

## **THE FIGHT AGAINST TERRORISM IN THE 21<sup>ST</sup> CENTURY: SOUTH AND SOUTHEAST ASIA**

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### **1. Terrorism in Asia in the 21<sup>st</sup> century**

#### *1.1. Introduction*

The phenomenon of terrorism gained special attention from the international community over the last years and became a top priority on the global agenda in the 21<sup>st</sup> century. The main reasons for that were the 11 September 2001 attacks on the World Trade Center and the Pentagon, carried out by the transnational terrorist organization called al-Qaeda. Those attacks demonstrated how terrorism could be effectively used in inflicting serious damage and causing several deaths, even against a country as powerful as the United States of America (USA). The September 11 attacks dramatically changed the global scenario, leading to what the former president George W. Bush called the Global War on Terror: “our war on terror begins with al-Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated” (Bush, 2001).

Bush’s statement preceded a period marked by USA’s interventions and military operations across the globe, seeking to fight terrorist groups and countries that presumably supported them. The most well-known and important of such interventions were the invasion of Afghanistan and the war on Iraq, the latter being carried out without a previous authorization of the United Nations Security Council. Those actions were frequently characterized by unilateralism, and helped to support the argument that September 11 was a turning point in international relations, resulting in a diminishing of the respect to international organizations and law, and in the one-sided approach adopted by the United States’ foreign policy. But besides the importance of September 2001 attacks against USA, terrorist threats are neither exclusively held by extremist Islamic groups, such as al-Qaeda, nor are they new in world history.

The Asian continent is particularly affected by terrorism, comprehending the Middle East, one of world’s most troubled areas and which has been described as “the traditional cradle of terrorism” (Chellaney, 2002: 96). But Asia also bears a variety of other regions and countries in which different groups, from Muslim extremist organizations to ethnic separatist movements, have been using terrorist methods as a way of pursuing their political objectives. The importance of Asia can be highlighted through the *2008 Report on Terrorism* (2009) made by USA’s National Counterterrorism Center, which indicates that approximately 84% of the terrorist attacks that happened in 2008 occurred in the Asian continent. Even excluding the Middle East, the report shows that, among the 11,770 attacks registered in that year, 4,354 were in South Asia,<sup>1</sup> and other 978 attacks occurred in the East Asia and Pacific region.<sup>2</sup>

The objective of this paper is to examine the terrorism phenomenon in Asia, the counter-terrorism measures adopted to fight it, and the moral, juridical and political constraints regarding that

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<sup>1</sup> USA’s National Counterterrorism Center defines South Asia as the region including Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.

<sup>2</sup> USA’s National Counterterrorism Center defines East Asia and Pacific as the region including Australia, Brunei, Cambodia, Federal States of Micronesia, Fiji, Indonesia, Japan, Kiribati, Laos, Macau, Malaysia, Marshall Islands, Mongolia, Myanmar, Nauru, New Zealand, North Korea, Palau, Papua New Guinea, People’s Republic of China, Philippines, Samoa, Singapore, Solomon Islands, South Korea, Taiwan, Thailand, East Timor, Tonga, Tuvalu, Vanuatu and Vietnam.

struggle. The Middle East, as a region that already has been largely discussed in other academic assessments and political analyses, and due to its particularities and complex internal logic, will be left out of this paper. Therefore, we will focus our efforts on the continent's other regions.

This first section seeks to introduce the terrorist cases in Asia, focusing on which are the main groups acting in each Asian region, what are their motivations, methods and goals, and how the phenomenon of terrorism in the continent affects international peace and security as a whole. Nevertheless, the complexity of the issue and the variety and particularities of the manifestations impose serious limitations to our attempt. Therefore, this section will limit its analysis to the main cases in South and Southeast Asia regions, both of which deserves special attention for having presented strong organized groups and recurrent terrorist attacks in the 21<sup>st</sup> Century.

### *1.2. South Asia<sup>3</sup>*

South Asia represents one of the most unstable and problematic regions of the continent, together with Middle Eastern areas. Ethnic diversity among national populations, political and ideological differences, socioeconomic inequalities, weak governments and historical conflicts among countries, all in all creates the complex scenario of South Asia.

India draws special attention as the largest country in the region, with a very diverse and multi-ethnic population. It also constitutes one of the world's most affected areas when it comes to terrorism. The militant threats are posed by three main sources: Maoist groups called Naxalites, some ethnic separatist movements, and Islamic organizations. The most affected areas in India include the Jammu and Kashmir state, and the northeastern part of the country.

Naxalites is a term used for referring to numerous Maoist rebel groups in India. The name comes from a village called Naxalbari where, on 1967, a number of local tribals attacked landowners and promoted a violent insurrection. The Naxalites fight against socioeconomic exploitation and seek to create a classless society through popular insurrection. These groups operate mainly in the eastern states of Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Karnataka, Orissa, and West Bengal – the so called “red corridor,” – and have been acting primarily in rural and underdeveloped areas (Office of the Coordinator for Counterterrorism, 2009: 146). Consistently with communist ideologies and wishing to overthrow India's current political system, Naxalite movement has traditionally targeted government officials and police officers, as well as capitalists and landlords. Among their methods are both bombings and assassinations. During the last years, Naxalites have gotten stronger, especially after September 2004, when a unification of the two main factions of the armed insurgency – the Maoist Communist Center and the People's War Group – was announced. A sign of this possible strengthening of the Naxalites was the 15 March 2007 attack to a police post in the jungles of the Chhattisgarh state, killing around 50 police officers, and being considered one of the worst attacks in the insurgency's history (Stratfor, 2007).

Terrorist threats in India also originate from Islamic extremist groups, such as Harakat-ul-Jihad-i-Islami (HJI), Jaish-e-Mohammad (JM) and Lashkar-e-Tayyiba (LT). These religious-based groups operate primarily in the Kashmir area. The region has a Muslim majority in its northern areas, but presents a predominantly Hindu population in the south, being territorially disputed by Indian and Pakistani governments since the 1940s. Opposing to the Indian presence in the area, almost all

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<sup>3</sup> For the purposes of this article, South Asia will be defined as the region comprehending Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. It is important to emphasize that Afghanistan will not be examined here, as it may be considered a Middle East country, and due to its particularities as a State currently under military intervention.

the Islamic terrorists groups acting in Kashmir maintain their base of operations in Pakistani territory, and allegedly receive support from al-Qaeda.<sup>4</sup> They also tend to defend the establishment of *Sharia* rule in the region, meaning the governments' adoption of a particular interpretation of the Islamic law based on Muslims' sacred book, the Koran. Among those groups, LT is appointed as one of the largest and most proficient of them, being suspected of conducting several attacks against Indian targets, including the 2001 bombing of the Indian Parliament, the May 2002 attack against an Indian Army base, and 26-28 November 2008 attacks in Mumbai, which resulted in more than 180 deaths. Moreover, the LT actions have frequently led to Indian accusations against Pakistan, claiming that the neighbor government's measures against the group were insufficient and lacked true commitment, what might be a source of greater concern in their already troubled relations (The New York Times, 2009; The Independent: 2006).

Similarly to India, Sri Lanka also has a very heterogeneous society. The population of the country has a Sinhalese majority, which is largely Buddhist. The second biggest group in Sri Lanka is composed of Tamils, who are usually either Hindu or Christians, and are the dominant ethnicity in north and east regions of the country. Besides those two groups, Sri Lanka has also a small Muslim population and a Eurasian group. The country suffered from multiple crises of terrorism since its independence, in 1948, with "conflicts based in religion, ethnicity, and ideology" (Lutz & Lutz, 2004: 215). During this period, Sri Lanka has dealt with a failed *coup d'état* in 1962, and two communist attempts of overthrowing the government, carried out by the communist party Janatha Vimukthi Peramanu (JVP), in 1971 and 1987. But the main and most enduring armed opposition to the government has been carried out by the Liberation Tigers of Tamil Eelam (LTTE), also known as Tamil Tigers.

The Tamil Tigers was founded in 1976. It is a Tamil secessionist group whose objective is to establish an independent Tamil state in the north and east regions of the island. The group has managed to ally guerrilla insurgency tactics with terrorist actions, and its forces included not only ground units, but also sea forces and a small air wing. The organization became notorious for the assassinations of government officials, having killed members of the parliament, executive ministers, and even a Sri Lankan president and an Indian prime minister. Those assassinations were carried out mainly by the Black Tigers, which are Tamil Tigers' cadre of suicide bombers. But Tamil Tigers' attacks aimed at not only politicians and military targets, but also local populations. Although the group was severely weakened in the last few years, especially after May 2009, when Sri Lankan military forces conducted a heavy strike against the Tamil Tigers' forces and eliminated its main leaders, evidences indicate that it remains active. As some specialists have pointed out, even with its leadership and military capacity being crippled, the organization will probably maintain actions against the government, with the group's possible "transformations from a conventional guerrilla fighting force to a traditional terrorist group" (Stratfor, 2009a).

The Nepalese situation also deserves attention. The country's government was based on a monarchic system until May 2008, when a decade-long campaign against it was finally successful in putting an end to the King Gyanendra rule, establishing a democratic republic. The insurgency was guided by the Communist Party of Nepal (Maoist), and resulted in a wide-spread armed conflict in the country that might have killed over 12,000 people and displaced around 100,000 (BBC, 2009). During the struggle, the Maoists allied political and military strategies, including the use of terrorist tactics, extortions and torture (International Crisis Group, 2005). Nevertheless, it is difficult to characterize them simply as a terrorist group. Actually, the Maoists became the largest parliamentary

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<sup>4</sup> See [http://www.globalsecurity.org/security/profiles/terrorism\\_organization\\_home.htm](http://www.globalsecurity.org/security/profiles/terrorism_organization_home.htm)

party in the April 2008 elections and, following the establishment of the republic, they began leading the democratic government in Nepal, even though they resigned it on May 2009.

### *1.3. Southeast Asia<sup>5</sup>*

Southeast Asia region is predominantly Muslim, with Islam being the religion of approximately 40 percent of the population (Houben, 2003: 153). Although it can be pointed out that the Muslims in Southeast Asia tend to be moderate and peaceful citizens (Houben, 2003: 166), the main terrorist groups acting in this region are commonly Muslim fundamentalists, usually defending, as one of their goals, the creation of Islamic States. Nevertheless, extremist trends and the use of terrorist methods among these sub-state groups might be closely connected to socioeconomic disparities and to political claims than to religious justifications.

Jemaah Islamiya (JI) is possibly the most influential terrorist group in Southeast Asia. Based on Indonesia, but assumedly sustaining cells in Malaysia and the Philippines, JI “is a terrorist group that seeks the establishment of an Islamic caliphate spanning Indonesia, Malaysia, Southern Thailand, Singapore, Brunei, and the Southern Philippines.” (Office of the Coordinator for Counterterrorism, 2009: 304). The group and its ramifications were responsible for several terrorist attacks in the region, including the October 2002 Bali bombing, which killed more than 200 people and is considered one of the most deadly terrorist attacks after September 11 (Office of the Coordinator for Counterterrorism, 2009: 304). JI was also involved in attacks such as the August 2003 bombing of the J. W. Marriott Hotel in Jakarta, the September 2004 bombing outside the Australian Embassy in Jakarta, and the October 2005 Bali suicide bombing. More recently, it presumably carried out the July 2009 Jakarta bombings at the Ritz-Carlton and J. W. Marriott hotels (Stratfor, 2009b).

Specialists have pointed out that the group received support and still maintains close links with al-Qaeda. In Southeast Asia, JI have supported and passed on its training and operational knowledge to other groups:

JI members are known to have traveled to Mindanao, Philippines, to train groups like Abu Sayyaf and the Moro Islamic Liberation Front, which continue fighting the Philippine government today. JI also supported *Kampulan Mujahideen* Malaysia and *Laskar Jihad* in Indonesia (both of whom support the overthrow of moderate governments and the installation of conservative Islamic law) with training and materials (Stratfor, 2009b).

During the last years, JI has suffered attacks from government agencies, especially from Indonesia's, having some of its leaders arrested and condemned. This process possibly helped to create splits and fractures inside the organization (Stratfor, 2009b, 2009c). Nevertheless, even weakened, the organization is still preeminent in Southeast Asia, and remains capable of conducting terrorist acts, as the July 2009 attacks in Jakarta have proven.

### *1.4. International security: spillovers from national to regional and global contexts*

Terrorism in the Asian continent has regrettably proven to be a common and widespread phenomenon, involving different countries, motivations and methods. Implications of terrorist actions, such as those described before, can overspill from national domain, comprehending threats to neighboring countries and creating instabilities to the international community as a whole. Therefore, it is important to analyze the possible negative spillover and side effects that terrorism

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<sup>5</sup> For the purposes of this article, Southeast Asia will be defined as the region comprehending Brunei, Cambodia, East Timor, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

might generate, including economic problems, regional and global security threats and human rights violations.

The domestic instabilities created by terrorist threats can result in great economic losses. Situations such as the civil war context in Sri Lanka can negatively affect national capabilities by damaging the country's infrastructure and restraining economic activities. The Maoist rebels in India, for their turn, may create serious restrictions to local business and foreign investments, as their main targets include what they might consider the symbols of economic exploitation and capitalist domination, such as industries and multinational companies. India plays a considerable role in the global economy, being the 9<sup>th</sup> major exporter of commercial services in world trade (World Trade Organization, 2009), which means that variations in its national economy affects a significant number of countries directly or indirectly dependent on its products and economic activities. Therefore, the impacts of terrorist actions such as those from Naxilite groups might create negative spillover effects throughout the globe, resulting in instabilities for the international economy.

Terrorist groups and the governments' fight against them can also lead to human rights violations and international law transgressions. Sri Lankan civil war was marked by accusations of humanitarian violations against both parts, with Tamil Tigers supposedly obligating civilians and even children to fight, and government forces using bombs in areas with large non-combatant populations (International Crisis Group, 2009). Armed conflicts, or the simple fear of terrorist attacks, can also obligate local population to flee their homes, which might affect both the national government, having to deal with internally displaced people, and the country's neighbors, receiving foreign refugees. Bearing in mind that human rights are a global issue in the contemporary global agenda, and that the international community has the responsibility to look over and protect populations against severe human rights violations, terrorist actions and their possible consequences in Asia can be seen as a major concern to all countries of the world.

Terrorist groups, even those limited to domestic actions, can be an influence to groups and communities abroad. Tamil Tigers' objectives are restricted to Sri Lankan territory, but its measures and results can have direct influence over Tamil populations living in the Indian state of Tamil Nadu, which in turn might feel motivated to seek greater autonomy or even independence from that state. Moreover, the Tamils that fled Sri Lanka due to the civil war and currently live in places such as Australia and North America might prove to be an important source of financing and support to the Tamil Tigers activities, bringing up the problem of terrorism funding. On the other hand, organizations such as Jemaah Islamiya, which already extend their operational scope to various countries, will necessarily affect regional stability and Asian security. Furthermore, JI links with other domestic and international Islamic groups, including al-Qaeda, might help supporting terrorism on many other regions, both in Asia or in other parts of the world.

Finally, terrorist treats can also implicate problems to the relations among different countries. The attacks promoted by Kashmir-focused terrorist groups, for example, have served to sustain accusations of terrorism support between Indian and Pakistani governments. Taking into account their traditionally troubled relations, characterized by disagreements and conflicts, and marked by three wars, the belief that one of them might be helping terrorists aiming to attack the other could lead to an armed confrontation. The fact that both countries possesses nuclear capabilities, demonstrated by 1998 nuclear tests promoted by them (Howlett, 2008 *In: Baylis; Smith; Owens: 391*), only makes the situation worst, as military confrontations among the two countries could lead to the usage of weapons of mass destruction. Such a scenario could potentially result in a further escalation of the conflict, with the involvement of neighboring countries and other nuclear powers,

thus mining the regional and international stability and endangering the lives of civilian populations. Hence, the fact that terrorist actions in the Kashmir region might lead to interstate wars, potentially resulting in large scale conflicts and the use of nuclear weapons, shall be seen with deep concerns by the international community, and treated as a possible source of threats to international peace and security.

The terrorist phenomenon in Asia represents, therefore, a relevant international problem, as it offers potential threats at national, regional and global levels. The capability of affecting regional stability and the international economy, and to create serious humanitarian crisis, together with possible support from certain terrorist organizations to groups elsewhere in the world, highlights the importance of taking Asian terrorism as a matter of concern to the international community. Moreover, the fact that some groups act through different States, carrying out attacks in other countries besides their own, and the establishment of transnational networks among terrorists, including links with organizations such as al-Qaeda, demonstrates the need to consider the terrorism phenomenon in Asia as a threat to international peace and security.

## **2. The fight against terrorism**

Counter-terrorist actions are devices used to prevent and combat terrorism. Since this phenomenon has old origins, the ways to avoid it is also not recent. It can be considered, for example, the hostage taking at Munich Olympics in 1972 and the resulting response, or still older cases, if it is possible to limit this phenomenon chronologically. However, it is only at the 21<sup>st</sup> century agenda that coordinated actions have been deeply taken to prevent and combat terrorism throughout the world.

Even considering that after the attacks of September 2001 there have been improved efforts to arrest people affiliated with al-Qaeda or organizations associated to Osama bin Laden, actions to prevent or combat terrorism are linked to past events. Terrorism is a phenomenon that does not have a date limit and not even a specific place. As Lutz & Lutz (2004: 244) affirm, “terrorism has been a nearly universal phenomenon.”

Not being a unique recent phenomenon and geographically determined, it is questionable to delimit causes that board terrorism. However, some common characteristics define possible means of combat and prevention of terrorist practices. Terrorist groups usually have political motivations for the use - or threat of using - violence. Organizations are built and maintained for mechanisms of influence and power, since terrorist groups, allegedly, cannot reach their motives through common social or political means. Furthermore, terrorism can also be linked to religious, ethnical or ideological motivations.

Programs to counter terrorism run the gamut from detection and prevention of violent dissident activities by police, security agencies, and military forces to more involved efforts to eliminate support within society for the dissident groups. (Lutz & Lutz, 2004: 224)

Considering those aspects, counter-terrorism means are not scattered or punctual, but linked and organized through mechanisms that avoid terrorist practice. Security structure must be reinforced; information must be easily detected, since terrorist groups have increased their access to technological means and the containment of these practices demands high technological sources. Besides, counter-terrorism practices are directly linked with governmental reprehension, retaliation, punishment, preemptive actions, special unit creation, concessions, financial resources and diplomatic boarding.

Although particular characteristics of each event must be considered, widespread elements are possible to be defined as common actions and structures. Terrorism also has a propensity to be considered a continuous process since terrorist groups are worried about maintenance of the group and its influence, besides far-reaching actions. Moreover, the variety of groups through time makes terrorism a widespread phenomenon. Dealing with worldwide conditions, these groups have found new ways of acting regionally and internationally. The successful persistence of the practice has turned terrorism into an option for achieving objectives locally and also with international evidence, having access to other terrorist groups and mechanisms such as financial support, maintaining and encouraging terrorist practices.

Terrorism is seen as a diffuse practice through many regions of the world, comprehending different characteristics and practices. Counter-terrorism practices usually go along with it, since terrorism challenges the legitimacy of the authority where the practice occurs. It would be impracticable to analyze terrorism as a widespread unique practice. However, it is possible to identify common elements and counter-terrorist means within a common region. Although a region as Asia can be focused, the interest is not only to concentrate the analysis regionally but also demonstrate that the international reach has continually gained further evidence. On that account, it turns necessary to analyze counter-terrorism practices at several levels for a best comprehension of them.

## *2.1. Means to combat terrorism in Asia: what has been done?*

### *2.1.1. National level*

National level implies counter-terrorist practices taken by states within their own territory. The evidence under this analysis follows over government position and internal justice. Although terrorism has become essentially a transnational phenomenon and attitudes to combat it are generally under international level, it is necessary to consider how governments, through their own mechanisms, combat terrorism practices and how their actions motivate multilateral decisions.

In Asia, most countries that come up against terrorist practices do not have specific counter-terrorism apparatus. Most of them act nationally and with instruments provided by each country's government. However, usually government actions demonstrate insufficient apparatus or limited answer to specific insurgent groups. National armies are often used and in most cases terrorist groups have religious or cultural features. Sometimes their causes can be separatist and, as recently found, not acting exclusively in its origin country. Moreover, as these groups have found support internationally, with financial or inter-groups relations, countries have been demanded to act multilaterally. In general, most Asian countries counter-terrorist practices are linked with suppression of violence through forceful mechanisms (NCTC, 2009; Chow, 2005: 302-321).

Malaysia and Singapore, for instance, possess domestic security laws that provide for indefinite detention without trial of any suspected terrorist; Indonesia, notwithstanding, has a police force beset by corruption and an antiquated legal framework that until March 2003 did not formally list terrorism as a crime or provide harsh punishments for it, although after Bali attacks counter-terrorist practices have improved in the country (Wnandi, 2002: 135-46). In Philippines, there are the Moro Islamic Liberation Front (MILF) and the Abu Sayyaf Group, both seeking to establish an independent Islamic state in the primarily Muslim southern province of Mindanao. Because of the large-scale nature of the insurgency in the country, the government has adopted a strongly military approach in combating it. During the 1990s, the

MILF launched a series of attacks throughout the Southern Philippines, resulting in reprisals from the army. Formal negotiations between the government and the MILF happened in February 2005, after an uneasy ceasefire that has lasted since July 2003 (Chow, 2005: 302-321).

In Indonesia, the world's most populous Islamic country, terrorism has been linked to separatist movements in the provinces of East Timor, Irian Jaya and Aceh. Under former President Suharto, holding office from 1967 to 1998, the Indonesian government employed force to suppress political violence and dissent, as illustrated by numerous military operations in those troubled provinces and elsewhere. The internal political turbulence that followed Suharto's fall in 1998 created a more fertile environment for separatism and Islamic extremism. Domestic and international pressure led to the 1999 referendum on independence in East Timor<sup>6</sup>, resulting in widespread violence by pro-Indonesian militias and a number of army units. In May 2003, peace talks between the government and the separatist Gerakan Aceh Merdeka (GAM) in the predominantly Muslim province of Aceh broke down, where Jakarta launched a major military crackdown. In early January 2005, GAM proposed a unilateral and unconditional ceasefire, an action welcomed by the Indonesian government.

After 2003, however, Indonesia has faced other international terrorist networks, even linked to al-Qaeda. Conspiracy theories prompted Coordinating Minister for Security and Politics Susilo Bambang Yudhoyone to call publicly to eliminate speculation about foreigners and to get behind the effort to confront the enemy within. Information connected to terrorist acts in Bali implicated a group called Jemaah Islamiya (JI; in English, *The Community of Islam*) and its spiritual leader, Abu Bakar Ba'asyir. While Ba'asyir was on trial, a car bomb exploded in 2003 at Jakarta, killing five and injuring nearly a hundred and fifty people. Arrested and put on trial, for treason and instigating terror, Ba'asyir later received a four-year sentence for sedition, but was not convicted for the Bali bombings. Although denial and incredulity remain resilient, the political prominence of terrorism has diminished (Kipp, 2004: 62-69).

The September 11 attacks prompted the United States to respond with major military operations against the Taliban and groups linked with al-Qaeda in Afghanistan, an aspect that leads our analysis from the exclusively domestic range to the international scope linked to government actions. These actions raised concern among the Association of Southeast Asian Nations' (ASEAN) members, particularly Malaysia and Indonesia, due to the fact that the War on Terror was turning into a War on Islam, since terrorist groups became carelessly associated with Islamic groups. However, the support to the War on Terror was considered part of the ASEAN agenda of cooperation with the United States for general counter-terrorism, even being polemic since Muslims tend to see US counter-terrorism actions as mainly directed to Muslim people (Chow, 2005: 302-321). In short, domestic factors, like unilateral government actions or opinion from religious groups, were considered a significant hurdle to substantive regional cooperation (Chow, 2005: 310).

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<sup>6</sup> East Timor was colonized by [Portugal](#). In 1975, East Timor declared its independence, however, in the same year it was invaded and [occupied](#) by Indonesia and was declared Indonesia's 27th province. In 1999, following the [United Nations](#)-sponsored act of self-determination, Indonesia relinquished control of the territory and East Timor became the first new [sovereign state](#) of the 21st century, in 2002.

Some argue that since many Southeast Asian terrorist groups are domestic rather than transnational and often represent separatist movements with primarily domestic goals, counter-terrorism efforts typically were limited to intrastate operations with little or no cooperation among neighboring states. This characteristic changed since terrorist groups started to perform beyond national borders. As terrorist practices have been widespread regionally, countries have seen counter-terrorism actions under cooperation as a better way of achieving successful outcomes. Terrorist groups are nowadays interconnected and can act jointly. Therefore, cooperation resources on counter-terrorism are demanded for effective prevention and combat, being international organizations an essential intermediate (Chow, 2005: 311).

Japan and China are relevant for this analysis. Following September 11, Tokyo sought a greater role for Japan in the counter-terror effort. Immediately following the attacks, the Japanese prime-minister ordered tightened security in US bases in Japan and provided new aid to Pakistan to alleviate its brewing refugee crisis (Gill, 2002: 43-46). Supporting US is part of Japan intimate connection with that country; Japan has provided aid and technical resources or even military support under cooperation as well. The question of contributing to counter-terrorism actions promptly faced the parameters of a non-military constitution, creating controversial subjects for the Japanese public opinion.

China's role in the post-September 11 security environment has been largely positive and forward-looking, although the country already acted against terrorism before this event and it is still currently considered limited. China backed the relevant UN Security Council resolutions for the use of force against terrorism by the United States, sent a delegation of counter-terror and intelligence experts to consult with counterparts in Washington, beefed up security along its border with Afghanistan to keep Taliban and al-Qaeda supporters from slipping into China, and took steps to freeze assets associated with terrorist organizations that may have been sitting in Chinese and Hong Kong banks. China, however, has its own problems dealing with radicalized separatists in the Turkish-speaking regions of its far northwest province of Xinjiang, where Islamic fundamentalism is making inroads. Besides that, China sees US intervention more frequent in Asia as a problem, since it fiercely defends the principle of sovereignty as imperative (Gill, 2002: 45).

Undoubtedly the South Asia countries have had their internal politics changed after September 11. Since 2001, Afghanistan has been facing Taliban trying to maintain its influence, with American and European presence fighting against terrorist groups, as the ones linked to Taliban and al-Qaeda. At its border, Pakistan tries to reduce ethnical dissidents linked to Taliban influence, keeping a sovereign position. In partnership with the United States, both countries deal with counter-terrorism practices, like troop presence, technical support, national police enforcement, donation or humanitarian actions. Besides that, Pakistan, for example, still faces conflict with India, which leads to frequent terrorist attacks in the Indian domestic scene, demanding cooperation between both countries (Khan, 2007: 461-475).

Considered a plural democratic society, India is singularly well placed to contribute to ensuring peace and stability in the region (Puri, 2001: 3805-3806). Cooperation between Pakistan and India has been deemed necessary to prevent terrorist attacks, and reinforce the legitimacy of their authorities. Connected terrorist actions in India with Indonesia have also provoked cooperative action with Indonesia to also contain its terrorist groups. Thus, as a

potential target to terrorist attacks - since the country concentrates an extensive variety of conflictive groups, sometimes linked to other countries - India has tried to assure security with cooperation with countries in the region, mainly neighbor ones.

### *2.2.2. Regional level*

Regionally, Asia suffers from a huge diversity of terrorist practices. Combating these practices became harder since there is a significant diversity of political parameters. In Southeast Asia, there are porous maritime borders (Carter, 2004). However, regional cooperation has grown since terrorist transnational actions have been more frequent. The South Asian Association for Regional Cooperation (SAARC) counter-terrorism practices has shown more evidently the necessity of multilateral action to combat groups acting in a widespread way. The SAARC Regional Convention on suppression of Terrorism and its additional protocols demonstrated a remarkable action for achieving regional cooperation on the combat of terrorism. Besides, in accordance with UN principles, the agreement showed an advance for its prospects. It was focused on aspects such as extraditions or “criminalizing the provision, collection or acquisition of funds for the purpose of committing terrorist acts and taking further measures to prevent and suppress financing of such acts” (SAARC, 2002). In the scope of the Association of Southeast Asian Nations (ASEAN), other regional counter-terrorism decisions have been taken and deserve prominence, as it will be approached below.

As in 2007, institutes like the United States-Thailand International Law Enforcement Academy (ILEA) in Bangkok, the Australian-Indonesian Jakarta Center for Law Enforcement Cooperation (JCLEC), and the Southeast Asia Regional Center for Counterterrorism (SEARCCT) in Malaysia sought to expand their efforts to provide effective counter-terrorism training to law enforcement officers throughout the region. The Asia-Pacific Economic Cooperation (APEC) forum has also encouraged counter-terrorism practices with political and economic support to its members.

Southeast Asia is home to an expansive network of violent non-state actors. Operating from Mindanao and neighboring islands in the Southern Philippines, the Moro Islamic Liberation Front (MILF) has battled the Philippine government for a separate homeland since the 1970s. Soldiers of Laskar Jihad lend continued support to Muslims fighting Christian rivals on the Indonesian islands of Moluccas and Sul Awesi. In Malaysia, *Kampulan Mujahideen* insurgents aim to transform Malaysia into an Islamic state. In Thailand, the New Pattani United Liberation Organization is working to establish independence for Muslims in the country’s southern states. Further north in Laos and Vietnam, “freedom fighters drawn from among the countries’ disenfranchised ethnic nationalities continue to protest, sometimes violently, against their governments” (Bristow, 2002: 6).

Damon Bristow argues that the solution would be military action in Southeast Asia as a supporting effort. Primarily, it provides a basic short-term security environment needed for the development of long-term economic and political infrastructure changes. A more accurate prioritized list of instruments of national power critical to success in Southeast Asia include information/intelligence, diplomatic, economic, judicial, law enforcement, customs and military training (Bristow, 2002: 6).

Hence, ASEAN occupies a central position in counter-terrorism action in Southeast Asia. Even existing as a potential mean of combating terrorism, there is great disagreement

through the necessity of domestic intervention. In the immediate aftermath of September 11, the ASEAN states acted independently. Only in October 2002, with the Sari Club in Bali, a greater regional cohesion was displayed by the countries, with intelligence sharing, joint training of law enforcement, and efforts to standardize legal definitions of terrorism (Chow, 2005: 302-321). Despite the traditional prospect of sovereignty during the 1990s, a growing regional consensus emerged on the need to address transnational organized crime. Terrorism was included in this category, although trafficking in drugs, arms, and humans received greater attention. After September 11, terrorism becomes a particular focus on transnational crime for the organization. In short, to deal with terrorism as a regional issue required that the ASEAN states carried out considerable standardization of political and social mechanisms. Therefore, the members of the group have been adapted to deal with combined action to combat terrorism.

### *2.2.3 International level*

International cooperation on the fight against terrorism precedes September 11 events, as demonstrates the International Convention for the Suppression of Terrorist Bombings, adopted in 1997, or the International Convention for the Suppression of the Financing of Terrorism, adopted in 1999, both adopted by the General Assembly of the United Nations. After 2001, however, the counter-terrorism theme became part of the mainstream international security agenda, with multilateral action and international cooperation. The most noticeable apparatus on counter-terrorism efforts has been the Counter-Terrorism Implementation Task Force of United Nations system. Agencies, funds, offices, organizations have been acting jointly with principal UN Organs. The United Nations Global Counter-Terrorism Strategy, adopted in 2006, tried to reinforce combined and coherent actions (UNGA, 2006). It is important to note the list of 13 conventions at the United Nations to provide the international framework of combating terrorism.<sup>7</sup>

Although the United Nations is undoubtedly an international field through which international counter-terrorism actions may be appropriate, cooperative actions, bilateral or multilateral ones are also frequent. “A huge amount of donor money, from the U.S., Australia, Japan, and the European Union, among others, has already gone into fighting terrorism, with a particular focus on training the police” (Jones, 2005). One example is the cooperation to contain groups in Indonesia, representing the complexity of combating terrorist movements. On the other hand, with an international perspective, terrorist groups can connect with one another, besides exchanging weapons and supplements. The persistence of terrorist groups and their international level of action demonstrate how cooperative counter-terrorism actions are necessary.

Supporters of a more robust role to Asian countries pointed out to the unanimous United Nations Security Council Resolution 1368, adopted the day after the attacks in New York and Washington, urging the international community “to take all necessary steps to respond to the terrorist attacks of September, 11 2001” (UNSC, 2001a). The American counter-terrorism perspective earns emphasis with its own mechanisms to act internationally, such as the Federal Bureau of Investigation (FBI) with their own Joint Terrorism Task Forces (FBI, 2008).

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<sup>7</sup> Check: <http://www.un.org/terrorism/instruments.shtml>

The Counter-Terrorism Committee (CTC) established by Security Council resolution 1373 (2001b), which was adopted on 28 September 2001, demonstrates a clear international mechanism of counter-terrorism. Cooperation under related issues is linked to a mutual and more focused framework, promoting specific actions and reducing costs for countries to act against terrorism. The CTC mainly suggests countries to implement measures intended to enhance their legal institutional ability to counter terrorist activities, such as the denial of all forms of financial support for terrorist groups; and cooperation with other governments in the investigation, detection, arrest, extradition and prosecution of those involved in such acts. In addition to this, the CTC offers technical assistance and tries to promote, in partnership with other organs, counter-terrorism actions through support of cooperation between countries (CTC, 2008). The Counter-Terrorism Committee Executive Directorate (CTED) was established in 2004 by the Security Council resolution 1535 to strengthen and coordinate the process of monitoring the implementation of resolution 1373.

The United Nations Global Counter-Terrorism Strategy, adopted by Member States on 8 September 2006, serves as a common platform, bringing the efforts of the United Nations system entities that work on counter-terrorism related issues into a common, coherent and more focused framework (UNGA, 2008).

It is important to mention the resolution 1267 of UNSC and 1540, the first in 1999 dealing with sanction against al-Qaeda and Taliban; the second in 2004 focusing on non-proliferation of weapons of mass destruction. Both resolutions were, as the 1373, approved according to the chapter VI of United Nations Charter<sup>8</sup> (UNSC, 1999, 2004b).

One example of action under UN Counter-Terrorism Task Force was the cooperation between CTC and United Nations Office on Drugs and Crime (UNODC) in 2005 at central Asia States, such as Afghanistan, Mongolia and Russia Federation in the fight against terrorism, especially about the financial prospect connected to drug trafficking (Press Release, 2005). The resolution adopted by the General Assembly in September of 2008 reaffirms the UN Global Counter-Terrorism Strategy, with given prominence to the exchange of best practices between states, besides providing assistance, especially in the area of capacity building and updating the strategy to respond to changes, since terrorism is admittedly a changeable phenomenon (UNGA, 2008).

In cooperation with UN, G8 has outstanding action in counter-terrorism globally. Establishing the Roma/Lyon Group, G8 focuses on defeat of terrorism through “multifaceted, collective and coordinated efforts” (G8, 2009), mainly with information sharing, capacity building and technical assistance, respecting human rights, as well as human freedom. The G8 Declaration on Counter-Terrorism still emphasizes the necessity to impede the mobility of terrorists, their access to financial resources, challenging the dissemination of false messages and the appeal of violence. Their use of communication and criminal issues can be contained. Promoting equitable social conditions and respect to law would be an efficient way in the long-term to avoid the growth of terrorist practices. Nuclear terrorism and attacks on critical infrastructure – assets that are essential for the functioning of a society and economy – are new manifestations of terrorism that challenge counter-terrorism to achieve diversified strategies and proper methods.

### **3. Juridical, moral and political constraints to combat terrorism in Asia**

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<sup>8</sup> The Charter can be accessed at: <http://www.un.org/en/documents/charter/index.shtml>

The previously stated mechanisms and actions to combat terrorism in Asia make clear that a significant degree of consensus has been built around the condemnation of both terrorist attacks and terrorist organizations. It may sound obvious that countries, policy-makers, civilians and the international community regard terrorism as a wrongful way to promote political, religious, secessionist or ideological causes and thus condemn it. After all, terrorist organizations employ violent means to advertise their objectives and terrorists usually aim at innocent people in order to call for public attention to their causes (Lutz & Lutz, 2004). It is the widespread *moral* disapproval of terrorism that legitimizes *juridical and political* means to prevent it, combat it and judge its perpetrators.

The fight against terrorism, however, is not a simple endeavor. Terrorist organizations usually hide themselves among the civilian population, making it difficult to identify its members. Since such organizations are by default outlawed groups, simply imposing tough and enforcing laws on its operation will not prevent new attacks. Finally, establishing a full-scale strategy of “war” against terrorists may cause civilian casualties, social tension, and thus feed a cycle of terror that would undermine the counter-terrorist tactics and even advances terrorist intents (Ganor, 2007).<sup>9</sup>

The major challenge of counter-terrorist measures is finding a balance between, on the one hand, the prevention and the rebuttal of terrorist attacks and, on the other hand, the utilization of prudent and conscious means. Such balance will emerge only if a set of constraints is applied to countries’ and international organizations’ policies. The objective behind each constraint is not the limitation or the restraining of counter-terrorist measures. The main purpose is ensuring that such measures are effective but also legitimate, in accordance with internationally acknowledged rules of conduct. Moral concerns, respect to human rights, international law and national legislation may be considered core means to legitimacy.

### 3.1. Moral concerns

*Just War Theory* offers a framework for understanding both the moral resistance to terrorism and the moral constraints applied to every kind of armed conflict, including counter-terrorist measures. It departs from the reasoning that if we are able to identify the values which influence us to condemn terrorism, then we will be able to take these same values into account in order to design counter-terrorist strategies. Fundamentally, just war theory commits policy-makers to a reasonable explanation for conflicts and wars, criticizing materialistic formulations which equate wars to a means automatically justified by its ends (Walzer, 1977).

There are widely recognized norms to guide the behavior of combatants during a war; in international law, such norms are known as *jus in bello* (laws in war). The protection of non-combatants constitutes the most basic principle among them. It affirms that individuals who are not directly involved in the casualties of a conflict should not be targeted by soldiers, even if the civilian and the soldier are at opposing sides of the conflict. Non-combatants shall be protected because the international norms concerning conflict express the countries’ desire that every conflict restricts itself to the opposing armies, since only military personnel is trained for and has the function of engaging in war affairs (Cassese, 2005).

If the laws in war are to be applied to every conflictive situation – that is, to every situation involving the use of force –, then terrorism is a clear violation of consolidated international norms. Just war theory uses this fact to classify terrorism as a kind of unjust war. Michael Walzer considers

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<sup>9</sup> In fact, counter-terrorism tactics usually emanate a couple of interrelated ‘dilemmas’, such as the degree of military force to be employed, the non-intrusive use of intelligence tools, the public opinion’s appraisal and the choice of offensive or defensive strategies.

terrorism “the deliberate killing of innocent people, at random, in order to spread fear through a whole population and force the hand of its political leaders” and highlights that its randomness and the innocent targets are central factors to delegitimize terrorists’ political claims (Walzer, 2002). Following the *jus in bello*, the aims of an army shall be limited to the opposing army; random killings, which include civilians, are prohibited.

Considering terrorism a wrongful political, religious or ideological mode of advancing claims, just war theory considers that it deserves a proper response, in order to prevent future random killings. Unlike an open-field war, however, the fight against terrorism should resemble the practices of police forces, not of military personnel (Meggle, 2005; Fitzpatrick, 2003).<sup>10</sup> Soldiers are trained to fight in all-out wars, during which civilians are often mingled with enemy soldiers and disengaged individuals are frequently killed. That kind of collateral damaged is completely unacceptable to police officers. Bandits and outlaws are pursued more cautiously. Killing them is not the primary tactic. The foremost objective shall be the protection of civilians; accordingly, innocent casualties represent the most serious drawback to police officers.

Targeted attacks, therefore, shall guide the actions of counter-terrorist forces. Terrorist organizations’ members play the role of ‘combatants’ here and thus are liable to be killed. That prevents extravagant and imprudent operations which might take place in public sites or crowded areas, according to Walzer (2006).<sup>11</sup>

Terrorism is a national security problem of a higher degree than common crimes tackled by the police. Because of this, special forces and/or highly specialized officers are employed in counter-terrorist operations. The War on Terror carried on during the last decade signalized that war discourses and war tactics might not be the most adequate approach to contain terrorism. Entire populations, such as the Afghan and the Iraqi, were subjected to a full-fledged military occupation that did little to prevent the spreading of terrorist organizations and the occurrence of terrorist attacks in their neighborhood (Hoffman, 2005). Intelligence and targeted attacks may not inspire grand strategies, but at least provide careful and sound means to contain terrorism on a case-by-case basis.

### 3.2. *Human rights*

After the attacks of September 11, rising concerns about terrorism led to harsher attitudes, legislations and ideologies to contain it. The discourse of ‘East *versus* West’ as the source of hatred that provoked the attacks gained momentum in the beginning of the decade, as much as the duty to combat governments which supposedly gave support to terrorist organizations. The Afghan and the Iraqi war followed the path of that grand strategy, one that could spread Western democratic values while fighting extremist groups. Domestically, the US government approved ever-increasing measures to promote the American national security. Tighter migrants’ control was introduced and growing investments to the Armed Forces were made (Elshtain, 2004).

In the international level, it was felt that a tradeoff between promoting the national security and protecting human rights would follow as an outcome of such measures (Gearty, 2006). In other words, emergency and extraordinary actions would be necessary in order to prevent foreign terrorist threats. Since extremist groups employ violent tactics to pursue their goals, national governments would have the duty to respond accordingly, by also using radical means (Gaddis, 2002). Torture,

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<sup>10</sup> That is why many analysts condemned the justification of open-field wars like the war in Afghanistan in the context of the so-called War on Terror, promoted by the American government after September 11.

<sup>11</sup> It shall be stressed that such an opinion is not consensual. Conor Gearty (2007), for instance, disagrees with this position.

tougher inquisition techniques and anomalous trials are examples of such means. And thus basic human rights would be neglected, in the name of security interests.

This opposition is as concrete as it is dangerous. In fact, torture, tougher inquisitions and anomalous trials were used in the aftermath of September 11 (Wittes, 2008; Mayer, 2008). What the discourse of security over human rights hides, however, is a long struggle for the consolidation of an international political tradition centered upon the concepts and the desires of universal human rights. If radical means are to be employed, even in emergency contexts, then the core values built since the Universal Declaration of Human Rights was approved, in 1948, are at risk.

The ‘human rights age’ that characterizes the international community since the end of the Second World War is basically based on the belief of a inherent human dignity, an universalist approach to protect such dignity and an idea of personal development that must be left open to each individual. Humans have their dignity respected if some basic rights are guaranteed via national and international norms and governments’ practices, and thus propitiate basic means to enjoy their lives. Such dignity is deemed universal, that is, every human being shall have access to these conditions, regardless of ethnic origins, gender, nationality or creed. Finally, the opportunity of personal development provides to an individual the perspective of a good life among a society and a political system (Gearty, 2007).

The principle of the human rights regime are clearly ambitious, but their international consolidation has been accordingly slow and pondered. A set of nearly universal conventions and protocols provide the regime’s core values and the international community’s common values. The Convention on the Rights of the Child (1989), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social, and Cultural Rights (1966), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), and the International Convention on the Elimination of All Forms of Discrimination Against Women (1981) broadly inform these core values.

Even with this apparent robustness, the human rights regime has fell prey to actions that give precedence to the security of the state. Former UN Secretary-General Kofi Annan once declared that “international human rights experts, including those of the UN system, are unanimous in finding that many of the measures that States are currently adopting to counter terrorism infringe on human rights and fundamental freedoms” (UN Secretary-General, 2005). One might add that some autocratic states even take advantage of counter-terrorist legislation and permissibility to take emergency actions with the purpose of linking political enemies to terrorist behavior.<sup>12</sup> Since counter-terrorist legislation is harsher to outlaws than common criminal legislation, opportunistic governments may use it to punish their opponents (Human Rights Watch, 2003).<sup>13</sup>

The United Nations and other international organizations are the foremost human rights champions and have the role of pushing for human rights’ respect in a variety of areas. As regarding counter-terrorism, the UN has set through different organs the objective of promoting *human* security above *state* security. Quoting Annan once again:

[T]he United Nations must ensure that the protection of human rights is conceived as an essential concern. Terrorism often thrives where human rights are violated, which adds to the need to strengthen action to combat violations of human

<sup>12</sup> But even democratic states might take pernicious advantage of counter-terrorist legislation.

<sup>13</sup> Human rights’ agencies reports have already accused People’s Republic of China, Sri Lanka and India of such practices.

rights. Terrorism itself should also be understood as an assault on basic rights. In all cases, the fight against terrorism must be respectful of international human rights obligations (UN Secretary-General, 2002).

The protection of human rights in a context of counter-terrorism would thus be not only a matter of paying tribute to previous conventions, resolutions and other legal documents that require respect to basic human standards – which, by itself, would be sufficient in terms of international law. But these standards also open the possibility that protection of human dignity and guarantee of personal development constitute, in the future, a political tool to prevent the formation of new terrorist groups. Although there are no definitive explanations to the phenomenon of terrorism, deprivation, poverty, decline of socio-economic patterns and political oppression usually figure among the sources of explanation (Lutz & Lutz, 2004; Walzer, 2002). Human rights protection is, after all, a basic concern on every conflictive situation and a powerful long-term preventive measure.

### 3.3. Asian countries' structural gaps in the fight against terrorism

When dealing with structural gaps, many aspects can be approached in accordance with different points of view. In this sense, this article focuses on *political, economic, technical and legal* gaps, since these are considered the main concerns that may affect on different ways the counter-terrorist practices. The preeminence of such topics is to be made clear when their direct consequences on terrorism are explained and when their importance on prevention is highlighted.

Moreover, structural influence, for the purposes of this article, should be understood as something that determines and characterizes in different ways the reality of different countries, regardless of small particularities. In other words, every body of linked causes that highly influences some facts might be considered structural.

#### 3.3.1. Political gaps

Since terrorism is, by definition (Lutz & Lutz, 2004), a set of violent acts with political motivations, it is vital to understand how Asian countries politically comprehend terrorism, pointing out what are their major failures. Countries may face national or international terrorism and these issues are likely to find answers on government mainly through the definition of an agenda and policies concerning internal affairs and international cooperation. At a glance, these are the scopes that reify how governments build their struggle against terrorism.

Even though terrorism might also be considered a social fact<sup>14</sup> (Goodwin, 2006) and therefore a fact – like religion and ethnicity – that finds social explanations, hereafter only *governmental acts* will be taken into consideration. This section of the article aims at developing a clear and comprehensive explanation of the relations between policies and terrorism in the Asian continent, bearing in mind different levels of national, bilateral and multilateral relations.

##### 3.3.1.1. Political Agenda

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<sup>14</sup> In Durkheim's (1982) definition, a social fact refers to facts, concepts, expectations that come not from individual responses and preferences, but from the social community which socializes each of its members through different ways.

An *agenda* may be understood as the issues and policies under debate in the political sphere and every agenda has as its main purpose the definition of guidelines and the scope of action of government (Stringer & Richardson, 1980). In this sense, no issue can be treated as a priority without being part of a political agenda, and, moreover, how significantly and frequently an issue is present on international and national agenda determines the relevance and priority with which such issue has been approached.

As a turning point in the fight against terrorism, the September 11 events brought terrorism to the edge of the political agenda in many places, including Asia. In what regards international terrorism, Southeast Asia was defined as the “second front” in the American global campaign against Islamist terrorism (CRS, 2009) and, as a response, local governments introduced terrorism as one of the main concerns on their political agenda. South Asian countries, such as Pakistan, were also strongly affected by September 11.

As an agenda can be influenced by civil society, non-governmental organizations (NGOs), international organizations, or other States terrorism is not likely to move out of the Asian political agenda. Nonetheless, especially in what regards Islamic terrorism, the social compliance that some terrorist groups find on local populations has brought some difficulties on the discussion and applicability of counter-terrorist acts. Indonesia is a great example of a country in which the central government still finds many hindrances when fighting against terrorism, as a result of the weakness of local authorities (Smith, 2002).

On the other hand, national terrorism has not faced many problems in being part of national agenda, since their acts often threaten national security, integrity and sovereignty. One fact that corroborates the fight against terrorism is the existent links between terrorist groups with national claims and international terrorist organizations, especially in Southeast Asia. The terrorist groups Jemaah Islamiya, Abu Sayyaf and the Moro Islamic Liberation Front exemplify this situation of fighting for the creation of another State inside pre-existent States and having relations with al-Qaeda (Frost; Rann; Chin, 2003).

### 3.3.1.2. *Internal affairs*

After the definition of an agenda, some policies and issues are reified,<sup>15</sup> while others are relegated to lower priority. That is how the decision-making process is made, and its main consequence is the fact that, if a determined issue calls greater attention, it does not necessarily mean that the governmental decision will be taken. In other words, while the agenda measures the existence of an issue on a political debate, the acts taken by the government are the ones that determine an effective decision on a specific theme.

Many Asian countries have adopted a national strategy to fight terrorism, such as the Philippines (PCTN, 2003). The development of a national strategy is considered to be vital in the struggle against terrorism (FBI, 2009) and, as a political decision; the design of such strategy is the main concern of internal affairs regarding terrorism. In

<sup>15</sup> Reify, in short, means the materialization of principles and proposed policies.

this sense, South and Southeast Asian countries, mainly, still lack the presence of national strategies able to congregate all efforts in an effective and productive way (CRS, 2004).

Moreover, States can not only fail when fighting and preventing terrorism, but also they can be sponsors of terrorism. The situation of a State sponsoring terrorism finds controversial examples in Asia. There are huge accusations on the Pakistani and Indian government to finance terrorist groups and the acts against the local population of Arakan, a geographically isolated area in western Myanmar (Tan, 2007). In these cases, international community, as a whole, assumes a vital role as a combatant against terrorism, creating pressure on internal affairs.

### *3.3.1.3. International cooperation*

The adoption of a Global Counter-Terrorism Strategy by the United Nations General Assembly (UNGA, 2006) has been one of the major orientations concerning multilateral cooperation. This resolution encourages all member States, the United Nations and other appropriate international, regional and sub-regional organizations to support the implementation of the Strategy, including the mobilization of resources and expertise.

This resolution came to fill the void of a global strategy able to promote international cooperation to fight terrorism. Even though their terms are feasible and bilateral cooperation, especially with the USA, has grown in the past years in Asia, there is still a great void in what regards regional cooperation and bilateral cooperation between key actors, especially between India and Pakistan. This reality, in addition, is not in accordance with the defining feature of the post-September 11 context, which has been one of emergence of counter-terrorism as a priority in agenda.

ASEAN (Association of Southeast Asian Nations), together with SCO (Shanghai Cooperation Organization) appear as the main regional bodies able to build some joint effort in the fight against terrorism. Both groups do not propose themselves to promote cooperation through the entire Asian continent, restricting their efforts to Southeast Asia and Central Asia plus Russia and China, respectively. This fact highlights the existent discrepancies and distinguished realities in the Asian continent. Since this article has outlined Southeast and South Asia as the most relevant regions in Asia in what concerns terrorism, the analysis of ASEAN efforts seems more relevant.

In 2001 the ASEAN members adopted the 2001 ASEAN Declaration on Joint Action to Counter Terrorism (2001), which was later (2002) incorporated in the terrorism component of the Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime. Another notable agreement was the one made between Malaysia, Indonesia, Thailand and Cambodia on handling border and security incidents, bearing in mind that some terrorist groups act in their boundaries (CRS, 2005).

As regards India and Pakistan, two Asian great powers, there is a huge lack of cooperation concerning terrorist issues, mainly as a consequence of historical disagreements. Despite of the Jammu and Kashmir question, there are also several

terrorist groups which operate in their boundaries and there is no effective joint effort to address it. Mutual accusations on the financing of terrorism make it more difficult to create this effort. In a few words, two of the greatest targets of terrorist acts have not been capable to promote a regional fight against terrorism, not only as a consequence of the lack of political cooperation but also as a result of cultural, social and historical discrepancies.

### *3.3.2. Economic gaps*

In a globalized and economically seamless world, terrorism has also to do with economic affairs and issues, determining many of the conditions which corroborate to the creation of terrorist groups and their existence (Lutz & Lutz, 2004). Besides that, the economic conditions of a country strongly influence its patterns and possibilities in the fight against terrorism, inasmuch as no consistent anti-terrorist program can be done with severe resource constraints.

As might be deduced from the aforementioned paragraph, the two main economic features concerning terrorism are the effects of economic crisis and instability on the survival and the operability of terrorist groups, and how the weakness of economy restrains acts against terrorism. Obviously, in a continent with such big economic disparities, it is extremely difficult to determine a synoptic chart. Even so, it might be indicated where this influence is more likely to be observed and where it brings more damages.

#### *3.3.2.1. Economic crisis and instability*

Economic crisis and instability are a routine for several Asian countries, especially where terrorism is more present. South and Southeast Asia embrace many countries listed between the poorest ones in the world and with great social disparities, which jeopardizes economic prosperity and peace in the region. Being mindful of this fact, there are many political and social analysts that defend the idea that economic instability fosters the development of terrorism.

In Asia, that thesis is corroborated when observing and tracing social patterns of terrorists. Economic recessions and depressions provoke changes in society that may directly affect some social groups, such as historical elites that lose power or less-favored classes and ethnicities which will find on terrorism, in accordance with their principles, the better way to recover their social status (Lutz & Lutz, 2004). Moreover, failed economic take-offs make other factors stronger – e.g. religious claims – and facilitate the establishment of terrorist groups (Looney, 2004; Ehrlich & Liu, 2002).

Nevertheless, if economic globalization can be pointed out as a cultural and discursive element used by terrorist groups as a way to justify their acts, the same relation cannot be made between economic globalization and the growth of transnational terrorist incidents. To the extent that trade and FDI (Foreign Direct Investment) promote economic development, they have an indirect negative effect on transnational terrorism (Quan & Chaub, 2004).

#### *3.3.2.2. Resource constraints*

As mentioned above, some of the poorest countries in Asia are the ones which suffer the hardest consequences of terrorist acts. Until September 11, resources delegated to the prevention and the fight against terrorism were heavily limited. Even in countries which had been facing national terrorist groups, the issue was, at many times, seen as a manageable State problem (Dillon & Pasicolan, 2001).

After September 11, resources have grown in direct response to the bigger commitment of the United States in the fight against terrorism. Even if international help is provided in order to fight terrorism, the poorest Asian countries are not likely to spend huge amounts of money in counter-terrorist actions instead of promoting larger goals such as economic recovery as a whole, which can be observed in Indonesia (O’Gorman, 2004). Moreover, in developing countries, terrorist acts tend to reduce economic growth by crowding governmental expenditures, which makes it harder to provide resources for combating terrorism (Gaibullov & Sandler, 2009).

### 3.3.3. Technical gaps

Technical gaps refer mainly to the lack of capability of national and international bodies to refrain terrorism acts *per se*. Technical aspects are directly connected with the priority that States give to terrorism as a threat and their access to technology and intelligence mechanisms. Consequently, international cooperation regarding the share of know-how in the fight against and in the prevention of terrorism assumes a great role in the question.

States are the legitimate and sovereign body to authorize or create national security policies. As a result, cooperation and development in this area are mainly an evolvement of polity, which does not mean that only States can affect security issues.

Inasmuch as the analysis of data regarding technical gaps is not the main focus of this section, what has to be pointed out is the concern of both United Nations Security Council and the Counter-Terrorism Committee to what is called “operative cooperation” and the commitment of Asian countries, which has proved not to be comprehensive, as will be described in the sub-topic 3.4.

### 3.3.4. Legal gaps

Countries are under some laws that should be respected, and, often, they are also under the so called *rule of law*, which consists in the supremacy of law and the establishment of a legal-political regime<sup>16</sup> to govern the society as a whole. In this sense, terrorism is characterized as a matter that bypasses both international and internal law.

Legal conditions are absolutely relevant for a broader comprehension of how national and also international terrorism work, because several terrorist groups find on legal voids the adequate space to maintain their activities. Moreover, every counter-terrorist action, according to the rule of law, should be supported on legal prerogatives. Since international law is the main concern of this article and assuming that many aspects of internal law were already described in this article, only international law is to be tackled in the conclusion of this article.

<sup>16</sup> See <[http://www.uiowa.edu/ifdebook/faq/Rule\\_of\\_Law.shtml](http://www.uiowa.edu/ifdebook/faq/Rule_of_Law.shtml)>

### 3.4. A set of practices that aim at overcoming constraints

In order to surpass these constraints according to the respect to human rights and international law and looking for effectiveness, a set of practices has been established after September 11. These practices, also known as *best practices* in different instances, are considered to be a key-point in the fight against terrorism, since they are understood as the better route to conducting both international and national efforts.

The turning point of the establishment of these practices was the Resolution 1373 adopted by the Security Council on the aftermath of the September 11 events (UNSC, 2001). This resolution brings a broad guideline to the fight against terrorism and is mainly directed to State policies, corroborating with the purposes of this section as a whole. In the resolution, a multi-oriented combat is suggested, by providing several recommendations that embrace a terrorist act in all of its steps, since the organization and funding of terrorist groups until the terrorist act *per se*.

One of the main concerns of the resolution is the protection to human rights and State action based on law, which gives the resolution a contemporary approach, instead of focusing only on results. Refugee issues, for instance, is a recurrent concern of the resolution and it has been clearly appointed that States should “take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights” (UNSC, 2001: clause 3f).

Moreover, the resolution calls on the right of self-defense against terrorism and encourages all member States to develop international cooperation, including the operational one, at regional and global level through bilateral or multilateral agreements. In response, many regional organizations understood this determination of the Security Council as one more sign of the need of a regional approach to the terrorism issue.

In Asia, the response has proven to exist, but it has also not been enough. Three main sets of practices are now on occurrence in the Asian continent. The Asia-Pacific Economic Cooperation (APEC) established a set of practices which includes plan of actions that highlight the importance of economic growth when fighting terrorism. In South and Southeast Asia, there is also a common set of practices containing a deeper political bias.

The South Asian Association for Regional Cooperation (SAARC) composed of countries such as India, Pakistan and Bangladesh adopted a Regional Convention on Suppression of Terrorism (1987) and ASEAN adopted a Treaty on Mutual Legal Assistance in Criminal Matters (2004). The first one basically consists of a series of recommendations that are to be applied only in the internal level. In this sense, there is still a huge lack of measures regarding regional cooperation, which is vital to a region without well-controlled borders. In the second one, even though it is a considerable effort on regional cooperation, law enforcements are only one of the fronts terrorism should be tackled. Moreover, in both cases, not only regional cooperation does need to be intensified and amplified, especially in operational matters, but also broader efforts should be taken to go beyond the existent doubtfulness between States.

At a glance, even though Asia has boosted a response to terrorism, there are still many heritages and gaps that are to be tackled in a scenario where terrorism issues goes beyond national level. Currently, it can be said that Asia has partially agreed upon a determined arrangement of practices which create common policies inside different states but not in a proper way between states.

#### 4. Conclusion: a proper framework to counter terrorism in Asia

The fight against terrorism in Asia has not been an easy endeavor during the new century's first decade. Section 1 argues that terrorism is a rising threat to the South and Southeast Asia's populations, amid which a multitude of hostile organizations has operated to inflict attacks that jeopardize their peace, security and freedom. It is also a potential source of broader international instability, given the ongoing negotiations between India and Pakistan to tackle their long-standing disagreements, their condition as nuclear powers and the recurrent setbacks provoked by terrorist attacks in Kashmir and within each country's territory.

Section 2 addresses the answers that the Asian countries have found to cope with terrorist organizations and their attacks. National responses through domestic justice systems and special forces have been deployed. Regional arrangements and multilateral approaches have been reinforced when terrorism seems to present a transnational threat, as it is usually the case.

However, as section 3 makes clear, the fight against terrorism is constrained by different forces. Politically, it is difficult to contain violent organizations if they found compliance with different social groups, which is a recurrent reality in countries with large Muslim populations and radical Islamist groups – Indonesia, Bangladesh, Pakistan and India, for instance. Economic difficulties also prevent bold actions to investigate terrorist acts, engage police forces or military troops and dismantle safe havens, be it because of the simple lack of resources or because of corrupted decision-making bodies. Asian States – as mainly developing countries – face some degree of both of these problems.

It is possible to realize that the major terrorist attacks inflicted in different parts of the world (Global Terrorism Database, 2009) during the last decade have generated a dual effect of, on the one hand, *raising concerns* among different populations to the risk of unexpected violent acts and, on the other hand, *gathering efforts* among the world leaders to address terrorism locally, nationally, regionally and globally. In other words, terrorism shall now be unambiguously considered a top security priority.

The proliferation of concerted and isolated counter-terrorist initiatives reinforces this perception. In Asia, both Asia-Pacific Economic Cooperation (APEC, 2001) and South Asian Association for Regional Cooperation (AP to the SAARC Convention, 2004) members have adopted harsher rules to identify terrorists and prevent new attacks. More importantly, both of these regional arrangements have intensified interstate cooperation, since the share of intelligence and the mutual help of local criminal systems are important steps to tackle transnational menaces. In addition to this, Asian States have rushed to adequate their national legislation to make counter-terrorism effective, as shown in section 2.

Global initiatives have paid special attention to terrorism as well. The Resolution 1373, adopted by the UN Security Council briefly after September, provides a foundation to ensure that all UN members are engaged in a kind of counter-terrorism regime, trying to universalize international conventions aimed at different manifestations of terrorism and following closely, via the Counter-Terrorism Committee, the implementation of national legal mechanisms, as stated in sections 2 and 3. The UN Security Council has buttressed these principles periodically since 2001, answering accordingly when pressed by violent events or gathering in summits to debate broader questions (UNSC 2004, 2005, 2008a, 2008b).

Such framework for counter-terrorism would be entirely welcomed and suitable if it had not opened the possibility of major abuses. It is not always clear the distinction between hard, proportionate response to major attacks and oppressive, extreme retaliation. Since the wave of counter-terrorist measures have raised the stakes to combat, identify, persecute and eliminate violent groups, States have taken advantage of such condition to advance undue agendas, unrelated to terrorism and usually linked to political or strategic goals

(Gearty, 2006). The War on Terror is the recurrent instance here; but developed and developing countries, with democratic or totalitarian institutions, have showed signs of abuse related to human rights violations or persecution of individuals and groups based on considerations of religion, ethnic or national origins (Human Rights Watch 2004, 2005, 2007, 2009). That is why the problem might have structural foundations, rather than particular ones.

The structural origins of abusive practices related to counter-terrorism may be weakened by a much-needed interface with international law patterns, particularly with human rights law. Section 3 states that the human rights perspective provides a *rationale* for counter-terrorism as part of the State responsibility to provide security to its citizens – as well as the alleged international responsibility to protect if the response is not prompt or adequate to the seriousness of the issue (International Commission on Intervention and State Sovereignty, 2009). Since human rights violations are essentially linked to violations *by* State actors, the deepening of the proposed interface would also provide multilateral brakes to States' abuses.

In fact, major advances have been made toward establishing a framework that enhances protection of human rights while fighting against terrorism since 2001, when the counter-terrorist wave gained momentum. In 2002, the Chairman of the UN Security Council Counter-Terrorism Committee described its function as follows:

The Counter-Terrorism Committee is mandated to monitor the implementation of resolution 1373 (2001). *Monitoring performance against other international conventions, including human rights law, is outside the scope of the Counter-Terrorism Committee's mandate.* But we will remain aware of the interaction with human rights concerns, and we will keep ourselves briefed as appropriate. It is, of course, open to other organizations to study States' reports and take up their content in other forums (Chairman of the CTC, 2002, our mark).

Within the Counter-Terrorism Committee, the creation of the Counter-Terrorism Committee Executive Directorate, in 2004, partially connected the Committee to international human rights law concerns. The Executive Directorate was created to provide advice to the Committee on human rights, refugee and humanitarian law, aside from establishing closer links with the Office of the United Nations High Commissioner for Human Rights and with the Office of the United Nations High Commissioner for Refugees (CTC, 2006).

Moreover, in 2006 the United Nations General Assembly adopted a Global Counter-Terrorism Strategy which encapsulates UN-wide practices and places high emphasis on human rights (UNGA 2006, 2008). Nowadays counter-terrorist initiatives amid the UN system are scattered in the Security Council, the General Assembly, the Secretariat and different agencies under the coordination of the Counter-Terrorism Implementation Task Force, which tries to provide accountability and coherence to dissimilar deliberations (UN Action to Counter Terrorism, 2009).

In sum, a proper framework to counter terrorism *in the world* is progressively taking shape. It encompasses the UN Global Counter-Terrorism Strategy, the Resolution 1373 and their subsequent reviews with respect for human rights. Thus some principles might be distinguished to guide future actions. First, *legality* indicates that each State action to counter terrorism must be taken under the existing legal grounds, national or international. Second, some human rights are subject to *non-derogability*, that is, they should be respected even in emergency situations. The right to life, the prohibition against torture and cruel, inhuman or degrading treatment or punishment and the right to freedom of thought, conscience and religion have such *status*, as well as the prohibition of extrajudicial, summary and arbitrary executions. Third, a sense of *proportionality* to the duration, geographical coverage and material scope of any special measures taken must guide State actions. Fourth, the treatment of terrorist organizations' members must not preclude the right to *due process* and the general conditions respectful to the *rule of law* (UNHCHR, 2002).

A proper framework to counter terrorism *in Asia* may be reached by, first and foremost, adequacy to the international standards just described. However, the framework sets the conditions to act but does not indicate the precise actions. Although that leaves a void to be filled by the Asian States, it opens a space to sovereign autonomy and to peculiar solutions to regional, particular threats.

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