (July 2021) 10(7) *Intl. J. Multidisciplinary Edu. R.* <[http://s3-ap-southeast-1.amazonaws.com/ijmer/pdf/volume10/volume10-issue7\(9\)/10.pdf](http://s3-ap-southeast-1.amazonaws.com/ijmer/pdf/volume10/volume10-issue7(9)/10.pdf)> accessed 24 July 2022.

³ Aniek Periani & Dewa Gede Sudika Mangku, 'Implementation of ASEAN Convention on Counter Terrorism in Eradication of Terrorism that Happens in the South Asia Area' (Dec. 2018) 17(4) *Intl. J. Bus., Eco. & L.* <<http://www.ijbel.com/wp-content/uploads/2019/01/LAW-99.pdf>> accessed 24 July 2022.

⁴ *ibid.*

⁵ Rohan Gunaratna, 'ASEAN's Greatest Counter-Terrorism Challenge: The Shift from "Need to Know" to Smart to Share' (2018) Konrad-Adenauer-Stiftung Ltd and International Centre for Political Violence and Terrorism Research. <https://www.kas.de/documents/288143/288192/Terrorism_Gunaratna.pdf/20fb5191-5289-d16e-a6c1-879a0442fbe4> accessed 24 July 2022.

⁶ Shruti Bedi, 'International Human Rights Law: Responsibility of Non-State Actors for Acts of Terrorism' (2014) 56(3) *J. Indian L. Inst.* 386 <http://14.139.60.116:8080/jspui/bitstream/123456789/12166/1/030_International%20Human%20Rights%20Law%20%28386-397%29.pdf> accessed 16 August 2022.

establishment of a prosperous and peaceful society.⁷ Without support from the international community and cooperation amongst its members, the eradication of terrorism becomes an impossible task. It is in this respect that the research is being undertaken.

Undoubtedly, the Covid-19 pandemic and the Russia-Ukraine war along with the China-US rivalry have taken the sting out of the threat of terrorism. One does not hear of terrorism related news events lately and it is a fact that the threat may have declined. However, it is in no way eradicated as terrorist groups in the South-East Asia region continue to express the political will for violence.⁸ It may have been further heightened by the victory of Taliban in Afghanistan.⁹ The Defence Minister of Singapore, Ng Eng Hen has also assessed that “there might be a resurgence of terrorism as global travel resumes.”¹⁰

The threat of terrorism in South East Asia spans the global, national and regional arenas. This growing threat cannot be eradicated by any single state as it is a transnational threat that requires a multilateral response. However, despite the increasing dimensions of the threat, the coordination and capacity building amongst the states leaves a lot to be desired. The ASEAN principles of non-interference and emphasis on state sovereignty have to an extent hampered regional coordination. The paper outlines the current existing terror threat in the South-East Asian region and traces the initiatives undertaken by ASEAN to counter terrorism. The author attempts to highlight and pinpoint the drawbacks in the approach adopted by ASEAN to counter the terrorist threat.

2. Terrorism in South-East Asia: The Threat

Located at the intersection of the world, South-East Asia becomes a significant region for external powers. In addition to the geostrategic placement, there are religious motives which have promoted terrorism, according to Singh.¹¹ Due to the complex nature of the threat, it has never been easy for countries to deal with it individually. Contributing to terrorism in the region, the security threats include Gerakan Aceh Merdeka (GAM) or The Free Aceh

⁷ Das & Sharma (n 2).

⁸ Kenneth Yeo, ‘As Southeast Asia Reopens, Will Transnational Terrorism Return?’ *The Diplomat* (South East Asia, 15 April 2022) <<https://thediplomat.com/2022/04/as-southeast-asia-reopens-will-transnational-terrorism-return/>> accessed 26 July 2022.

⁹ Sidney Jones, ‘Has the Taliban’s victory heightened the terrorism threat in Southeast Asia?’ *The Strategist* (23 September 2021) <<https://www.aspistrategist.org.au/has-the-talibans-victory-heightened-the-terrorism-threat-in-southeast-asia/>> accessed 26 July 2022.

¹⁰ Yeo (n 8).

¹¹ Bilveer Singh, *The Talibanization of Southeast Asia: Losing the War on Terror to Islamist Extremists* (Praeger 2007) 229.

Movement in Indonesia, Moro Islamic Liberation Front (MILF), Abu Sayyaf in the Philippines, and the Pattani United Liberation Organization (PULO) in Thailand. Further, the Islamic State of Iraq and Syria (ISIS) and Al-Qaeda have been attempting to strengthen their operational range.¹²

According to Wilujeng, South-East Asia has had to combat three generations of terrorism. The first being Al Qaeda, which attacked the World Trade Centre, USA in 2001, the second was the worldwide jihad of ISIS in 2014, and the third was the return of the foreign terrorist fighters (FTF).¹³ When FTFs return to their countries, their actions could take any turn.¹⁴ Terrorism is a global threat and needs a well-devised strategy to counter it. In the absence of any coordinated measures at the national and international level, organised crime particularly terrorism has adverse consequences.¹⁵ It is impossible for any individual country to tackle it without cooperation from other nations. The fundamental challenge to fighting terrorism in the region has always been the existence of differences between countries and the presence of mistrust amongst them.¹⁶

2.1 Terror Activity

A brief overview of the status of terrorism in the ASEAN states is necessary to understand the context. Indonesia is home to one of the most infamous terror networks, Jemaah Islamiyah (JI). It was formed in the 1990s to establish an Islamic state encompassing southern Thailand, Malaysia, Singapore, Indonesia, Brunei and southern Philippines.¹⁷ It was responsible for a series of bombings in Indonesia and Philippines from 2000 to 2005. These include the 2002 Bali nightclub attacks killing 202 people; 2003 car bombing of the JW Marriott hotel in Jakarta; and the 2005 suicide bombing in Bali.¹⁸ Over a period of time, it weakened. It is now believed

¹² Nila Febri Wilujeng, Yoedhi Swastanto & Thomas Gabriel Joostensz, 'Counter-Terrorism Cooperation in the ASEAN Regional Forum (ARF) from the Perspective of Indonesia Defense Diplomacy' (2021) 7(2) *Jurnal Pertahanan* 205, 206.

¹³ E.K.J. Sembiring, 'Beri Kuliah Umum di Singapura, Menhan Ryamizard Paparkan Hal Ini' cited in Wilujeng et al. *ibid.*

¹⁴ Zakir Hussain, 'Returning ISIS Fighters "Pose Threat to Region"' *The Jakarta Post* (30 October 2014) <<https://www.thejakartapost.com/news/2014/10/30/returning-isis-fighters-pose-threat-region-says-indonesias-military-chief.html>> accessed 27 July 2022.

¹⁵ Mitchell, J. N., 'Transnational Organised Crime in Indonesia: The Need for International Cooperation' (2016) 3(2) *Brawijaya L. J.* 176-199 <https://www.researchgate.net/publication/310600397_TRANSNATIONAL_ORGANISED_CRIME_IN_INDONESIA_THE_NEED_FOR_INTERNATIONAL_COOPERATION> accessed 27 July 2022.

¹⁶ Maj. Gen. Mahmud Ali Durrani, 'Developing a Common Denominator to Fight Terrorism in Asia' in Shruti Pandalai (ed), *Combating Terrorism Evolving Asian Perspectives* (New Delhi, IDSA 2019) 12 <https://idsa.in/system/files/book/book_combating-terrorism.pdf> accessed 3 August 2022.

¹⁷ Counter Terrorism Guide, 'Jemaah Islamiyah' (September 2013) National Counterterrorism Centre <<https://www.dni.gov/nctc/groups/ji.html>> accessed 3 August 2022.

¹⁸ *ibid.*

to have merged into the Islamic State (IS) affiliate in South-East Asia, Abu Sayyaf (ASG).¹⁹ However, it is also believed that Al Qaeda provides funds to JI.²⁰

Indonesia also faces threat from an ISIS linked group, Jamaah Ansharut Daulah (JAD), believed to have been formed in 2015. The group was responsible for the January 2016 attack in central Jakarta, which led to its designation as a Specially Designated Global Terrorist by the US Department of State in January 2017.²¹ On March 4, 2020, it was listed by the UN Security Council as being associated with ISIL for “participating in the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of Al-Qaida, ISIL, or any cell, affiliate, splinter group or derivative thereof”.²² In May 2018, JAD launched terror attacks on three churches and police headquarters in Surabaya.²³ In a study conducted by Singapore based International Centre for Political Violence and Terrorism Research (ICPVTR) found JAD responsible for the maximum number of suicide bombings in South-East Asia.²⁴

Moreover, trained foreign fighters returning to Indonesia pose a bigger security threat to the region. After the defeat of the ISIS, the influx of FTFs to their countries of origin has been a cause of concern for the international community. One of the questions for debate has been whether the states of origin have a responsibility towards repatriation of the FTFs.²⁵

Since the late 1990s, Malaysia has faced threat from a domestic Islamic extremist group, Kumpulan Mujahidin Malaysia (KMM). The KMM has talked of forming an Islamic State comprising of Thailand, Malaysia, Indonesia, and Southern Philippines.²⁶ This group comprises of Malaysian fighters from the Soviet-Afghan war and regional groups like the

¹⁹ Jemaah Islamiyah, ‘Counter Extremism Project’ (2022) <<https://www.counterextremism.com/threat/jemaah-islamiyah-ji>> accessed 3 August 2022.

²⁰ *ibid.*

²¹ Report, ‘Indonesia: Extremism and Terrorism’ (2022) Counter Extremism Project <<https://www.counterextremism.com/countries/indonesia-extremism-and-terrorism>> accessed 11 August 2022.

²² United Nations Security Council, ‘Jamaah Ansharut Daulah’ (March 2020) <<https://www.un.org/securitycouncil/content/jamaah-ansharut-daulah>> accessed 5 August 2022.

²³ Kate Lamb, ‘The bombers next door: how an Indonesian family turned into suicide attackers’ *The Guardian* (19 May 2018) <<https://www.theguardian.com/world/2018/may/19/indonesia-blasts-surabaya-family-from-good-neighbours-suicide-bombers>> accessed 5 August 2022.

²⁴ Kenneth Yeo Yaoren, ‘Family Martyrdom: Examining Suicide Terrorism Trends in Southeast Asia’ *The Diplomat* (24 May 2021) <<https://thediplomat.com/2021/05/family-martyrdom-examining-suicide-terrorism-trends-in-southeast-asia/>> accessed 6 August 2022.

²⁵ Beritasatu, ‘Indonesia Refuses to Repatriate Former Islamic State Fighters’ *Jakarta Globe* (12 February 2020) <<https://jakartaglobe.id/news/indonesia-refuses-to-repatriate-former-islamic-state-fighters>> accessed 6 August 2022; Also see Setyo Widagdo, Kadek Wisik Indrayanti, & Anak Agung Ayuk, ‘Repatriation as a Human Rights Approach to State Options in Dealing with Returning ISIS Foreign Terrorist Fighters’ (July 2021) *Sage Open* <<https://journals.sagepub.com/doi/pdf/10.1177/21582440211032679>> accessed 7 August 2022.

²⁶ Kumpulan Mujahidin Malaysia, ‘Malaysian Mujahidin Movement’ *Global Security* <<https://www.globalsecurity.org/military/world/para/kmm.htm>> accessed 8 August 2022.

Indonesian JI and Philippines' Moro Islamic Liberation Front and Abu Sayyaf Group (ASG). JI has established cells in Malaysia for training recruits, particularly in the state of Sabah on the island of Borneo.²⁷

In the Philippines both Communist nationalist rebels and Islamic separatist insurgencies have wreaked havoc especially in Mindanao. This has led to killings in bombings, assassinations, kidnappings and executions of thousands of Filipinos. The first Islamic extremist group in the Philippines, the Moro National Liberation Front (MNLF) was established in 1971 to fight for an independent Moro (Islamic) state in Mindanao. On July 26, 2018, the government in Philippine signed the Bangsamoro Organic Law (BOL), which created a new autonomous region, to be called the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM).²⁸ This has been received well by the extremist groups, ending the long conflict in the region.

The Abu Sayyaf Group (ASG), although the smallest, is the most radical separatist group in Mindanao. The group has brought attention to itself from Australia and the United States on account of its propensity for violence and its historical ties to Al-Qaeda and Jemaah Islamiyah.²⁹ On June 27, 2019, a Roman Catholic church in Jolo, Sulu, was bombed by a couple, during Sunday Mass, killing 20 people and wounding many more.³⁰ Also on August 24, 2020, two suicide bombers attacked a Jolo town plaza.³¹

The ASG and the Bangsamoro Islamic Freedom Fighters (BIFF) had pledged allegiance to ISIS.³² In late 2015, other militant groups including Maute Group and Ansar Khalifah Philippines (AKP) also pledged their allegiance to ISIS, forming a loose alliance, Daulah Islamiyah.³³ On May 13, 2018, a family of six detonated suicide bombs at three churches in

²⁷ Report, 'Malaysia: Extremism and Terrorism' (2022) Counter Extremism Project <<https://www.counterextremism.com/countries/malaysia-extremism-and-terrorism>> accessed 8 August 2022.

²⁸ Report, 'The Philippines: Extremism and Terrorism' (2022) Counter Extremism Project <<https://www.counterextremism.com/countries/philippines-extremism-and-terrorism>> accessed 8 August 2022.

²⁹ Stanford, 'Abu Sayyaf Group: Key Statistics' (February 2022) Centre for International Security and Cooperation (CISAC) <https://cisac.fsi.stanford.edu/mappingmilitants/profiles/abu-sayyaf-group#text_block_17334> accessed 11 August 2022.

³⁰ News, 'Jolo church attack: Many killed in Philippines' *BBC News* (27 January 2019) <<https://www.bbc.com/news/world-asia-47018747>> accessed 8 August 2022.

³¹ Jamaine Punzalan, 'Jolo Twin Blasts, 2019 Church Bombing have same Mastermind' *ABS-CBN News* (27 August 2020) <<https://news.abs-cbn.com/news/08/27/20/jolo-twin-blasts-2019-church-bombing-have-same-mastermind-military>> accessed 11 August 2022.

³² Mico A. Galang, 'The Islamic State of Iraq and Syria: A Direct Threat to the Philippines?' (23 April 2015) 3 *NDPC Policy Brief* <https://www.academia.edu/14105348/The_Islamic_State_of_Iraq_and_Syria_A_Direct_Threat_to_the_Philippines_Part_2_of_2> accessed 12 August 2022.

³³ 'BIFF, Abu Sayyaf pledge allegiance to Islamic State Jihadists' *GMA News Online* (16 August 2014) <<https://www.gmanetwork.com/news/topstories/nation/375074/biff-abu-sayyaf-pledge-allegiance-to-islamic-state-jihadists/story/>> accessed 10 August 2022.

Surabaya, Indonesia. Next day another suicide bomb was detonated by driving into the police headquarters. This was the first successful mission of IS in Indonesia since 2016.³⁴

The IS affiliate forces captured the Marawi City in Philippines in 2017. The Philippines defence forces managed to recapture the city after five months of brutal combat.³⁵ The IS success came from the transnational movement of forces from Malaysia and Indonesia into Philippines, which strengthened the existing manpower, funds and weapons of the IS.³⁶ The threat of IS in South-East Asia is concentrated in the Sulu-Sulawesi Sea, a tri-border area, where the national borders of Malaysia, Indonesia and Philippines meet. This region has been the subject of many disputes among the three states on account of the disputed ownership of many islands, consequently giving rise to a lawless environment.³⁷

Instability in Thailand has been created by the violence and acts of extremism of the National Revolutionary Front (BRN), an Islamic ethnic separatist movement.³⁸ The arms and ammunition flows from the black markets to the BRN from Thailand to Malaysia, and from there to Philippines and Indonesia through the Sulu-Sulawesi Sea.³⁹

Terrorist recruitment underwent a decline during the Covid-19 pandemic, however, the governments are now alert for resurgence after the lifting of the pandemic related restrictions, as terrorist groups are repositioning themselves.⁴⁰ Online radicalization also happens through the use of internet and on social media platforms, which are exploited by terrorist groups to gain sympathy.⁴¹ There was a surge in the spread of terrorist propaganda via social media

³⁴ Kirsten Schulze, 'The Surabaya Bombings and the Evolution of the Jihadi Treat in Indonesia' (2018) 11(6) *Combatting Terrorism Center at West Point* <<https://ctc.westpoint.edu/surabaya-bombings-evolution-jihadi-threat-indonesia/>> accessed 10 August 2022.

³⁵ Bill Neely, 'Battle to recapture Marawi, Philippines, from ISIS is Warning for Asia' *NBC News* (8 August 2017) <<https://www.nbcnews.com/news/world/battle-recapture-marawi-philippines-isis-warning-asia-n790626>> accessed 11 August 2022.

³⁶ Michael Hart, 'A Year After Marawi, What's Left of ISIS in the Philippines' *The Diplomat* (25 October 2018) <<https://thediplomat.com/2018/10/a-year-after-marawi-whats-left-of-isis-in-the-philippines/>> accessed 12 August 2022.

³⁷ Marguerite Borelli, 'ASEAN Counter-Terrorism Weaknesses' (September 2017) 9(9) *Counter Terrorist Trends and Analyses* 17.

³⁸ Hannah Beech & Ryan Jirenuwat, '15 Killed in Southern Thailand in the Worst Violence in Years' *The New York Times* (6 November 2019) <<https://www.nytimes.com/2019/11/06/world/asia/thailand-violence-insurgency.html>> accessed 12 August 2022.

³⁹ Beal (n 1) 41.

⁴⁰ UNODC, 'Complex Terrorist Cases for South and South-East Asia: Investigation, prosecution, adjudication, rehabilitation and reintegration' (Vienna 2021) 124-125 <https://www.unodc.org/res/terrorism/resources/capacity-building_html/21-06370_eBook.pdf> accessed 12 August 2022.

⁴¹ Jordan Newton, Benjamin Mok, Raffaello Pantucci, Muhammad Haniff Hassan, 'Counter Terrorist Trends and Analyses' (14 June 2022) 14(3) *RSIS* <https://www.rsis.edu.sg/rsis-publication/icpvtr/counter-terrorist-trends-and-analyses-ctta-volume-14-issue-03/?doing_wp_cron=1658034589.7740659713745117187500> accessed 12 August 2022.

channels in the Philippines after the siege of Mindanao. During the pandemic, the world moved online and the anonymity offered by the online platforms was exploited by terrorist groups to spread misinformation, recruit people, and raise funds for their cause.⁴²

According to the UNSC Counter-Terrorism Committee, South-East Asia remains a “source, transit point and destination for ISIL fighters, as well as militants connected to, inter alia, the Abu Sayyaf Group (ASG) (also known as the Islamic State East Asia Province), Al-Qaida, and Jemaah Islamiyah”.⁴³ As is evident, extremism, terrorism and militancy are a palpable threat to the “diversity of ASEAN communities”.⁴⁴ It is apparent that the South-East Asian region, especially ASEAN has been besieged by radical organisations intent on creating conflict and disturbance, to eventually create a new venue for developing radical perspectives in the region.

3. ASEAN: Counter-Terrorism Initiatives

Terrorism is ideally countered through a combination of public and international policies that restrict the activities of terrorist groups or organisations. Policy measures include freezing the financial assets of terrorist organizations, conducting raids on their locations; providing military and economic assistance to countries fighting terrorism; facilitating and implementing counter-terrorism policies and agreements etc.⁴⁵

ASEAN’s counter-terrorism initiatives have incorporated a variety of measures, which have evolved over time. The issue of terrorism was low priority till 1999 in South-East Asia. Initially the approach adopted was traditional in perspective wherein terrorism was categorised as a criminal act. At the ground level, there was overlapping between terrorism and other transnational criminal activities like money laundering, trafficking of drugs and people etc.⁴⁶ This tilted ASEAN’s direction towards the principle of ‘comprehensive security’.⁴⁷ Currently,

⁴² UNSC Counter-Terrorism Committee, ‘Global survey of the implementation of Security Council resolution 1373 (2001) and other relevant resolutions by Member States’ (2021) 69
<https://www.un.org/securitycouncil/ctc/sites/www.un.org.securitycouncil.ctc/files/ctc_1373_gis.pdf> accessed 12 August 2022.

⁴³ *ibid* 68.

⁴⁴ Agung Hidayat, ‘ASEAN and Counter-terrorism: Some Notes’ (27 August 2015) ASEAN Studies Center
<https://asc-fisipol-ugm-ac-id.translate.google/2015/08/27/648/?_x_tr_sl=id&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=sc> accessed 13 August 2022.

⁴⁵ M.Y. Omelicheva, *Counterterrorism Policies in Central Asia* (Routledge 2011).

⁴⁶ See generally Arabinda Acharya, *Targeting Terrorist Financing: International Cooperation and New Regimes* (Routledge 2009); Graham Gerard Ong-Webb (ed), *Piracy, Maritime Terrorism and Securing the Malacca Straits* (ISEAS Publishing 2006).

⁴⁷ Declaration of ASEAN Concord II (Bali Concord II), adopted 7 October 2003, Art. A, para 2; ASEAN Charter, Art. 1(8).

terrorism is one of the highest security challenges for the region, which has resulted in eagerness amongst the ASEAN countries to tackle it through cooperative and coordinated efforts.⁴⁸

Post 9/11, the US and the West carried out targeted propaganda against Islam and Muslims. The western media tried to identify Islam with terrorism. Such humiliation angered and provoked the Muslims who came to harbour resentment against the West.⁴⁹ The South-East Asian region comprising of over 225 million Muslims came to be greatly impacted by such perceptions.⁵⁰ Therefore, ASEAN needs to find ways to tackle the threat without appearing to rally with the US on its war on terrorism.⁵¹

Tackling terrorism requires a multilateral and cooperative approach which reflects rationality and pragmatism at the ground level. There are several multilateral security frameworks, conventions and agreements on counter-terrorism in existence in Asia. To deal with security related issues in this region of contrasts, the countries tried to forge a common political identity through ASEAN. Resultantly, the ASEAN Regional Forum (ARF) was constituted in 1994. The ARF primarily focuses on two issues: firstly, fostering constructive dialogue and consultation on political and security related issues of common interest and concerns; and secondly, making significant contributions to efforts towards confidence building and preventive diplomacy in the Asia-Pacific region.⁵²

ASEAN signed the Declaration on Transnational Crime in Manila on 20 December 1997.⁵³ This was based on the ASEAN way of decision making by consensus and reliance on non-binding rules. Terrorism was acknowledged as a transnational crime; however, progress was restricted till the 9/11 attacks, whence terrorism became a global phenomenon. The ASEAN Declaration on Joint Action to Counter Terrorism (ADJACT) was adopted in 2001⁵⁴, two weeks after the Asia-Pacific Economic Cooperation was formulated.

⁴⁸ Fazal-ur-Rahman, 'Multilateral Approach to Counter-Terrorism: A Case Study of ASEAN's Anti-Terrorism Strategy' (Spring 2003) 23(1) Strategic Studies 123, 123.

⁴⁹ *ibid* 124.

⁵⁰ East Asia Strategic Review, (2002) The National Institute for Defense Studies, Japan 40.

⁵¹ Hana Umezawa, 'EU-ASEAN Cooperation in Transnational Security Threats: Prospects for Inter-regional Cooperation in Counter-terrorism' (2014) 67(1) Studia Diplomatica, The EU in International Affairs 65, 72.

⁵² ASEAN Regional Forum, 'Objectives' <<https://aseanregionalforum.asean.org/about-arf/>> accessed 10 August 2022.

⁵³ ASEAN Declaration on Transnational Crime, December 1997, Manilla <<https://asean.org/wp-content/uploads/2012/05/ASEAN-Declaration-on-Transnational-Crime-1997.pdf>> accessed 10 August 2022.

⁵⁴ 2001 ASEAN Declaration on Joint Action to Counter Terrorism, (November 2001) Bandar Seri Begawan. <<https://asean.org/wp-content/uploads/2012/05/2001-ASEAN-Declaration-on-Joint-Action-to-Counter-Terrorism.pdf>> accessed 10 August 2022.

Greatly impacted by the Bali bomb blast in Indonesia in October 2002, ASEAN adopted the ASEAN Declaration on Terrorism⁵⁵, while recommending enhanced cooperation among the member states against terrorism. ASEAN has also signed a number of joint declarations with its external dialogue partners like the United States, European Union, Australia, India, Russia, Japan, Republic of Korea, New Zealand, Pakistan and Canada.⁵⁶ Interestingly, these agreements were signed prior to it adopting its own counter-terrorism treaty. Additionally, in 2002, some ASEAN nations like Indonesia, Philippines, Malaysia, Thailand and Cambodia signed other counter-terrorism agreements among themselves pushing for strengthening border controls, sharing airline passenger information, establishing hotlines, sharing intelligence and adopting standard procedures for search and rescue.⁵⁷ There were agreements between other countries also. These collaborations between nations were somewhat successful given the difficult and sensitive political and economic situation in South-East Asia.

A pertinent instrument on counter-terrorism was the Treaty on Mutual Legal Assistance in Criminal Matters, adopted on 29 November 2004⁵⁸, referred to as the Mutual Legal Assistance Treaty (MLAT). The aim and objective of MLAT is to strengthen the law enforcement agencies of the ASEAN countries in the investigation and prosecution of offences through cooperation and mutual assistance.

3.1 ASEAN Convention on Counter-Terrorism

In furtherance of maintaining peace, security and stability in the region, the ASEAN member states agreed to enact a principal instrument for strengthening regional counter-terrorism efforts, the ASEAN Convention on Counter-Terrorism (ACCT).⁵⁹ The ACCT was adopted in Cebu, Philippines on January 13, 2007. The ACCT is a landmark achievement of the counter-terrorism efforts of ASEAN that provides a framework for regional cooperation to counter,

⁵⁵ Declaration on Terrorism by the 8th ASEAN Summit Phnom Penh, (3 November 2002) Association of South-East Asian Nations <<https://asean.org/declaration-on-terrorism-by-the-8th-asean-summit-phnom-penh-3-november-2002/>> accessed 11 August 2022.

⁵⁶ The text of these joint declarations is reproduced in Political-Security Department Security Cooperation Division, Association of Southeast Asian Nations, 'ASEAN Documents on Combating Transnational Crime and Terrorism: A Compilation of ASEAN Declarations, Joint Declarations, and Statements on Combating Transnational Crime and Terrorism' (April 2012) 27–60 <<https://asean.org/wp-content/uploads/2021/01/ASEAN-Documents-on-Combating-Transnational-Crime-and-Terrorism-1.pdf>> accessed 11 August 2022.

⁵⁷ Das & Sharma (n 2) 58.

⁵⁸ Treaty on Mutual Legal Assistance in Criminal Matters, (29 November 2004) Kuala Lumpur <<https://jla.coj.go.th/file/get/file/2018092522e8d67bbff7c047a81270264de8d7d6194602.pdf>> accessed 11 August 2022.

⁵⁹ Satria Unggul Wicaksana Prakasa, Sholahuddin Al-Fatih & Abdurrahman Raden Aji Haqqi, 'Terrorism Eradication in ASEAN Countries: Human Rights Perspective' (2021) 16(2) *Journal Hukum dan Pranata Sosial* 327, 330.

prevent and suppress terrorism. It gives prominence to the strategic role of this region in countering terrorism globally.⁶⁰ The ACCT came into force on May 27, 2011 when six states ratified it. However, the ratification by all member states was completed only by 2013.⁶¹ This Convention reflects the solidarity and political will of ASEAN to combat terrorism. Included among other provisions of the Convention is the unique feature of rehabilitation programmes for the terrorists⁶² and their fair treatment⁶³.

Included among the notable features of the Convention is that it does not include a regional definition of terrorism.⁶⁴ It relies on the meaning of ‘offence’ as defined by the relevant universal counter-terrorism instruments.⁶⁵ Article IX (1) of the General Provisions impose a primary obligation on the member states under ACCT:

The Parties shall adopt such measures as may be necessary, including, where appropriate, national legislation, to ensure that offences covered in Article II of this Convention, especially when it is intended to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

This provision is significant for two reasons. The introduction of the component of ‘intent’, usually found in the definition of terrorism in the laws of many countries, is a remarkable feature.⁶⁶ Secondly, it is based on the exclusion of the nature of the motive of the act, like a political, philosophical, ideological, racial, ethnic, religious motivation, from the criminalisation of terrorism.⁶⁷ This is an important assertion, especially in the background of an extremely diverse South-East Asia, where criminal trails etc are easily politicised.⁶⁸

⁶⁰ ASEAN Security Outlook, (Malaysia 2015) 18 <<https://asean.org/wp-content/uploads/2015/12/ASEAN-SECURITY-OUTLOOK-2015.pdf>> accessed 11 August 2022.

⁶¹ Borelli (n 37) 15.

⁶² ASEAN Convention on Counter-Terrorism 2007 (ACCT), Art. 11 <<https://asean.org/wp-content/uploads/2021/01/ACCT.pdf>> accessed 12 August 2022.

⁶³ *ibid* Art. VIII.

⁶⁴ *ibid*.

⁶⁵ *ibid* Art. II.

⁶⁶ Ridarson Galingging, ‘Problems and Progress in Defining Terrorism in International Law’ (October 2009) 21 (3) *Mimbar Hukum* 409, 448-457.

⁶⁷ See Ben Saul, ‘The Curious Element of Motive in Definitions of Terrorism: Essential Ingredient or Criminalising Thought?’ in Andrew Lynch, Edwina MacDonald and George Williams (eds), *Law and Liberty in the War on Terror* (Federation Press 2007) 28.

⁶⁸ Hitoshi Nasu & See Seng Tan, ‘ASEAN and the Development of Counter-Terrorism Law and Policy in Southeast Asia’ (2016) 39 (3) UNSW L. J. 1219, 1226.

The provisions of ACCT reaffirm the obligations imposed under different counter-terrorism treaties for the purpose of implementation at the national level⁶⁹; and identify the areas of cooperation between member states, in conformity with their domestic laws.⁷⁰ The enactment of the ACCT is a “significant milestone in ASEAN counter-terrorism co-operation with much potential in the areas of information-sharing and capacity-building”⁷¹ and has opened the path for sustainability in establishing regional cooperation between the ASEAN nations. The effectiveness of the Convention was visible in 2011 when the ACCT information network became the medium for the capture of Umar Patek, an important leader of JI, Pakistan.⁷²

The ACCT has been the primary instrument to counter terrorism in the ASEAN region. However, there are some practical difficulties encountered in the process of cooperation and coordination among member states. Prominent among them is that the treaty follows the ‘ASEAN Way’ which reiterates the principles of sovereignty and non-interference. The exceptions provided in the provisions of the ACCT negate the effectiveness of the solution. For instance, Article VII establishes jurisdiction of the parties in other member states, in a situation where the criminal commits an offence in or against that state.⁷³ This provision assists the state parties in acting against criminals hiding in states with population sympathetic to the criminal. However, the impact of this provision is negated by Article XIII which states that parties may not extradite suspects, as long as they prosecute them in their own country.⁷⁴ The ACCT is non-binding in character and does not impose any penalty on states which do not abide by the provisions of the Convention. This absence of liability and inadequate implementation of the provisions does not promote the required cooperation and intelligence sharing.⁷⁵

After the Convention, ASEAN adopted the Comprehensive Plan of Action on Counter Terrorism in 2009 (ACPoA-CT).⁷⁶ The Plan aimed at enhancing cooperation among the law enforcement agencies etc of the member states “to counter, prevent and suppress terrorism, terrorist organisations and their associations.”⁷⁷ These action plans act as a guide for ASEAN

⁶⁹ ACCT (n 62) Arts. VII, X, XIII-XIV.

⁷⁰ *ibid* Arts. VI, XII.

⁷¹ Nasu & Tan (n 68) 1227.

⁷² Senia Febrica, ‘Securing the Sulu-Sulawesi seas from maritime terrorism: a troublesome cooperation?’ (2014) 8 (3) *Perspectives on Terrorism* 64, 74.

⁷³ ACCT (n 62) Art. VII.

⁷⁴ *ibid* Art. XIII (1)

⁷⁵ Beal (n 1) 45.

⁷⁶ ASEAN Comprehensive Plan of Action on Counter Terrorism (17 November 17 2009) <<https://asean.org/wp-content/uploads/2012/05/ACPoA-on-CT.pdf>> accessed 12 August 2022.

⁷⁷ *ibid*.

to implement counter-terrorism at the regional level. ASEAN periodically prepares a progress report of implementation of the ACCT action plans to review the working on the issue of counter-terrorism.⁷⁸ Such regional initiatives undertaken by ASEAN attempt to overcome the limitations of national efforts to combat transnational modern terrorist activity.⁷⁹

4. Counter-Terrorism Legislation: A ‘Soft’ Approach

Undoubtedly, the ACCT is the most important instrument on counter-terrorism for South-East Asia, which provides for varied issues ranging from definitional challenges to pursuing deradicalization. However, looking at the existing conditions of the South-East Asia region, it is clear that the presence of radicalism and extremism enhanced by the growth of terrorist organisations has made the region unsafe.⁸⁰ As seen, ASEAN has adopted several declarations and conventions on countering terrorism in the region as it is impossible to combat the threat by one nation alone. However, the guidelines and principles of the instruments are not implemented properly and thousands of terrorist supporters are active in the region.⁸¹

Over a period of time, it has become clear that Muslims in the ASEAN space are “moderate and tolerant and value coexistence, but a tiny percentage have embraced foreign ideologies from the conflict regions of South Asia and the Middle East.”⁸² The ASEAN leaders understand the intricacies of the existing threat of extremism and the challenges which prevent effective counter-terrorism cooperation and coordination. That radicalism and terror can make the region unstable.

Therefore there is a greater need for coordination between the ACCT parties. The essence of the ‘ASEAN Way’ is that the member states take decisions based on consensus; respect national sovereignty; and follow the policy of non-interference in domestic issues.⁸³ Consequently, ASEAN is left to grapple with its weakness of simply being a facilitator rather than a driving force for counter-terrorism initiatives.⁸⁴ Within the ASEAN, there is a reluctance to share information and intelligence with other nations. Additionally, the divergence in the

⁷⁸ Giuliani Agustha Namora, ‘Peran ASEAN Convention on Counter Terrorism Dalam Penanganan Terorisme Di Filipina Periode 2011-2013’ (2016) 2(4) J. Intl. R. 170, 176.

⁷⁹ Arabinda Acharya, *Targeting Terrorist Financing: International Cooperation and New Regimes* (Routledge 2009) 216-19.

⁸⁰ Periani & Mangku (n 3) 6.

⁸¹ Das & Sharma (n 2) 58.

⁸² Gunaratna (n 5) 127

⁸³ ASEAN Charter, Arts. 2(2)(a), (e)-(f).

⁸⁴ Nasu & Tan (n 68) 1233-34.

domestic interests of Indonesia, Malaysia, Philippines and Singapore makes it difficult to achieve the aims and objectives of the regional agreements.⁸⁵ Unilateralism as opposed to multilateralism is the dominant practice for ASEAN counter-terrorism. The ACPoA-CT itself states that the primary responsibility for countering terrorism rests with individual member states in ASEAN.⁸⁶

There are competing interpretations of the threat of terrorism in ASEAN. For example, Indonesia and Singapore have traditionally adopted a more non-militaristic law-enforcement style, whereas Malaysia and Thailand have relied on coercive and militaristic responses in the past. This is evident given Malaysia's experiences with armed communist rebellions, and Thailand's to its separatist insurgency.⁸⁷ Another pertinent example is the marginalisation of the Rohingya people in Myanmar through the 'national races' ideology and the institutionalisation of legal, political and economic discrimination. Myanmar labels the Rohingya militants as 'Bengali terrorists' and is unwilling to consider the Rohingya disenfranchisement.⁸⁸

ASEAN's response to terror and radical acts is more rhetorical as member nations rely on actions that are non-binding, non-specific in nature. There is a dire need to institute affirmative action at the regional level.⁸⁹ ASEAN has been unable to reconcile the tension between the regional community and state sovereignty.⁹⁰ The member states tend to prioritise respect for state sovereignty, while maintaining the ASEAN Way as their *modus operandi*. On the issue of counter-terrorism treaties, Gregory Rose and Diana Nestorovska observe:

They are typically couched in vague language and contain many uncertain obligations. Their various definitions of terrorist acts and approaches to the criminalisation of those acts are conceptually flawed or inadequate. Most of their measures for prevention and intelligence cooperation are insubstantial.⁹¹

⁸⁵ Ralf Emmers, 'ASEAN and the Securitization of Transnational Crime in Southeast Asia' (2003) 16(3) *The Pacific Rev.* 419-438.

⁸⁶ ASEAN Comprehensive Plan of Action on Counter Terrorism, Art. 2, adopted on 20 September 2017 <<https://asean.org/wp-content/uploads/2012/05/ACPoA-on-CT-Adopted-by-11th-AMMTC.pdf>> accessed 13 August 2022.

⁸⁷ Wilujeng et al (n 12) 208.

⁸⁸ Mathew Bukit, 'ASEAN needs to unify its counter-terrorism strategy' (22 September 2018) East Asia Forum <<https://www.eastasiaforum.org/2018/09/22/asean-needs-to-unify-its-counter-terrorism-strategy/>> accessed 13 August 2022.

⁸⁹ Hidayat (n 44).

⁹⁰ Singapore Institute of International Affairs, 'Reviewing the ASEAN Charter: An Opportunity to Reform ASEAN Processes' (September 2014) Policy Brief 3.

⁹¹ Gregory Rose and Diana Nestorovska, 'Towards an ASEAN Counter-Terrorism Treaty' (2005) 9 *Singapore Year Book of Intl. L.* 157, 185.

The problem is exacerbated by the absence of a regional security institution like Interpol or Europol. No doubt, the ASEAN Chiefs of Police (ASEANAPOL) was established in 1981, but this has primarily acted as a discussion forum of police chiefs of members states, that lacks sufficient budget and staff.⁹²

4.1 Obstacles Encountered in Countering Terrorism

ASEAN faces issues on the issue of countering terrorism on account of both structural factors pertaining to the nature of ASEAN and the lack of preventive measures within its counter-terrorism framework.

Lackadaisical Attitude on policy implementation – There exists a time lag between the drafting, enactment and ratification of an ASEAN policy measure and its implementation.⁹³ This sluggish attitude is exploited in full measure by the fast-changing terrorism landscape in South-East Asia. The terrorists are quick to smuggle foreign fighters and weapons for carrying out their terror acts in the region.

The ACCT does not have any time frame for its implementation or enforcement, nor does it impose any kind of compliance on the member states at the cost of penalty. Article IX (1) of the ACCT states that members agree to exclude motivational factors behind terrorist acts which include ideology, religion, ethnicity, race and politics from criminalisation of terrorism. The basis of this provision is the tradition of non-intervention and internal disputes being resolved through consensus. However, this in turn limits the scope of ACCT to information sharing and capacity building.⁹⁴

Lack of effective information-sharing and cooperation - Undoubtedly, some states in ASEAN have taken steps to improve information-sharing between the law enforcement agencies. In 2018, six member states launched the “Our Eyes Initiative” for enabling the exchange of information on terrorism and extremism.⁹⁵ However according to the 2021 Report of the UNSC Counter Terrorism Committee on Global Survey of the Implementation of Security Council resolution 1373:

⁹² Leslie Homles, ‘Dealing with Terrorism, Corruption and Organised Crimes: The EU and Asia’ in Thomas Christiansen et al. (eds), *The Palgrave Handbook of EU-Asia Relations* (London, Palgrave 2013) 157.

⁹³ Abdul Razak Ahmad, ‘The ASEAN Convention on Counter-terrorism 2007’ (2013) 14(1-2) *Asia-Pacific J. HR & L.* 93.

⁹⁴ I Gede Wahyu Wicaksana, ‘Militarising Counterterrorism in Southeast Asia: Incompatibilities and Implications for ASEAN’ (2019) 18(2) *Eur. J. E. A. S.* 205, 219.

⁹⁵ Tom Allard, ‘Southeast Asian States Launch Intelligence Pact to Counter Islamist Threat’ *Reuters* (25 January 2018) <<https://www.reuters.com/article/us-asia-intelligence-idUSKBN1FE163>> accessed 13 August 2022.

... only one State is known to have conducted bilateral cooperation in investigations relating to terrorism cases with foreign authorities. This is because the legislation of most States of this subregion precludes integrated joint investigations with other States, owing to concerns relating to the protection of sovereignty.⁹⁶

ASEAN states rely on bilateral agreements to tackle security issues instead of the structure provided by ASEAN. For example, after Marawi was re-taken, Philippines, Malaysia and Indonesia entered into an agreement outside the ASEAN framework, to conduct joint naval patrols and air reconnaissance over the Sulu-Sulawesi Sea.⁹⁷ No doubt bilateral and multilateral agreements are important, but for preventing the spread of terrorist activity in the region, full-fledged cooperation is required.⁹⁸

Individual Frameworks - ASEAN lays emphasis on the policy of non-interference, wherein every state has been encouraged to develop an individual national framework to combat terrorism and terrorist groups. This has hindered the creation of joint programs focussing on sharing of forces; and the implementation of regional counter-terrorism programs.⁹⁹ Individualistic approaches and state-centrism obstructs the building of trust and consequently leads to inadequacy in the fight against terrorism. according to Nasu and Tan there is a tendency among ASEAN member states to prioritise respect for state sovereignty, many times at the cost of regional interest.¹⁰⁰ This weakens the efforts to combat terrorism at the transnational level.

Lack of border-management capacities - The intra-regional cooperation in South-East Asia is fraught with existing differences in capacities of member states to manage their borders. ASEAN itself states that a serious shared regional border-management approach is required, where the parties work collectively to tackle cross-border crime and security threats.¹⁰¹ The UNSC CTC has recommended the improvement of border security in the South-East Asian region by introducing “API or PNR systems at international air and seaports, with appropriate privacy and data protection safeguards, and by increasing and strengthening the screening of passengers, goods and cargo based on intelligence-led risk assessments.”¹⁰²

⁹⁶ UNSC CTC (n 42) 78.

⁹⁷ Austin Bodetti, ‘How the Thai Conflict Is Boosting Islamic State in Malaysia’ *The Diplomat* (17 October 2018) <<https://thediplomat.com/2018/10/how-the-thai-conflict-is-boosting-islamic-state-in-malaysia/>> accessed 13 August 2022.

⁹⁸ Beal (n 1) 44.

⁹⁹ Benedetta Di Matteo, ‘ASEAN’s anti-terror coordination problem’ *Global Risk Insights* (16 October 2017) <<https://globalriskinsights.com/2017/10/asean-anti-terror-coordination-problem/>> accessed 13 August 2022.

¹⁰⁰ Nasu & Tan (n 68) 1236.

¹⁰¹ UNSC CTC (n 42) 75

¹⁰² *ibid* 79.

ASEAN faces limitations in effectively countering terrorism on account of constraints of conflicting national interests, domestic policies, aggravated suspicions and lasting concerns over sovereignty. The member states encounter challenges in areas of implementation of policies and sharing the responsibilities and costs. The cost of implementing a proposal varies from state to state, which leads to the likelihood of creating rifts within ASEAN.

5. Conclusion

The diversity of the South-East Asian region in addition to the differences in tackling rebellions, led to ASEAN developing its own approach towards countering terrorism. ASEAN's counter-terrorism policy reflects a traditional approach towards conflict resolution, where the effort has been to contain rather than eradicate. The commitment of ASEAN to the 'ASEAN Way' prevents this regional organisation to effectively counter terrorism. Bilateral or multilateral agreements may limit, but cannot eradicate terrorism. terrorism can only be tackled by effective implementation of focussed and binding resolutions, thwarting the accessibility of arms trafficking, finances to terrorist groups and illicit activities in the region. ASEAN states will have to soften their stand on the principle of non-interference.¹⁰³ States will have to make room for outside intervention in matters of internal armed conflicts.

The barriers in terms of sovereignty and exclusive jurisdiction among the ASEAN states need to be whittled down so that regional coordination and security integrity increases. Undoubtedly, ASEAN plays a significant role in South-East Asia to eradicate terrorism. It is responsible for the maintenance of peace and security in the region. The member nations of ASEAN should work together to achieve the guidelines laid down by the ACCT and ACPoA-CT.

¹⁰³ Beal (n 1) 46.

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