Transnational Crime is the crime which takes place in more than one country jurisdictions, but their consequences significantly affecting other countries. Transnational crime also against more than one country domestic law, however, it need not be based in international law as such. Although, either international agreements or treaty (purely procedural) and custom can be relevant to the issues concerning jurisdiction, enforcement, due process, judicial cooperation, the serving of sentences. For example: human smuggling, sea piracy, money laundering, terrorism, trafficking in illicit arm and drug. According to the Convention on Transnational Organized Crime 2000, an offense is transnational if, firstly, it is committed in more than one state, secondly, it is committed in one state but a substantial part of its preparation, planning, direction, or control takes place in another state, thirdly, it is committed in one state but involves an organized criminal group that engages in criminal activities in more than one state, finally, it is committed in one state but has substantial effects in another state.

Keywords : Corporate States, Transnational Crime, International Criminal Law Enforcement
A. Introduction

As an effect of globalization, today states are increasingly faced crimes which crossed national borders. Thus, more and extra international cooperation is an essential component of criminal investigation or prosecutions. Since criminal activities go beyond the national borders, it is clear that the international community has recognized the need for enhancing cooperation, particularly with respect to gathering evidence located outside national state borders.

In order to suppress the transnational and international crime in international criminal law knowledge, there are several international judicial cooperation regimes and institutions among states, such as: Letter of Rogatory (the traditional approach), Extradition, Transferred Sentenced Person (TSP), Mutual Legal Assistance (MLA) in Criminal Matter, International Criminal Police Cooperation (INTERPOL), European Law Enforcement Organization (EUROPOL), ASEAN Police Cooperation (ASEANPOL) respectively.

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On the other hand, Mutual Legal Assistance (MLA) in Criminal Matters is an international cooperation process by which States seek and provide assistance in gathering evidence for use in the investigation and prosecution of criminal case, and in tracing, freezing, seizing and ultimately confiscating criminally derived wealth. It covers a wide and ever-expanding range of assistance. They include; search and seizure, production of documents, taking the witness statements by video conference and temporary transfer of prisoners or other witnesses to give evidence. After all, the cooperation prevails based on the reciprocity relationship principle.

B. History of the Global and the Southeast Asia’s Transnational Crimes

Starting in the 1990s with the end of the Cold War and the advent of globalization, transnational crime issues ramped up their operations and expanded them worldwide. These organizations are believed to have been helped by weakening government institutions in some countries, more open borders, and the resurgence of ethnic and regional conflicts across the former Soviet Union and many other regions. Mainly due to its clandestine nature, international crime is hard to measure. By the most conservative estimates, criminal proceeds comprise between two and five percent of global gross domestic product.

Transnational organized crime tends to develop in nations where law enforcement institutions are weak and citizens have limited economic alternatives. Farmers frequently turn to drug cultivation, boosting the international narcotics trade.
Unemployment citizens seek work abroad and fall victim to human trafficking rings. Across the global, government corruption and illicit trade fuel and sustain each other.

Historically, the United Kingdom’s experience in fighting the transnational crime, starting with the Extradition Act 1873 allowed the Secretary of State to require a magistrate or justice of peace to require the production of documents or to take evidence for any pending criminal matter in a foreign court as if he were taking a deposition in committal proceedings for an indictable offence. The 1873 Act provisions remained in force until 1975 when the criminal law provisions of the Evidence (Proceedings in other jurisdiction) Act 1975 repealed but substantially re-enacted them.

The 1873 Act and the Criminal Law Provision of the 1975 Act were repealed by the Criminal Justice (International Cooperation) Act 1990 (“the 1990 Act”). The 1990 Act gave effect to the 1959 European Convention on Mutual Assistance in Criminal Matters, the 1978 Additional Protocol to the European Convention, and the Commonwealth Scheme.

C. Complexities Definition of Transnational Crime

There is no single accepted definition of transnational crime. The term “transnational crime” was developed by the United Nations (UN) Crime and Criminal Justice Branch in 1974 to guide discussion at one of the UN crime conference. As described by Muller (1978), it was a criminological term, with no claim to providing a juridical concept, and consisted simply of a list of five activities: (i) crime as business: organized crime, white collar crime, and corruption (ii) offences involving works of art and other cultural property (iii) criminality associated with alcoholism and drug abuse (especially illicit traffic) (iv) violence of transnational and comparative international significance (v) criminality associated with migration and flight from natural disaster and hostilities.

Twenty years later, a single sentence conceptual definition was added by the UN in which defines transnational crime as: offense whose inception, prevention and/or direct effect or indirect effect involved more than one country (UN, 1951). Such crimes must be differentiated from international crimes, which are recognized by and can therefore be prosecuted under international law and domestic crimes that fall under one national jurisdiction. In order to be considered as transnational crime, a crime must involve the crossing of borders or jurisdictions.

The UN has identified 18 different categories of transnational crime. These are (i) Money laundering (ii) Terrorist activities (iii) Theft of art and cultural objects (iv) Theft of intellectual property (v) Illicit traffic in arms (vi) sea piracy (vii) Hijacking on land (viii) Insurance fraud (ix) Computer crime (x) Environmental crime (xi) Trafficking in persons (xii) Trade human body parts (xiii) Illicit drug trafficking, (xiv) Fraud bankruptcy (xv) Infiltration of legal business (xvi) Corruption (xvii) Bribery of public officials, and (xviii) Other offences committed by organized criminal groups.

D. Recent Development of Transnational Crime Issues in Southeast Asia

1. Trafficking in Illicit Drugs

Several Southeast Asian Countries are major producers of narcotics and serve transit for illicit drugs exported to North America, Europe and other parts of Asia. The Golden Triangle which incorporates North Thailand, Eastern Myanmar, and Western Laos, is one the leading producing regions of narcotics in the world. Myanmar and Laos are respectively the first and third largest
cultivators of opium poppies, which are later transformed into heroin. As a result, it is estimated that two-thirds of the world’s opium is cultivated in Southeast Asia.

In October 2000, ASEAN organized in Bangkok, the International Congress in Pursuit of a Drug Free ASEAN 2015, in association with the United Nations Office for Drug Control and Crime Prevention (UNDCP). It led to the formulation of the Bangkok Political Declaration in Pursuit of a Drug Free ASEAN 2015 and to the adoption of a plan of action, the ASEAN and China Cooperative Operations in Response to Dangerous Drugs (ACCORD). It seeks to eradicate or at least seriously reduce the production, trafficking and consumption of narcotics in Southeast Asia by 2015. Also, it created a Plan of Action that relies on four central pillars: (i) advocating proactively civic awareness on dangers of drugs and social response. (ii) building consensus and sharing best practices on demand reduction (iii) strengthening the rule of law by an enhanced network of control measures and improved law enforcement cooperation and legislative review (iv) eliminating the supply of illicit drugs by booting alternative development programs and community participation in the eradication of illicit crops.

2. People Smuggling and Human Trafficking

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

People smuggling is also one of the top three forms of transnational crime in terms of criminal profits, with an estimated $ 7 billion annual profit being made by organizers who are moving millions of people every year. The UN estimates that, of the 125 million displaced migrants throughout the world, 15 million were transported by illegal migrant-smuggling syndicates.

The International Labor Organization (ILO) – the United Nations agency charged with addressing labor standards, employment, and social protection issues, estimates that 12.3 million people the world are enslaved in forced labor, bonded labor, sexual servitude, and involuntary servitude at any given time. Million of these victims are trafficked within their own national borders. According to the State Department’s 2005 Trafficking in Persons (TIP) Report, approximately 600,000 to 800,000 men, women, and children are trafficked across international borders each year; of these, about 80 percent are female, and up to half are minors. The majority of transnational victims are trafficked commercial sexual exploitation.

Some Southeast States have sought to promote regional cooperation against undocumented migration by organizing ministerial conferences. In February 2002, Hasan Wirayuda and Alexander Downer, the (former) foreign minister of Indonesia and Australia, co-chaired the Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime in Bali. It gathered ministers from thirty four countries, including Iran and Afghanistan from where a lot of illegal migrants departed, as well as representatives from the International Organization for Migration, the United Nations High Commissioner for
Refugees (UNHCR) and INTERPOL. Despite some attempts to promote interstate cooperation against human smuggling and trafficking, the issue has continued to cause political problems among the Southeast Asian states, especially since the financial crisis of 1997. This has limited bilateral and multilateral collaboration against human smuggling and trafficking. The lack of political unity among the Southeast Asian States on this issue results from the sensitivity of the illegal migration question and the bilateral tensions that it creates.

3. Sea Piracy

Sea piracy is an historical and cultural phenomenon that has continued in this modern age to affect maritime traffic in some of the world’s busiest shipping lanes. It is estimated by the International Maritime Bureau (IMB) to cost as much as US $ 16 billion a year in commercial losses. Founded in 1981, the IMB defines piracy as:

“An act of boarding any ship with intention to commit theft or any other crime and with intention or capacity to use force in the furtherance of that act”

This definition can be distinguished from the narrower approach adopted in the United Nations Convention on the Law of the Sea (UNCLOS).

The problem of piracy in Southeast Asia is a threat to regional and the international economic security. The free and safe navigation of commercial vessels in Southeast Asia is an essential for international trade. The risk of piracy in the region has already led to high economic cost reflected by the loss of merchandise and ships and the increased insurance premium added to a number of cargoes that pass through the Malacca Strait, which ply 900 km-long (550 miles) sea line and with 200 to 600 ships crossing the Strait daily. Additionally, it has become the most important route of transport for oil from the Middle East to oil markets in East Asia. Moreover, a piracy attack on an oil super tanker crossing the Strait could lead to an environmental disaster to massive proportions.

In recent years, coordinated patrols by Indonesia, Malaysia, and Singapore, along with increased security on vessels have sparked a dramatic downturn in piracy. According to IMB reported that worldwide pirate attacks fell for the third year in a row in 2006. Attacks on ships at sea in 2006 fell to 239 vessels, down from 276 in 2005. The same trend echoed in the Strait of Malacca where attacks dropped from 79 in 2005 to 50 in 2006. Nonetheless, in 2004, the region accounted for 40 % of piracy worldwide.

In 2004, the three countries in the region, Indonesia, Malaysia, and Singapore increased the patrol on the strait in an attempt to curb piracy. While Singapore wants international supports in this effort, Indonesia and Malaysia opposed to foreign intervention.

4. Corruption

Southeast Asia is distinctive in many ways, and this no different with respect to much studied subject of corruption. Indonesia and Thailand have also ranked among the faster-growing economies in the word in the past, as they still are today. Indonesia, Philippines and Thailand have all recently democratized. There may have been some increase in corruption following democratization with some changes in its perpetrators and beneficiaries. By some indices, in the 1990s all three countries even fell from being less to being more corrupt than China. The least democratic of the five market economy countries, Malaysia and Singapore, are also ranked as the least corrupt.

All these countries have experienced economic liberalization, the reduction of
trade and investment barriers, and less government intervention in the economy, which is supposed to reduce corruption because business no longer needs to pay bribes to be allowed to conduct their business. Yet despite this, there has been no discernible fall in corruption.

5. Money Laundering

Money laundering is a financial crime, with no boundary of states, considering that the crime proceeds are often laundered and hidden in foreign countries. The IMF estimates the present scale of global money laundering transactions to be 2 to 5 percent of global Gross Domestic Product (GDP) and that the impact of money laundering is large enough that it must be taken into account by macroeconomic policy makers.

The Financial Action Task Force (FATF) is a leading international body on money laundering policy. Its Forty Recommendations define the state task in providing a functional yet transparent financial system. The FATF’s outreach program is manifest in the Asia Pacific Group on Money Laundering (APG). According to the APG, the primary sources of criminal proceed in regions were identified as trafficking in illicit drugs and human beings, gambling, and the activities of organized crime groups. Some others identified source included kidnapping, arm smuggling, hijacking, extortion, corruption, tax evasion, and terrorism.

6. Terrorism

Since the World Trade Center (WTC) tragedy in USA on September 9, 2001, international terrorism has become a new form of war, an asymmetric and concrete threat for the World. Yet, terrorism is purely a crime against national and international law.

Furthermore, there are many definitions run arguing over the precise meaning of ‘terrorism’. Schmid and Jongman recorded 109 different definitions in their famous review in the middle 1980’s, but an energetic compiler today would have little trouble gathering at least twice that number.

According to the International Convention for the Suppression of the Financing of Terrorism 1999, define terrorism as:

“any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to, intimidate a population or to compel a government or an international organization to do or abstain from doing any act”.

Furthermore, the United Nation (UN) come to recognize that terrorism destroys the human rights of the people to be free in life, and free from fear, since Human Rights presuppose recognition of the dignity and values of human beings. UN Resolution 1624 (2005) condemn all acts of terrorism and incitement to commit a terrorist act or acts irrespective of theirs motivation, whenever and by whomsoever committed.

The other world shaking tragedies in Terrorism are the Bali, Madrid, and Jakarta tragedies. Indonesian’s most prominent cases: October 12th 2002, September, 8th 2004 and July, 17th 2009. Act of small scale of terrorism and conflicts occur in various countries around the world continuously. However, the international community calls for fighting them mutually, respecting the Human Rights principle in advance.

E. The United Nation Convention on Transnational Crimes and the Model Treaty on Mutual Legal Assistance 1990
To facilitate combating the transnational crime in international rank, the significant advancements in the field of the mutual legal cooperation came with the adoption by the General Assembly of the United Nations of the 1990 Model Treaty on Mutual Assistance. This instrument now has over 130 signatory states. And another important document is the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988 Drug Convention) which contains a “stand alone” article on Mutual Legal Assistance. Under this article state parties to the Convention can seek and provide a broad range of assistance in evidence gathering.

A similar detailed article has been introduced in recently concluded United Nations Convention against Transnational Organized Crime (UNTOC Convention) 2000 which entered into force in September 2003. Article 18 which develop on the basis of the 1988 Drug Convention provisions on mutual assistance, contain 30 clauses providing for an elaborate and modern scheme for mutual assistance among state parties.

In the context of Corruption case, UN Convention on Anti Corruption 2003 was adopted by the General Assembly of the United Nations on 31 October 2003. The Convention also mentioned Mutual Legal Assistance as an International Regime on fighting transnational crime, particularly in corruption issue. The latest status reported by the UNOCT, there are 140 countries that have signed the convention. 103 States have ratified it into their domestic law.

Because of the word wide of the corruption problems are a large amount of ill gotten money are now kept in bank account, most of them in the developed country. All assets are from developing country which stolen and deposited by ex corruption leader’s of the developing country when they had hold on the power. Therefore, on 17 September 2007, UNODC and the World Bank launched the Stolen Asset Recovery (StAR) Initiatives.

Additionally, in order to lift up the UN signature countries on Anti Corruption commitment, the UNOCT host the Second International Conference in Bali, from January 28 to February 1, 2008. The Conference have discussed four main agenda namely mechanism of reviewing the convention returning ill gotten assets, technical cooperation, and corruption committed by public officials.

F. The Background of States Compliances with International Treaty

In the context to recognize deeper backgrounds why the states complies with the international treaty theoretically, there are some grounds persuade it. Three paradigms may be distinguished: the classical, the non hierarchic network, and individualist.

“The Classical Theory mentioned that countries may join a treaty because others are doing so, contributing to a “bandwagon” affect. Other governments may use leverage to pressure countries into compliance. Domestic interest may force the issue. In some cases, countries may join with no intention of immediately changing their behavior to conform to international obligations. Frequently, countries simply lack the capacity to comply”.

The classical theory pointed out that, in many cases for some extent, states comply with the international treaty mostly because of their national interest or economic interest. Most the international treaty mechanism provides states with some advantages, especially for the developing country, for instances: technical assistance, training for staff member, and the good will. Because of considering the reason, even sometimes, states likely did not have its own financial support to pay the annual
contribution which compulsory provisional for many international treaties.

“The Network Paradigm states that compliance is a dynamic process in which states and their sub-units, intergovernmental institutions, non governmental organizations, business, other associations and individuals interact in complex ways. Patterns vary among agreements and among and within countries. The degree of compliance for any country changes over time”.

The Network Paradigm emphasizes the network among many actors such as states and non states variable. All the actors linked together in transnational network that flow across national borders.

“The Individual Paradigm cited that the individual as the key participant and sovereign unit in the international system. Individual gives consent to governments, and even to international bodies. Democracy is the political vehicle. Compliance would then focus primarily on educating and mobilizing civil society to pressure governments, international organizations and other relevant actors to comply with their international obligations”.

The Individual Paradigm stressed sovereignty of individual and protection of their rights. Compliance should focus mainly on educating and mobilizing civil society to pressure governments, international organizations, and other relevant actors to comply with their international obligations.

With regard to the three ground theories of states compliance with the international treaty shown at previous part, we can reach an understanding that the states level compliance with the international treaty would be different from one to the other. Therefore, at least we could predict and identify what steps should be taken by one state while it intend to involved into certain international treaty.

Meanwhile, Kal Raustiala pays more attention to the complex architecture of international agreements and treats agreement design holistically. From his point of view, there are three dimensions of institutional design of international law, namely: legality, substance, and structure. The availability of dimensions will lead the state compliances of international agreement vary each others. Even the Vienna Convention on the Law of Treaties defines treaties (contract) as “international agreement(s) concluded between states in written form and governed by international law”. In practice, the usage of the term varies widely as such, it depend upon the state commitments whether to be deep contract or shallow pledge. In short, the effective enforcement is an outcome that may vary on the basis of a range of other factors: the nature of the parties, the legality and substance of the agreement, the precise sanctions employed.

Nevertheless, for practice purpose, procedure of MLA in criminal matters, United Nation Office for Drugs and Crime (UNDOC) creates a guideline of MLA tool workflow process. The workflow chart comprises all the necessary steps that can be taken by the practitioner when drafting a Mutual Legal Assistance request with the MLA tool.

G. Regional Treaties and Bilateral Cooperation on Combating Transnational Crime

Currently states began to design providing for assistance between states, particularly the states that belong to the different legal family. The first example as breakthrough instrument is the treaty between the United States and Switzerland (came in to force in January 1970). Since that time the network of bilateral instrument has develop between states of similar or diverse legal tradition. Those agreements are further supplemented by domestic legislation within some states which allows for assistance to be rendered
on the basis of reciprocity, designation or administrative arrangement.

Similar to extradition, there has also been an increasing development of the regional agreement for mutual assistance. Some recent examples include the Inter-American Convention on Mutual Legal Assistance in Criminal Matters, and the Economic Community of West African States Convention on Mutual Legal Assistance in Criminal Matters, whiles in Europe continent, on May 20, 2000, after five years of negotiations, the Council of Ministers adopted the Convention on MLA designed to make MLA more efficient and effective.

In South East Asia Region, a number of important regional statements have been issued and initiatives have been taken in relation to transnational crime. Useful initiatives in this area have been taken by the Association of Southeast Asian Nations (ASEAN), the ASEAN Regional Forum (ARF) and the Asia Pacific Economic Cooperation (APEC) Forum. Moreover, there was Regional Treaty on Mutual Legal Assistance signed by member countries of ASEAN (Southeast ASEAN MLAT), November 29\textsuperscript{th}, 2004. Among the countries in the initiative, Malaysia, Singapore, and Vietnam have signed and ratified the treaty. Cambodia, Indonesia, the Philippines, and Thailand have signed but not ratified it yet. The Treaty obliges parties to render to one another the widest possible measure of MLA in criminal matters, subject to requested state’s domestic laws. The Southeast Asian MLAT provides for many forms of MLA that are commonly found in bilateral treaties, such as taking of evidence, search and seizure, confiscation of assets.

Again, there is an ASEAN Chiefs of Police forum known, as ASEANPOL, which meets regularly to discuss regional matters. ASEANPOL is administered by the ASEAN Secretariat in Jakarta. Under the Chief’s meeting is a Senior Officers’ Meeting on Transnational Crime (SOM-TC). The Chiefs report to the ASEAN Ministerial Meeting on Transnational Crime (AMM-TC). The plan of action to Combat Transnational Crime was facilitated by the SOM-TC.

H. Conclusion

In line with the increasing of amount world population, poverty level globally, and globalization, all factors influenced transnational crime action scales worldwide. Various kinds of the transnational crime extent capacity from one country border to the others, involving more than one country. In addition, globalization simultaneously accelerates on delivering process of the transnational crime damage affects for center of attention. As consequences, to fulfill its function protecting its people lives and territory, states as the international entities subjects in international relationships hold a very crucial and central position to combat the transnational crime. Hence, states mutual legal cooperation is a must in the globalization era. No states can stand alone in countering such action at this moment. In reality, the most well know transnational crimes nature at present: (i) trafficking in illegal drugs (ii) people smuggling (iii) sea piracy (iv) corruption (v) money laundering (vi) terrorism.

There are numerous international judicial cooperation in international criminal law perspectives, for instances: Letter of Rogatory (the traditional approach), Extradition, Transferred Sentenced Person (TSP), Mutual Legal Assistance (MLA) in Criminal Matters, International Criminal Police Cooperation (INTERPOL), European Law Enforcement Organization (EUROPOL), ASEAN Police Cooperation (ASEANPOL). All the international judicial cooperation may convey an effective effect to the states; they have to engage to the agreement bilaterally or multilaterally. However, the most important
step is states shall ratify them into national domestic law at the first place.

Overall, referring to the last progress of the international judicial cooperation experienced by states revealed that bilateral agreement is much more preferential than multilateral one. Despite of the dissimilarity of legal system between states concerned, also, it is with the purpose that the agreement tends to be able to maintenance the certain state interests, agendas, and no commitment to disburse compensation as annually member’s contributions which compulsory conditional for many international treaty.

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