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THE THREAT OF TRANSNATIONAL CRIME IN SOUTHEAST ASIA: DRUG TRAFFICKING, HUMAN SMUGGLING AND TRAFFICKING, AND SEA PIRACY

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1. Introduction

The activities of many criminal groups cross national boundaries and escape the control of governments and law enforcement agencies. As a result, they are as much part of domestic as of international politics. The problem of transnational crime in Southeast Asia is severe and consists primarily of drug trafficking, illegal migration, terrorism, money laundering, transnational prostitution, piracy, arms smuggling, credit card fraud, and corruption. Drug trafficking is perhaps the most serious transnational criminal problem faced by the Southeast Asian states. Some of the largest and most dangerous criminal organizations operating in the region are the Chinese triads, the Japanese yakuza, and Vietnamese gangs. Smaller networks have also flourished in most regional states and set up transnational criminal activities. All these groups take advantage of corrupt officials and politicians as well as weak governmental institutions and law enforcement agencies to broaden their actions and increase their profits. By doing so, they undermine new democracies and developing countries in Southeast Asia.

This article consists of three sections. The first introduces the notion of transnational crime and positions it both within a discourse of crime and security. The second section examines the problem of transnational crime in Southeast Asia with a special focus on drug trafficking, human smuggling and trafficking, and sea piracy. It also discusses the kind of regional inter-state cooperation that has been established to address this growing problem. The final section considers some judiciary, domestic and regional factors that have limited the fight against transnational crime in Southeast Asia.

2. Transnational Crime: A non-Traditional Security Threat

Robert Keohane and Joseph Nye first discussed the notion of transnationalism in the early 1970s as well as its importance to the study of international politics.² Transnational relations refer to “those networks, associations or interactions which cut across national societies, creating linkages between individuals, groups, organizations and communities with different

¹Las opiniones expresadas en estos artículos son propias de sus autores. Estos artículos no reflejan necesariamente la opinión de UNISCI. The views expressed in these articles are those of the authors. These articles do not necessarily reflect the views of UNISCI

²See Robert O. Keohane and Joseph S. Nye, eds., *Transnational Relations and World Politics* (Cambridge, MA.: Harvard University Press, 1971).



nation-states.”³ Transnational crime can be addressed both in a discourse of crime and security. Let us start with the former. The United Nations (UN) has defined transnational crimes “as offences whose inception, prevention and/or direct or indirect effects involved more than one country.”⁴ Such crimes must be differentiated from international crimes, which are recognized by and can therefore be prosecuted under international law, and domestic crimes that fall under one national jurisdiction. In order to be considered as transnational, a crime must involve the crossing of borders or jurisdictions. The UN has identified 18 different categories of transnational crime. These are: money laundering, terrorist activities, theft of art and cultural objects, theft of intellectual property, illicit traffic in arms, sea piracy, hijacking on land, insurance fraud, computer crime, environmental crime, trafficking in persons, trade human body parts, illicit drug trafficking, fraudulent bankruptcy, infiltration of legal business, corruption and bribery of public officials, and finally other offences committed by organized criminal groups.⁵

Transnational crime has also been discussed as an international security issue in the academic literature. McFarlane and McLellan claimed in 1996: “Transnational crime is now emerging as a serious threat in its own right to national and international security and stability.”⁶ It is important to highlight the threats posed by transnational crime to states, national economies and civil societies. In the case of international terrorism, non-state actors can use this method of terror as a means of promoting their political causes. Such groupings gain strength from their ability to forge linkages across national boundaries. Their activities represent a challenge to the national sovereignty and integrity of independent states and can threaten the survival of governments. Other forms of transnational crime can dangerously affect states and their societies. Criminal activities, such as drug trafficking and money laundering, can reduce a government’s capacity to govern, weaken the credibility of financial institutions and undermine social order by questioning the rule of law and increasing the level of violence. Weak states as well as open societies are particularly vulnerable to transnational criminal activities.

Drug trafficking, money laundering or terrorism require international cooperation and cannot be effectively addressed by individual governments. Indeed, the problem of transnational crime requires a transnational response. Still, cooperation tends to be limited, as governments prefer to react to these problems at a national level. Inter-state cooperation against transnational crime is complicated by the fact that it touches on sensitive questions such as national sovereignty and jurisdiction, the sharing of information, extradition laws and problems of corruption.⁷ As will be discussed in the next two sections, these different issues have restricted the response to transnational crime in Southeast Asia.

The fight against transnational crime has already led to some examples of international cooperation, resulting primarily in the criminalization of the issue. Founded in 1923, the International Criminal Police Organization (Interpol) has currently 176 member states and

³Anthony G. McGrew and Paul G. Lewis et al, *Global Politics* (Cambridge: Polity Press, 1993), p. 7.

⁴Definition reproduced in Gerhard O.W. Mueller, “Transnational Crime: Definitions and Concepts,” in Phil Williams and Dimitri Vlassis, eds., *Combating Transnational Crime*, a Special Issue of *Transnational Organized Crime*, Vol. 4, Nos 3&4 (Autumn/Winter 1998), p. 18.

⁵List reproduced in Mueller, “Transnational Crime: Definitions and Concepts,” p. 14.

⁶John McFarlane and Karen McLellan, *Transnational Crime: The New Security Paradigm*, Working Paper No. 294 (Canberra: Strategic and Defence Studies Centre, Australian National University, 1996), p. 2.

⁷McFarlane and McLennan, *Transnational Crime: The New Security Paradigm*, p. 10.



provides a vehicle for the exchange of information and assistance between police forces. The European Union (EU) formed Europol in July 1999 in an attempt to combat transnational crime at a European level. The Group of Seven (G7) nations created in 1989 the Financial Action Task Force (FAFTF) to tackle money laundering and it set up the Lyon Group in 1995 to improve international cooperation against transnational crime. The UN has also established different bodies, which include the UN Commission on Crime Prevention and Criminal Justice and the Commission on narcotic Drugs, and introduced conventions such as the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Moreover, it organized the Naples Ministerial Conference on Organized Crime in November 1994 that led to the Naples Political Declaration and Global Action Plan Against Organized Transnational Crime.

3. Transnational Crime in Southeast Asia

3.1. Trafficking of Illicit Drugs

Several Southeast Asian countries are major producers of narcotics and/or serve as transit for illicit drugs exported to North America, Europe and other parts of Asia. The Golden Triangle, which incorporates Northern Thailand, Eastern Myanmar and Western Laos, is one of the leading producing regions of narcotics in the world. Myanmar and Laos are respectively the first and third largest cultivators of opium poppies, which are later transformed into heroin. As a result, it is estimated that two-thirds of the world's opium is cultivated in Southeast Asia. In supplement to the heroin trade, the manufacturing of amphetamine-type stimulants (ATS), commonly known as "shabu" or "ice" in Southeast Asia, has dramatically increased in the Golden Triangle since the early 1990s and specifically in Myanmar where relatively inexpensive forms of the drug are being produced in massive quantities.

The United States and most other ASEAN members are concerned with the scale of heroin and ATS production in Myanmar and with the low level of Yangon's anti-narcotics efforts. The central importance of Myanmar in the Golden Triangle heroin trade partly results from the activities of the former Burmese Communist Party (BCP) and its breaking-up into separate factions in 1989.⁸ The BCP started to traffic drugs in the 1970s to fund its fight against the military regime of General Ne Win and gradually became a central player in the production and distribution of heroin. In September 1988, the military government in Rangoon transformed itself into the State and Order Restoration Council (SLORC) after having violently suppressed a popular rebellion. This was followed a year later by the splitting up of the BCP into four groups; namely, the United Wa State Army, the Shan State Army, the National Democratic Alliance Army, and the New Democratic Army. SLORC reached agreements with some of these separatist militias that permitted them to trade heroin in exchange for not attacking government troops or entering areas under its control.

The production of narcotics in the Golden Triangle rapidly increased in the 1990s due to the drug trafficking activities of these groups and the rampant level of corruption among Burmese government officials. Olson explains that it is not clear whether these ethnic rebel armies are "drug trafficking organizations that use a cover of nationalism to give their

⁸For an excellent discussion on Myanmar and the drug trade, see Dupont, "Transnational Crime, Drugs, and Security in East Asia," *Asian Survey*, Vol. 34, No. 3 (May/June 1999), pp. 433-455. This paragraph is based on that discussion.



activities a patina of legitimacy or whether they are national liberation movements that turned to drug trafficking as a means to raise money.”⁹ Untroubled by Yangon with which a ceasefire agreement has been signed, the United Wa State Army (UWSA) disposes over ten thousand soldiers and exercises almost full control over the Shan State in Northeast Myanmar. The UWSA is estimated to control 80 per cent of the opium-heroin trade as well as most ATS-producing laboratories in the country.¹⁰ Due to the growing evidence of complicity between the military government and the drug traffickers, Dupont writes that Myanmar is “the most egregious example of a drug-tainted regime in East Asia.”¹¹ To improve its international image and indicate its determination to fight the drug trade, the military regime has organised bonfires of opium, heroin and amphetamines. For instance, the authorities burnt some US\$1billion of illicit drugs during a ceremony in June 2002. Yet, as mentioned above, most of the opium poppies are cultivated in areas that are not controlled by Yangon.

An effective distribution network enables the drug traffickers to transport the refined heroin and amphetamines from the Golden Triangle into Thailand, which is still one of the major routes of the illicit drug trade. Narcotics are also smuggled from the Golden Triangle into China’s Yunnan Province and then overland to Guangdong, Hong Kong and Macao. Moreover, Ho Chi Minh City, Manila and Phnom Penh have become important hubs in the global drug distribution. All these different destinations are used as transit points to supply domestic and international markets. The Chinese triads trade most of Asia’s narcotics and collaborate with other transnational criminal organizations, such as the Japanese yakuza, Vietnamese gangs, Nigerian groups and Colombian cartels, to distribute illicit drugs worldwide. The drug trade, but also to an increasing extent human trafficking, has provided these mafias with exceptional financial resources. These funds enable the criminal syndicates to dispose over modern military equipment and to corrupt politicians, judges and police authorities. Consequently, to refer to these mafias, especially in the case of the Chinese triads, as mere criminal groups tends to minimize the threat that they pose to the political, economic and societal stability of regional states. Instead, it may be more appropriate to speak of transnational criminal powers. These are the kind of non-state actors that the members of the Association of Southeast Asian Nations (ASEAN)¹² will have to combat jointly in the coming years.

Narcotics produced in the Golden Triangle used to be primarily exported to non-Asian countries. This has changed since the late 1980s due to a dramatic increase in drugs consumption in East Asia. The consumption of ATS, which are smuggled from Northeast Myanmar and to a lesser extent Laos and Cambodia, has become the prime drug problem in the region, larger than opium or heroin addiction. Its consistent abuse leads to violent behaviour, deep forms of paranoia and hallucinations, and suicidal depression during withdrawal. This problem has reached epidemic proportions in Thailand. The average age of users continues to decline rapidly. Thailand regards the drug activities of the UWSA as an immediate threat to its society and national security. Yet, the Thai authorities are poorly equipped to deal with the narcotics problem and their activities are severely restrained by the

⁹William J. Olson, “Illegal Narcotics in Southeast Asia,” in William M. Carpenter and David G. Wiencek, eds., *Asian Security Outlook 2000* (Armonk, New York: M.E. Sharpe, 2000), p. 102.

¹⁰“Thaksin will persuade Yangon to Talk to Rebels,” *Straits Times Interactive*, 28 January 2003.

¹¹Dupont, “Transnational Crime, Drugs, and Security in East Asia,” p. 445.

¹²ASEAN was established in Bangkok in August 1967. The original members were: Indonesia, Malaysia, the Philippines, Singapore and Thailand. Brunei joined in 1984, Vietnam in 1995, Laos and Myanmar in 1997, and Cambodia in 1999.



fact that they have no influence on the production of ATS in the Shan State of Myanmar. The problem in Southeast Asia is not confined, however, to Thailand. ATS tablets are channelled to the Philippines, Malaysia and Indonesia in ever-increasing amounts. The consumption of narcotics in Southeast Asia, especially amphetamines, is unlikely to decline in the future.

In October 2000, ASEAN organized in Bangkok the International Congress in Pursuit of a Drug Free ASEAN 2015 in association with the United Nations Office for Drug Control and Crime Prevention (UNDCP). It led to the formulation of the Bangkok Political Declaration in Pursuit of a Drug-Free ASEAN 2015 and to the adoption of a plan of action, the ASEAN and China Cooperative Operations in Response to Dangerous Drugs (ACCORD). The latter seeks to eradicate or at least seriously reduce the production, trafficking and consumption of narcotics in Southeast Asia by 2015. It created a Plan of Action that relies on four central pillars:

1. Proactively advocating civic awareness on dangers of drugs and social response
2. Building consensus and sharing best practices on demand reduction
3. Strengthening the rule of law by an enhanced network of control measures and improved law enforcement co-operation and legislative review
4. Eliminating the supply of illicit drugs by boosting alternative development programmes and community participation in the eradication of illicit crops.¹³

While the ACCORD is only a declaration of intent, it seeks to address some key issues. First, it regionalizes cooperation against narcotics by including China. The regional production, trafficking and consumption of narcotics should be viewed as an East Asian problem rather than just a Southeast Asian one. It needs therefore to be addressed through broader cooperative structures. Second, the ACCORD aims to tackle the issue of supervision by establishing a monitoring mechanism and introducing target dates. If implemented, this could be an important step in a cooperative process where the adoption of binding measures will most likely remain unattainable in the short to medium term.

3.2.Human Smuggling and Trafficking

Over the last ten years, the issue of illegal migration has been increasingly linked to organised criminal groups that now largely control the smuggling and trafficking of people. People-traffickers and smugglers make high profits while risking relatively short prison sentences in comparison with drug dealers. They are connected to other transnational criminal networks involved in narcotics, arms trafficking, money laundering and counterfeit documentation and dispose over the necessary funds to purchase modern equipment and corrupt police and other government officials. Their activities rely on complex infrastructures and are taken more and more seriously by states.

People-smugglers demand large sums of money to individuals in exchange for their illegal entry into a new country. They normally provide transport, fake passports, transit accommodation and the crossing of borders. The strengthening of immigration procedures in host countries has often forced those that wish to escape domestic poverty or conflict to rely on these dangerous and expensive services. The undocumented immigrants usually reimburse

¹³ASEAN and China Cooperative Operations in Response to Dangerous Drugs (ACCORD), Bangkok, Thailand, 13 October 2000.



the price of the passage after their arrival. Unable to pay off their debt, many start working for organized gangs in low skilled jobs, the sex industry and crime. Gangs can therefore be involved in the smuggling as well as in the exploitation of illegal labourers. People traffickers trap mostly young women and children into work or prostitution through the use of force or deceit. They end up after having been promised good jobs as sex slaves, domestic labourers, and cheap labour. Their passports are generally confiscated and their illegal status makes it much harder for them to approach the local police authorities. When they do, they risk fines, prison terms and deportation.

Many undocumented workers in Asia have relied on people-smugglers to illegally enter their final destinations. A majority of these illegal immigrants are now women who often fall into the hands of people-traffickers. The UN estimates that 200,000 women are trafficked annually in Southeast Asia. Thousands of women from China, Laos, and Myanmar work as prostitutes in Thailand. Vietnamese girls are also trafficked to Cambodia to supply the sex trade and to China and Taiwan for marriage. The illegal trade in women has become a great source of income for people-traffickers and remains difficult to apprehend as it is predominantly hidden within the broader phenomenon of undocumented migration. The Asian financial crisis of 1997-98 and the ongoing economic difficulties faced by Indonesia and other regional nations have increased the trafficking of women in Southeast Asia. Poverty as well as a lack of education and job opportunities for women are the root causes of this problem.

Some Southeast Asian states have sought to promote regional cooperation against undocumented migration by organizing ministerial conferences. In February 2002, Hassan Wirayuda and Alexander Downer, the foreign ministers of Indonesia and Australia, co-chaired the Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime. The event was held in Bali and gathered ministers from thirty-four countries, including Iran and Afghanistan from where a lot of illegal migrants depart, as well as representatives from the International Organization for Migration, the United Nations High Commissioner for Refugees (UNHCR) and INTERPOL. Indonesia's President Megawati Sukarnoputri stressed in her opening speech that undocumented migration is a problem that needs to be addressed collectively and warned states against taking unilateral actions to solve the matter. She declared: "We have witnessed some impatient governments taking unilateral steps to protect their national interests."¹⁴ Australia later denied that Megawati was referring to its controversial policy on illegal immigrants first implemented in the summer of 2001. It consisted of intercepting ships carrying Iraqi and Afghan asylum-seekers and diverting them to Pacific Islands for processing or sending them back to Indonesia, from where they set sail.

Despite some attempts to promote inter-state cooperation against human smuggling and trafficking, the issue has continued to cause political problems among the Southeast Asian states, especially since the financial crisis of 1997. This has limited bilateral and multilateral collaboration against human smuggling and trafficking. The lack of political unity among the Southeast Asian countries on this issue results from the sensitivity of the illegal migration question and the bilateral tensions that it creates. Several examples are indicative of how illegal migration can negatively affect bilateral ties. Malaysian relations with Thailand have been strained due to the entry through their common land border of undocumented labourers from Bangladesh, Myanmar and Thailand itself. Besides strengthening border control and extending military patrols, Malaysia built a fence along their joint frontier. Illegal migration

¹⁴Quoted in "Jakarta raps Canberra for Immigrant Policy," *International Herald Tribune*, 28 February 2002, p. 6.



has also been a recurrent cause of political strain between Kuala Lumpur and Jakarta. For instance, Malaysia announced a general amnesty period in early 2002 for illegal immigrants to leave the country without punishment. More than 300,000 illegal workers, mostly from Indonesia, left Malaysia under the voluntary repatriation programme. Finally, the severe poverty and economic disparities that persist in Southeast Asia severely undermine regional efforts to address the problems of human smuggling and trafficking.

3.3.Sea Piracy

Sea piracy is an historical and cultural phenomenon that has continued in this modern age to affect maritime traffic in some of the world's busiest shipping lanes. It is estimated by the International Maritime Bureau (IMB) to cost as much as US\$ 16 billion a year in commercial losses.¹⁵ Founded in 1981, the IMB defines piracy as "an act of boarding any ship with the intent to commit theft or any other crime and with the intent or capability to use force in the furtherance of that act."¹⁶ This definition can be distinguished from the narrower approach adopted in international law. According to the latter, sea piracy is a crime committed inside international waters, which includes the high seas, exclusive economic zones and the contiguous zone, and therefore beyond the territorial jurisdiction of any country.¹⁷ The Third United Nations Convention of the Law of the Sea (UNCLOS III) declares: "All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside of the jurisdiction of any State."¹⁸ The notion of sea robbery refers in international law to attacks on commercial ships located in territorial waters where no foreign state has jurisdiction. The IMB's definition will here be used as most acts of piracy in Southeast Asia take place in territorial waters.

The number of reported piracy attacks in the world has been rising quickly over the last few years. Many of these incidents occur along the coasts of South Africa, Bangladesh, India, Ecuador, and in the Red Sea. Yet, a majority of them take place in Southeast Asia, primarily in Indonesian waters and in the Malacca Straits. The IMB reported 72 cases of piracy attacks in Indonesian waters during the first nine months of 2002. This represents more than a quarter of the 271 attacks recorded by the IMB in that period. A total of 103 piracy attacks were finally reported in Indonesian waters in 2002. Significantly, it is believed that at least a third of the attacks are never reported. Ship-owners and captains are afraid of increased insurance premiums and to be regarded in the industry as unreliable freight carriers.

The problem of piracy in Southeast Asia is a threat to regional and international economic security. The free and safe navigation of commercial vessels in Southeast Asia is essential for international trade. The risk of piracy in the region has already led to a high economic cost reflected by the loss of merchandise and ships and the increased insurance premiums added to a number of cargoes that pass through the Strait of Malacca. Moreover, it

¹⁵Quoted in Kevin Sullivan and Mary Jordan, "High-Tech Pirates Ravage Asian Seas," *Washington Post*, 5 July 1999, p. A18.

¹⁶International Maritime Bureau, *1992 Special Report on Piracy* (London: IMB, June 1992).

¹⁷The Third United Nations Convention of the Law of the Sea (UNCLOS III) defines piracy as "any illegal acts of violence, detention, or any act of depredation, committed for private ends...on the high seas against another ship or aircraft...outside the jurisdiction of any state." *Official Text of the United Nations Convention on the Law of the Sea with Annexes and Index* (New York: United Nations, 1983). UNCLOS III was adopted on 30 April 1982 and came into force on 16 November 1994.

¹⁸1982 Convention



is feared that a piracy attack on an oil super-tanker crossing the Strait could lead to an environmental disaster of massive proportions. Indonesia, Malaysia, the Philippines and Singapore are the ASEAN countries mostly affected by piracy.

Sea piracy in Southeast Asia is typically perpetrated at night by fishermen, small criminals, ex-members of the armed forces but also by well-organised criminal gangs. The latter are often better equipped than most naval authorities. They dispose over speedboats and modern weaponry to take control of merchant ships. A majority of piracy incidents occur in ports or when the boat is at anchor. The crew can be violently assaulted by armed groups that target cash, expensive equipment, and parts of the cargo. Attacks also take place when boats are navigating in territorial waters and to a much lesser extent on the high seas. Crime syndicates are increasingly involved in piracy and generally target relatively small vessels carrying products that can be sold with high profits on the black market. They also use hijacked ships for human smuggling and the transport of illicit drugs and weapons. These groups take advantage of weak governments that lack the financial resources, political will and efficient enforcement agencies to tackle their criminal activities.

The dramatic rise of piracy attacks in Southeast Asia chiefly results from the acute economic difficulties and political instability faced by Indonesia since 1997. The number of attacks in Indonesian waters doubled from 1998 to 1999. Even greater poverty and increased unemployment have transformed piracy into an attractive source of income. Rampant corruption among maritime officials and port workers enable the pirates to be well informed about the movement of ships and the composition of their cargoes. Rivalry between the Indonesian police and navy also undermines efforts to prevent piracy attacks. All these factors explain why piracy is currently out of control in the Indonesian waters and in the Strait of Malacca. Nevertheless, the problem is still viewed as secondary in Indonesia despite the fact that it is damaging its weak economy. Little has been done by the central government, which lacks the funds and political will to address the issue. Navy and coast guard budgets have been reduced since 1997. The maritime forces remain poorly equipped, lacking fast patrol boats and sophisticated weaponry. Only thirty percent of the navy's one hundred and thirteen ships are said to be fully operational.¹⁹ This questions the navy's ability to address the sea piracy problem within Indonesia's territorial waters. Pirates can act within these waters without having to fear an external naval intervention.

In addition to corruption and ineffective naval authorities, sea pirates take advantage of jurisdictional limitations and often commit their crimes in the territorial waters of one state before seeking sanctuary under another country's jurisdiction. Most ASEAN members refuse to prosecute pirates who found sanctuary in their territory for crimes committed outside of their own jurisdiction. These criminals are also rarely extradited. A solution to this problem is offered by the 1988 Rome Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation, which provides a legal structure for inter-state cooperation against piracy. It empowers signatory states to extradite or prosecute pirates arrested in their territorial waters for crimes committed under the jurisdiction of other countries. Except for Vietnam and Singapore, none of the ASEAN members have ratified the convention.

Regional collaboration against sea piracy has been based on a so-called "spider web approach," outside of an ASEAN framework. The member states have developed a bilateral

¹⁹Derwin Pereira, "Indonesian Navy Ships not fit to fight, says Chief," *The Straits Times Interactive*, 3 July 2002.



system of confidence building and military linkages. Such defence ties have included the exchange of information, cross-border agreements, and training exercises. The spider web strategy has been applied to the piracy problem since the early 1990s. Indonesia and Singapore agreed in 1992 to set up direct communication links between their navies and to organize naval patrols in the Singapore Strait. Both states have continued to work together to improve and coordinate their efforts against piracy. Indonesia and Malaysia decided in 1992 to establish a Maritime Operation Planning Team to coordinate patrols in the Strait of Malacca. The Philippine and Malaysian navies reached an agreement in August 2001 to cooperate and exchange information to prevent piracy attacks. Thailand has also conducted joint patrols with Malaysia and Vietnam.

Japan has played an active role in trying to increase regional cooperation against sea piracy and has encouraged the Southeast Asian states to intensify their efforts. This is not surprising in light of the economic interests at stake. Japan is one of the largest trading nations in the world and it imports most of its oil from the Persian Gulf. Many of its super tankers and other commercial ships cross the Strait of Malacca and the South China Sea on a daily basis. Japan has provided expertise and training to regional states. Most ASEAN countries can gain from Japan's support due to their need for sophisticated equipment and a better training of their naval officials. Tokyo has also pushed for additional collaboration within the ASEAN Regional Forum (ARF)²⁰ and has used the ASEAN+3 (Japan, South Korea and China) to introduce new ideas. At the ASEAN+3 summit of heads of state and government held in the Philippines in November 1999, Japan's Prime Minister Keizo Obuchi suggested the creation of a regional coast guard as an anti-piracy measure. It was proposed that these patrols be based on a multilateral approach and involve Japan, South Korea, China, Malaysia, Indonesia and Singapore. While the ASEAN members were not overly enthusiastic about the idea, China openly opposed Obuchi's proposal. As a legacy of the Pacific War, most regional states fear the prospect of Japan extending its security role in East Asia. China also perceived the Japanese initiative as an effort to constrain its rising power and reduce its regional maritime influence.

Japan took again the initiative during the following ASEAN+3 summit in Singapore in November 2000. Prime Minister Yoshiro Mori suggested the organization of an Asian Cooperation Conference on Combating Piracy and Armed Robbery. Held in Tokyo in October 2001, the conference consisted of three sessions dealing with the exchange of information, anti-piracy measures already implemented by regional states, and future cooperation. The participants agreed that "multilateral regional cooperation was indispensable in order to effectively combat piracy and armed robbery against ships and that Asian nations should take the initiative in taking the anti-piratical measures in Asia."²¹ Prime Minister Junichiro Koizumi visited the Philippines, Malaysia, Thailand, Indonesia and Singapore in January 2002 and addressed once more the sea piracy issue. In Singapore, he declared:

²⁰The founding dinner of the ARF was held in Singapore in July 1993. Its initial participants were: Australia, Brunei, Canada, China, the European Union, Indonesia, Japan, Laos, Malaysia, New Zealand, Papua New Guinea, the Philippines, Russia, Singapore, South Korea, Thailand, the United States, and Vietnam. Cambodia was admitted in 1995, India and Myanmar in 1996, Mongolia in 1998, and North Korea in 2000.

²¹Chairman's Concluding Statement for Asian Cooperation Conference on Combating Piracy and Armed Robbery against Ships, Tokyo, Japan, 4-5 October 2001.



I believe we need an agreement for regional cooperation on piracy, and I will promote consultation to achieve that end. We must band together to eradicate the plague of piracy. In addition, I would like to strengthen cooperation between the Coast Guard of Japan and ASEAN counterparts.²²

Nevertheless, Japan's attempts to increase maritime security in Southeast Asia have been restrained by the question of national sovereignty. Indonesia and Malaysia have for instance accepted the holding of common anti-piracy exercises but rejected the presence of armed patrol boats from other countries in their territorial waters.

Besides Japan, the United States could play an active part in the fight against sea piracy in Southeast Asia. It has provided counter-piracy training to different Southeast Asian navies since 1999. In light of its naval presence and strong links with different regional states, the US is in a favourable position to help address the issue. Its military deployment in Southeast Asia has not been overly affected by its departure from Subic Bay Naval Base and Clark Air Base in the Philippines in November 1992. The Philippine Senate ratified in May 1999 a Visiting Forces Agreement (VFA) with the United States that enabled the resumption of joint military exercises. The VFA could play a role in fighting sea piracy. Moreover, the US navy has been conducting joint exercises with the Thai and Malaysian navy respectively since 1982 and 1984 and it has access to the Changi Naval Base in Singapore. Washington has suggested that these agreements be used as a common platform to organize multilateral anti-piracy exercises.

4.Domestic, Judiciary and Regional Factors Limiting the Fight Against Transnational Crime in Southeast Asia

The difficulty to cope with transnational crime in Southeast Asia partly results from a series of domestic factors, including the role of corruption, vested interests, and a lack of resources. The links between domestic instability, poverty and transnational crime need to be stressed. A majority of Southeast Asian countries have remained weak states that suffer from fragile domestic institutions and socio-economic problems. Corruption as well as poorly financed law enforcement agencies have undermined domestic attempts to combat organized gangs. For instance, corruption and a lack of resources have undermined efforts to address the growing problem of drug trafficking and consumption in Southeast Asia. The poverty and economic disparities that persist in the region also diminish ASEAN's ability to tackle other forms of transnational crime, particularly the issues of human smuggling and trafficking.

Some Southeast Asian countries have been slow to criminalize aspects of transnational crime due to some of the domestic factors mentioned above. This is translated in the fact they do not dispose over the necessary legislation to prosecute specific categories of crime. Indonesia, for example, does not have laws against people smuggling and trafficking and its judiciary system often prosecutes these crimes merely for visa offences. This is in sharp contrast to Thailand that has adopted tougher laws over the last few years, including the 1997 Trafficking in Women and Children Act. The rule of law is only partially applied in Myanmar and Cambodia; two failed states where corruption and domestic struggles for control undermine administrative and judiciary systems. They therefore provide ideal environments for organized crime. Vietnam's legal system is also incomplete, particularly vis-à-vis criminal

²²Speech by Prime Minister of Japan Junichiro Koizumi, *Japan and ASEAN in East Asia: A Sincere and Open Partnership*, Given at the Institute of Southeast Asian Studies (ISEAS), Singapore, 14 February 2002.



activities. In short, one sees in the case of some Southeast Asian countries a failure to criminalize transnational crime at a national level, which complicates any attempt to respond regionally to such activity. To address this fundamental shortcoming, all ASEAN members should be encouraged to ratify the 2000 UN Convention Against Transnational Crime, and its Protocols on Human Smuggling, Sex Trafficking and the Illicit Trafficking in Firearms. Cyber crime, corruption and additional forms of transnational crime have either been addressed or are in the process of being addressed by the Convention. Once it gains international legal standing, the ASEAN nations that have adhered to the protocols will be forced to translate these instruments into national law.

The Southeast Asian countries have also failed so far to establish effective law enforcement cooperation at the regional level through the signing of extradition treaties and mutual legal assistance treaties (MLATS). The latter aim to increase judicial assistance and to regularize and ease its procedures. Such treaties involve, among others, the right to summon witnesses, to compel production of evidence, and issue search warrants. An extradition treaty, either at a bilateral or multilateral level, leads to the delivery of suspected or convicted criminals by the state where they have taken refuge to the state that asserts jurisdiction over them. Extradition treaties are therefore essential instruments to combat transnational crime. Most Southeast Asian countries have signed bilateral extradition treaties with the United States and other countries but very few with each other.

Finally, the issue of transnational crime is closely linked to the question of national sovereignty. On the one hand, transnational criminal activities represent a threat to the national sovereignty and integrity of independent states and endanger the survival of their governments. On the other, effective cooperation in combating transnational crime requires some surrendering of state sovereignty. Indeed, a section of national sovereignty needs to be abandoned for it to be protected more effectively. This is in direct contradiction with a Westphalian understanding of national sovereignty, which is still prevalent among the ASEAN members. The Southeast Asian countries have traditionally been strong defenders of the sanctity of national sovereignty and territorial integrity. This derives from a history of colonization and Japanese occupation and as a result of a process of independence and state building that only started, with the exception of Thailand, after the Second World War.

A paradigm shift vis-à-vis the questions of national sovereignty and non-intervention has therefore not yet occurred in Southeast Asia. Thailand's Foreign Minister Surin Pitsuwan suggested in June 1998 the need to amend the basic principle of non-intervention, which caused disagreement between the members at the AMM of July 1998. Only supported by Thailand and the Philippines, the notion of 'flexible engagement' was rejected by the other members that feared interference in their domestic affairs. The foreign ministers eventually agreed on the euphemistic compromise of 'enhanced interaction'. This has led to a clash between the necessity to achieve deeper multilateral cooperation against transnational crime and domestic priorities to oppose any kind of restrictions on these principles.