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**The Securitization of Transnational  
Crime in ASEAN**

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## ABSTRACT

This paper studies the securitization of transnational crime in ASEAN since 1997. It first positions the issue of transnational crime in the international security debate through a short elaboration on the Copenhagen School and its securitization theory. It then examines whether transnational crime has been articulated in security terms in the ASEAN rhetoric. The paper demonstrates that the member states have made statements in which they make claims about security in the context of crime. Yet, there is little evidence that this has encouraged regional policy-makers to adopt common security responses. The act of securitization has therefore remained a convenient rhetorical device, given that the claims about security have not resulted in policy outcomes. This paper asserts that ASEAN has failed to implement joint actions due to domestic circumstances, its own resistance to action and institutional reforms and its inability or unwillingness to criminalize transnational crime.

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# THE SECURITIZATION OF TRANSNATIONAL CRIME IN ASEAN

## Introduction

Transnational crime in Southeast Asia is an important issue that needs to be addressed in the context of the Association of Southeast Asian Nations (ASEAN) and regional security.<sup>1</sup> This article examines the securitization of transnational crime in ASEAN since 1997. It notes that even if criminal activity has been securitized rhetorically, there is little evidence that this has encouraged regional policy-makers to adopt multilateral security responses. If this is the case, why have they not done so and what does it tell us about the securitization of crime in Southeast Asia? One possibility is whether ASEAN has failed not only because of domestic circumstances but also due to its inbuilt resistance to action and institutional reforms and its inability to criminalize transnational crime. Such a failure should force us to remain sceptical about the actual securitization of crime in Southeast Asia. Indeed, the paper questions the extent to which securitization has simply been a convenient rhetorical device, given that ASEAN's political responses have not matched the claims about security.

The paper only considers initiatives endorsed within an ASEAN framework as well as multilateral decisions that are operationalized at a bilateral or trilateral level. It therefore ignores joint activities undertaken by member states outside of an ASEAN context and seeks to contribute to the study of the Association as a regional multilateral institution. The paper consists of three sections. The first introduces transnational crime

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This paper relies on some ideas and material first developed in Ralf Emmers, *ASEAN's Response to Transnational Crime*, Working Paper No. 70, Canberra: Australian Defence Studies Centre, University of New South Wales, 2002.

<sup>1</sup>The United Nations (UN) defines transnational crimes "as offences whose inception, prevention and/or direct or indirect effects involved more than one country." Definition reproduced in Gerhard O. W. Mueller, "Transnational Crime: Definitions and Concepts", in P. Williams and D. Vlassis (eds.) *Combating Transnational Crime*, a Special Issue of *Transnational Organized Crime*, 4(3&4), Autumn/Winter 1998, p. 18. 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, aircraft hijacking, sea piracy, hijacking on land, insurance fraud, computer crime, environmental crime, trafficking in persons, trade in 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. List reprinted in Mueller, "Transnational Crime: Definitions and Concepts", p. 14.

and positions it within the international security debate. In particular, it asserts that the Copenhagen School provides a coherent framework to define security and determine how an issue becomes securitized. The second examines whether transnational crime has been articulated in security terms in the ASEAN rhetoric. The final section seeks to explain why the securitization of criminal activity has not resulted in policy outcomes.

### **Transnational Crime and Securitization Theory**

Transnational crime has been referred to as a security issue in the academic literature. McFarlane and McLennan claimed in 1996: “Transnational crime is now emerging as a serious threat in its own right to national and international security and stability.”<sup>2</sup> Galeotti has recently indicated that “the struggle against organized and transnational crime will be the defining security concern of the twenty-first century.”<sup>3</sup> Transnational crime poses a threat to states, national economies and civil societies. For example, non-state actors can use terrorism to promote their political causes. These 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 threaten the survival of governments. Other forms of transnational crime affect states and their societies. Drug trafficking and money laundering reduce a government’s capacity to govern, weaken the credibility of financial institutions and undermine social order. Weak states and open societies are especially vulnerable to transnational crime.

The problem of transnational crime often requires non-military responses. This complicates its introduction within a national security agenda, which is conventionally dominated by military questions. Defence officials continue to make a distinction between a traditional and a newly emerging security agenda, the latter being regarded as less significant and threatening than the former. Interestingly, the need for a non-military reaction to transnational crime is in accord with ASEAN’s modalities. The member states rejected military cooperation when ASEAN was first established in August 1967. ASEAN

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<sup>2</sup>John McFarlane and Karen McLennan, *Transnational Crime: The New Security Paradigm*, Working Paper no. 294, Canberra: Strategic and Defence Studies Centre, Australian National University, 1996, p. 2.

<sup>3</sup>Mark Galeotti, “Underworld and Upperworld: Transnational Organized Crime and Global Society”, in D. Josselin and W. Wallace (eds.) *Non-State Actors in World Politics*, London: Palgrave Publishers, 2001, p. 216.

was no substitute for the Southeast Asia Collective Defence Treaty, or Manila Pact, of September 1954. Since then, it has never evolved into a formal or tacit alliance. The institution has made clear that it would deal with security matters through political and economic means rather than by conventional military methods.

The fight against transnational crime has already led to many examples of international cooperation, resulting primarily in the politicization and criminalization of the issue. Founded in 1923, the International Criminal Police Organization (Interpol) has currently 176 member states and provides a vehicle for the exchange of information and assistance between police forces. The European Union (EU) formed EUROPOL in July 1995 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 (FATF) to tackle money laundering and it set up the Lyon Group in 1995 to improve international cooperation against transnational crime. The United Nations (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.

This paper discusses ASEAN's securitization of transnational crime and whether this process has resulted in policy outcomes. To do so, it is essential to comprehend what is meant by an act of securitization. The Copenhagen School provides a coherent framework to define security and determine how a specific matter becomes securitized. The School is critical to the understanding of a new security environment and, in particular, to the priority that should be accorded to non-traditional security issues, including transnational crime. It emerged at the Conflict and Peace Research Institute (COPRI) of Copenhagen and is represented by the work of Barry Buzan, Ole Waever and others.<sup>4</sup> Although significant differences exist between its scholars, the School has developed a substantial body of concepts to rethink security.

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<sup>4</sup>See Barry Buzan, *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, Boulder: Lynne Rienner Publishers, 1991; Ole Waever, "Securitization and Desecuritization", in R. Lipschutz (ed.) *On Security*, New York: Columbia University Press, 1995, pp. 46-86; Barry Buzan, Ole

In *Security: A New Framework for Analysis*, Buzan, Wæver and de Wilde start by defining security in a traditional military context. They explain that “security is about survival. It is when an issue is presented as posing an existential threat to a designated referent object”.<sup>5</sup> The security-survival logic is then applied to five categories of security: military, environmental, economic, societal and political security.<sup>6</sup> The dynamics of each sector are determined by securitizing actors and referent objects. The former are defined as “actors who securitize issues by declaring something, a referent object, existentially threatened”<sup>7</sup> and can be expected to be “political leaders, bureaucracies, governments, lobbyists, and pressure groups.”<sup>8</sup> Referent objects are “things that are seen to be existentially threatened and that have a legitimate claim to survival.”<sup>9</sup> They include the state, national sovereignty, national economies, collective identities, and environmental habitats.<sup>10</sup> Evidently, referent objects and the kind of existential threats that they may face vary across the security sectors.

A multi-sectoral approach to security represents a significant move away from traditional security studies and its primary focus on the military sector. Indeed, four of the five components account for non-military threats to security. In addition to widening the definition of security beyond military issues, the Copenhagen School deepens security studies by including non-state actors. A crucial question though is whether the concept of security can be broadened to such an extent without losing its coherence and meaning. The school offers an answer to this problem. Lene Hansen writes:

The decisive move, captured by Ole Wæver’s concept of ‘securitization’ is to permit a possible expansion of the concept, but to make the actual definition of security dependent on its successful construction in discourse. Securitization refers to the process of presenting an issue in security terms, in other words as an existential threat.<sup>11</sup>

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Wæver and Jaap de Wilde, *Security: A New Framework for Analysis*, Boulder: Lynne Rienner Publishers, 1998.

<sup>5</sup>Ibid., p. 21.

<sup>6</sup>Ibid., pp. 7-8, chapters three to seven.

<sup>7</sup>Ibid., p. 36.

<sup>8</sup>Ibid., p. 40.

<sup>9</sup>Ibid., p. 36.

<sup>10</sup>Ibid., pp. 22-23.

<sup>11</sup>Lene Hansen, “The Little Mermaid’s Silent Security Dilemma and the Absence of Gender in the Copenhagen School”, *Millennium: Journal of International Studies*, 29(2), 2000, p. 288.

The Copenhagen School regards security as a socially constructed concept. A political concern becomes a security matter through a process of securitization. A securitizing actor defines an issue as an existential threat and asserts that it needs to be removed from the normal process of politics due to its declared urgency. Buzan et al argue that security “is the move that takes politics beyond the established rules of the game and frames the issue either as a special kind of politics or as above politics.”<sup>12</sup> Desecuritization refers to the reverse process. The Copenhagen School stresses the importance of the speech act in securitization.<sup>13</sup> Securitizing actors articulate an issue in security terms to persuade a relevant audience of its immediate danger. The concern must be represented as an existential threat.<sup>14</sup> This criterion enables the school to link security to survival and thus to the reasoning found within traditional security studies. The act of securitization is only successful when the securitizing actor succeeds in convincing a relevant audience (public opinion, politicians, military officers or other elites) of the existential nature of the threat. What constitutes an existential threat is thus viewed as a subjective question that depends on a shared understanding of what is meant by such a threat. Once the securitization is completed, extraordinary measures can be imposed that go beyond standard political procedures. The School asserts, however, that an act of securitization does not depend on the use of exceptional means, as it simply provides securitizing actors with the right to adopt such actions.

The Copenhagen School allows for non-traditional security issues to be included in security studies while still offering a coherent understanding of the security concept. Yet, three limitations need to be pointed out that complicate its application to ASEAN and criminal activity. First, one can question the significance of a securitization process when it does not go hand in hand with actions and policies to address the ostensible threat. This shortcoming is discussed in the final section. Second, the Copenhagen School reflects European security concerns and questions. This attitude is less obvious in the case of *Security: A New Framework for Analysis*, which seeks to provide a broad theoretical approach to security studies. Still, societal security, for instance, derives from a European experience. It refers to borderless societies that are said to exist in Europe as a result of political and economic integration. Societal security is linked to the construction of a

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<sup>12</sup>Buzan et al, Op. Cit., p. 23.

<sup>13</sup>Waever, Op. Cit., p. 55.

<sup>14</sup>Buzan et al, Op. Cit., p. 24.

collective European identity and should be dissociated from state security, which relates to the preservation of national sovereignty and territorial integrity. The existence of a similar sense of community in Southeast Asia is doubtful. The socialization of relations has not led to a collective identity that crosses national boundaries. The applicability of societal security to a Southeast Asian context is therefore questionable. Finally, bureaucratic and political elites dominate the formulation of threat perceptions in most Southeast Asian countries. The influence of social pressures and aspirations on the securitization of political matters remains limited.<sup>15</sup> A political elite may in these circumstances abuse the act of securitization to achieve specific objectives. A domestic audience that is not invited to speak out is unable to prevent the dangers of over-securitization.

### **ASEAN's Securitization of Transnational Crime**

The problem of transnational crime in Southeast Asia is severe and consists primarily of drug trafficking, trafficking in persons, 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 regional states. Myanmar, Thailand and Laos are major producers of narcotics and transit points for drugs sent to North America, Europe and other parts of Asia. 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 Southeast Asian 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.

Securitizing transnational crime can provide tangible benefits. It can inject urgency into an issue and lead to a mobilization of political support and a better deployment of resources. Portraying criminal activity as a security concern may well be the only way for the ASEAN states to move forward on this question and to gain the kind of political momentum necessary for the adoption of appropriate measures. The advantages of an act of securitization were previously demonstrated by ASEAN's

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<sup>15</sup>William Tow, "Alternative Security Models: Implications for ASEAN", in A. Tan and K. Boutin (eds.) *Non-Traditional Security Issues in Southeast Asia*, Singapore: Institute of Defence and Strategic Studies, 2001, p. 265.

response to Vietnam's invasion of Cambodia in December 1978. ASEAN described the occupation as a violation of its cardinal principle of respect for national sovereignty and as a direct threat to Thai security interests. In spite of different threat perceptions, the members closed ranks with Thailand. Their collective reaction raised the level of political and security cooperation. The ASEAN states were successful in isolating Vietnam diplomatically in the UN and in preventing its puppet government in Phnom Penh from gaining international recognition. It is not suggested that ASEAN's response to the Third Indochina Conflict should be compared to its reaction to transnational crime. What should be stressed though is the significance of securitizing an issue and the consequences that it can have on the workings of the Association.

Before examining ASEAN's securitization of transnational crime, one needs to single out the securitizing actors, the referent objects and the relevant audience. The securitizing actors are the Heads of State and Government as well as their foreign ministers and ministers of interior/home affairs. The various senior officials involved with transnational crime and the national chiefs of police should be regarded as securitizing actors, though of much less importance. The beliefs and concerns of these actors are reflected in the ASEAN declarations and communiqués. These sources have to be examined closely. In particular, it needs to be verified whether the Heads of State and Government and their foreign and interior ministers have labelled transnational crime as an existential threat to security. The prime referent object is the sovereign state. Regional policy-makers are concerned with state security and the preservation of national sovereignty and territorial integrity. Yet, as we shall see, the joint declarations and communiqués make reference to the dangers of transnational crime to the welfare of regional populations, to the social and moral fabrics of societies and to economic prosperity. ASEAN rhetoric thus adopts a multi-sectoral approach to security. This broad conceptualization of security is not surprising, as the members have adopted the notion of comprehensive security since the 1970s. Finally, the relevant audience is essentially restricted to an elite of policy-makers. The actors who express an issue in security terms are the same as those who need to be persuaded of its existential threat. This does not allow for a dialogue between securitizing actors and a separate audience.

Let us now determine if ASEAN has addressed transnational crime in security terms and assess whether such an act of securitization has resulted in policy outcomes.

The members have sought to promote regional cooperation against transnational crime since 1976 and thus recognized the need to deal with its dangers at an early stage of ASEAN's institutional evolution. Yet, the Association limited its focus from 1976 until 1997 to the abuse and illegal trafficking of drugs. Its concern with illegal narcotics can be traced back to 1972 and the organization of a first meeting on the prevention and control of drug abuse. The question of drug trafficking was discussed at the Bali Summit of February 1976 and mentioned in the ASEAN Concord. It called for the "intensification of cooperation among member states as well as with the relevant international bodies in the prevention and eradication of the abuse of narcotics and the illegal trafficking of drugs."<sup>16</sup> The ASEAN Declaration of Principles to Combat the Abuses of Narcotics Drugs was adopted in Manila on 26 June 1976 and led to some initial proposals. It was the start of an institutional process against transnational crime, which would remain confined for 21 years to the issue of narcotics. The ASEAN decision to cooperate against drug trafficking in Southeast Asia partly resulted from strong US pressure. Similarly, the United States currently expects the Southeast Asian nations to participate in the international fight against terrorism and to combat regional extremist movements. The ASEAN members have been encouraged to increase their domestic efforts as well as to promote intra-mural cooperation. Consequently, the role of external pressure needs to be highlighted when examining ASEAN activities against transnational crime.

By the mid-1990s, the ASEAN countries were forced to recognize that in addition to drug trafficking, other forms of transnational crime had become a threat to regional development and stability. These issues began to be considered at the highest diplomatic level and mentioned in the communiqués. At the ASEAN Ministerial Meeting (AMM) of July 1996, the foreign ministers discussed drug trafficking, human smuggling and trafficking, money laundering and other categories of transnational crime. They called for the urgent need to tackle these transnational problems to prevent them from undermining the long-term viability of the member states.<sup>17</sup> This statement indicated that transnational crime was perceived as a possible threat to the political, societal and economic security of the ASEAN nations. The Heads of State and Government met in Jakarta in November of that year and requested "the relevant ASEAN body to study the possibility of regional

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<sup>16</sup>Declaration of ASEAN Concord, Bali, Indonesia, 24 February 1976.

<sup>17</sup>Joint Communiqué of the 29<sup>th</sup> ASEAN Ministerial Meeting (AMM), Jakarta, Indonesia, 20-21 July 1996.

cooperation on criminal matters including extradition.”<sup>18</sup> The 30<sup>th</sup> AMM in July 1997 stressed the necessity for sustained regional cooperation to tackle the problems of terrorism, narcotics, arms smuggling, piracy, and human trafficking.<sup>19</sup> Finally, the second informal summit in Kuala Lumpur in mid-December 1997 called for firm measures to combat the different categories of transnational crime. In short, the Southeast Asian decision-makers expressed the issue in security terms and demanded the adoption of strong actions.

It is important to briefly discuss why ASEAN decided in 1996-97, after 21 years of cooperation on illicit drugs, to securitize transnational crime. The political decision to articulate crime in security terms primarily resulted from ASEAN’s enlargement to include Myanmar and Laos in July 1997. Myanmar had been the last Southeast Asian state to adhere to the Treaty of Amity and Cooperation (TAC) in July 1995. Myanmar and Laos are respectively the first and third largest cultivators of opium poppies in the world. Untroubled by Yangon with which a ceasefire agreement has been signed, the United Wa State Army (UWSA) exercises almost full control over the Shan State in Northeast Myanmar, where it produces vast quantities of narcotics.<sup>20</sup> In supplement to the heroin trade, the manufacturing of amphetamine-type stimulants (ATS) has dramatically increased in Myanmar since the early 1990s. Thailand, in particular, has perceived the drug trafficking of UWSA as a significant national security issue.<sup>21</sup> While Bangkok had failed by 1997 to convince Myanmar to act against the production of narcotics within its frontiers, it hoped that Yangon’s membership in ASEAN might lead to more tangible results. In short, the inclusion of Myanmar and to a lesser extent Laos served as a catalyst to securitize transnational crime in the Association. US pressure for action should also be mentioned. While opposed to Myanmar’s accession to ASEAN membership due to its brutal regime and human rights record, the US was also deeply concerned with the scale of heroin and ATS production in Myanmar and with the low level of Yangon’s anti-narcotics efforts.

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<sup>18</sup>Chairman’s Statement of the First ASEAN Informal Meeting, Jakarta, Indonesia, 30 November 1996.

<sup>19</sup>Joint Communiqué of the 30<sup>th</sup> ASEAN Ministerial Meeting (AMM), Subang Jaya, Malaysia, 24-25 July 1997.

<sup>20</sup>“Rush to Market”, *The Economist*, 16 February 2002, p. 30.

<sup>21</sup>Alan Dupont, Talking Points for the Defence Leadership in ASEAN Workshop for the Center for Defence and Strategic Studies Conference on “Defence Leadership in the Asia-Pacific: Challenges in a Time of Change”, Canberra, Australia, 18 May 2001.

Endorsed on 20 December 1997, the ASEAN Declaration on Transnational Crime broadened and intensified regional cooperation against crime. It resulted from the first ASEAN conference on the subject organized in Manila with the participation of the ministers of interior and home affairs. The declaration represented a common position on the issue as well as a joint statement of political support and cooperation against this interconnected phenomenon. Rather than a binding document, the collective stand was an expression of consensus on the dangers involved. The ministers stated their concern about “the pernicious effects of transnational crime... on regional stability and development, the maintenance of the rule of law and the welfare of the region’s peoples”.<sup>22</sup> Hence, ASEAN referred again to the issue as a threat to the economic, political and societal security of its members. In response, the interior ministers recognized “the need for clear and effective regional modalities to combat these forms of crimes”.<sup>23</sup> The 1997 declaration strengthened the commitment of the member states to cooperate against criminal activity. It announced that the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) would meet at least once every two years and coordinate actions of other bodies involved with the issue, including the ASEAN Chiefs of National Police (ASEANAPOL) and the ASEAN Senior Officials on Drug Matters (ASOD). The declaration also introduced some proposals. It encouraged the member countries to exchange and disseminate information, to sign bilateral treaties and mutual assistance agreements, to assign police liaison officers to other Southeast Asian capitals and to explore ways of extending cooperation with the dialogue partners, the UN and other organizations.

The ministerial meeting played an important role in securitizing transnational crime in ASEAN. Of particular relevance was the keynote address by Philippine President Fidel Ramos during the opening ceremony. He declared:

The concept of regional security should extend beyond the mere absence of armed conflict among and within nations. Enduring regional security continues to be assaulted by transnational crime and from time to time international terrorism, which threaten the attainment of our peoples’ goals and aspirations. We cannot allow these criminals and terrorists to steal our future and that of our young people away from us.<sup>24</sup>

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<sup>22</sup>ASEAN Declaration on Transnational Crime, Manila, the Philippines, 20 December 1997.

<sup>23</sup>Ibid.

<sup>24</sup>Speech of His Excellency President Fidel V. Ramos at the Meeting of ASEAN Ministers of Interior/Home Affairs (AMIHA) and First Conference to Address Transnational Crimes, Manila, Philippines, 20 December 1997.

In other words, Ramos portrayed transnational crime as a non-traditional threat to the ASEAN states and their societies. He stressed the importance of attaining societal security in Southeast Asia and demanded that criminal activity be tackled as a security concern. His comments were indicative of the leading Philippine role in ASEAN's response to crime. It had previously advocated the need for a common position at the 1997 informal summit. Manila has also been active outside of the ASEAN institutional framework. In March 1998, it hosted the Asian Regional Ministerial Meeting on Transnational Crime, which resulted in the adoption of the Manila Declaration on the Prevention and Control of Transnational Crime. The participants recognized that the issue "undermines civil society, distorts legitimate markets and destabilizes States."<sup>25</sup>

Transnational crime continued to be articulated in security terms at the highest diplomatic level in between AMMTC meetings. The 31<sup>st</sup> AMM in July 1998 asked the members to take concrete steps for the introduction of firm measures.<sup>26</sup> Crime was also discussed at the summit in Hanoi in December 1998. The Heads of State and Government indicated their concern and called for better links between the institutional structures combating illicit narcotics and an intensification of efforts to fight other criminal activity.<sup>27</sup> The Hanoi Plan of Action was adopted and prescribed the necessity to "strengthen regional capacity to address transnational crime."<sup>28</sup>

The second AMMTC was organized in Yangon in June 1999. Transnational crime was described as a non-traditional threat to security. The interior ministers recognized that it "was becoming more organized, diversified and pervasive, and thus posed a serious threat to the political, economic and social well-being of all nations, including the ASEAN Member Countries."<sup>29</sup> The AMMTC adopted the ASEAN Plan of Action to Combat Transnational Crime. The plan sought to extend collective efforts and consolidate regional cooperation. It advocated the exchange of information, legal cooperation, law enforcement, training, and institutional building. Moreover, the second AMMTC formed

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<sup>25</sup>Manila Declaration on the Prevention and Control of Transnational Crime, Manila, Philippines, 25 March 1998.

<sup>26</sup>Joint Communiqué of the 31<sup>st</sup> ASEAN Ministerial Meeting, Manila, Philippines, 24-25 July 1998.

<sup>27</sup>Hanoi Declaration of 1998, Sixth ASEAN Summit, Meeting of the ASEAN Heads of State and Government, Hanoi, Vietnam, 15-16 December 1998.

<sup>28</sup>Hanoi Plan of Action, Sixth ASEAN Summit, Meeting of the ASEAN Heads of State and Government, Hanoi, Vietnam, 15-16 December 1998.

<sup>29</sup>Joint Communiqué of the Second ASEAN Ministerial Meeting on Transnational Crime (AMMTC), Yangon, Myanmar, 23 June 1999.

an institutional structure against transnational crime. The interior ministers agreed that their meeting would supervise the activities of ASEANAPOL, ASOD, and the ASEAN Directors-General of Customs (ADGC) and work closely with the ASEAN Senior Law Officials' Meeting (ASLOM) and the ASEAN Attorney Generals' Meeting. The ministers also decided to form a Senior Officials Meeting on Transnational Crime (SOMTEC) that would coordinate measures approved by the AMMTC and develop a work programme to carry out the plan of action. Finally, they decided in principle to set up an ASEAN Centre for Combating Transnational Crime (ACTC). The idea had been proposed by the Philippines, which offered to host its facilities. The ACTC was expected to help implement the plan of action, propose regional strategies, collect data on legal matters, and promote intelligence sharing among the members.

After the second AMMTC, Philippine President Joseph Estrada expressed transnational crime in security terms at the 13<sup>th</sup> General Meeting of the Pacific Economic Cooperation Council in Manila in October 1999. Adopting his predecessor's viewpoint, he argued that the concept of security needed to include terrorism, drug trafficking, money laundering, environmental degradation, human trafficking and others. He declared that these matters "become security issues because they threaten the quality of life of our people, erode our development efforts, and limit the policy choices available to us."<sup>30</sup> The necessity to manage new forms of security concerns was raised again in November 1999 during the 3<sup>rd</sup> ASEAN informal summit chaired by Estrada. The Heads of State and Government acknowledged that new forms of security threats had appeared in Southeast Asia during the 1990s due to a changing security environment. They also agreed that the Association "should make its long-held principles and approaches more relevant to meet these new security challenges."<sup>31</sup> Their statement failed, however, to be specific on the new security concerns and on the kind of measures required to address them.

No new development occurred in ASEAN's response to transnational crime until the terror attacks in the United States on 11 September 2001. The securitization of the issue was predictably affected by these dramatic events. In October 2001, the interior ministers declared at the third AMMTC: "We are determined to combat threats to

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<sup>30</sup>Speech of His Excellency President Joseph Estrada at the 13<sup>th</sup> General Meeting of the Pacific Economic Cooperation Council, Manila, the Philippines, 21 October 1999.

<sup>31</sup>Chairman's Statement of the Third ASEAN Informal Summit, Manila, the Philippines, 28 November 1999.

international peace, security and humanity caused by terrorist acts.”<sup>32</sup> They agreed to organize a Special AMMTC in Malaysia on terrorism. Yet, even in these exceptional circumstances, the initial reaction was limited and disappointing. The joint communiqué only included one paragraph on terrorism and did not introduce any recommendation to address the problem in Southeast Asia. This resulted from ASEAN’s own modalities. The document was most likely drafted before 11 September, leaving little time to formulate a common position. The decision-making is based on consensus, which significantly delays and complicates the formulation of proposals. No progress either was achieved on the other categories of transnational crime.

The ASEAN leaders adopted a more active position on the issue of terrorism at their summit in November 2001. Terrorism was depicted in the press statement as a “formidable challenge to regional and international peace and stability as well as economic development”.<sup>33</sup> The Heads of State and Government endorsed the 2001 ASEAN Declaration on Joint Action to Counter Terrorism.<sup>34</sup> It declared their commitment to counter, prevent, and suppress all acts of terrorism in adherence to international law and the UN Charter. It called for regional efforts to combat terrorism and the introduction of counter-terrorist measures adapted to the specific conditions of the different members. These included the improvement of national mechanisms to fight terrorism, the ratification of all anti-terrorist conventions, more cooperation among law enforcement agencies, and better exchanges of information. The declaration also demanded additional coordination between the AMMTC and other bodies, and the adoption of new initiatives to increase cooperation within the ASEAN+3 (Japan, South Korea and China), the Post-Ministerial Conference (PMC) and the ASEAN Regional Forum (ARF).<sup>35</sup>

The ASEAN states clearly deserved some credit for articulating a common stand on terrorism and initiating a process of cooperation only two months after 11 September 2001. The expression of a joint ASEAN position would also strengthen Singaporean and

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<sup>32</sup>Joint Communiqué of the Third ASEAN Ministerial Meeting on Transnational Crime (AMMTC), Singapore, 11 October 2001.

<sup>33</sup>Press Statement by the Chairman of the Seventh ASEAN Summit and the Fifth ASEAN+3 Summit, Bandar Seri Begawan, Brunei, 5 November 2001.

<sup>34</sup>2001 ASEAN Declaration on Joint Action to Counter Terrorism, Bandar Seri Begawan, Brunei, 5 November 2001.

<sup>35</sup>2001 ASEAN Declaration on Joint Action to Counter Terrorism.

Malaysian legitimacy to use their Internal Security Acts to arrest suspected terrorists in December 2001 and of President Gloria Macapagal Arroyo to accept the deployment of US soldiers in the Southern Philippines for a period of six months to train and advise the Philippine army combating Abu Sayyaf. Still, the Declaration on Joint Action to Counter Terrorism did not derive from a real consensus among the member states. The existence of divergent domestic interests between Indonesia on the one hand and Singapore, Malaysia and the Philippines on the other undermined the attainment of a regional agreement and the formulation of more concrete measures. The relevance of the proposed recommendations was also questionable, as the issue of implementation was never addressed. In short, the joint declaration was primarily an empty statement offering no tangible results against the threat of regional terrorism.

A Work Programme on Terrorism to Implement the ASEAN Plan of Action to Combat Transnational Crime was approved by the second annual SOMTEC in Kuala Lumpur on 17 May 2002.<sup>36</sup> This long document offered a more comprehensive strategy against crime. It focused on illicit drug trafficking, trafficking in persons, sea piracy, arms smuggling, money laundering, terrorism, international economic crime and cyber crime. For each of these categories, the work programme introduced action lines to enhance the exchange of information, legal coordination, law enforcement, training, institutional capacity-building and extra-regional cooperation. It demanded that some of the action lines be implemented within a period of six months. The introduction of a specific time frame for some suggested measures was a positive development. Still, the actual execution of the action lines will be much harder than their simple endorsement by the senior officials. It is therefore too soon to say whether the work programme will be successful or remain a proclamation of good intentions.

Terrorism and other forms of transnational crime were expressed again in security terms during the 35<sup>th</sup> AMM in Brunei in July 2002. In his opening address, Sultan Hassanal Bolkiah declared that terrorism “directly threatens all international order. It is therefore an attack on the very structure of our association.”<sup>37</sup> This point was later

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<sup>36</sup>Work Programme on Terrorism to Implement the ASEAN Plan of Action to Combat Transnational Crime, Kuala Lumpur, Malaysia, 17 May 2002.

<sup>37</sup>Keynote Address by His Majesty Sultan Hassanal Bolkiah, at the Opening of the 35<sup>th</sup> ASEAN Ministerial Meeting, Bandar Seri Begawan, 29 July 2002.

repeated in the joint communiqué that concluded the ministerial meeting.<sup>38</sup> The most significant development in Brunei came in the form of a joint declaration on counter-terrorism signed by the ten ASEAN members and the United States. The agreement was a political statement that confirmed ASEAN's commitment to the war against terrorism. It stipulated "the importance of having a framework for cooperation to prevent, disrupt and combat international terrorism through the exchange and flow of information, intelligence and capacity-building."<sup>39</sup> Nonetheless, it failed to include concrete measures against terrorism. The signatories were asked to improve intelligence sharing and collaboration among their law enforcement agencies, to provide assistance on border surveillance, immigration and financial issues and to comply with UN resolutions on terrorism. The declaration is a non-binding agreement that may be compared to an anti-terrorism accord reached by Indonesia, Malaysia and the Philippines in May 2002 and later signed by Cambodia. This trilateral accord was reached outside of an ASEAN context and should therefore not be regarded as part of the institutional process. Significantly, the ASEAN-US statement did not refer to military operations or to the deployment of American troops in Southeast Asia. Prior to its adoption, Vietnam and Indonesia rejected any clause that might be regarded as allowing the involvement of US forces in the region and thus undermining the principles of national sovereignty and non-intervention in the affairs of other states.

In sum, an examination of the ASEAN rhetoric has demonstrated the securitization of transnational crime since 1997. Persuaded of its threat, the Heads of State and Government and their foreign and home ministers have discussed the matter in security terms. Various examples have supported this claim. ASEAN has portrayed transnational crime as a threat to state security and regional stability (military security), to state sovereignty and the rule of law (political security), to the social and moral fabrics of Southeast Asian countries (societal security though within rather than across national boundaries), and to economic development (economic security). Yet, with the exception of terrorism, the way transnational crime has been referred to in the rhetoric has not changed or evolved since 1997. Similar phrases have simply been used repeatedly.

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<sup>38</sup>Joint Communiqué of the 35<sup>th</sup> ASEAN Ministerial Meeting, Bandar Seri Begawan, Brunei, 29-30 July 2002.

<sup>39</sup>ASEAN-United States of America Joint Declaration for Cooperation To Combat International Terrorism, Bandar Seri Begawan, Brunei, 1 August 2002.

## **Absence of Policy Outcomes**

Even if criminal activity has been securitized rhetorically, there is little evidence that this has encouraged regional decision-makers to adopt policy responses. Transnational crime has not been addressed forcefully regardless of its declared urgency. The cooperative response has been characterized by a low rather than an extreme level of politicization despite the language of security used in the ASEAN rhetoric. Repetitive and empty statements on the need for cooperation have only given an illusion of progress. Consequently, ASEAN's response has primarily consisted of a rhetorical device. The members have adopted modest declarations that have failed to move beyond the proclamation of good intentions. They have focused on non-binding and unspecific measures without addressing the question of funding, setting target dates and establishing monitoring mechanisms to assess progress. Appropriate measures would have to deal with all these issues and would most likely need to be binding to lead to more tangible results. A major problem is that such initiatives would go against ASEAN's traditional modalities and its inbuilt resistance to action and preference for proclamation, which has affected a whole range of issue areas besides crime.

The absence of policy outcomes questions the purpose of securitization. According to the Copenhagen School, a security act does not depend on the use of strong measures, but simply on an inter-subjective understanding on whether a given referent object faces an existential threat. This paper challenges the significance of securitization when it does not go hand in hand with actions and policies to address the ostensible threat. Instead, it proposes a different understanding of when an issue is fully securitized. This should demand discursive (speech act and shared understanding) and non-discursive (policy implementation and action) dimensions. A security act should depend on a language of security that persuades an audience of the nature of the threat and on the implementation of appropriate measures to address it. This modified understanding of the theory enables us to claim that ASEAN's securitization of transnational crime has been weak. The question remains though why a rhetorical securitization has not resulted in policy outcomes.

ASEAN's inability to cope with transnational crime partly results from a series of domestic and regional circumstances. First, 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. The poverty and economic disparities that persist in the region also diminish ASEAN's ability to tackle transnational crime, especially human smuggling and trafficking. Second, it is difficult for ASEAN to address the specific problem of drug trafficking, as it includes among its members both key producers (Myanmar and Laos) and consumers of narcotics (Thailand and Philippines). Third, intra-ASEAN relations are still influenced by suspicion and competition. Bilateral relations have continued to be troubled by minor matters that can lead to larger diplomatic incidents. Such an environment limits collaboration and intelligence sharing, key elements in the combat against transnational crime. Fourth, ASEAN's identity and its quasi-familial approach to cooperation have been altered by an expansion process and the East Asian financial crisis of 1997-98. These events have weakened ASEAN, diminished its capacity to speak with one voice and cast doubt upon its informal process of interaction. Finally, the fear of terrorism in Southeast Asia since the attacks in the United States has lessened the importance given to other forms of transnational crime. The AMMTC has to a large extent been hijacked by the issue of international terrorism and by other forms of transnational crime that can be linked to the activities of terrorist groups, especially money laundering and illicit drug and arms trafficking.

These domestic and regional factors help us understand the absence of joint policy implementation. In addition, it is important to discuss several factors that are part of ASEAN's own modalities; namely, its resistance to action and institutional reforms and its inability or unwillingness to criminalize transnational crime. These problems are not unique to the Association, as they are faced by most inter-governmental institutions aiming to address policy-issue areas.

ASEAN generally limits its activities to the proclamation of common positions and the formulation of non-binding measures. Its decision-making is defined by a practice of consensus-building and conflict avoidance that ensures the sovereign equality of the member states. The reliance on consensus guarantees that no decision is ever imposed on a member. The ASEAN countries practice conflict avoidance by not addressing specific

problems and disputes. Hence, they do not aim to solve differences but rather to promote a peaceful environment. This decision-making process is inadequate to combat transnational crime. Assessing ASEAN's limited response to drug trafficking, Shinn argues, for instance, that the lack of "funding is one problem, but a more serious roadblock is ASEAN's consensus decision-making style."<sup>40</sup> The latter is based on an inter-governmental approach to cooperation, which depends on the narrowly defined interests of the participating states. ASEAN's response to transnational crime thus rests on an overlap between domestic priorities and a need for regional cooperation. National considerations take precedence in case of disagreements. Some members can slow down or even stop multilateral cooperation if they believe that collective actions may undermine their domestic interests. The response to transnational crime would clearly benefit from an 'ASEAN minus X' formula. This procedure is already applied to some economic issues. ASEAN's decision-making is also incapable of reacting promptly to changes in circumstances. In contrast, criminal groups quickly adjust their operations to changing conditions. This is currently indicated by their growing involvement in human trafficking. To combat crime, governments and their law enforcement agencies need to be flexible and capable of adapting their actions. Dependent on a slow practice of consensus building, ASEAN's decision-making severely weakens its response to transnational crime.

ASEAN's resistance to institutional reforms is most adamant vis-à-vis its cardinal principles of national sovereignty and non-intervention in the domestic affairs of other states. 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 of a process of independence and state building that only started, with the exception of Thailand, after the Second World War. As stipulated in the 1976 Treaty of Amity and Cooperation, the Association is based on the principles of the UN Charter.<sup>41</sup> Most of these principles are well known in the study of International Relations as they represent the underlying foundations of the traditional European states system constructed on the sovereignty and legal equality of nation-states. ASEAN has never promoted political or economic integration. Instead, it has constantly reaffirmed the principles of national sovereignty and non-intervention and has remained an arrangement with no supra-national power or character. A close examination of ASEAN's

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<sup>40</sup>James Shinn, "Asia's Drug Menace and the Poverty of Diplomacy", *Current History*, 1998, p. 178.

<sup>41</sup>Treaty of Amity and Cooperation in Southeast Asia, Bali, Indonesia, 24 February 1976.

institutional evolution indicates that it lacks relevance beyond the issue of non-intervention. This was demonstrated, for example, by the East Timor crisis of September 1999.

The issue of transnational crime is linked to the question of national sovereignty. On the one hand, transnational criminal activities are a threat to the national sovereignty and integrity of independent states and endanger the survival of their governments. On the other, inter-state cooperation against crime requires some surrendering of state sovereignty. It is a paradox that a section of national sovereignty needs to be abandoned for it to be protected more effectively. Transnational problems cannot be addressed through a strict application of traditional principles. The fight against crime demands a limited form of shared sovereignty among the Southeast Asian states on a set of specific issues. Such a shared sovereignty could result from international treaties and conventions, which might lead to the formation of some supra-national structures focusing on transnational problems. It could also derive from overlapping contractual agreements at a bilateral and multilateral level that would complement each other in the fight against criminal activity. In addition, a significant strengthening of ASEANAPOL would improve law enforcement and create an ongoing exchange of information between Southeast Asian police forces. Finally, a shared sovereignty on transnational problems would require a rethinking of the non-intervention principle. Thailand's Foreign Minister Surin Pitsuwan already 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'.

The idea of shared sovereignty and the kind of institutional reforms that it would bring about to tackle crime are in direct contradiction with a Westphalian understanding of national sovereignty, which is still prevalent among the ASEAN members.<sup>42</sup>

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<sup>42</sup>Krasner writes: "The basic rule of Westphalian sovereignty is that external authority structures should be excluded from the territory of a state. Sovereign states are not only de jure independent; they are also de facto autonomous." Stephen Krasner, "Problematic Sovereignty", in S. Krasner (ed.) *Problematic Sovereignty: Contested Rules and Political Possibilities*, New York: Columbia Press, 2001, pp. 10-11. He

Consequently, it seems unrealistic that the institutional reforms mentioned above will be endorsed by ASEAN in the short to medium term. A paradigm shift vis-à-vis the questions of national sovereignty and non-intervention has not yet occurred within the Association. 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. ASEAN's adherence to these basic principles has obviously helped consolidate the national sovereignty of the member countries. When the Association was first established, they constituted the only way available for weak states to strengthen their domestic legitimacy and promote regional stability. Still, they now represent a limiting factor in the management of transnational problems. It is not suggested that ASEAN should abandon its key norms and principles, which are still the foundations of the contemporary international order. On the contrary, they should be adjusted to enable the member states to discuss more openly each other's domestic problems and address transnational issues. An important question though is how traditional norms can be modified in light of a changing international environment. It is often argued in the academic literature that a crisis can challenge specific norms and force the relevant actors to acknowledge their reduced relevance and applicability. Interestingly, the financial crisis of 1997-98, which should be regarded as the worst crisis faced by the ASEAN members since the end of the Third Indochina Conflict, did not cause such a fundamental rethinking in Southeast Asia.

Finally, the absence of policy outcomes has derived from ASEAN's inability or unwillingness to criminalize transnational crime. The member countries have failed so far to strengthen legal collaboration. Much more needs to be done to facilitate the extradition of criminals and harmonize national legislations against crime. Such actions are only suggested in the latest ASEAN work programme. Moreover, some Southeast Asian countries do not have the legislation to prosecute specific categories of transnational crime. For example, Indonesia does not have laws against people smuggling and trafficking and its judiciary system often prosecutes these crimes merely for visa offences. One sees therefore 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

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also identifies three other forms of sovereignty; namely, interdependence sovereignty, domestic sovereignty and international legal sovereignty. *Ibid.*, pp. 7-10.

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.

Transnational crime can be addressed both in a discourse on crime and/or security. The road of international law was followed to punish those responsible for the destruction of an airliner over the town of Lockerbie in Scotland. US President George W. Bush has since 11 September referred instead to a 'war on terrorism'. This can be compared to the so-called war on drugs, particularly in connection to drug trafficking from Central and Latin America. The securitization rather than the criminalization of terrorism has allowed the United States to use more traditional security responses against al-Qaeda. In the context of Southeast Asia, ASEAN may be advised to further rely on the criminalization of transnational crime, as it does not dispose over the collective will, joint political instruments and military capabilities to match its rhetorical claims about security. Significantly, the criminalization of transnational crime could also lead to better results. Indeed, criminal activity cannot be solved through traditional security means. The US war on drugs in Colombia and its failure to reduce the supply of narcotics in America is testimony to that reality.

## **Conclusion**

ASEAN has securitized transnational crime since 1997. The member states have acknowledged the nature of the threat and articulated the issue in security terms. This has indicated the urgency of the problem and led to political attention at the highest diplomatic level. The members have formulated a common position and announced their willingness to increase cooperation against this multifaceted problem. In reaction, ASEAN has established an institutional framework. Multilateral sessions have provided vehicles for dialogue and avenues to initiate cooperation. Yet, the securitization of transnational crime has so far been a rhetorical device that has not resulted in policy outcomes. The proliferation of meetings has watered down their impact and relevance. The repetitive and empty statements on the need for cooperation force us to remain sceptical about ASEAN's

policy response. To fight transnational crime, the Association will need to address a series of policy issues that include the institution of concrete actions and institutional reforms as well as ensuring the criminalization of such activity in Southeast Asia.

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