

## ARTICLE

# Standing our Ground: A Study of Southeast Asian Counterterrorism Conventions Contributing to a Peaceful Existence Major Dennis Hager\*

### ABSTRACT

Less than a year after the September 11<sup>th</sup> attacks on New York and Washington D.C., terrorist groups in Southeast Asia carried out a number of high profile attacks in the region. In an area ripe for global terrorism the effects of counter-terrorism conventions can be measured and the possibility of progress in the global war observed. The regional cooperation inherent in these conventions has been crucial to the success of peace for this region, and is especially significant considering the immense cultural and political differences among these nations.

With fourteen official languages and over 500 million people living in an area that spans the entire economic, religious, and political spectrum, Southeast Asia may very well epitomize the definition of regional diversity. They have a style very different from that of the European Union, but one that may be applicable in Africa, Latin America, or the Middle East.

Maintaining a focus on sovereignty does not equate to a lack of regional or international cooperation. Contrary to some western views this region has proven to be flexible and effective in countering terrorist threats. As terrorists continue to evolve, Southeast Asia is prepared to evolve in ways that will counter new threats.

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## I. INTRODUCTION

From July 2007 through June 2008, I had the honor of travelling throughout Southeast Asia as the Civil Military Operations Officer and Staff Judge Advocate of a Marine Expeditionary Unit. A major aspect of my job was the coordination between host nation governments, local leadership, Department of State Personnel, Non-government organizations, my military unit planners and leadership. I was able to visit Cambodia, Indonesia, Malaysia, the Philippines, Singapore, Thailand, Vietnam, and Timor Leste (nine of the twelve nations of Southeast Asia). Firsthand, I observed some of the counter terrorism training taking place in many of these nations and, after further study, determined that the region is an emerging cooperative force in the global war against terrorism. This emergent anti-terrorism cooperative behavior, which involves multiple cultures and nations, has helped shape the battlefield in favor of current national governments in Southeast Asia.

Less than a year after the September 11<sup>th</sup> attacks on New York and Washington D.C., terrorist groups in Southeast Asia carried out a number of high profile attacks against westerners in the region. The most infamous of these attacks was the October 2002 Bali bombing that killed 202 people.<sup>1</sup> Since 2002, cooperative anti terrorism efforts have significantly impacted terrorist activities. In an area ripe for global terrorism the effects of these counter-terrorism conventions can be measured and the possibility of progress in the global war observed. The regional cooperation inherent in these conventions has been crucial to the success of peace for this region, and is especially significant considering the immense cultural and political differences among these nations. As the global fight against terrorism continues to evolve, Southeast Asia has become a model of counterterrorism law and regional cooperation in a region where multiple sovereign interests reign.

*A. A Region of Diversity*

With over 500 million people living in an area spanning multiple economic standings, religions, opposing political ideologies and fourteen official languages, Southeast Asia may very well epitomize the definition of regional diversity.<sup>2</sup> In order to understand how regional security has developed in this

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<sup>1</sup> *Bali death toll set at 202*, BBC NEWS, <http://news.bbc.co.uk/2/hi/asia-pacific/2778923.stm> (last updated Feb. 19, 2003, 9:42 AM).

<sup>2</sup> *See generally East & Southeast Asia*, CENTRAL INTELLIGENCE AGENCY [CIA], THE WORLD FACTBOOK, [https://www.cia.gov/library/publications/the-world-factbook/wfbExt/region\\_eas.html](https://www.cia.gov/library/publications/the-world-factbook/wfbExt/region_eas.html) (last visited Apr. 9, 2011) (noting that there are over 30 languages listed as spoken in the region including some indigenous languages that are just now being studied); *ASEAN Member States*, ASS'N OF SE. ASIAN NATIONS [ASEAN],

part of the world and why it works using a significantly different mechanism than the rest of the world, you have to first acknowledge this diversity and the historical events which shaped it.

### 1. Economic Variety

Economically, the region is home to Brunei Darussalam and Singapore, which have the world's fourth and fifth highest gross national product (GNP), while at the same time being home to some of the world's lowest GNP's in Burma and Cambodia.<sup>3</sup> The economic development of these countries is dramatically diverse along similar lines with Burma, Timor Leste, and Cambodia being listed in a group considered the least developed countries in the world while Singapore is singled out as one of the foremost modern economies.<sup>4</sup> Even with the significantly advanced and strong economies of Brunei Darussalam and Singapore, the average unemployment rate in Southeast Asia is over thirty percent.<sup>5</sup> This, combined with the low GNP for the majority of the nations, makes economic advancement the primary focus of most nations in Southeast Asia.<sup>6</sup> One of the key enabling factors for terrorism in Southeast Asia is poverty; therefore any effort to counter terrorism in this region has to be complimented by efforts to address the economic shortfalls.

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<http://www.aseansec.org/18619.htm> (last visited Apr. 9, 2011) (listing thirteen official languages).

<sup>3</sup> See generally *Country Information Reports* INTN'L MONETARY FUND, <http://www.imf.org/external/country/index.htm> (last visited Apr. 11, 2011); *Date and Research*, THE WORLD BANK, <http://www.worldbank.org/> (last visited Apr. 11, 2011); *Country Comparison: GDP Per Capita*, CIA, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html> (last visited Mar. 11, 2011) (providing statistics that came from a list of nations sorted by their gross domestic product at purchasing power parity per capita and the value of goods and services produced within a nation in a given year divided by the average population for the same year).

<sup>4</sup> See *Least Developed Countries: Country Profiles*, U.N. OFFICE OF THE HIGH REPRESENTATIVE FOR THE LEAST DEVELOPED COUNTRIES, LANDLOCKED DEVELOPING COUNTRIES & SMALL ISLAND DEVELOPING STATES, <http://www.unohrlls.org/en/ldc/related/62/> (last visited Apr. 11, 2011) (providing economic information on each country); *Singapore*, UN-OHRLLS, <http://www.unohrlls.org/en/orphan/134/> (last updated June, 2008) (stating that the "per capita GDP [is] equal to that of the leading nations of Western Europe).

<sup>5</sup> See *Country Comparison: Unemployment Rate*, CIA, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2129rank.html> (last visited Apr. 11, 2011) (providing an average of all rates of unemployment).

<sup>6</sup> See *ASEAN Vision 2020*, Kuala Lumpur (Dec. 15, 1997), <http://www.aseansec.org/1814.htm> (outlining achievable goals by ASEAN by 2020).

The global economic importance of the Straits of Malacca and Singapore, which connect the Pacific Ocean to the Indian Ocean and the Persian Gulf, cannot be overstated. Currently, over 15 million barrels of oil are transported every day through the Straits and, by 2015 this region is projected to be a single market of 550 million people.<sup>7</sup> It is one of the top five export markets for the U.S. and its economy is growing rapidly with \$100 billion in American private sector dollars invested in the region.<sup>8</sup> A significant indicator of the importance of a stable economy in the Southeast Asian region to the U.S. is the \$554,400,000.00 in regional assistance that was budgeted by the U.S. government in 2008.<sup>9</sup>

## 2. Religious Ideology

Religions in Southeast Asia cover almost the entire spectrum of global religious ideologies. They differ in significance from nation to nation both in their effect on internal legislation and in the religious influence and teachings of specific groups within each state. Indonesia holds the world's largest Muslim population and the Philippines have one of the world's largest Christian populations, while Thailand and Cambodia are predominantly Buddhist.<sup>10</sup> In Singapore religion seems to have little if any significance at all on the population while in the southern Philippine island of Mindanao it has been a reason for over a hundred years of fighting.<sup>11</sup> Religious institutions play a major civic role in some cases, such as the Buddhist monks in Burma who were the primary if not one of the only resources for distribution of food and water to the victims of Typhoon Nargis.<sup>12</sup> They also have historical influence in the region; Buddhism on the mainland, the Muslim missionaries from the 14<sup>th</sup> century in the islands and Christian missionaries from the 17<sup>th</sup> century in the Philippines remain relevant in those cultures today.<sup>13</sup> In a region where nations are very aware of their

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<sup>7</sup> Scot A. Marciel, U.S. Ambassador for ASEAN Affairs & Deputy Assistant Sec'y for E. Asian & Pac. Affairs, Remarks to the Center for Strategic International Studies Meeting on "U.S. and Southeast Asia: Toward a Strategy for Enhanced Engagement" (Sept. 25, 2008).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *East & Southeast Asia*, CIA, THE WORLD FACTBOOK, [https://www.cia.gov/library/publications/the-world-factbook/wfbExt/region\\_eas.html](https://www.cia.gov/library/publications/the-world-factbook/wfbExt/region_eas.html) (last visited Apr. 11, 2011).

<sup>11</sup> See Li-ann Thio, *Constitutional Accommodation of the Rights of Ethnic and Religious Minorities in Plural Democracies: Lessons and Cautionary Tales from South-East Asia*, 22 PACE INT'L L. REV. 43, 51–53 (2010) (discussing the Minanao conflict).

<sup>12</sup> Dennis Hager, Typhoon Nargis Notes from the Andaman Sea (May 25, 2008) (describing personal experiences during the relief effort in Burma) (on file with author).

<sup>13</sup> Univ. of Cumbria Div. of Religion and Philosophy, *South-East Asian Religions*, PHILTAR, <http://www.philtar.ac.uk/encyclopedia/seasia/index.html> (last visited Apr. 9, 2011) (providing an overview of world religions).

sovereign rights and suspicious of outside influences, Christianity from the West and Wahabism from Middle East are still major influences which often shape events on national, regional, and especially local levels. Important to this paper is the thought that; the ideologies that support terrorism in Southeast Asia are attributed primarily to the influence of extreme Salafi notions of jihad emanating from the Middle East and the historical violence of Islamic extremist groups in Indonesia and the Southern Philippines.<sup>14</sup>

### 3. Political Differences

The political ideologies of Southeast Asia vary from the strict military regime in Burma, to the Communists of Vietnam and Laos, and from the differing forms of democracy in Indonesia, the Philippines, and Thailand, to the United Nations supervised governments in Cambodia and Timor Leste.<sup>15</sup> Some of these countries such as Vietnam, Laos, and Burma constitutionally only allow for a single political party, while other countries have several options, such as Thailand where there are ten parties to choose from during an election.<sup>16</sup>

#### *B. Post Colonial Sovereignty*

For the last century Southeast Asians have struggled to recover from colonial domination and form their own respective sovereign identities. In the 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> centuries Great Britain, France, Spain, and Portugal colonized all of Southeast Asia except for Thailand.<sup>17</sup> Although there were some struggles for independence in the 1930's it was not until after World War II when the Japanese attempted regional domination that most of the colonial rule began to dissolve.<sup>18</sup> With the end of the war, communism spread down into the region from China.<sup>19</sup> The ideology of communism was met by resistance supported by the United States, and an era of struggle continued in the region until the conclusion of the cold war.<sup>20</sup> The colonial experience led to a regional obsession to preserve state sovereignty and created a propensity for avoidance of both

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<sup>14</sup> Xincheng Wang, Dir., Zhongshan Univ. Ctr. for Asia-Pacific Studies, Lecture to UCLA Center for Southeast Asian Studies (May 13, 2004) (transcript on file with author).

<sup>15</sup> See generally CIA, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/> (last visited Apr. 13, 2011) (profiling these countries and giving information on the form of government used in each).

<sup>16</sup> *Id.*

<sup>17</sup> See generally PETER CHURCH, A SHORT HISTORY OF SOUTH-EAST ASIA (Peter Church ed., John Wiley & Sons 5<sup>th</sup> ed. 2009) (2003) (summarizing the history of each country in South-east Asia).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

international law and its institutions.<sup>21</sup> Consequently the region does not follow the models of international law that have become standard in the West and this causes some outsiders to view Southeast Asia as a loosely tied group of states focused on sovereignty of their individual states over the regional/global issues of the group.<sup>22</sup> Southeast Asian states prefer informal processes, modest institutionalization, and relations with non-state actors such as the private sector.<sup>23</sup> While these types of relationships as law are in contradiction to western structures and arrangements, they are necessary when developing any type of legal relationships in Southeast Asia.<sup>24</sup> This fear of infringement on their sovereignty by foreigners is a central concept to Southeast Asian states regional agreements.<sup>25</sup> It is a concept that makes it seem complicated to form any type of working regional entity and for many Westerners to understand if and when it works.<sup>26</sup> Hesitance extends not only to the traditional outside nations that have colonized the region, but also to the thought of regionalization itself. Southeast Asians are tentative about entering into any kind of relationship; however, they have come to a realization that successful and effective cooperation and integration are essential to prevent terrorists from manipulating their region.<sup>27</sup>

### C. *The ASEAN Way*

In 1967, after several attempts at regional unification had failed, the Association of Southeast Asian Nations (ASEAN) was formed.<sup>28</sup> During a time

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<sup>21</sup> See Valeriane Toon, *International Criminal Court: Reservations of Non-State Parties in Southeast Asia*, 26 CONTEMP. SOUTHEAST ASIA 218, 219–226 (2004) (discussing Southeast Asia's opposition to the ICC and the two common themes of pre-eminence of state sovereignty and sustencanc eof regimes).

<sup>22</sup> See Eric Stein, *International Integration and Democracy: No Love at First Sight*, 95 AM. J. INT'L L. 489, 495 (2001) (noting the difficulties that ASEAN has faced because oyoung nations in particularf disputes among its members and the organization's failure to respond to problems).

<sup>23</sup> YOSHI KODAMA, ASIA PACIFIC ECONOMIC INTEGRATION AND THE GATT-WTO REGIME 96 (2000).

<sup>24</sup> See *id.* at 97, 118–119 (noting that these characteristics were necessary "in order to achieve ASEAN's co-operation").

<sup>25</sup> See *id.* at 96 (discussing the efforts in making the regional arrangement to reduce the concern amongst ASEAN members regarding domination by foreign powers).

<sup>26</sup> See Megan R. Williams, Note, *ASEAN: Do Progress and Effectiveness Require a Judiciary?*, 30 SUFFOLK TRANSNAT'L L. REV. 433, 452–457 (2007) (arguing that ASEAN needs to change it's tradition of "sovereignty above all else" if it wishes to be an effective organization).

<sup>27</sup> See 28th ASEAN Chiefs of Police Conference, Brunei, May 25–29, 2008, *Joint Communiqué*, ¶ 11, 12, <http://www.aseansec.org/21619.htm> (stating that ASEAN recognizes the need for cooperation in order to achieve its goals).

<sup>28</sup> Williams, *supra* note 26, at 435; see also Wahjudi Widajanto, *The Future of ASEAN After the Financial and Economic Crisis in the Region*, in 2003 SHEDDEN PAPERS 82, 82–84, available at

when many Southeast Asian Nations were still emerging from the yoke of colonialism and evolving into their own sovereign identities it was not an easy step to enter into a collective organization that stripped some of that identity. Fortunately, the founding members of ASEAN recognized that the Superpowers of the cold war were vying for influence in the area and that successful and effective cooperation and integration would be essential to prevent the rest of the world from manipulating their region.<sup>29</sup> The founders did not want this to be seen as a military alliance or an attempt at a third superpower, so they made it clear that this was not a military alliance, but an organization for cooperation and economic prosperity in Southeast Asia.<sup>30</sup> That, notwithstanding the fear of communist influence, was significant motivation for the five original members (Thailand, Indonesia, the Philippines, Malaysia, and Singapore) to consolidate in some way.<sup>31</sup>

ASEAN functions with one institutional body, the Secretariat, which facilitates discussions between representatives. The position of Chairman rotates each year between the member nations on an alphabetical basis.<sup>32</sup> Beyond this basic organizational structure however ASEAN is unique. Anti-neocolonialism and sovereignty are at the center of a thought process that creates a challenge for the introduction of any Western style binding legal structure.<sup>33</sup> This may be in part because Southeast Asia has its own cultural identity, and although these nations were colonized for over a century there is an underlying cultural heritage native to the region. Culturally, most people in the region reconcile differences through negotiation and accommodation rather than adjudication.<sup>34</sup> It would make no sense to try and put a square peg into a round hole by trying to force western style agreements on Southeast Asian nations; thus, the creation of a concept titled the “ASEAN Way.” The “ASEAN Way” is defined as a pledged commitment to consultation as the basis for settling differences among the

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[http://www.defence.gov.au/adc/docs/Publications/Shedden%20Papers%202003/Col\\_Widajanto.pdf](http://www.defence.gov.au/adc/docs/Publications/Shedden%20Papers%202003/Col_Widajanto.pdf) (discussing past failed attempts at regional organization).

<sup>29</sup> See Williams, *supra* note 26, at 440 (stating that the fear of the spread of communism to the region was one driving force in the creation of ASEAN, and that its goal was the eventual integration of all of Southeast Asia).

<sup>30</sup> See The ASEAN Declaration, Aug. 8, 1967, 6 I.L.M. 1233 (citing objectives and member states: Thailand, Indonesia, the Philippines, Malaysia, and Singapore).

<sup>31</sup> KODAMA, *supra* note 20, at 86.

<sup>32</sup>The ASEAN Charter art. 31, Nov. 20, 2007, <http://www.aseansec.org/publications/ASEAN-Charter.pdf>.

<sup>33</sup> See Hisashi Owada, *The Experience of Asia with International Adjudication*, 9 SING.Y.B.INT'L.L. 9, 9–10 (2005) (describing the cultural development of the Southeast Asian region).

<sup>34</sup> *Id.* at 14 (“Some of those arrested in Cambodia were Thai nationals, or in Thailand were Malaysian nationals, or in the Philippines and Singapore were Indonesian nationals.”).

ASEAN members while maintaining observance to a principle of noninterference.<sup>35</sup> While many of the western forms of regional partnership seem to erode sovereignty, ASEAN prides itself on the reinforcement of the sovereign nation status.<sup>36</sup>

The "ASEAN Way" has proven efficient in the region when dealing with transnational issues including the threats of Communism and colonial domination. Today there is a new challenge to ASEAN in the global threat of terrorism. In 2002–2003, actions were taken against terrorists operating in ASEAN countries such as Cambodia, Indonesia, Malaysia, the Philippines, Singapore, and Thailand.<sup>37</sup> A number of those arrested in each country were nationals of other ASEAN member countries. Terrorists have taken their trade outside of sovereign borders and created an environment requiring regional action. The response has been an evolution of the "ASEAN Way" to incorporate partnerships both regionally and internationally while striving to maintain their ethos of sovereignty.

#### *D. Terrorism Defined*

In the post 9-11 world a global emphasis has been put on countering terrorism, yet the definition of the term terrorism is just as elusive as the terrorists themselves. Terrorism is defined differently in domestic legislation, regional organizations, and the United Nation Conventions.<sup>38</sup> Authority for the Security Council to take action against terrorists is provided under the United Nations Security Council Resolution (UNSCR) 1566,<sup>39</sup> but its definition of "terrorism" is still evasive. While efforts continue to create a comprehensive international treaty in the UN that defines terrorism, ASEAN has agreed to a

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<sup>35</sup> Gillian Goh, *The "ASEAN Way": Non-Intervention and ASEAN's Role in Conflict Management*, 3 STAN. J. E. ASIAN AFF. 113, 114 (Spring 2003).

<sup>36</sup> Tom Ginsberg, *The State of Sovereignty in Southeast Asia*, 99 AM. SOC'Y INT'L LEGAL PROC. 419, 420 (2005) (A presentation for the ninety-ninth annual meeting of the American Society of International Law).

<sup>37</sup> Gregory Rose & Diana Nestorovska, *Towards an ASEAN Counter-Terrorism Treaty*, 9 S.Y.B.I.L. 157, 166 (2005).

<sup>38</sup> Compare 18 U.S.C. § 2331 (2007) (defining terrorism in the United States as the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives), with S.C. Res. 1566, ¶13, U.N. Doc. S/RES/1566 (Oct. 8, 2004) (describing the United Nations definition of terrorism as, criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act).

<sup>39</sup> S.C. Res. 1566, *supra* note 38, ¶ 2.

definition in their counter terrorism convention. The ASEAN definition is a compilation of the thirteen UN counter terrorism conventions definitions referring to terrorist acts.<sup>40</sup> Getting over the hurdle of agreeing on a definition of terrorism was a good start; however, counterterrorism entails more than just defining a term, it also requires an understanding of the roots of terrorism. Confucius stated, “From the Emperor down to the masses of the people, all must consider the cultivation of the person the root of everything else.”<sup>41</sup> Significant factors in Southeast Asia that have created an especially strong soil for the roots of terrorism are the social environment and a loosely regulated financial market.<sup>42</sup> A social environment of extreme poverty, extensive rural areas, and minimal education give terrorist recruiters a captive audience for their ideological prose.<sup>43</sup> In addition, a business friendly environment with poor regulations makes the region an attractive resource for money laundering.<sup>44</sup>

Terrorism has been a major problem for many Southeast Asian nations for decades.<sup>45</sup> Southeast Asia is home to numerous Muslim separatist groups that have expanded their activities to other parts of the globe.<sup>46</sup> Jemaah Islamiyya (“JI”),<sup>47</sup> Moro Islamic Liberation Front (“MILF”),<sup>48</sup> and Abu Sayyaf (“ASG”),<sup>49</sup> who have all carried out terrorist attacks against their host nation

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<sup>40</sup> Association of Southeast Asian Nations [ASEAN], *Convention on Counter Terrorism*, art. II, ¶1 (Jan. 13, 2004) [hereinafter ASEAN Convention], available at <http://www.aseansec.org/19250.htm>.

<sup>41</sup> Gillian Triggs, *Confucius and Consensus: International Law in the Asian Pacific*, 21 MELB. U. L. REV. 650, 650 (1997).

<sup>42</sup> Paul Smith & Terry Klapakis, ASIA-PACIFIC CENTER FOR SECURITY STUDIES, EXECUTIVE SUMMARY: COUNTERING THE SUPPORT ENVIRONMENT FOR TERRORISM IN THE ASIA-PACIFIC REGION (2006), <http://www.apcss.org/college/conference/countering-the-support-environment-for-terrorism-in-the-asia-pacific-region/>.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> MARK MANYIN ET AL., CONG. RESEARCH SERV., RL 31672, TERRORISM IN SOUTHEAST ASIA (2004), available at <http://fpc.state.gov/documents/organization/35795.pdf>.

<sup>46</sup> Simon Elegant, *Dire Straits*, TIME, Nov. 29, 2004, <http://www.time.com/time/magazine/article/0,9171,501041206-832306,00.html>.

<sup>47</sup> See MANYIN, *supra* note 45, at 4–12 (describing JI as a militant Islamist group active in several Southeast Asian countries, especially Indonesia, founded in the 1960s by Indonesian’s Abu Bakar Baasyir and Abdullah Sungkar, with the goal to create an Islamic state comprising Malaysia, Singapore, Indonesia, and the southern Philippines).

<sup>48</sup> *Id.* at 18 (describing MILF as Philippine organization with political objective of separation and independence for the Muslim region of the southern Philippines and linking MILF to the February 24, 2000, explosion of two buses aboard a ferry in the Philippines, also expressing suspicion that JI terrorists have trained at MILF camps in the Philippines).

<sup>49</sup> See LARRY NIKSCH, CONG. RESEARCH SERV., RL 31265, ABU SAYYAF: TARGET OF PHILIPPINE-U.S. ANTI-TERRORISM COOPERATION (2002), available at

governments as part of Islamic separatist movements, have become associated with terrorist external to the region.<sup>50</sup> Once considered merely a regional threat, recent intelligence has exposed links between some of these regional groups and Al Qaeda, proving that the threat goes beyond traditional anti-government attacks.<sup>51</sup> The strategy for Al-Qaeda and other global terrorist organizations has been to attack tourist areas with less security when individual nations institute greater security measures at political, diplomatic, and military facilities.<sup>52</sup> The JI bombings of a Bali nightclub in October 2002<sup>53</sup> and an Indonesian JW Marriot hotel in August 2003<sup>54</sup> are evidence that Southeast Asian terrorists are in sync with global terrorist strategies.

Combining the economic significance that Southeast Asia has on the world's economy with the potential for home grown terrorists, it is only logical that Al-Qaeda will expand its efforts in the region. Of particular concern is the massive number of potential maritime targets in the Straits of Malacca. This is a very real concern, as Al Qaeda plans strategically over a very long time and attacks a wide variety of targets. The successful attack against a US Navy Destroyer in Aden provides grim evidence of the possibility of future maritime terrorist act in Southeast Asia and is of significant concern for shipping in the Strait of Malacca.<sup>55</sup>

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<http://fpc.state.gov/documents/organization/8046.pdf> (describing ASG as a splinter group composed of former Moro National Liberation Front fighters and Filipinos who had fought against the Soviets in Afghanistan, responsible for numerous attacks against Filipino and American targets, including May 2000 kidnapping of three Americans, one of which was executed); *see also* MANYIN, *supra* note 45, at 17–18 (discussing the kidnappings carried out by ASG).

<sup>50</sup> *See generally* MANYIN, *supra* note 45 (discussing terrorism in Southeast Asia).

<sup>51</sup> *See* AUDREY KURTH CRONIN, CONG. RESEARCH SERV., RS 21529, AL QAEDA AFTER THE IRAQ CONFLICT (2003), *available at* <http://www.fas.org/irp/crs/RS21529.pdf> (defining Al Qaeda as an international terrorist organization led by Osama bin Laden, responsible for numerous terrorist attacks including the September 11, 2001, attacks on New York City and Washington, D.C., and attacks in Kenya, Indonesia, the Middle East, and the Mediterranean); *see also* MANYIN, *supra* note 45, at 24 (discussing the attack on the *USS Cole*).

<sup>52</sup> Ambassador Francis X. Taylor, Coordinator for Counter-terrorism of the U.S. State Department, Address before the Energy Security Council, Apr 5, 2004, *available at* <http://2001-2009.state.gov/m/ds/rls/rm/31917.htm>.

<sup>53</sup> *See* MANYIN, *supra* note 45, at 10 (describing the bombing that occurred in the resort town of Kuta on the Indonesian Island of Bali where approximately 200 people were killed and 300 were injured).

<sup>54</sup> *Islamist Group Appears to Claim Jakarta Blast*, MSNBC (last updated Sept. 10, 2004, 7:41 AM), <http://www.msnbc.msn.com/id/5947558/MSNBC>.

<sup>55</sup> Andrin Raj, *The Straits of Malacca Under the Threat of a Maritime Terrorist Attack*, THE JOURNAL OF TURKISH WEEKLY (Mar. 24, 2010), <http://www.turkishweekly.net/oped/2646/the-straits-of-malacca-under-the-threat-of-a-maritime-terrorist-attack.html>;

## II. COUNTERTERRORISM MECHANISMS

There is a simple formula that defines the terrorist threat in Southeast Asia: hopeless poverty plus ideological promises for better situation through violence equals terrorism. In order to counter this equation, the member states of the region must not only bring violators of the law to task but must also institute education that counters the ideological justification for terror and mitigates poverty. The nations of ASEAN understand this process and are addressing it through the adoption of the following international, regional, and multilateral efforts.

### A. *UN Counterterrorism Conventions*

After the events of September 11, 2001, an international framework was developed in the United Nations for national legal changes related to anti-terrorism. Seventeen days after the attacks on New York and Washington D.C. the United Nations Security Council passed Resolution 1373.<sup>56</sup> Utilizing the Council's powers under Chapter VII, Resolution 1373 was based on a determination that the attacks of September 11<sup>th</sup> constituted "a threat to international peace and security."<sup>57</sup> By framing their resolution in this manner the Security Council was able to direct member states to comply with their program instead of just suggesting a course of action.<sup>58</sup> What they directed was that all states fight terrorism by criminalizing acts of terrorism, terrorist enterprises, and any active or passive support to terrorists.<sup>59</sup> Resolution 1373 requires all states to bring terrorists, terrorist financiers, planners, and facilitators to justice.<sup>60</sup> The resolution also calls on all states to create early warning systems to screen for terrorists and share that information with other states.<sup>61</sup> To ensure that the provisions of Resolution 1373 were complied with, a special monitoring body, the Counter-Terrorism Committee (CTC), was set up. Member states are required to report to CTC regarding their compliance with the resolution.<sup>62</sup>

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*see also* Greg Sheridan, *Muslim Deaths Hit Region's War on Terror*, THE AUSTRALIAN, Nov. 1, 2004, at C24 (discussing the potential dangers to the Strait of Malacca).

<sup>56</sup> S.C. Res. 1373, U.N. SCOR, 56th Sess., 4385th mtg., U.N. Doc. S/RES/1374 (Sept. 28, 2001).

<sup>57</sup> U.N. Charter art. 42.

<sup>58</sup> *Id.* art. 39.

<sup>59</sup> S.C. Res. 1373, *supra* note 56, ¶ 2(e).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* ¶ 3(b).

<sup>62</sup> *Country Reports*, UN. COUNTER-TERRORISM COMM., <http://www.un.org/sc/ctc/> (last updated Oct. 13, 2010, 5:20 PM).

In 2004, the United Nations Security Council adopted Resolution 1566, which reinforced the provisions of Resolution 1373, called for an expansion to the list of terrorist entities, and strengthened the United Nations position on terrorism.<sup>63</sup> Resolution 1566 also directed that nations cooperate with their relevant regional organizations to facilitate the continued implementation of Resolution 1373.<sup>64</sup> ASEAN has embraced this task and views the United Nations as playing a vital role in strengthening international cooperation to combat global terrorism.<sup>65</sup> As a regional organization, ASEAN stresses the importance of its member nations meeting their obligations under United Nations Security Resolution 1373 and all other relevant UN resolutions.<sup>66</sup>

### *B. ASEAN Counterterrorism Conventions*

The diversity overcome through ASEAN's very existence makes consensus on a contentious subject such as a counter terrorism convention seem a lot less daunting than it would be under other circumstances. In the ASEAN Convention on Counter Terrorism (CCT) a framework is laid out for cooperation to prevent and suppress terrorists by requiring each member state to work towards a common law enforcement agenda.<sup>67</sup> While the approach taken in the ASEAN CCT seems to be very comprehensive, it maintains the identity of the "ASEAN Way."<sup>68</sup> Each ASEAN nation has its own version of terrorism laws and maintains the sovereign right to enforce those laws, ensuring that they do not suffer the infringement on those rights by their neighbors.<sup>69</sup> The difference between this convention and previous ASEAN agreements is that the convention implies a formal based approach, which molds the terrorism laws for all countries within the region. Although not going so far as to entrust the regional organization with the ability to address member's deficiencies directly, it does require each nation to work toward a common law enforcement agenda not only to counter but also to prevent and suppress terrorists.<sup>70</sup>

The ASEAN CCT defines terrorism by detailing specific criminal offenses when any action fits the scope of terrorism as defined in the fourteen United Nations Conventions that address terrorism.<sup>71</sup> The exception to this being that

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<sup>63</sup> S.C. Res. 1566, *supra* note 38.

<sup>64</sup> *Id.*

<sup>65</sup> Press Release, ASEAN, Co-Chairs' Statement of the Bali Regional Ministerial Meeting on Counter-Terrorism (Feb. 5, 2004), <http://www.aseansec.org/16000.htm> (last visited Mar. 9, 2011) [hereinafter Co-Chairs' Statement].

<sup>66</sup> *Id.*

<sup>67</sup> *See generally* ASEAN Convention, *supra* note 40.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* arts. III, IV.

<sup>70</sup> *Id.* art. IV.

<sup>71</sup> *Id.* art. II, ¶ 1(a-m).

no party to the convention will be held to task for those UN conventions defining criminal offenses to which they are not a party.<sup>72</sup> If a party withdraws from one of the definitive treaties, they must declare that withdrawal and then are no longer responsible for enforcing the criminal acts that are defined by that specific convention.<sup>73</sup> The definitions of a criminal offense are as significant as is the oath to counter these criminal acts through current sovereign domestic laws and the thirteen cooperative areas below:

- 1) Take the necessary steps to prevent the commission of terrorist acts, including by the provision of early warning to the other Parties through the exchange of information;
- 2) 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;
- 3) Prevent and suppress the financing of terrorist acts;
- 4) Prevent the movement of terrorists or terrorist groups by effective border control and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;
- 5) Promote capacity-building including trainings and technical cooperation and the holding of regional meetings;
- 6) Promote public awareness and participation in efforts to counter terrorism, as well as enhance inter-faith and intra-faith dialogue and dialogue among civilizations;
- 7) Enhance cross-border cooperation;
- 8) Enhance intelligence exchange and sharing of information;
- 9) Enhance existing cooperation towards developing regional databases under the purview of the relevant ASEAN bodies;
- 10) Strengthen capability and readiness to deal with chemical, biological, radiological, nuclear (CBRN) terrorism, cyber terrorism and any new forms of terrorism;
- 11) Undertake research and development on measures to counter terrorism;
- 12) Encourage the use of video conference or teleconference facilities for court proceedings, where appropriate; and
- 13) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice.<sup>74</sup>

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<sup>72</sup> ASEAN Convention, *supra* note 40, art. II, ¶ 2.

<sup>73</sup> *Id.* ¶ 3.

<sup>74</sup> *Id.* art. VI, ¶ 1.

### C. ASEAN Counterterrorism Declarations

Prior to the CCT there were twelve declarations or agreements made by the ASEAN members in the pursuit of a comprehensive counter terrorism agenda.<sup>75</sup> The leaders of ASEAN applied the United Nations Charter, International Law and all the relevant United Nations Resolutions or Declarations on international terrorism, in particular the principles outlined in United Nations Security Council Resolutions 1373 and 1566, when drafting these declarations.<sup>76</sup> This history in the area of regional cooperation against terrorism in conjunction with the global initiatives on counterterrorism is detailed in the 2001 ASEAN Declaration on Joint Action to Counter Terrorism.<sup>77</sup> This declaration was a significant step in the post 9-11 world to show the regions solidarity in the fight against terrorism. Similar to the CCT, the 2001 declaration maintained a regional persona by recognizing the sovereign equality, territorial integrity and non-

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<sup>75</sup> ASEAN, *Joint Declaration on Co-operation to Combat Terrorism, 14th ASEAN-EU Ministerial Meeting* (Jan. 27, 2003), <http://www.aseansec.org/14030.htm> (last visited Mar. 12, 2011); ASEAN, *Joint Declaration of ASEAN and China on Cooperation in the Field of Non-Traditional Security Issues* (Nov. 4, 2002), <http://www.aseansec.org/13185.htm> (last visited Mar. 12, 2011); ASEAN, *Declaration on Terrorism by the 8th ASEAN Summit* (Nov. 3, 2002), <http://www.aseansec.org/13154.htm> (last visited Mar. 12, 2011); ASEAN, *2001 ASEAN Declaration on Joint Action to Counter Terrorism* (Nov. 5, 2001), <http://www.aseansec.org/5620.htm> (last visited Mar. 12, 2011); ASEAN, *Manila Declaration on the Prevention and Control of Transnational Crime* (1998), <http://www.aseansec.org/5634.htm> (last visited Mar. 12, 2011); ASEAN, *Declaration on Transnational Crime* (Dec. 20, 1997), <http://www.aseansec.org/5640.htm> (last visited Mar. 12, 2011); Treaty on Mutual Legal Assistance in Criminal Matters, Nov. 29, 2004, available at <http://www.aseansec.org/17363.pdf>; Agreement on Information Exchange and Establishment of Communication Procedures, May 7, 2002, available at <http://www.aseansec.org/17346.pdf>; ASEAN, *Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime* (May 17, 2002), <http://www.aseansec.org/5616.htm> (last visited Mar. 12, 2011); Memorandum of Understanding between the Governments of the Member Countries of the Association of Southeast Asian Nations (ASEAN) and the Government of the People's Republic of China on Cooperation in the Field of Non-traditional Security Issues (Jan. 10, 2004), <http://www.aseansec.org/15647.htm> (last visited Mar. 12, 2011); ASEAN, *ASEAN-United States of America Joint Declaration for Cooperation to Combat International Terrorism, Bandar Seri Begawan* (Aug. 1, 2002), <http://www.aseansec.org/7424.htm> (last visited Mar. 12, 2011); Letter from ASEAN's Standing Committees Chairman to U.S. Secretary of State Colin Powell (Sep. 13, 2001), <http://www.aseansec.org/590.htm> (last visited Mar. 12, 2011) (on terrorists attack).

<sup>76</sup> See generally ASEAN, *Joint Declaration on Co-operation to Combat Terrorism, 14th ASEAN-EU Ministerial Meeting* (Jan. 27, 2003), <http://www.aseansec.org/14030.htm> (last visited Mar. 12, 2011); ASEAN, *ASEAN-United States of America Joint Declaration for Cooperation to Combat International Terrorism* (Aug. 1, 2002), <http://www.aseansec.org/7424.htm> (last visited Mar. 12, 2011).

<sup>77</sup> *Id.*

intervention in the domestic affairs of the individual states, but also affirmed their commitment to counter, prevent and suppress all forms of terrorist acts.<sup>78</sup>

#### *D. Regional Security Partnerships*

As significant to ASEAN's efforts to adhere to the UN Resolution 1373 by entering into its own counter terrorism convention is the efforts that ASEAN has made to participate with the nations external to the organization for the purpose of counter terrorism in the region. ASEAN has been very successful in developing forums with these external partners. Examples of these forums are the ASEAN Regional Forum (twenty-one countries including all major powers), ASEAN Plus Three (China, Korea, and Japan), and ASEAN Plus One (China).<sup>79</sup> ASEAN has also entered into several agreements in counter-terrorism, transnational crime or non-traditional security threats with individual countries, namely Australia (June 2004), China (November 2002), the European Union (January 2003), India (October 2003), Japan (November 2004), the Russian Federation (June 2004), and the United States (August 2002).<sup>80</sup> The level of participation of ASEAN members and external nations is a shining example of success for the sovereignty focused, non-confrontational style that is the ASEAN Way.<sup>81</sup> The organization has managed to sit successfully at the table with both North and South Korea, the United States, and member nation Burma—parties whom are not normally inclined to be in the same room, much less at the same table.<sup>82</sup>

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<sup>78</sup> *Id.*

<sup>79</sup> Ginsberg, *supra* note 36, at 421 (defining the ASEAN Regional Forum as a formal, official, multilateral dialogue in Asia Pacific region, consisting of 27 participants).

<sup>80</sup> Press Release, ASEAN, ASEAN-Australia Sign Counter-Terror Declaration (Jul. 1., 2004), <http://www.aseansec.org/afp/61.htm> (last visited Mar. 12, 2011) (quoting Alexander Downer, Australian Minister for Foreign Affairs); ASEAN, *Joint Declaration of ASEAN and China on Cooperation in the Field of Non-Traditional Security Issues* (Nov. 4, 2002), <http://www.aseansec.org/13185.htm> (last visited Mar. 12, 2011); ASEAN, *ASEAN-India Joint Declaration for Cooperation to Combat International Terrorism, in Bali, Indonesia* (Oct. 8, 2003), <http://www.aseansec.org/15276.htm> (last visited Mar. 12, 2011); ASEAN, *ASEAN-Japan Joint Declaration for Cooperation to Combat International Terrorism* (Nov. 30, 2004), <http://www.aseansec.org/16808.htm> (last visited Mar. 12, 2011); ASEAN, *Joint Declaration of the Foreign Ministers of the Russian Federation and the Association of Southeast Asian Nations on Partnership for Peace and Security, and Prosperity and Development in the Asia-Pacific Region* (Jun. 19, 2003), <http://www.aseansec.org/14849.htm> (last visited Mar. 12, 2011); ASEAN, *ASEAN-United States of America Joint Declaration for Cooperation to Combat International Terrorism, Bandar Seri Begawan* (Aug. 1, 2002), <http://www.aseansec.org/7424.htm> (last visited Mar. 12, 2011).

<sup>81</sup> Ginsberg, *supra* note 36.

<sup>82</sup> *Id.* at 421.

The positive effects of cooperation amongst ASEAN states and external partners are also evident in non-binding relationships with inter-state institutions on security issues such as the United Nations' Organization for Economic Cooperation and Development (OECD) and Financial Action Task Force (FATF). Included in this are significant mechanisms to counter terrorism by addressing the financial environment attractive to terrorists in the region.<sup>83</sup> ASEAN recognizes the vital importance of these links in addressing the economic vulnerabilities of the region that facilitate the terrorist agenda, and in particular has cooperated both as a region and as individual states with the UN, OECD, and FATF.<sup>84</sup> The Special Recommendations on Terrorist Financing provided by OECD and the work of the Asia-Pacific Group on Money Laundering provide the framework to detect, prevent, and suppress the financing of global terrorism in the region. By addressing the financing of terrorists and their money laundering activities, Southeast Asian nations are taking away one of the key ingredients that make this region susceptible to terrorists.

#### *E. Proliferation Security Initiatives*

The Proliferation Security Initiative (PSI) is a multinational activity directed at preventing the trafficking of weapons of mass destruction, their means of delivery, and related materials to and from states and non-state actors of proliferation concern.<sup>85</sup> It is a partnership of states working together to develop a broad range of legal, diplomatic, economic, military, law enforcement, and other tools to interdict shipments of WMD-related items of proliferation concern.<sup>86</sup> There are ninety-eight nations that have volunteered to become participants in PSI.<sup>87</sup> Along with the membership that includes a majority of the global community, PSI has enjoyed the endorsement of the United Nations. The UN High-Level Panel of advisors said that all states should be encouraged to join

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<sup>83</sup> Paul Smith & Terry Klapakis, *Executive Summary: Countering the Support Environment for Terrorism in the Asia-Pacific Region (31 Jan—2 Feb 2006)*, ASIA-PAC. CTR. FOR SEC. STUDIES, <http://www.apcss.org/college/conference/countering-the-support-environment-for-terrorism-in-the-asia-pacific-region/> (last visited May 20, 2011).

<sup>84</sup> See ASEAN, *ASEAN-EU Joint Declaration on Co-operation to Combat Terrorism* (Jan. 27–28, 2003), <http://www.aseansec.org/14030.htm> (last visited Mar. 12, 2011) (stressing the importance of cooperation with UN organizations and acknowledging the complex problems associated with terrorist financial operations).

<sup>85</sup> Media Note, U.S. Dep't of State, Office of the Spokesman, *Washington Declaration for PSI 5th Anniversary Senior-Level Meeting (May 28, 2008)*, available at <http://www.america.gov/st/texttrans-english/2008/May/20080529121217eaifas0.5970575.html&distid=ucs>.

<sup>86</sup> *Id.*

<sup>87</sup> See *Proliferation Security Initiative Participants (2010)*, U.S. DEP'T OF STATE, BUREAU OF INT'L SEC. AND NONPROLIFERATION, available at <http://www.state.gov/t/isn/c27732.htm> (last visited Apr. 3, 2010) (listing the nations that are PSI participants).

this voluntary initiative.<sup>88</sup> Referring to this advice, Mr. Kofi Annan, the former Secretary-General of the UN, applauded PSI as an effort to fill gaps in global defenses against terrorism.<sup>89</sup>

In August 2004, ASEAN was represented by Cambodia, the Philippines, Singapore, and Thailand at Japan's PSI maritime interception exercise, where their representatives took part as observers.<sup>90</sup> In 2006, Singapore hosted the first PSI exercise in Southeast Asia, and thirteen PSI core countries participated, as well as observers from Malaysia, Pakistan, Vietnam, and Brunei.<sup>91</sup> While most ASEAN nations are playing an active role in the evolving function of PSI, some members are still reluctant because of continued sovereignty concerns.<sup>92</sup> As it becomes more obvious that PSI will not infringe on the rights of these nations, more nations can be expected to fully participate and all will be affected in some way.

### III. LEGISLATION AND ENFORCEMENT

Through the conventions, agreements, doctrines, and forums discussed in this paper thus far, I have shown that ASEAN nations have agreed to criminalize terrorism and take action against those who commit terrorist acts in their region. Cooperation in the creation of these mechanisms is very evident; the reality, however, is that no law, convention, treaty, or agreement can stop its own violation. The success or failure of any legal framework is dependent on whether it is accepted, applied, and enforced. Once the nations of Southeast Asia agreed to the counter terrorism mechanisms, the individual nations needed to take steps to provide law enforcement agencies the appropriate authority and resources to capture, prosecute, and punish those that commit or support terrorists.<sup>93</sup> An effective measure of how post 9–11 law making has affected terrorism is to look at the Philippines and Indonesia, home to JI, the MILF, and ASG.<sup>94</sup> These two island nations have taken great strides over the last six years

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<sup>88</sup> Michael Richardson, *The Proliferation Security Initiative (PSI): An Assessment of its Strengths & Weaknesses, With Some Proposals for Shaping its Future*, in 3 TRENDS IN SOUTHEAST ASIA SERIES 1, 3 (2006).

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 10.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> See *Joint Communiqué*, *supra* note 27, ¶ 8.2, <http://www.aseansec.org/21619.htm> (listing the resolutions concerning terrorism).

<sup>94</sup> See Eric Schmitt, *Experts See Gains Against Asian Terror Networks*, N.Y. TIMES, June 9, 2008, [http://www.nytimes.com/2008/06/09/world/asia/09terror.html?pagewanted=1&\\_r=1](http://www.nytimes.com/2008/06/09/world/asia/09terror.html?pagewanted=1&_r=1) (stating that both Indonesia and the Philippines have had some success in fighting the terrorists within their borders).

to implement counter terrorism measures in accordance with the UN and subsequent ASEAN conventions.<sup>95</sup> The effect of these has not only strengthened their security but also their regional and global relationships.<sup>96</sup>

#### A. *The Republic of the Philippines*

In November of 2001, George Bush, the President of the United States, met with President Gloria Macapagal-Arroyo of the Philippines at the White House.<sup>97</sup> Following this meeting, President Bush announced the U.S. support for a united ASEAN and offered America's assistance to ASEAN in their efforts to combat transnational crimes including terrorism.<sup>98</sup> The President also stated that the fight against terrorism was parallel with the fight against poverty in the region.<sup>99</sup> The Philippines have taken advantage of the assistance offered by other nations and non-government organizations (NGO) and have used that assistance to find some excellent success in both enacting laws that counter terrorism and in enforcement efforts.<sup>100</sup>

##### 1. An Executive Order for the Philippines

The significant legal basis for actions in the Philippines' fight against terrorism was initiated through President Arroyo's Executive Order no. 265, titled "Defining the Approach and Institutional Mechanism for the Governments Comprehensive Program on Combating Transnational Crime."<sup>101</sup> Here, she cites that the Philippines is a party to the United Nations Convention Against Transnational Crime and the ASEAN Declaration on Transnational Organized Crime, and states that the adherence to those agreements requires the

<sup>95</sup> See S.C. Res. 1373, *supra* note 56, ¶¶ 1–3 (listing the responsibilities States have to fight terrorism).

<sup>96</sup> See Press Release, Australia Minister for Foreign Affairs, Australia Doubles Counter-Terrorism Assistance to Indonesia (Dec. 7, 2004) (discussing Australia's aid to Indonesia and also the efforts against terrorism); Press Release, White House, Philippine President Reiterates Support (Nov. 21, 2001) (remarks by President Bush and President Arroyo of the Philippines in a photo opportunity at the Oval Office) (discussing the relationship between the US and the Philippines and the commitment to fighting terrorism).

<sup>97</sup> Philippine President Reiterates Support, *supra* note 96.

<sup>98</sup> Press Release, White House, Joint Statement Between the U.S. and the Philippines (Nov. 20, 2001).

<sup>99</sup> *Id.*

<sup>100</sup> Stew Magnuson, *To Counter Terrorism, Philippine Army Takes Lessons From U.S. Forces*, NAT'L DEF. MAGAZINE, Feb. 2008, <http://www.nationaldefensemagazine.org/archive/2008/February/Pages/ToCounter4664.aspx>.

<sup>101</sup> DEFINING THE APPROACH AND INSTITUTIONAL MECHANISMS FOR THE GOVERNMENT'S COMPREHENSIVE PROGRAM ON COMBATING TRANSNATIONAL CRIME, Exec. Ord. 265 (Phil.).

Philippines to combat every aspect of transnational crime.<sup>102</sup> She provided five areas of focus for the execution of her order: (1) Strengthening information and intelligence gathering, (2) Strategic research, (3) Intensifying law enforcement operations, (4) Capacity building and empowerment for major stakeholders, and (5) Reinforcing regional and international cooperation.<sup>103</sup> Based on the President's guidance, the Philippines is operating against terrorism using a two pronged approach. On one hand they are working with ASEAN partners Malaysia and Indonesia, who monitor a diplomatic relationship with Moro National Liberation Front (MNLF); and on the other hand they are actively conducting operations, with the assistance of U.S. advisors, to track down and capture or kill JI, MNLF, and ASG operators in the area.<sup>104</sup>

The relationship with the MNLF primarily affects focus areas four and five—the capacity building and empowerment of major stakeholders and reinforcement of regional cooperation. Terrorists in the Southern Philippines have had an advantage in that the national government in Luzon is predominantly Christian, leading to a benefit for recruitment and support.<sup>105</sup> By working with representatives from Indonesia and Malaysia, the Philippine government has more credibility when sitting at the table with Islamic groups that are concerned about the government having their best interests. The Philippine government representatives pride themselves on twelve years of peaceful process with the MNLF and views that peace as representative of Christians and Muslims being able to live together in Mindanao. Malaysia withdrew from the international monitoring team in 2008,<sup>106</sup> however, the four years that they spent working with the Philippine government continues to have a significant impact on the government's diplomatic relationship with community leaders in the southern Philippine Islands.

## 2. External Partnerships for a Common Goal

There are a variety of U.S. resources dedicated to counterterrorism assistance in the Philippines that reinforce President Arroyos focus' areas. Some examples of U.S. agencies that provide training and assistance are: The United States Agency for International Development (USAID), which between 2001–2008, provided approximately \$345 million to reinforce Philippine Government

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> Schmitt, *supra* note 94.

<sup>105</sup> See Religious Freedom Report 2004, U.S. Dep't of State, Bureau of Democracy, Human Rights, & Labor, <http://www.state.gov/g/drl/rls/irf/2004/35425.htm> (discussing the societal attitudes and conflicts between Muslims and Christians in the Philippines).

<sup>106</sup> Joyce Pango Pa'ares, *Manila Airs Regret, Relief Over Malaysia Withdrawal*, MANILA STANDARD TODAY, Apr. 28, 2008, <http://www.manilastandardtoday.com/2008/april/28/news1.htm>.

efforts to secure a lasting peace and build a better life for the people of Mindanao;<sup>107</sup> the Joint Special Operations Task Force Philippines (JSOTF-P), a U.S. military command focused on providing intelligence and training to their Philippine counter-parts, the FBI, CIA, and the DEA, who also provide training and assistance to the Philippine military and intelligence agencies.<sup>108</sup>

President Arroyo's fourth and fifth focus areas, capacity building and empowerment for major stake-holders, may be the lynchpin to success in the Philippines war on terrorism. These focus areas are in sync with President Bush's statement paralleling the fight on poverty with the fight on terrorism and thus are being assisted by USAID and JSOTF-P. USAID participates by contracting civil action projects using Philippine and, whenever possible, local contractors and local labor.<sup>109</sup> A few examples of the projects contracted by USAID include the building of schools, foot bridges, medical facilities, rice and seaweed drying and storing facilities, and wells.<sup>110</sup> By focusing on local contractors and local labor, USAID not only puts money into the local economy through the salaries of those hired, but also provides a point of pride for the community in that they are building their own future. USAID is also prepared to demobilize and help transition 10,000 MILF soldiers back to civilian life when the organization enters a peace accord with the national government.<sup>111</sup> USAID had success with a similar program in conjunction with the 1996 peace treaty between the MNLF and the government.<sup>112</sup> As stated earlier in this paper, the Philippine government is proud that the 1996 treaty is still honored by both parties twelve years later.

### 3. External Partnerships for a Common Goal

JSOTF-P also plays a role in capacity building through its engineering (ENCAP), medical (MEDCAP), dental (DENCAP), and veterinary (VETCAP) civic action projects.<sup>113</sup> The ENCAP's are done by U.S. service members, Philippine

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<sup>107</sup> *Activities in Mindanao*, USAID-Philippines, available at <http://philippines.usaid.gov/usaid-mindanao> (last updated May, 2011).

<sup>108</sup> Magnuson, *supra* note 100.

<sup>109</sup> See *Activities in Mindanao*, *supra* note 107 (discussing the focus areas of USAID's assistance). This proposition is also drawn from the author's own extensive dealings with USAID in the Philippines.

<sup>110</sup> These projects are documented in unpublished notes by Dennis Hager, which are on file with the author and recount Hager's personal experience using examples of these projects to develop and supervise construction of similar projects in Luzon and Palawan, in the Philippines, from August 2007–June 2008.

<sup>111</sup> Magnuson, *supra* note 100.

<sup>112</sup> *Id.*

<sup>113</sup> Interview with LtCol. Mark Deluna, operations officer, JSOTF.

service members, and normally some volunteers from the local communities.<sup>114</sup> Projects have included the building of schools, medical centers, roads, and wells.<sup>115</sup> MEDCAPS also include both U.S. and Philippine Military medical personnel, as well as local medical personnel and NGO's if available. They treat walk-in sick call issues, provide some vaccines, diagnose problems for follow up treatment, and sometimes perform minor surgery.<sup>116</sup> DENCAPS, and VETCAPS, are organized for similar missions for dentistry or veterinary purposes.<sup>117</sup> Key to the success of the JSOTF-P mission is that an emphasis is placed on the Philippine government representatives leading these missions and that they are out there in front, so that the local people can see their government is trying to help them and a provide a service for them.

JSOTF-P also plays a large part in the law enforcement aspects of the Philippine war on terrorism. The members of JSOTF-P do not directly engage terrorists, but they train and equip their Philippine counterparts with the knowledge and expertise to get the mission done.<sup>118</sup> Along with the training provided by JSOTF-P on tactics, six million dollars in night-vision goggles, body armor, helmets, and radios have helped intensify law enforcement operations.<sup>119</sup> JSOTF-P also provides intelligence, surveillance and reconnaissance assets, including P-3 Orion maritime surveillance aircraft, unmanned aerial vehicles, and satellite imagery.<sup>120</sup> In addition, the Philippines, Malaysia, and Indonesia have received \$27 million dollars in coastal surveillance stations equipped with special radar, heat detecting cameras, and computers.<sup>121</sup> The Philippine National Police Agencies and Military have used these additional tools in their kit bag to great advantage. The Philippine government has killed or captured all major elements of the ASG group in the last five years.<sup>122</sup> An organization that had over 1,000 active organizers operating only a few years ago is now down to an estimated 200.<sup>123</sup> The JI presence in the Philippines has all but disappeared and the group has been ostracized by the MILF who see JI as a threat to continued peace negotiations with the government.<sup>124</sup> The success of the government in communicating and enforcing laws has created a rift between local separatists and international terrorists.<sup>125</sup> International terrorists like JI and Al-Qaeda are

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<sup>114</sup> The author has planned and participated in these projects.

<sup>115</sup> Magnuson, *supra* note 100.

<sup>116</sup> *Id.*

<sup>117</sup> Interview, *supra* note 113.

<sup>118</sup> Magnuson, *supra* note 100.

<sup>119</sup> Schmitt, *supra* note 94.

<sup>120</sup> Magnuson, *supra* note 100.

<sup>121</sup> Schmitt, *supra* note 94.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> Magnuson, *supra* note 100.

<sup>125</sup> *Id.*

losing the battle in Southeast Asia and it is directly related to the initiative put forth by the efforts ASEAN predicated on post-9/11 UN conventions.

### *B. Indonesia*

On November 9, 2008, the legal process for the three members of JI who were convicted of terrorist acts in the Bali bombing came to an end when they were executed a by firing squad on a prison island south of Java. Indonesia has focused its counterterrorism efforts on enhancing the capabilities of their judicial system and law enforcement. Extensive efforts in these areas have paid high dividends over the past five years and make Indonesia a prime example of post-9/11 counter terrorism conventions succeeding.

#### 1. The Judiciary

Indonesia's courts have been effective in prosecuting over 200 JI terrorists with links to Al-Qaeda in the last three years.<sup>126</sup> This success is based on an evolving but effective legal and law enforcement environment that supports the end state of counterterrorism.<sup>127</sup> At the legal forefront of the fight against terror in Indonesia is the U.S. government funded Attorney General's Task Force on Terrorism and Transnational Crime.<sup>128</sup> In 2008, this team of prosecutors has had some major convictions including: Zarkasih, the leader of JI from 2005 until his arrest; Dujana, leader of JI's military arm; Hasanuddin, a JI leader; four men who participated in the 2005 schoolgirl beheadings; and three others who were involved in the 2005 Tentena market bombings.<sup>129</sup> In addition to the terrorist actors themselves, the Indonesian government has prosecuted thirty-two persons for financial crimes that could be linked to terrorist organizations, expanding the battle beyond the immediate fight.<sup>130</sup>

More significant in some ways than the convictions themselves is the announcement by the Indonesian government in October 2008 that prisoners with terrorist convictions will no longer receive remissions on major holidays.<sup>131</sup> The Indonesian traditional practice of remissions or the early release of prisoners during holidays had caused tension between Indonesia and the U.S. and

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<sup>126</sup> U.S. DEP'T OF STATE, OFFICE OF THE COORDINATOR FOR COUNTERTERRORISM, COUNTRY REPORTS ON TERRORISM 2007 (2008), *available at* <http://www.state.gov/documents/organization/105904.pdf> (referencing Indonesia).

<sup>127</sup> Schmitt, *supra* note 91.

<sup>128</sup> U.S. DEP'T OF STATE, *supra* note 126.

<sup>129</sup> *Id.*; *See also* Schmitt, *supra* note 94.

<sup>130</sup> U.S. DEP'T OF STATE, *supra* note 126.

<sup>131</sup> *Id.*

Australia.<sup>132</sup> In 2006, Abu Bakar Bashir, a terrorist associated with the Bali Bombing, was released early to the dismay of the U.S. and Australia.<sup>133</sup> Bashir served just over a year for his part in the criminal conspiracy involved in the Bali Bombing. In a turn of events the more recently captured Zarkasih and Dujana were not so lucky; in April 2008 Zarkasih and Dujana were sentenced to 15 years imprisonment.<sup>134</sup> At home in Indonesia, JI members no longer enjoy the comfort of leniency, as the judicial system begins to show some muscle in dealing with terrorists.

While in prison, Indonesians convicted of terrorist acts have an opportunity to reconcile with society. The Indonesian government has a rehabilitation program for convicted terrorists serving time in prison.<sup>135</sup> The program singles out those terrorists that may be open to more moderate teachings of Islam and the government works with them using mentorship type program.<sup>136</sup> The program provides spiritual support and education for the men, as well as some financial support for their families.<sup>137</sup> The results of this program have been a decrease in the recruiting cadre for terrorists within the prison walls and the receipt of some valuable intelligence for Indonesian counterterrorism operations.<sup>138</sup>

## 2. Serving Justice in Java

The people responsible for bringing terrorists to justice are the counterterrorism law enforcement units of the Indonesian National Police (POLRI).<sup>139</sup> Based on the law enforcement initiatives of ASEAN convention on counterterrorism and the UN conventions, a special police unit was created in 2002. The unit is titled Special Detachment 88 (SD-88), and they are trained by

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<sup>132</sup> Raymond Bonner, *Cleric Linked to 2002 Bali Blasts Is Released*, N.Y. TIMES, June 14, 2006, available at <http://www.nytimes.com/2006/06/14/world/asia/14bashir.html>.

<sup>133</sup> *Bali Bomb Cleric Freed From Jail*, BBC WORLD NEWS, <http://news.bbc.co.uk/2/hi/5075908.stm> (last updated June 14, 2006, 4:32 AM).

<sup>134</sup> *Key Indonesian Militants Jailed*, BBC WORLD NEWS, <http://news.bbc.co.uk/2/hi/asia-pacific/7358165.stm> (last updated Apr. 21, 2008, 12:57 PM).

<sup>135</sup> Schmitt, *supra* note 94.

<sup>136</sup> U.S. DEP'T OF STATE, *supra* note 126.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*; Ed Davies & Olivia Rondonuwu, *U.S.-funded Detachment 88, Elite of Indonesia Security*, REUTERS (Mar. 18, 2010, 4:25 AM), <http://www.reuters.com/article/2010/03/18/us-indonesia-usa-security-idUSTRE62H13F20100318>.

<sup>139</sup> See Imanuddin Razak, Op-Ed., *Police Reforms Should Be More on Mentality*, JAKARTA POST (Dec. 21, 2010, 9:28 AM), <http://www.thejakartapost.com/news/2010/12/21/police-reforms-should-be-more-mentality.html> (discussing POLRI's role in fighting terrorism).

the U.S. military, FBI, CIA, DEA, and Australian military/law enforcement representatives.<sup>140</sup> In researching this topic it was hard to find an article over the last three years dealing with counter terrorism in Indonesia that did not discuss the unit's successes. This elite force, which receives much of its funding for equipment and training from the U.S. government, has been the strong arm of the law for the government of Indonesia in its fight against terrorism.<sup>141</sup> Nearly all of the over 200 JI personnel captured or killed in the last few years have been escorted out of their hiding places by SD-88 members.<sup>142</sup>

Another unit that has not received as much notoriety as SD-88, but that might be as effective in eradicating terrorists from the region, is the officers of the Financial Crimes Transaction and Analysis Center (PPATK). An organization created in the aftermath of the Bali Bombing and 9-11 in accordance with the ASEAN initiatives to counter terrorism, PPATK has taken the battle to the terrorist's wallet.<sup>143</sup> PPATK receives information on suspicious transactions from financial institutions throughout Indonesia and investigates for potential terrorist financing schemes.<sup>144</sup> They currently receive almost 500 reports of suspicious transactions a month and have been responsible for the arrest and prosecution of 32 individuals.<sup>145</sup>

### 3. Partnership from Down Under and Uncle Sam

The ASEAN convention on counterterrorism encouraged its members to work with outside nations toward the goal of defeating terrorists in the region.<sup>146</sup> Indonesia has benefited significantly from one such relationship with Australia. The Australians have been working to develop an expanded program of assistance in close cooperation with the Indonesian Government. They have assisted in the building of counterterrorism programs in three key areas: (1)

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<sup>140</sup> Davies & Rondonuwu, *supra* note 138; U.S. DEP'T OF STATE, *supra* note 126. Of note, the country who lost the most people in the 2002 Bali Bombing was Australia. It lost 88 citizens. Made Arya Kencana, 'I Still Can't Forget': Bali Bombing Victims Remembered 8 Years On, JAKARTA GLOBE (Oct. 13, 2010), <http://www.thejakartaglobe.com/home/i-still-cant-forget-bali-bombing-victims-remembered-8-years-on/401032>.

<sup>141</sup> Dana Dillon, *Timika Arrests Show Growing Respect and Strength in Indo-U.S. Relations*, HERITAGE FOUND. (Jan. 26, 2006), <http://www.heritage.org/research/reports/2006/01/timika-arrests-show-growing-respect-and-strength-in-indo-us-relations>.

<sup>142</sup> *Id.*

<sup>143</sup> See U.S. DEP'T OF STATE, *supra* note 126 (discussing Indonesia's efforts to combat money laundering and terrorism finance).

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> See ASEAN Convention, *supra* note 40, arts. I, VI (listing the convention's objective and areas of cooperation).

enhancing the capacity of the Indonesian National Police (POLRI); (2) travel security; and (3) combating terrorist financing.<sup>147</sup> To this end Australia has contributed an estimated \$100 million dollars to the Indonesians to fight terrorism, including the establishment of the \$50 million Jakarta Centre for Law Enforcement Cooperation (JCLEC) to enhance bilateral and regional goals to counter terrorism and \$7 million for the Transnational Crime Centre (TNCC) to provide a focal point within POLRI for prevention, identification and dismantling all forms of transnational crime, including terrorism.<sup>148</sup> The Australians also provide sophisticated electronic surveillance capabilities, assist in monitoring telephone traffic, and the training of lawyers and prosecutors.<sup>149</sup>

Taking a similar stance to its assistance in the Philippines, the U.S. government, in addition to its counter terrorism law enforcement and legislative assistance, has provided \$157 million in education assistance.<sup>150</sup> This assistance seems to follow the same train of thought that President Bush had when discussing the Philippines, in that we need to fight the war against poverty parallel with the fight against terrorists.<sup>151</sup> Each time a terrorist is captured and brought to justice a battle is won; however, these battles are insignificant if steps are not taken to also educate people and address poverty in this region.

#### 4. Neighborhood Watch

External partnerships are not the only resource being tapped by the Indonesian government. In July 2004, they initiated Operation MALSINDO along with Singapore and Malaysia.<sup>152</sup> This operation consists of trilateral coordinated patrols to counter the threats of maritime terrorism and piracy in the Strait of Malacca.<sup>153</sup> Each of the countries involved has committed themselves to sharing information and providing maritime and aviation assets to patrol the strait. Since

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<sup>147</sup> AUST'L. GOV'T, AUSAID, COUNTER-TERRORISM CAPACITY BUILDING INITIATIVE, <http://www.indo.usaid.gov.au/projects/counterterrorism.html> (last updated May 22, 2007).

<sup>148</sup> *Id.*; AUST'L. GOV'T DEP'T OF FOREIGN AFFAIRS & TRADE, INDONESIA COUNTRY BRIEF, [http://www.dfat.gov.au/geo/indonesia/indonesia\\_brief.html](http://www.dfat.gov.au/geo/indonesia/indonesia_brief.html) (last visited Apr. 8, 2011).

<sup>149</sup> Schmitt, *supra* note 94.

<sup>150</sup> *Background Note on Indonesia*, U.S. DEP'T OF STATE, BUREAU OF E. ASIAN & PAC. AFFAIRS, <http://www.state.gov/r/pa/ei/bgn/2748.htm> (last updated Nov. 3, 2010).

<sup>151</sup> See Rupert Cornwell, *Bush Accepts Link Between Poverty and Terrorism* Saturday, Mar. 23, 2002, <http://www.independent.co.uk/news/world/americas/bush-accepts-link-between-poverty-and-terrorism-655054.html> (last visited Apr. 12, 2011) (discussing belief in a link between poverty and terrorism).

<sup>152</sup> *Thai to Join RI Patrolling Malacca Strait*, JAKARTA POST, Mar. 5, 2009, <http://www.thejakartapost.com/news/2009/03/05/thai-join-ri-patrolling-malacca-strait.html> (last visited Apr. 9, 2011).

<sup>153</sup> *Id.*

the operation began, piracy has dropped significantly in the Strait and security against terrorists has been enhanced.<sup>154</sup>

If the number of terrorists captured and prosecuted, the drop in pirate activities, or the level of cooperation between Indonesia and its regional and international partners in the fight against terrorism are not enough there is one other statistic that may convince observers that the war against terrorism is successful tourism. In 2007 Bali saw a thirty-two percent rise in tourism and Indonesia saw an overall fifteen percent rise.<sup>155</sup> This symbolizes people's belief that it is once again a safe place to visit and enjoy the beach.

## V. CONCLUSION

ASEAN's compliance with UN counter terrorism conventions has been successful because of new laws, legal training and strong relationships between member states and the international community. New laws like the ASEAN counter terrorism convention and the ASEAN counterterrorism declarations have been a beacon to the individual states in their own counterterrorism initiatives, while legal training including every aspect of the law from legislation to law enforcement, and then the courtroom has been critical to execution. Multiplying the effectiveness of legislation and training have been the relationships with other members of ASEAN, multiple forums, and relationships with individual nations outside of the region.

A positive picture has been painted depicting the battle against terrorism in Southeast Asia, but much of this success on the ground, particularly in the Philippines, has been enabled by positive nation building efforts. There will always be a threat of terrorism while a large percentage of the population lives in abject poverty. The socio-economic level of the public will continue to provide a breeding ground of terrorism for those who can manipulate it. This makes more education and economic reform essential to keeping terrorists at bay in this or any region.

Clearly however the ASEAN counter terrorism convention, and the ASEAN counterterrorism declarations have been a success in providing the critical framework to enable the cooperation and actions necessary to counter terrorist activity. As a direct result of these initiatives Southeast Asia is a model of flexibility that can be applied to other regions that do not have the rigid structure and reliance on regionalism over sovereignty. It is a style very different from that of the European Union, but one that can be very applicable in Africa,

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<sup>154</sup> *Id.*

<sup>155</sup> *Indonesia Jan–Nov Tourist Arrivals Up 14 Percent Yr-on-yr*, TOURISM INDONESIA (Jan. 2, 2008, 4:10 AM), [http://www.tourismindonesia.com/2007\\_12\\_30\\_archive.html](http://www.tourismindonesia.com/2007_12_30_archive.html).

Latin America, or the Middle East. ASEAN has shown that maintaining a focus on sovereignty does not equate to a lack of regional or international cooperation. Contrary to some western views this region and its concept of the “ASEAN Way” has proven to be flexible and effective in countering terrorist threats. As terrorists continue to evolve, Southeast Asia is prepared to evolve in ways that will counter new threats.

*“The governments out here take it very seriously and, in my opinion, seem to be doing a very good job individually and working together to deal with that terrorist threat.”*

*U.S. Secretary of Defense Robert Gates  
June 1, 2008 (referring to Southeast Asia)*