Terrorism and ASEAN: Noninterference vs Security

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Abstract: The Association of South East Asian Nations (ASEAN) is perhaps one of, if not the strongest free trade regime outside of the European Union (EU). However, unlike the EU, ASEAN’s member states cover areas that are much less developed and much harder to govern. Many ASEAN states deal with issues of political instability and unrest that creates opportunities for terrorist groups. These groups include ISIS affiliates that receive support in the form of men, material, and finances from criminal activity and sympathetic populations in other ASEAN member states and have committed attacks such as the 2002 Bali bombing that killed around 200 people. Due to the transnational nature of the movement of fighters, funds, and arms the appropriate response that is needed is one that is multilateral and makes use of the ASEAN structure. However, the fundamental structure of ASEAN is based on a policy on non-interference, and many of the solutions needed to address terrorism in the region will demand the surrendering of some aspects of member states’ sovereignty. Any multilateral approach to solve these issues would heavily conflict with the “ASEAN Way” principle of non-interference, yet only multilateral action can effectively combat terrorism in the region.

“The ASEAN way” and Terrorism

The Association of South East Asian Nations or ASEAN is perhaps the largest free trade regime outside the European Union. Founded in 1967, its ten member states have a wide range of levels of development and forms of government and they all have distinctly different religions, ethnic groups, and languages. The ten states Singapore, Malaysia, Thailand, Cambodia, Laos, Vietnam, Myanmar, Indonesia, the Philippines, and Brunei all have had to overcome each other’s differences to work together for the greater development of themselves and Southeast Asia (SEA) as a whole. They have done this through their strategy of “noninterference.” This policy of noninterference is the unofficial policy of ASEAN that commits all member states to the strict recognition and respecting of member state sovereignty. The principle is present from the founding of ASEAN, with the 1967 Bangkok Declaration (which is considered the founding document of ASEAN) emphasizing the equality of member states and the necessary respect for the UN Charter to promote regional stability and security. This was followed by both the Zone of Peace, Freedom and Neutrality (ZOPFAN) Declaration in 1971 and the 1976 Treaty of Amity and Co-operation which both reaffirmed the equality of member states and stressed the importance of the noninterference in ASEAN affairs by foreign powers. These declarations formed what is called the “ASEAN Way,” which is a collection of principles that ASEAN members agree to follow on a nonbinding but normative basis.¹ The principle of noninterference in each other’s affairs has been one of the most controversial principles, and it has led to the sidestepping of issues among member states for what is perceived as greater benefit for all called “constructive engagement.” The use of constructive engagement to preserve noninterference has been seen by many as a failure and has often done more harm than good to ASEAN member states. The quintessential example of this failure is the membership of Myanmar in the late

1990s. Myanmar at the time was under great pressure from the West due to its myriad of human rights abuses, it also had its security forces cross the border frequently into Thailand to chase rebels, violating Thai sovereignty. Thailand and ASEAN hoped that by allowing Myanmar into ASEAN that they could use constructive engagement to change the situation. This failed miserably, with human rights abuses continuing and with Thai territorial sovereignty continually breached after joining ASEAN.2

The principle of noninterference has proved a roadblock to more issues than just human rights, with terrorism in ASEAN becoming one of the greatest challenges for the ASEAN as an institution. Terrorism has always been an issue in SEA, with rebel groups, separatist forces, and during the cold war communist guerillas threatening the security of the region. However, the nature of terrorism in SEA changed fundamentally after the September 11th terrorist attacks on the United States. Al Qaeda had called for a global jihad against the West and used its international networks to globalize activities that had once been limited to regional conflicts. The global climate changed rapidly, and noninterference came under great strain. Suddenly, the United States began to sign extradition and cooperative anti-terror agreements with states all over the globe to help combat global terrorism. Counter terrorism cooperation and extraterritorial jurisdiction issues fundamentally challenged the concept of the ASEAN Way. Mutual assistance treaties signed by some states allowed foreign entities to get involved in local law enforcement operations and extradite citizens for trial in a foreign state. ASEAN as an organization and many ASEAN states steered clear from signing these treaties with the United States, with the notable exception of the Philippines, who joined US-led antiterror initiatives that even included US troop deployments.3 However, staying out of US led initiatives did not protect ASEAN states from radical Islamic groups who still saw the governments of many ASEAN states as puppet governments of the West. Terrorism activity increased in scale and frequency, and it wasn’t long after 9/11 that ASEAN states soon began to feel the effects of global terrorism themselves.4 In October 2002, a terrorist group in Indonesia with ties to Al-Qaida detonated a bomb in Bali that killed approximately 200 people.5 The way ASEAN states have responded to this terrorist attack and subsequent attacks and threats by similar groups has come in conflict with the ASEAN Way, and has ultimately led to an ineffective counter terrorism response.

**Terrorist Activity**

To fully understand ASEAN issues with counter terrorism, a brief overview of terrorism in ASEAN states is needed. In ASEAN states, the groups that have operated as terrorist organizations primarily have come from low income Muslim majority areas. One of the most famous groups is Jemaah Islamiyah (JI). JI is based in Indonesia, and it was responsible for the 2002 attack as well as having links to the 1993 World Trade Center bombing. This group once operated in Indonesia, the Philippines, and Malaysia, but after its main benefactor Al-Qaida began to weaken, it constricted its operations to just Indonesia in 2009. JI is now believed to

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3 Senia Febria, "Securing the Sulu-Sulawesi Seas from Maritime Terrorism: A Troublesome Cooperation?" Perspectives on Terrorism 8, no. 3 (2014): 68
have been rolled into the rising Islamic State (IS) affiliate in SEA named Abu Sayyaf (ASG). The rise of IS in Syria rejuvenated Islamic terrorism in the Middle East and the world. JI and other groups that had been weakened converted into IS affiliate groups, taking advantage of the funding and technical knowledge that IS was able to provide. These IS affiliates have been able to achieve considerable success across many ASEAN states including Indonesia, Malaysia, and most prominently the Philippines.

In 2017, IS affiliate forces captured Marawi City in the Philippines, with Philippine defense forces only able to recapture the city after five months of brutal street combat. Despite some affiliate groups taking heavy casualties during the siege, other IS groups emerged from the siege relatively unscathed, and are still operating insurgency operations in the region. Part of the reason that these IS forces were able to capture the city was the transnational movement of fighters from Malaysia and Indonesia into the Philippines, augmenting the forces there with manpower, weapons, and funds that allowed them to overwhelm the local police forces. The environment that facilitates this trafficking is the Sulu-Sulawesi Sea, a tri-country area shared by Indonesia, Malaysia, and the Philippines. This area has been the subject of many border disputes among these three states as ownership of many of the islands is contested, thus creating a lawless environment where it is unknown which state has jurisdiction. This environment makes it easy to smuggle arms, fighters, and supplies to the Philippines, and provides a good hiding place for pirates and other criminal groups.

The flow of arms to the Philippines and the rest of Southeast Asia originates primarily in Thailand, which is currently battling the National Revolutionary Front (BRN). The BRN is an Islamic ethnic Malay separatist movement in Southern Thailand that has been fighting against the central government. Despite their Malay ethnicity, their resistance movement has created great instability in Malaysia as well as Thailand. The group wages a brutal armed resistance movement against the Thai government, carrying out terrorist attacks and conducting raids on government installations to acquire arms and ammunition. A recent attack on a government checkpoint in November of 2019 left 15 dead and allowed the BRN to raid government weapons. The attack was the bloodiest in years and is a result of the BRN’s resurgence in the region. However, the BRN itself is a local organization, it has rejected offers from international Islamic organizations to affiliate and has remained focused on its goals of either further autonomy or independence from Thailand. Despite their local goals, the BRN contributes greatly to terrorism in SEA, with the conflict creating space for other international minded groups. Arms steadily flow from the black markets supplying the BRN from Thailand to Malaysia, and from there through the Sulu-Sulawesi Sea to the Philippines and Indonesia. In 2017, the Royal Malaysian Police arrested individuals involved with an IS cell involved in these smuggling operations. These individuals, along with other independent gun runners, have supplied IS affiliated terrorist

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6 “Jemaah Islamiyah (JI),” Counter Extremism Project, accessed November 15, 2019.
8 Marguerite Borelli, "ASEAN Counter-terrorism Weaknesses," Counter Terrorist Trends and Analyses 9, no. 9 (September 2017): 17.
groups across the region with small arms and other supplies that have fueled conflict in the region.\textsuperscript{10}

Indonesia also faces terrorist threats from separatist groups that are, just like those in the Philippines, transnational. The Free Aceh Movement and The Free Papua Movement (OPM) separatist groups both have used terrorism as a tool for their causes. These groups have targeted westerners, NGO workers, and Christian communities and police with terrorist acts. They were also responsible for a series of hotel bombings in 2009. Indonesian police have found that these groups are able to train their fighters in the Philippines and then get them across the Sulu-Sulawesi to Indonesia along with weapons and other support.\textsuperscript{11} IS affiliate forces have also carried out attacks in Indonesia as well, including the attempted assassination of the Indonesian security minister in October of 2019. IS has allied with forces in the region and set up bases of operation on the myriad of difficult to patrol islands that make up Indonesia and their current strength and capabilities remain difficult to ascertain.\textsuperscript{12}

International terrorism is also very present in Malaysia, which in 2016, IS made a priority for opening up and promoting recruitment. Between 2013 and 2019 the Malaysian security forces prevented at least 25 terrorist attacks before they could be committed. Despite the efforts of Malaysian security forces, the IS affiliate was still able to carry out an attack in Puchong with a grenade that wounded eight people. This attack was the first carried out by IS in Malaysia. Al Qaeda has been in Malaysia for longer, but its influence has been lost to IS affiliates and its international infrastructure crippled after the American success in Afghanistan. A major threat to the security in the country has been the large number of Malaysians leaving to fight for IS in Syria and Iraq. These fighters are returning to Malaysia after ISIS’s defeat in Syria and have the knowledge and capability to carry out complex attacks.\textsuperscript{13} In early 2019, Malaysian authorities uncovered an IS cell that was planning a series of simultaneous bombings and assassinations during Ramadan. What made this plot unique was that only one member of cell was Malaysian while two others were Rohingya and one was Indonesian. The cell had small arms and IEDs that were smuggled in from Southern Thailand, and the direction was mostly foreign in nature. The attempted attacks are the first time that a group of mostly foreigners have planned terrorist attacks in Malaysia and demonstrates the regional trend to move towards transnational rather than local terrorism.\textsuperscript{14}

The Challenging Nature of Terrorism in SEA

Terrorism in ASEAN states is both transnational and fed into by the internal instability of fellow ASEAN states. Many of the solutions needed to successfully combat terrorism in the region will therefore challenge the ASEAN Way of non-interference. This challenge is due to the now decades-old problem of how to differentiate terrorist groups from separatist and rebel groups, along with the continued regional instability in SEA driving the continued strength of terrorist and other violent groups. For example, the terrorist groups in the Philippines are also a

\textsuperscript{10} Austin Bodetti, “How the Thai Conflict Is Boosting Islamic State in Malaysia.” \textit{The Diplomat}, October 17, 2018.

\textsuperscript{11} Febrica, “Securing the Sulu-Sulawesi Seas,” 67


\textsuperscript{13} Muhammad Haziq\^{a}li, "MALAYSIA," \textit{Counter Terrorist Trends and Analyses} 9, no. 1 (January 2017): 18.

product of and caught up in the Philippine Civil War between the central government and the southern Muslim majority population. The Muslim majority southern islands want independence from the Christian majority northern islands, although recently the more moderate Islamic rebel groups have been in negotiations to settle for an autonomous region rather than full independence. This would technically put these terrorist groups in the purview of the domestic civil war, making any interference by ASEAN member states to assist or inhibit them a breach of Philippine sovereignty and the ASEAN policy of non-interference. Similarly, the arms that are fueling these terrorist groups are coming from Thailand’s civil war, again making counter terrorism a challenge of ASEAN ideas of sovereignty. While these more moderate groups in both Thailand and the Philippines both are not labeled terrorist groups, their existence makes space for and fuels extremist terrorist groups that threaten the security of the entire region. For example, the conflict in Thailand has allowed Thai gunrunners to supply IS militant groups in Malaysia with weapons despite very strict Malaysian gun control laws. The growth of ISIS affiliated groups in Malaysia has also begun to spread back into Thailand, with a small IS branch opening up in the south in 2018.15

The issues with classification of rebels vs terrorists creates issues with enforcement in the region as well, especially in areas of disputed or unsure jurisdiction. In the Sulu-Sulawesi Sea, which is the direct line for terrorist funds and material to the Philippines, both the Filipino and Indonesian governments do not classify many of the actions of groups the same. Acts of terrorism to one are seen as maritime piracy and crime to another. For example, the Philippines labels all acts of piracy and maritime crime as terrorism, while Indonesia see these two types of actions as separate. Because this distinction is drawn, Indonesia states that in fact, there is no maritime terrorist threat to the region. And yet, activities such as piracy and smuggling are directly responsible for fueling conflict in the region. Here the ASEAN principles of non-interference get in the way of enforcement, as the Indonesian government makes the distinction carefully in order not to invite foreign intervention in their waters. However, this distinction prevents proper enforcement, and leaves gaps readily exploited by terrorist organizations.16

The political weakness of ASEAN states poses perhaps the largest problem to an effective counter terrorism response in its member states. Despite cooperation and agreements between countries, an ineffective bureaucracy and law enforcement will lead to a continuation of the same problems. The primary reason for the ineffectiveness of states in SEA dealing with terrorism is corruption that is institutional in nature. Corruption in many cases infects nations’ armies, police, the customs administrations, and even the upper levels of government.17 Even if this corruption is limited to strictly criminal and non-terrorist activities, it still will create space for, fuel, and directly benefit terrorist organizations. These corrupt state officials and servants will often “misplace” military equipment, which finds its way into the hands of criminals and terrorists. In the case of Myanmar, the government has deals with many of the rebel groups to allow the illicit trade of opium, which has led to an explosion of illicit trafficking that has

15 Bodetti, “Islamic State in Malaysia.”
subsequently both made it easier to traffic fighters and arms for terrorist organizations as well as provided them profits.\textsuperscript{18}

\textbf{Bilateral and Limited Multilateral Action}

So, what actions then have ASEAN states taken to tackle terrorism in the region? Most of the actions taken have been focused on bilateral or very limited multilateral agreements rather than through the ASEAN structure. For example, after the retaking of Marawi, the Philippines, Malaysia, and Indonesia all agreed, externally from the ASEAN framework, to conduct joint naval patrols and air reconnaissance over the Sulu-Sulawesi Sea.\textsuperscript{19} An argument can be made that, in this circumstance, going through the ASEAN structure was not needed, as the Sulu-Sulawesi Sea does not concern Thailand, Brunei, or any other ASEAN members. It is true that in some situations bilateral or limited multilateral agreements can be used to effectively counter terrorism in the region, especially since the ASEAN need for consensus building slows negotiations and does not allow for quick decisive decision making.\textsuperscript{20} However, to effectively prevent the spread of terrorist activity in the region, the full cooperation of ASEAN states will be needed, and ASEAN as an organization needs to take more responsibility for preventing interstate activities that assist terrorist organizations, especially arms trafficking and other illicit activities.

In addition to bilateral relations with other ASEAN members, ASEAN states also have bilateral relations with the United States to help combat terrorism in the region. The United States has only increased its interest in suppressing terrorist activities in SEA over recent years and since 2001, has tried to work with states in the region to achieve this. The degree of bilateral cooperation can range from the more direct, such as the US military personnel and arms in the Philippines, or to more subtle such as Indonesian intelligence sharing. In the case of the Philippines, the United States has provided them with millions of U.S. Dollars (USD) in military equipment since 2002 until the present. The United States also sent 660 special forces troops (the deployment was classified as a “joint training exercise” to circumvent the Philippine’s laws against hosting foreign forces) to the Philippines in 2002, and in 2012 promised to transfer over two US naval vessels to the Philippines along with deploying jets and a coastal radar system.\textsuperscript{21} Indonesia, on the other hand, has cooperated with the United States in gathering intelligence on terrorist groups. In 2010, Indonesia concluded the U.S.-Indonesia Defence Framework Arrangement that seeks to increase cooperation on operational support and military supplies. From 2006 to 2008, the United States gave Indonesia 57 million USD to establish an Integrated Maritime Surveillance System (IMSS). The IMSS covers more than 1,205 kilometers of coastline in the Straits of Malacca and approximately 1,285 kilometers of coast line in the Sulawesi Sea, providing both the United States and Indonesia with data to identify and combat terrorism in the region.\textsuperscript{22}

\textbf{Multilateral Action}

\textsuperscript{18} Ibid, 44.
\textsuperscript{19} Bodetti, “How the Thai Conflict Is Boosting Islamic State in Malaysia.”
\textsuperscript{20} Borelli, “ASEAN Counter-terrorism,” 15.
\textsuperscript{21} Febrica, "Securing the Sulu-Sulawesi Seas", 67.
\textsuperscript{22} Ibid, 68.
Through the ASEAN structure the primary achievement on counter terrorism has been the 2007 ASEAN Convention on Counter Terrorism (ACCT), which was updated most recently in 2015. However, this treaty strictly follows the principles of the ASEAN Way, with multiple sections reiterating sovereignty and non-interference. Many of the articles propose solutions that have potential for successful implementation, but then undermine themselves with exceptions and loopholes. One such conflict is Article VII of the ACCT that states that member states may gain jurisdiction within each other if the criminal carries out an offence in or against that state.\footnote{“ASEAN Convention on Counter Terrorism,”signed January 13, 2007, 8.} This is a crucial step in fighting terror organizations, as it prevents terrorists from hiding in another ASEAN state in a population that may be sympathetic to them. However, the ACCT goes on to undermine Article VII in Article XIII, which allows states to not extradite suspected terrorists as long as they are put on trial for their crimes.\footnote{Ibid, 12.} This clause can create situations in which a state or regional court may try a perpetrator leniently or in a manner deemed unfair to the other states. Scholars have pointed to the ACCT as an example of the failure of ASEAN to tackle larger regional issues beyond just economic ones. The entire convention is non-binding and fails to include articles that provide compensation or punishment for states failing to follow the convention, even if that failure harms a fellow ASEAN member state. The non-binding nature of the ACCT has led to sloppy implementation. For example, the regional counter-terrorism data sharing data base that was supposed to be implemented has so far been incomplete and lacking in funding.\footnote{Borelli, “ASEAN Counter-terrorism,” 16.} Despite this ineffective implementation the agreement has borne fruit, testifying to the inherent benefit of the needed multilateral cooperation on this issue. The most prominent success was in 2011, when the ACCT information network was responsible for the capture of Umar Patek, a prominent leader in JI, in Pakistan.\footnote{Febrica, “Securing the Sulu-Sulawesi Seas,” 74.}

Other than arms trafficking and extradition, a main component to the operations of terrorist groups is the way they secure funding. Terrorist groups like any army, police force, or militia relies on funds to feed, train, supply, and attract new recruits for their cause. In article VI of the ACCT, it states that signatories must “prevent those who finance, plan, facilitate, or commit terrorist acts from using their respective territories for those purposes against the other Parties and/or the citizens of the other Parties” and to “prevent and suppress the financing of terrorist acts”.\footnote{“ASEAN Convention,” 6.} The way states are supposed to do this is not detailed, and much like the rest of the ACCT, there is much room for interpretation and no motive for states other than those directly affected by terrorist activities to take concrete actions. In addition to the ACCT, ASEAN has also used the East Asian Summit (EAS) to address this issue, releasing a joint statement with ASEAN and the members of the EAS to plan on addressing the issues of money laundering and funding of criminal organizations. While like the ACCT in that much of its language is vague, this Joint Statement does include some specifics courses of action. These include efforts to “continue to develop the capacity of and enhance cooperation among financial intelligence units (FIUs)” and “Encourage the continued and enhanced involvement of the private sector in disrupting and preventing money laundering and terrorism financing”.\footnote{“East Asia Summit Leaders’ Declaration on Anti-Money Laundering and Countering the Financing of Terrorism,” signed November 14, 2017, 3.} Unfortunately, there is a
lack of scholarly analysis on whether these provisions have been successfully implemented, but numbers collected before the agreement signed show extensive money transfers to terrorist groups in SEA from fellow ASEAN states. Online funding is one of their greatest sources of donation income, with an app in Indonesia before it was shut down that allowed people to donate money to IS affiliate groups through it. From the internet IS affiliates receive lots of money through small donations of only 100 to 1,000 USD with an estimated 763,000 USD received by Indonesian Jihadist cells in donations from 2014 to 2015. These donations are the greatest challenge for ASEAN in countering the funding of terrorist groups. The internet makes it virtually impossible to completely block these donations, as Bitcoin creates untraceable transactions without the need for banks, and Facebook and Twitter create platforms that reach millions of people all around the world. To block this funding would take a concerted effort from ASEAN, and integration of internet regulations that would be heavily controversial.29

Conclusion

The ASEAN commitment to the ASEAN Way has prevented the organization from effectively fighting terrorism in SEA in the long term. Bilateral treaties and joint operations can assist with quick reactions to terrorist activities, but to fully address the issue, comprehensive legally binding agreements need to be put in place in ASEAN to limit the spillover of terrorism. This must be achieved by establishing and implementing concrete and binding regulations that prevent the transnational spread of arms and finances to terrorist groups. However, this idea fundamentally conflicts with the ASEAN principle of non-interference, as it leaves no room for states to change their minds and would require some form of outside intervention in the current armed conflicts in Thailand and the Philippines. Until ASEAN is willing to soften its stance on non-interference, counter terrorism activities will be hampered and the underlying environment that has spawned terrorism in the region will continue to hold ASEAN back.

29 Resty Woro Yuniar, “Support for Islamic State? In Indonesia, There’s an App for That,” This Week in Asia, November 8, 2017.
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