

Analysis of Europol's Critical Success Factors and The Potencies of Aseanapol as Regional Cooperation Against Transnational Crime

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Abstract

In addition to giving various positive impacts, globalization has also allowed criminal activities to spread globally. The complexity of the trans-boundary has also increasingly intensified. Moreover, no single national jurisdiction alone has been able to intervene the whole process of transnational crimes. Therefore, international cooperation is absolutely required. Despite its limitations, regional law enforcement cooperation provides some advantages in the efforts to deal with the transnational crimes. This paper provides an analysis based on some academic reviews over a number of critical success factors of Europol if compared to the limitations and the potencies of ASEANAPOL as a regional effort to deal with transnational crimes. Considering some different conditions of the two regions, this paper argues Europol demonstrates a number of strength points which can potentially be implemented by ASEANAPOL in addressing transnational crime.

Key Words: *Transnational Crime, Globalization, law enforcement, cooperation.*

Introduction

Globalization is defined by Stiglitz as “the closer integration of the countries and peoples of the world which has been brought about by the enormous reduction of costs of transportation and communication, and the breaking down of artificial barriers to the flows of goods, services, capital, knowledge, and (to a lesser extent) people

across borders”.¹ Besides some positive impacts, such as international economic and financial activities among the countries, globalization, however, has also led to the increasing global demand for illicit goods and services, and greater opportunity for the criminal activities.

There are increasing complexity, range of geographical areas, and scale of crime activities.²

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1. Joseph E. Stiglitz, *Globalization and Its Discontents*, (Norton & Company, 2009) 9.
2. Peter Willetts, 'Transnational Actors and International Organizations in Global Politics' in John Bayliss & Steve Smith, *The Globalization of World Politics* (Oxford University Press, 2005) 425, 434.

Criminal financial flows through money laundering activities have gained access to and undermined the integrity of legitimate financial sector. No country in the world has escaped from being a transit country for the trafficking of illegal goods or services. Uncomprehensive law enforcement agencies' measures may displace a transnational crime from their jurisdiction to other less-managed countries, yet fruitless to stop the transnational crime itself.³

Nation states which theoretically have sovereign control over criminal jurisdiction within their territory have become powerless in addressing transnational crime. Individual nations can only effectively deal with the commission of crimes that can be prevented within their jurisdiction. Criminals operate across borders, leaving the state where the commission of crimes takes place or in other way, by committing crimes overseas to gain maximum profits and seek to evade jurisdiction. As a consequence, the evidences of crime may not be present in the concerned state jurisdiction. Furthermore, lack of criminalization consensus where certain conduct is not universally criminalized, making safe havens exist. From the prevention perspective, transnational natures, where potential wrongdoers may be beyond the jurisdiction, impede the efforts to pursue social prevention approaches.

Theoretically, transnational crime was described differently by many scholars. Passas argued that 'crime becomes transnational when offenders or victims are located in, or operate through, more than one country'.⁴ While Fijnaut explained transnational crime as 'a general purpose concept that contains many different types of crime, including organized, corporate, professional and political crime'.⁵

In spite of those descriptions of transnational crime, some major differences between transnational crime and domestic crime are the locus and the effects of the criminal activity, and the involvement of transnational organized crime. As described in article 3 the United Nation Convention against Transnational Organized Crime that an offence is 'transnational' if it is committed in more than one State, committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; committed in one State but involving an organized criminal group that engages in criminal activities in more than one State; or committed in one State but has substantial effects in another State.

As cross border crime demonstrates the increasing of the complexity, more established cooperation among the law enforcement authorities from other countries is required.⁶ In addressing transnational crime, no single national jurisdiction has the capability to intervene the whole process of transnational crimes. Therefore, although there is no a panacea in the global efforts against transnational crime, partnership and international cooperation is absolutely needed. International cooperation aims to pool and coordinate the responses to solve a problem that a single state cannot resolve alone.

International law enforcement cooperation is different from a mutual legal assistance. It facilitates law enforcement agencies on locating evidences, persons, and assets. It also assists on non-coercive acquisition of information, evidences, and including covert investigation. Moreover, international law enforcement cooperation optimizes the activities of intelligence exchange, investigative assistance and capacity-building.

The developments of the international law enforcement cooperation is moving from

3. Ibid.

4. Nikos Passas, 'Global Anomie, Dysnomie, and Economic Crime: Hidden Consequences of Neoliberalism and Globalization in Russia and Around the World' (2000) 27 2 Social Justice 16.

5. Paoli Letizia and Cyrille Fijnaut, 'Organised Crime and Its Control Policies' (2006) 14, 3 European Journal of Crime, Criminal Law and

Criminal Justice 307.

6. TELEMASP Bulletin, 'Utilization of International Police Cooperation for Criminal Investigations' (2001) 7 TELEMASP Bulletin 1, 1.

particular phenomenon, for instance drugs and terrorism, to more general issues; from informal cooperation to formal and official cooperation, such as Europol; from national aspect to 'horizontal supranational law enforcement level'; and emphasize the political change and extraterritorial activities, such as joint investigation team and peace keeping operation.⁷

International law enforcement cooperation can be based on intergovernmental treaty such as Schengen Convention 1990, Prüm Convention 2005, and WCO Convention 1950; organizational constitution such as Interpol Constitution; Memoranda of Understanding such as Cross-Channel Intelligence Conference; and diplomatic relations. It can be conducted by states governments and state bodies; sub-state actors i.e. police and military; non-state actors i.e. NGOs, INGOs, charities, and companies; and also civilians such as individuals and groups. It can be manifested on the global levels such as Interpol and World Customs Organization; regional levels such as ASEANAPOL, Europol, and Baltic Sea Task Force; and also co-operative groups, i.e. Maritime Analysis and Operation Centre (MAOC); and agency liaison networks as demonstrated by SOCA, AFP, FBI, and DEA.

This paper provides an analysis based on academic reviews over a number of critical success factors of Europol if are compared to the limitations and potencies of ASEANAPOL in the regional efforts to deal with transnational crime.

Success Story of Europol

As stated in the article 3 the EU Council Decision⁸, the European Police Office or Europol is the EU's law enforcement agency which purpose is to assist the legal authority of the EU member

states in addressing transnational organized crime, serious crime and terrorism. Its tasks are to assist the information exchange; to collect and analyze information and intelligence; to inform the competent authorities via the national units; to support investigations by present pertinent information; to uphold a computerized system of collected information; and to take part in joint investigation teams.⁹ Europol also has additional tasks 'to develop specialist knowledge of the investigative procedures of the competent authorities in the Member States and to provide advice on investigations; to provide strategic intelligence to assist with and promote the efficient and effective use of the resources available at national level for operational activities; and to prepare general situation reports'¹⁰.

The staffs of Europol consist of various legal authorities, such as police, customs, borders police, and security services.¹¹ Every member state and non-EU partner state has Europol Liaison Officers in the Europol Headquarters in The Hague, the Netherlands, and directly connects with the law enforcement authority of 27 member states and non-EU partner states.¹²

In June 1991 at the Luxemburg European Council, the German Chancellor Helmut Kohl proposed the idea that the problem of drug trafficking and organized crime should be accommodated in the Inter-Governmental Conference in Maastricht December 1991.¹³ Hence, the Maastricht Treaty that was signed on 7 February 1992 contain the attention for the problem of terrorism, drug trafficking, and other transnational crimes.¹⁴ Furthermore, the legal basis for the establishing of the Europol

7. Willy Bruggeman, 'International Law Enforcement Co-operation: A Critical Assessment' (2001) 9 *European Journal on Criminal Policy and Research* 283, 289.

8. Council Decision 2009/371/JHA of 6 April 2009 on Establishing the European Police Office (Europol) [2009] OJ L 121/37 Art 3.

9. *Ibid*, Art 3 (1).

10. Council Decision 2009/371/JHA of 6 April 2009 on Establishing the European Police Office (Europol) [2009] OJ L 121/37 Art 3 (2).

11. Europol Official Website, 'Europol Profile', <http://www.europol.europa.eu/index.asp?page=facts>

12. *Ibid*.

13. European Union Committee, *Europol: Coordinating the Fight Against Serious and Organised Crime* House of Lords HL Paper 183, 29th Report of Session 2007-08 (2008) 11.

14. *Ibid*.

is the Europol Convention, as a pursuant of the article K 3 (2) Maastricht Treaty, that was signed on 26 July 1995 and entered into the force on 1 October 1998, and was followed by the operation of Europol Headquarters in the Hague on 1 July 1999.¹⁵

Furthermore, the change of Europol's role from an intergovernmental organization to a law enforcement agency of the EU starting 1 January 2010 was based on the EU Council Decision of 6 April 2009.¹⁶ Besides its role as a center of crime intelligence information, Europol also manages the law enforcement operation between the member states, as the center investigation of euro counterfeiting,¹⁷ and sends the officer to take part in the Joint Investigation Teams.¹⁸

The improvements that were showed by the Europol have inspired other regional police cooperation organizations around the world. Europol has emerged as the most innovative and the frontier facilitator and coordinator regional police cooperation. There are two factors that support the Europol success story: political and legal factor, and Europol organizational factor.

1. Political and Legal Factor

The most important factor of the multinational law enforcement agencies cooperation is to obtain legal basis and political support from the member states. Discussion of international cooperation against transnational crime cannot be separated from political sphere because transnational crime plays its role on the international ground which is constructed by nation-states and their political attention.¹⁹ Transnational crimes have also affected international and national politics, economies,

security and society.

Moreover, analyzing transnational crime prevention paradigm based on international relations theories also correlates the issue of transnational crime with the political aspect.²⁰ Realist points out the national security, self-help through alliances; and non-intervention against threats to national security.²¹ Liberalist argues international norms as the best way to manage national security and encourage international cooperation.²² While constructivist focuses on the using of perceptions, ideas and norms to influence state and non-state actors on international politics.²³

Furthermore, in his work which examined the international law enforcement cooperation, Bruggeman states that '[i]nternational law enforcement cooperation is more and more influenced by basis political developments'.²⁴ It is in accordance with Das and Kratcoski who argue that the continuance and performance of multinational police cooperation organization is fully determined by legal and political decision of the participant states.²⁵ Political will that is combined with regional and international security awareness of the state leads to the emerging of the effective multinational law enforcement cooperation.²⁶ Those arguments show the importance of the EU development for the existence of the Europol. The EU is more than implementation of the regional-

15. Ibid.

16. Council Decision 2009/371/JHA of 6 April 2009 on Establishing the European Police Office (Europol) [2009] OJ L 121/37

17. Ibid, Art 5.

18. Ibid, Art 6.

19. John Winterdyk and Philip Reichel, 'Introduction to Special Issue: Human Trafficking: Issues and Perspectives' (2010) 7, 1 European Journal of Criminology 5.

20. A Burke, 'Security' in R Devetak, A Burke & J George (eds) *An Introduction to International Relations: Australian Perspectives*, (Cambridge University Press, 2007) 144.

21. Tim Dunne and Brian C. Schmidt, 'Realism' in John Baylis, Steve Smith, & Patricia Owens (eds), *The Globalization of World Politics: An Introduction to International Relations*, 4ed (Oxford University Press, 2008).

22. Tim Dunne, 'Liberalism' in John Baylis, Steve Smith, & Patricia Owens (eds), *The Globalization of World Politics: An Introduction to International Relations*, 4ed, (Oxford University Press, 2008).

23. S. Smith and P. Owens, 'Alternative Approaches to International Theory' in John Baylis, Steve Smith, & Patricia Owens (eds), *The Globalization of World Politics: An Introduction to International Relations*, 4ed, (Oxford University Press, 2008).

24. Bruggeman, above n 7, 290.

25. Dilip K. Das and Peter C. Kratcoski, 'International Police Co-operation: A World Perspective' (1999) 22 *Policing: An International Journal of Police Strategies & Management* 214, 231.

26. David McClean, *Transnational Organized Crime: A Commentary on the UN Convention and its Protocols* (Oxford University Press, 2007), 30.

based cooperation. It is a real manifestation of cooperation spirit among the member states. Moreover, the important role of the Europol in the security aspect is fully understood by the EU member countries.

The existence of the EU assist the success of the Europol, while the other regional and international police cooperation are still concerning the political will of the member states. Europol is a real example of multinational police cooperation that is fully supported by political strength from the participants. Based on the Europol Council Decision on 6 April 2009, Europol has changed from an intergovernmental organization to law enforcement agency of the European Union, where European Union agency has an essential function over various sectors of the European Union.²⁷

Moreover, there are many strength points for the Europol that were built by this Decision. The Decision is more flexible and easier than convention to be amended in order to adapt with the dynamics of situation.²⁸ Therefore, Europol will always adjustable with the contemporary situation. The Council Decision also strengthen the Europol legal basis which is very useful to maximize the role of Europol in the keeping the safe of European Union, not only for 'organized crime' but also for broader aspect that is 'serious crime'.²⁹ Additionally, as stated on article 23 the EU Council Decision, Europol may cooperate with third states and organizations.³⁰ This authority leads Europol to the broader opportunity to coordinate and cooperate with non-EU states, regional and international organization in the providing the best service to its participant states.

27. Craig, *EU Administrative Law* (OUP, 2006) cited in de Moor and Vermeulen, below n 24.

28. Alexandra de Moor and Gert Vermeulen, 'The Europol Council Decision: Transforming Europol into an Agency of the European Union' (2010) 47 *Common Market Law Review* 1089, 1092.

29. *Ibid*, 1098.

30. Council Decision 2009/371/JHA of 6 April 2009 on Establishing the European Police Office (Europol) [2009] OJ L 121/37 Art 23.

2. Europol Organizational Factor

a. Optimizing the Role of Liaison Officer

Liaison officers have an important role in the Europol activities. As noted by Bigo that 'free trade and free movement' policy led to the improvement of the important function of Police Liaison Officer in the information exchange in Europe.³¹ While speed response is obstructed by procedural ruler, and the cooperation is hampered by problem of trust, Europol Liaison Officer provides the best service in the Europol action.

The role of liaison officer is supported by effective works of Europol national units which are established on all Europol member states. Despite negative effect of liaison officer role where 80% of the information exchanges were committed directly between the Europol Liaison Officers and did not involve the Europol,³² 'they guarantee fast and effective cooperation based on personal contact and mutual trust'³³.

b. Joint Investigation Team

Article 6 the Council Decision states that Europol personnel may take part in the Joint Investigation Teams.³⁴ Benefits that are provided by Joint Investigation Teams namely, communication between Member state and its personnel that take part in Joint Investigation Teams can be executed effectively, and the sharing of information can be conducted quickly and informally.³⁵ The availability of Europol staff in the Joint Investigation Teams has supported

31. Didier Bigo, 'Liaison Officer in Europe: New Officers in the European Security Field' in James Sheptycki, *Issues in Transnational Policing* (Routledge, 2000).

32. European Union Committee, above n 13, 22.

33. Europol Official Website, 'Europol Profile', <http://www.europol.europa.eu/index.asp?page=facts>.

34. Council Decision 2009/371/JHA of 6 April 2009 on Establishing the European Police Office (Europol) [2009] OJ L 121/37 Art 6.

35. Conny Rijken, 'Joint Investigation Teams: Principles, Practice, and Problems. Lesson Learnt from the First Efforts to Establish a JIT' (2006) 2 *Utrecht Law Review* 99, 102.

the investigation process especially in the information exchange which is useful to support the investigation.

Regarding the fact that law enforcement authorities are more interested to use 'informal and pragmatic international cooperation, 'horizontal cooperation', than about formal and programmed international cooperation, 'vertical cooperation',³⁶ hence, Joint Investigation Teams and Liaison officer is a bridge that connects those two styles of police cooperation. Joint Investigation Teams is a law enforcement breakthrough for the contemporary transnational crime which shows more complex sophistication.³⁷

c. Employing Analysis Experts and Europol's 'Product'

Based on the Rhodes Vision 2003, 'the core business of Europol is receiving, exchanging and analyzing information and intelligence'.³⁸ Therefore, more than 100 best crime analysts are employed by Europol to give the finest services to the member countries.³⁹

Despite the critiques which pointed out the methodological aspect,⁴⁰ analyses that are provided by Europol, such as The European Organized Crime Threat Assessment (OCTA), the EU Terrorism Situation and Trend Report (TE-SAT), show the comprehensive analyses which are fruitful for the member states in fighting terrorism, organized crime and others serious crimes.

d. Use of Modern Technology and Data Protection

In order to handle more than 9000 cases per year, Europol uses the most modern technology to ensure the highest quality of services that are provided to the member states, namely 'state-of-the-art database communication channel'.⁴¹

Moreover, data protection is a sensitive issue. It is connected to the trust among the participant states. Unsurprisingly, Europol puts a lot of attention to this area. Despite the long discussion of the accessibility of Europol data by member states,⁴² Europol implements strict procedures in securing and protecting data.

Europol faces a low level of participation from its state members that is caused by the problem of trust that obstructs the coordination.⁴³ Therefore, data protection is useful to build the trust among the member states which lead to the improvement of participation level. Data protection control is executed by Data Protection Office⁴⁴ and Joint Supervisory Body.⁴⁵

e. Speed Response

Europol was designed to give quick response for 24 hours a day, 7 days a week, that is supported by mobile office, synthetic drug laboratories, and others technologies.⁴⁶ Furthermore, Europol also shows speedy responses to the latest situation and enable to provide real program. As described by Bures, for example, after 9/11 terrorist attack, in 21 September 2001 Europol held the

36. M.G.W. den Boer, 'Justice and Home Affairs Cooperation: Attachment without Integration' in H. Wallace and W. Wallace (eds) *Policy Making in the European Union* (Oxford University Press, 1996) cited in M.G.W. den Boer, 'Internationalization: A Challenge to Police Organizations in Europe' in R.I. Mawby (ed) *Policing Across the World: Issues for the Twenty-first Century* (UCL Press, 1999) 71.
37. Michael Plachta, 'Joint Investigation Teams: A New Form of International Cooperation in Criminal Matters' (2005) 13 *European Journal of Crime, Criminal Law and Criminal Justice* 284, 301.
38. Europol, *Ten Years of Europol 1999-2009* (Europol Police Office, 2009) 27.
39. Europol Official Website, 'Europol Profile', <http://www.europol.europa.eu/index.asp?page=facts>.
40. Andries Johannes Zoutendijk, 'Organised Crime Threat Assessments: A Critical Review' (2010) 54 *Crime Law Soc Change* 63.

41. Europol Official Website, 'Europol Profile', <http://www.europol.europa.eu/index.asp?page=facts>.
42. de Moor and Vermeulen, above n 28, 1102.
43. Hugo Brady, 'Europol and the European Criminal Intelligence Model: A Non-state Response to Organized Crime' (2008) 2 *Policing* 103.
44. Council Decision 2009/371/JHA of 6 April 2009 on Establishing the European Police Office (Europol) [2009] OJ L 121/37 Art 28.
45. *Ibid*, Art 34.
46. Europol Official Website, 'Europol Profile', <http://www.europol.europa.eu/index.asp?page=facts>.

Extraordinary European Council Meeting and provided several strategic steps based on its mandates in the counterterrorism activity.⁴⁷ Although those steps were not fully successful in preventing terrorism attack in Europe, as showed in Madrid's 11 March 2004 and London's 7 July 2005 terrorist attacks, and yet at least those strategic approaches showed good coordination and communication among Europol member states to maintain the regional security by providing available quick response.

ASEAN and ASEANAPOL

The Association of Southeast Asia Nation or ASEAN was established by the signing of the ASEAN Declaration on 8 August 1967. Upon its initial establishment, ASEAN has five member states, Indonesia, Malaysia, Thailand, Singapore, and the Philippine.⁴⁸ The objectives of the ASEAN are to maintain regional peace, security and stability; to improve the regional cooperation in political, security, economic, and socio cultural aspects; to maintain the region as a free nuclear and mass destructive weapon zone; to encourage the development of economic activities, trade, and investment; support the democracy, good governance, rule of law, and human rights protection; and give effective response to the threat of transnational crime.⁴⁹

ASEAN members have a variety of political views and socio-economic conditions. Indonesia, Philippines, Thailand, and Cambodia are the democracy states, Laos and Vietnam are communist nation, as Malaysia and Singapore are so-called 'soft authoritarian' states, Brunei is a monarchy state, and Myanmar is 'a pariah military regime'.⁵⁰ In economical aspect,

ASEAN also has a broad diversity, for instance, Brunei's and Singapore's Gross Domestic Product per capita is 35 and 55 times higher than Laos'.⁵¹ Therefore, to maintain the unity among members, ASEAN Treaty of Amity and Co-operation in Southeast Asia 1976 provides three supreme principles through a series of sub-principles. Those are mutual respect for independence, sovereignty, territorial integrity; right of every country to lead its national existence free from external interference, subversion or coercion; non-interference in internal affairs of others; settlement of disputes by peaceful means; renunciation of use or threat of force; and commitment to effective co-operation.⁵²

In the 9th ASEAN Summit 2003, ASEAN has proclaimed as security, economic, and socio-cultural community by Declaration of ASEAN Concord II.⁵³ Therefore, ASEAN has emerged as a regional organization that holds important role as a result of its deeper attention in economics issues, regional security topics, social and culture sectors.⁵⁴

Special attentions on those three sectors are full of strategic reasons. Firstly, in 1997 most of Southeast Asia countries suffered from severe financial crisis that damaged the macro and micro economics on the countries. Secondly, Southeast Asia region is the basis of Jemaah Islamiyah, a terrorist group behind the terrorist attacks in Singapore, Thailand, Malaysia, Philippine and Indonesia. Thirdly, ASEAN has emerged as a world tourism destination which focuses on its socio-cultural and natural-environmental tourism.

ASEAN has entered a new era by the signing of ASEAN Charter in 13th ASEAN Summit in

47. Oldrich Bures, 'Europol's Fledgling Counterterrorism Role' (2008) 20 *Terrorism and Political Violence* 498, 500.

48. ASEAN Secretariat, 'The Founding of ASEAN', www.aseansec.org/7069.htm

49. Charter of the Association of Southeast Asian Nations Art 1.

50. *Ibid.*

51. *Ibid.*

52. Dominik Heller, 'The Relevance of the ASEAN Regional Forum for Regional Security in the Asia-Pacific' (2005) 27, 1 *Contemporary Southeast Asia* 123, 127.

53. Declaration of Bali Concord II, signed in 7 October 2003, www.aseansec.org/15159.htm

54. Katja Freistein, 'ASEAN After the Bali Summit 2003: From Paralysis to New Life?' (2005) 4 *European Journal of East Asian Studies* 177.

Singapore on 20 November 2007 and came into force on 15 December 2008. This charter provides ASEAN with a legal personality, therefore, by this Charter ASEAN has moved from 'a loosely-organized regional body towards a more rules-based inter-governmental organization'.⁵⁵

The ASEAN's chiefs of national police or ASEANAPOL has the functions, namely to facilitate and to coordinate the sharing of information and intelligence, joint operations and investigation among member states; and to manage training and conferences.⁵⁶ The first formal meeting the chiefs of ASEAN national police was held on 1981 in Manila, Philippines, which were attended by delegations of five member states.

Pursuant to ASEAN Declaration on the Prevention and Control of Transnational Crime, in Manila at 20 Dec 1997, ASEANAPOL deals with the preventive, enforcement and operational aspects of cooperation against transnational crime, actively involved in sharing of knowledge and expertise on policing, enforcement, law, criminal justice, and transnational and international crimes. Three ad-hoc commissions were established in dealing with drug trafficking, arms smuggling, counterfeiting, economic and financial crimes, credit card fraud, extradition and arrangements for handing over of criminal offenders and fugitives. ASEANAPOL also has initiatives to combat new forms of transnational crime, such as fraudulent travel documents, phantom ship frauds, product counterfeiting and piracy

ASEAN Plan of Action to Combat Transnational Crime 1998 provided some guidance in addressing transnational crime. Those are enhancing ASEANAPOL database and information exchange, harmonize

criminalization, enhance law enforcement liaison and intelligence exchange and joint training, establishing an ASEAN Centre for Combating Transnational Crime, institute ministerial level regular meetings on transnational crime, and institutional capacity building.

The 29th ASEANAPOL Conference 2009 in Hanoi Vietnam defined the permanent secretariat of ASEANAPOL which was established in Kuala Lumpur, Malaysia, and commenced on 1st January 2010. ASEANAPOL is managed by an Executive Director, a Director for Police Services, a Director for Plans and Programs, and some administrative and technical staff.⁵⁷

The ASEAN Concord II led to the developing role of ASEAN as a center of regional community that focuses on security, economics, and socio-cultural aspect. This situation improves the important role of ASEAN in the regional and global political stages. Obviously, this is a political potency for the improving role of ASEANAPOL.

Stability of regional political condition is one of ASEANAPOL's potency to be developed as modern as Europol. Although there are many domestic conflicts that obstruct the national political stabilization, no ASEAN member state has involved in a war against each other.⁵⁸ Moreover, several regional threats, such as terrorism, piracy and people smuggling, are some common problems that can be managed as a potency to improve the role of ASEANAPOL.

In 25 July 2006, ASEAN foreign minister signed the ASEAN Framework Agreement on Visa Exemption,⁵⁹ 'this pact allows two week visa free entry for ASEAN nationals travelling within the bloc'⁶⁰. Moreover, in 2007, Thailand

55. ASEAN Secretariat, 'Significance of The ASEAN Charter', (24 May 2010), www.aseansec.org/Fact%20Sheet/APSC/2010-APSC-004-2.pdf

56. ASEANAPOL Official Website, ASEANAPOL's Objective and Function, ASEANAPOL.org.my/base.cfm?path=about/about.cfm?mod=68#

57. ASEANAPOL official website, ASEANAPOL's Governance, ASEANAPOL.org.my/base.cfm?path=about/about.cfm?mod=68#

58. Freistein, above n 54.

59. ASEAN Official Website, 'ASEAN Framework Agreement on Visa Exemption, Kuala Lumpur, 25 July 2006' www.asean.org/18570.htm

60. ASEAN Official Website, 'ASEAN Visa-Free Deal Said to Boost Tourism', www.asean.org/afp/150.htm.

and Cambodia signed the agreement of single visa for the tourist to enter those countries.⁶¹ On one hand, those agreements are new threat that can allow the commission of transnational crimes. On the other hand, that is a new reason to enhance the role of ASEANAPOL, similar to the Europol's that was established not only to address the problem of transnational organized crime but also 'to compensate for the removal of border controls in the EU'.⁶²

There are of course some limitations which are faced by ASEANAPOL. Like European Union and Council of Europe, ASEAN has been focusing its attention more on the regional and global security sector, yet it has not established a 'joint institutional mechanism' like Europol.⁶³ ASEANAPOL is lack of legal basis in its activities, different from Europol that has solid legal grounds. However, although ASEAN Concord II has emphasized ASEAN as a security community, but ASEANAPOL as center of regional police cooperation and information exchange has not been optimized as yet.⁶⁴

Moreover, although ASEAN states have showed the high achievement in the global counter terrorism, for instance the apprehend of several prominent terrorism suspects, Arifin bin Ali, Mas Selamat Kastari, Al Ghozi, and Hambali, but those success were affected by bilateral and directly cooperation between countries, not the results of the ASEANAPOL's role in the assisting the cooperation among countries in the Southeast Asia.⁶⁵

The ASEAN's agenda in countering transnational crime in the Southeast Asia

is also lack of comprehensive strategies. For instance, the Southeast Asia Regional Center for Counter-Terrorism (SEARCCT) is not a counter terrorism operation or a center of information exchange among the members, but its tasks are merely to manage seminars, meeting, and training course.⁶⁶

Furthermore, so many apprehensions and disturbances in form of terrorism attacks in Southeast Asia show the fact that law enforcement authority in this region still needs assistance and support from the countries other than ASEAN members, for example, the apprehension of Hambali which was supported by the USA. Another example is the disturbance in form of terrorist attacks at many embassies, and one example was in Singapore where the intelligence information was provided by MI6.⁶⁷

ASEANAPOL also does not have standard processing and storing for crime statistic data that are needed to support the academic and policy purposes.⁶⁸ Unavailable statistical data lead to inaccurate analyses which adversely affect the policy quality.⁶⁹

Another obstacle in the improvement regional cooperation in the ASEAN is different political perspective among the states. In many cases, the difference of political orientations gave impact to the regional policy, for example, as in 2004 the USA planned the Regional Maritime Security Initiative in the Strait of Malacca that was refused by Malaysia and Indonesia because of sovereignty reason, and it was only approved by Singapore.⁷⁰

Conclusion

International law enforcement cooperation

61. ASEAN Official Website, www.aseanvisa.com

62. Bruggeman, above n 7 cited in Nadia Gerspacher, 'The Roles of International Police Cooperation Organizations: Beyond Mandates, Toward Unintended Roles' (2005) 13 *European Journal of Crime, Criminal Law and Criminal Justice* 413, 420.

63. Narayanan Ganapathy and Roderic Broadhurst, 'Organized Crime in Asia: A Review of Problems and Progress' (2008) 3 *Asian Criminology* 1.

64. Ibid.

65. Andrew Chau, 'Security Community and Southeast Asia: Australia, the U.S., and ASEAN's Counter-Terror Strategy' (2008) 48 *Asian Survey* 629.

66. Ibid.

67. Ibid.

68. Mohd Kassim Noor Mohamed, 'Kidnap for Ransom in South East Asia: The Case for a Regional Recording Standard' (2008) 3 *Asian Criminology* 61.

69. Ganapathy and Broadhurst, above n 63.

70. Chau, above n 65, 632.

increases the effectiveness of cooperation between investigators by sharing information and facilitating investigations. International law enforcement cooperation also assists the mutual legal assistance activities. However, there are some drawbacks of international law enforcement cooperation. Different capacity and capability of the participants hamper the cooperation. Moreover, the institutions of international law enforcement cooperation are non-operational entities. It potentially obstructs the effectiveness of the cooperation.

Regional law enforcement cooperation institution is not the only mechanism of the international cooperation against transnational crime. There are many other alternative approaches. However, it is inevitable that the establishment of well-organized regional law enforcement cooperation institution helps the national and regional efforts in addressing transnational crime. Effective regional law enforcement cooperation institution may potentially support other international cooperation, such as bilateral and regional extradition treaty.

From the above illustration, it can be summarized that ASEANAPOL should learn more lessons from Europol. Firstly, ASEANAPOL needs to be supported by legal and political basis in performing its activities. Secondly, ASEANAPOL should improve the organizational capacity. ASEANAPOL needs to be managed by high qualified personnel that is supported by skilled analysts and staff, needs to implement well-structured organization, needs to apply systematic methods and organizational procedure, needs to use modern technology, and needs to have powerful financial source.

Thirdly, with regard to several advantages that are provided by liaison officer role, the optimizing role of liaison officer should be followed by ASEANAPOL's. Finally, the authority of Europol staff's participation in the joint investigation team is a good example for ASEANAPOL. Therefore, national and international legal basis should be prepared, in addition to the existing trust and capacity building among the member states.⁷¹

71. Plachta, above n 37.