
INTERNATIONAL LAW STUDIES

Published Since 1895

One Treaty to Apply Them All? Defining Maritime Terrorism by Cross-References and Reservations: The ASEAN Region Example

Arron N. Honniball

100 INT'L L. STUD. 62 (2023)

Volume 100



2023

Published by the Stockton Center for International Law

ISSN 2375-2831

One Treaty to Apply Them All? Defining Maritime Terrorism by Cross-References and Reservations: The ASEAN Region Example

*Arron N. Honniball**

CONTENTS

I.	Introduction.....	64
II.	Defining Maritime Terrorism.....	68
III.	Analysis and Implications for Cooperation	74
IV.	The Impact of Reservations on Defining Maritime Terrorism	80
	A. Minimum Application of the 'Treaties' Definitions of Maritime Offenses.....	82
	B. Full Application of the 'Treaties' Definitions of Maritime Offenses.....	85
	C. Broader Terrorist Funding Offenses Than Terrorist Act Offenses.....	88
	D. Broader Terrorist Act Offenses Than Terrorist Funding Offenses.....	90
	E. Incompatible Reservations.....	93

* Senior Research Fellow, Max Planck Foundation for International Peace and the Rule of Law, Germany. This article was originally drafted during the author's previous position at the Centre for International Law (CIL), National University of Singapore. In addition to thanking CIL colleagues and professor Greg Rose for their input on previous drafts, the author is indebted to participants at the ASEAN Law Academy Conference 2021, the Asian Society of International Law 8th Biennial Conference 2021, and the 4th Annual Alexander C. Cushing International Law Conference for comments on the author's presentations of previous drafts. A previous version of this article was made available on the website of Comité Maritime International (CMI) as first runner-up for the CMI Young Person's Essay Prize 2020, <https://comitemaritime.org/young-cmi/>.

The thoughts and opinions expressed are those of the author and not necessarily those of the U.S. government, the U.S. Department of the Navy, or the U.S. Naval War College.

F. Partial Reservations 94
G. Withdrawal from a Cross-Referenced Treaty..... 95
H. Amending the Definition of Maritime Offenses 96
V. Conclusion 98
Appendix 1..... 103
Appendix 2..... 105

I. INTRODUCTION

As the continual work of the Association of Southeast Asian Nations (ASEAN) recognizes, States must cooperate on legislative and enforcement measures responding to a range of maritime crimes and security concerns.¹ Effective measures are essential to maintain maritime security and protect the maritime community. States with shared values, concerns, objectives, and responses may utilize treaty-based jurisdiction to reach an optimal and consensual ad-hoc balance of jurisdiction—with possible additional rights and obligations attached to their pooled jurisdiction. The devil is in the reaching of an agreement among the vested States.

When an explicit and largely shared definition of a maritime crime exists, such as is largely the case today with piracy² or armed robbery at sea,³ greater uniformity in domestic legislation and international cooperation may readily proceed.⁴ In Southeast Asia, this is exemplified by the extensive cooperative efforts under the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP),⁵ including the estab-

1. ASEAN Secretariat, ASEAN Political-Security Community Blueprint 2025, §§ B.3.1.iii, B.3.1.XI, B.3.2, B.6.2.vii (Mar. 2016), <https://www.asean.org/wp-content/uploads/2012/05/ASEAN-APSC-Blueprint-2025.pdf>; ASEAN, Kuala Lumpur Declaration on Combating Transnational Crime (Sept. 30, 2015), <https://asean.org/wp-content/uploads/2021/01/KL-DECLARATION-IN-COMBATING-TNC.pdf>; ASEAN Plan of Action in Combating Transnational Crime 2016–2025, (Sept. 20, 2017), https://asean.org/wp-content/uploads/2021/01/ASEAN-Plan-of-Action-in-Combating-TC_Adopted-by-11th-AMMTC-on-20Sept17-1.pdf [hereinafter ASEAN Plan of Action 2016–2025].

2. United Nations Convention on the Law of the Sea art. 101, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS]; Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia art. 1(1), Nov. 11, 2004, 2398 U.N.T.S. 199 [hereinafter ReCAAP].

3. International Maritime Organization Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery Against Ships § 2.2, IMO Doc. A 26/Res.1025 (Jan. 18, 2010); ReCAAP, *supra* note 2, art. 1(2).

4. International Maritime Organization Maritime Criminal Acts—Draft Guidelines for National Legislation ¶ 1, IMO Doc. LEG 93/12/1 (Aug. 15, 2007) [hereinafter IMO Draft Guidelines] (aiming for “effective measures for the criminal prosecution of piracy and armed robbery”).

5. ReCAAP, *supra* note 2; *see generally* Joshua Ho, *Combating Piracy and Armed Robbery in Asia: The ReCAAP Information Sharing Centre (ISC)*, 33 MARINE POLICY 432 (2009).

lishment of an international organization dedicated to such effect, the ReCAAP Information Sharing Centre based in Singapore.⁶ ReCAAP operationalizes the general customary law obligation of cooperation found in Article 100 of the United Nations Convention on the Law of the Sea (UNCLOS)⁷ and has inspired other regional instruments to combat piracy, armed robbery at sea, and wider international maritime crimes.⁸

However, there is no agreed definition of terrorism, let alone maritime terrorism.⁹ Instead, maritime terrorism is an “umbrella term”¹⁰ referring to the piecemeal approach of numerous treaties that create offenses for identified acts at sea as shared offenses. Global and regional treaties then cross-reference the offenses in these global instruments to create related offenses, such as financing terrorism, or regional offenses, such as regional maritime terrorism.¹¹ Many acts within the Maritime Criminal Acts: Draft Guidelines for National Legislation, produced by the Comité Maritime International (CMI) and circulated via the International Maritime Organization (IMO), fall

6. ReCAAP, *supra* note 2; see also Arron Honniball, *Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia, 11th November 2004*, OXFORD PUBLIC INTERNATIONAL LAW (last updated Apr. 30, 2021), <https://opil.ouplaw.com/view/10.1093/law-oxio/e643.013.1/law-oxio-e643>.

7. UNCLOS, *supra* note 2; see also “Enrica Lexie” Incident (It. v. India), Case No. 2015-28, Award, ¶¶ 719–24 (Perm. Ct. Arb. 2020), <https://pcacases.com/web/sendAttach/16500> (“the Arbitral Tribunal notes that India has provided sufficient information confirming that it has taken and is taking active steps to prevent piracy attempts at sea and plays an active role in this regard within the framework of the ReCAAP”).

8. Anja Menzel, *Institutional Adoption and Maritime Crime Governance: The Djibouti Code of Conduct*, 14 JOURNAL OF THE INDIAN OCEAN REGION 152 (2018).

9. Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukr. v. Russ.), Preliminary Objections, Judgment, 2019 I.C.J. 558, Declaration of Judge Robinson, ¶¶ 9–14 (Nov. 8).

10. U.N. OFFICE ON DRUGS AND CRIME, MARITIME CRIME: A MANUAL FOR CRIMINAL JUSTICE PRACTITIONERS 132 (2d ed. 2019), https://www.unodc.org/documents/Maritime_crime/19-02087_Maritime_Crime_Manual_Second_Edition_ebook.pdf.

11. See Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, Case No. STL-11-01/I, Summary (UN Special Tribunal for Lebanon Feb. 16, 2011), https://www.eccc.gov.kh/sites/default/files/20110223_STL_11_01_R176bis_F0010_Cor_PRES_Interlocutory_Decision.pdf.

under the maritime terrorism umbrella.¹² While States are encouraged to become party to all relevant international conventions and protocols, there is no obligation to do so.¹³

Therefore, for the purposes of determining a State's obligations—the domestic legislation necessary, the “shaping and sharing of norms,”¹⁴ or the availability of cooperative mechanisms—one must identify which acts at sea are accepted by that State as shared offenses under the umbrella of maritime terrorism. At the global level, the offenses accepted by a State are found by analyzing which of the nineteen counterterrorism instruments the State joined.¹⁵ At the regional level, including in the ASEAN Convention on Counter Terrorism (ACCT), this task is supposedly simplified by creating a regional definition of shared offenses that cross-references the offenses found in a long list of global counterterrorism instruments.¹⁶ As will be seen below in Part II, many instruments apply in a maritime context to define maritime terrorism.

Importantly, all cross-referenced instruments shall apply to the definition of the ACCT offenses *unless* a State excludes, by reservation, a cross-referenced instrument to which it is not a party.¹⁷ As nearly the entire treaty framework of obligations and cooperation is built upon a shared definition of offenses, a simplified and comprehensive definition is a useful starting point. So long as each State carefully considers the scope of the ACCT offenses it accepts when ratifying ACCT—and faithfully implements the results—wide and coherent regional cooperation are promoted. Likewise, the discretionary right to submit a reservation to the definition of offenses respects national sovereignty and the principle of *pacta tertiis nec nocent nec prosunt*.¹⁸ If a State party excludes any offenses from the regional definition

12. IMO Draft Guidelines, *supra* note 4, art. 2(a)(ii)–(x), 2(b).

13. S.C. Res. 1566, ¶ 4 (Oct. 8, 2004); ASEAN Convention on Counter Terrorism, pmbl, Jan. 13, 2007, U.N. Registration No. 54629, <https://asean.org/wp-content/uploads/2021/01/ACCT.pdf> [hereinafter ACCT]; ASEAN Political-Security Community Blueprint 2025, *supra* note 1, § B.3.2.ii.

14. ACCT, *supra* note 13 at 1.

15. U.N. Security Council Counter-Terrorism Committee, *International Legal Instruments*, <https://www.un.org/securitycouncil/ctc/content/international-legal-instruments> (last visited Mar. 2, 2023).

16. ACCT, *supra* note 13, art. 2(1).

17. *Id.* art. 2(2).

18. *Pacta tertiis nec nocent nec prosunt*, BLACK'S LAW DICTIONARY (11th ed. 2019) (“Treaties neither harm nor benefit third parties”).

of terrorism offenses it shall make the exclusion explicit within a reservation so that other State parties are on notice and aware of the reservation's impacts on their own rights and obligations under the ACCT.

However, as this article demonstrates, from the perspective of legal certainty good intentions do not always lead to good results. The simpler and more pragmatic approach of defining regional offenses by cross-referencing the definition of offenses in global instruments has led to a series of unforeseen and unfortunate results when the impact of reservations is considered. This is particularly apparent when analyzing the cumulative impact of a State's reservations on the definition of offenses under concurrently applicable global and regional counterterrorism instruments. Viewed in isolation, one might argue that regional agreements can implement international agreements in a way suitable to regional characteristics. Thus, there need not be consistency between global and regional instruments, including the shared definition of offenses at the heart of these legal undertakings. However, for a State acting and binding itself within the regional and global spheres, there should be complementary commitments at the global and regional levels to ensure coherence and compatibility between their voluntarily accepted international law obligations. It is here that if a State takes a radically different approach to the scope of its reservations to counterterrorism instruments, one might wonder if the consent expressed through ratification has been fully considered and will be faithfully implemented.

As will be seen below, the lack of domestic implementation for counterterrorism obligations flowing from a lack of applicable reservations suggests not. This article provides a case study on the result of reservations to the ACCT and the International Convention for the Suppression of the Financing of Terrorism (ICSFT)¹⁹ when defining maritime terrorism. The impact of reservations and resulting differences in the definition of maritime terrorism will affect the parties' respective obligations and possible regional cooperation available under the ACCT (discussed in Part III). Eight impacts of varying concern to operationalizing international cooperation are then identified (Part IV). The conclusion reflects on the way forward in defining and combatting maritime terrorism (Part V).

19. International Convention for the Suppression of the Financing of Terrorism, Dec. 9, 1999, T.I.A.S. 13075, 2178 U.N.T.S. 197 [hereinafter ICSFT].

It is noteworthy that other regional counterterrorism conventions define shared offenses by cross-referencing global instruments.²⁰ Incoherencies and difficulties in defining shared maritime terrorism offenses identified here may have wider application.

II. DEFINING MARITIME TERRORISM

Since February 2, 2000, when the United Nations General Assembly adopted Resolution 54/110, an ad hoc committee has sought to finalize a draft comprehensive treaty on international terrorism, including a definition of terrorism.²¹ An earlier League of Nations convention had provided a short definition of terrorism but the agreement never entered into force.²² Similarly, attempts by the International Criminal Court Preparatory Committee to define terrorism in the 1990s were unsuccessful²³ and the 2010 Kampala Conference did not take up the recommendation to reconsider the crime of terrorism.²⁴ Indeed, it is the very issue of reaching an international consensus on a definition of terrorism that frustrates the efforts to finalize a comprehensive treaty.²⁵ As succinctly put by Amrith Rohan Perera: “Faced with this dilemma, the UN adopted what has come to be known as the ‘sectoral convention approach’ (or simply the ‘sectoral approach’), which has involved criminalizing specific unlawful acts, irrespective of motive, and containing a criminal offence or an operational definition of such acts.”²⁶

20. Among the numerous examples, *see* Interlocutory Decision on the Applicable Law, *supra* note 11, at 140.

21. G.A. Res. 54/110, Measures to Eliminate International Terrorism ¶ 13 (Feb. 2, 2000).

22. League of Nations Convention for the Prevention and Punishment of Terrorism art. 1(2), Nov. 16, 1937 (not in force), <https://www.loc.gov/item/2021667893/>.

23. ROBERTA ARNOLD, THE ICC AS A NEW INSTRUMENT FOR REPRESSING TERRORISM 56 (2004).

24. Jacques Hartmann, *The Achievements and Limits of Global Counter-Terrorism Cooperation*, in THE ACHIEVEMENTS OF INTERNATIONAL LAW 350 (Jacques Hartman & Urfan Kaliq eds., 2021).

25. Mahmoud Hmoud, *Negotiating the Draft Comprehensive Convention on International Terrorism: Major Bones of Contention*, 4 JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE 1031 (2006); G.A. Res. 75/145, Measures to Eliminate International Terrorism ¶¶ 25–26 (Dec. 22, 2020).

26. Amrith Rohan Perera, *The Draft United Nations Comprehensive Convention on International Terrorism*, in RESEARCH HANDBOOK ON INTERNATIONAL LAW AND TERRORISM 120, 122 (Ben Saul ed., 2d ed. 2020).

Likewise, maritime terrorism remains globally undefined and instead refers to the piecemeal approach of numerous treaties that create offenses for identified acts at sea.²⁷ Of the nineteen global instruments defining terrorist offenses, seventeen *explicitly* apply to maritime offenses because parties are obliged to establish jurisdiction over offenses at sea.²⁸ For the purposes of this article, the term “flag State” refers to the State “whose flag the ship flies and is entitled to do so under UNCLOS,”²⁹ while “State of registry” is used when referring to aircraft; that is, “Aircraft have the nationality of the State in which they are registered.”³⁰ The following conventions require the flag State and State of registry to establish jurisdiction over offenses aboard, or in respect of, vessels or aircraft at sea: Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (Protection of Diplomats Convention);³¹ International Convention Against the Taking of Hostages (Hostages Convention);³² Convention on the Physical Protection of Nuclear Material (Nuclear Material Convention);³³ Amendment to the Convention on the Physical Protection of Nuclear Material (2005 Amendment to Nuclear Material Convention);³⁴ Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation (SUA Convention 1988);³⁵ Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety

27. Saiful Karim, *Maritime Terrorism and the Role of Judicial Institutions in the International Legal Order*, 82 PUBLICATIONS ON OCEAN DEVELOPMENT 1, 40–46, 56–65 (2016).

28. See maritime zones including/excluding the seabed and subsoil, water column, and/or airspace. UNCLOS, *supra* note 2, arts. 1(1), 2, 49, 55, 76, 86.

29. DEFINITIONS FOR THE LAW OF THE SEA: TERMS NOT DEFINED BY THE 1982 CONVENTION 193 (George K. Walker ed., 2012).

30. Convention on International Civil Aviation art. 17, Dec. 7, 1944, 61 Stat. 1180, T.I.A.S. No. 1591, 15 U.N.T.S. 295 [hereinafter Chicago Convention]; *see also* UNCLOS, *supra* note 2, art. 42(5) (uses the terminology of flag State and State of registry, including the distinction thereof).

31. Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents arts. 2, 3(1)(a), Dec. 14, 1973, 28 U.S.T. 1975, 1035 U.N.T.S. 167.

32. International Convention Against the Taking of Hostages arts. 1, 5(1)(a), Dec. 17, 1979, T.I.A.S. No. 11081, 1316 U.N.T.S. 205.

33. Convention on the Physical Protection of Nuclear Material arts. 7, 8(1)(a), Oct. 26, 1979, T.I.A.S. 11080, 1456 U.N.T.S. 101.

34. Amendment to the Convention on the Physical Protection of Nuclear Material art. 7, July 8, 2005, IAEA Doc. INFCIRC/274/Rev.1/Mod.1.

35. Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation arts. 3, 6(1)(a), Mar. 10, 1988, 1678 U.N.T.S. 221 [hereinafter SUA].

of Maritime Navigation (2005 Protocol to the SUA Convention);³⁶ International Convention for the Suppression of Terrorist Bombings (Terrorist Bombings Convention);³⁷ ICSFT;³⁸ and the International Convention for the Suppression of Acts of Nuclear Terrorism (Nuclear Terrorism Convention).³⁹

Furthermore, the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (SUA Platforms 1988)⁴⁰ and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (SUA Platforms 2005)⁴¹ require coastal States to establish jurisdiction over offenses aboard, or in respect of, fixed platforms at sea.

Finally, the following conventions require the State of registry to establish jurisdiction over offenses aboard, or in respect of, aircraft exercising maritime overflight: Convention on Offences and Certain Acts Committed on Board Aircraft (Tokyo Convention);⁴² Convention for the Suppression of Unlawful Seizure of Aircraft (Hijacking Convention);⁴³ Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal Convention 1971);⁴⁴ Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (Beijing Convention 2010);⁴⁵ Proto-

36. Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation arts. 3bis, 3ter, 3quarter, Oct. 14, 2005, IMO Doc. LEG/CONF.15/21 [hereinafter SUA 2005].

37. International Convention for the Suppression of Terrorist Bombings arts. 2, 6(1)(b), Dec. 15, 1997, 2149 U.N.T.S. 256.

38. ICSFT, *supra* note 19, arts. 2, 7(1)(b).

39. International Convention for the Suppression of Acts of Nuclear Terrorism arts. 2, 9(1)(b), Apr. 13, 2005, 2445 U.N.T.S. 89.

40. Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf arts. 2, 3(1)(a), Mar. 10, 1988, 1678 U.N.T.S. 304.

41. Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf arts. 2bis, 2ter, Oct. 14, 2005, IMO Doc. LEG/CONF.15/22 [hereinafter SUA Platforms].

42. Convention on Offences and Certain Other Acts Committed on Board Aircraft arts. 1(2), 3(2), Sept. 14, 1963, 20 U.S.T. 2941, 704 U.N.T.S. 219.

43. Convention for the Suppression of Unlawful Seizure of Aircraft arts. 1, 4(1)(a), Dec. 16, 1970, 22 U.S.T. 1641, 860 U.N.T.S. 105.

44. Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation arts. 1, 5(1)(b), Sept. 23, 1971, 24 U.S.T. 565, 974 U.N.T.S. 177.

45. Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation arts. 1, 8(1)(b), Sept. 10, 2010, U.N. Registration No. 55859, ICAO Doc. 9960.

col Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (Beijing Protocol 2010);⁴⁶ and Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Montreal Protocol 2014).⁴⁷ Only offenses under the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Montreal Supplementary Protocol)⁴⁸ and the Convention on the Marking of Plastic Explosives for the Purpose of Detection (Explosives Convention),⁴⁹ which could occur at sea, do not include specific maritime provisions. Within all conventions, another jurisdictional basis may require regulating maritime offenses, such as territorial-based jurisdiction⁵⁰ or nationality-based jurisdiction.⁵¹

Regionally, maritime terrorism remains undefined by ASEAN. Nevertheless, the threat of maritime terrorism⁵² and the benefits of regional cooperation result in counterterrorism being a mainstay of ASEAN's agenda.⁵³

The ACCT was concluded in record time, in part because it avoids defining terrorism.⁵⁴ Instead, Article 2 of the ACCT defines "offenses" for the

46. Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft arts. 1, 4(1)(b), Sept. 10, 2010, ICAO Doc. 9959.

47. Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft art. 3(2), Apr. 4, 2014, ICAO Doc. 10034.

48. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation art. 1bis, Feb. 24, 1988, 1589 U.N.T.S. 474.

49. Convention on the Marking of Plastic Explosives for the Purpose of Detection art. 3(1), Mar. 1, 1991, 2122 U.N.T.S. 359 [hereinafter Explosives Convention].

50. *See, e.g.*, SUA, *supra* note 35, art. 6(1)(b).

51. *See, e.g.*, SUA Platforms, *supra* note 41, art. 3(1)(b).

52. U.N.S.C., Letter dated Jan. 18, 2016 from the Chair of the Security Council Committee Established Pursuant to Resolution 1373 (2001) Concerning Counter-Terrorism to the President of the S.C., ¶ 194, U.N. Doc. S/2016/49 Annex (Jan. 20, 2016) [hereinafter UNSC Counter-Terrorism Letter].

53. Space limits discussing the ACCT in general; *but see* Abdul Razak Ahmad, *The ASEAN Convention on Counter-Terrorism 2007*, 14 ASIA-PACIFIC JOURNAL ON HUMAN RIGHTS AND THE LAW 93 (2013).

54. Tatik S. Hadidz, *A Long Row to Hoe: A Critical Assessment of ASEAN Cooperation on Counter-Terrorism*, KYOTO REVIEW OF SOUTHEAST ASIA (Dec. 2009), <https://kyotoreview.org/issue-11/a-long-row-to-hoe-a-critical-assessment-of-asean-cooperation-on-counter-terrorism/>; Rohan Gunaratna, *ASEAN's Greatest Counter-Terrorism Challenge: The Shift from "Need to Know" to Smart to Share*, in COMBATTING VIOLENT EXTREMISM AND TERRORISM IN ASIA AND EUROPE: FROM COOPERATION TO COLLABORATION 112 (Christian Echle et al. eds., 2018).

purposes of the ACCT as “offences within the scope of and as defined in” a list of fourteen global counterterrorism instruments.⁵⁵ These are shown below in Appendix 1. Concerning maritime terrorism, the flag State and the State of registry are obliged to establish jurisdiction over ACCT offenses aboard, or in respect of, vessels or aircraft at sea.⁵⁶ Regardless of whether the ACCT contracting party is a party to the cross-referenced instruments, all fourteen instruments apply to defining ACCT offenses *unless* a reservation is submitted to exclude an instrument to which a State is not a party:

On depositing its instrument of ratification or approval, a Party which is not a Party to a treaty listed in paragraph 1 of this Article may declare that, in the application of this Convention to that Party, that treaty shall be deemed not to be included in paragraph 1 of this Article.⁵⁷

Such a declaration is actually a reservation because it “purports to exclude or to modify the legal effect of certain provisions of the [ACCT] in their application to that State.”⁵⁸ The declaration (or lack thereof) defines offenses for that contracting party modifying the scope of all the rights and obligations of the ACCT tied to this definition.⁵⁹ These reservations are expressly authorized by the ACCT and therefore do not require acceptance by other parties before affecting a State’s relations with all other contracting parties.⁶⁰ All ten ASEAN member States are contracting parties to the ACCT and all have submitted declarations, as will be discussed in Part IV. These declarations are largely effective as they meet the substantive and procedural requirements of a reservation, such as being in writing and being confirmed upon formal acceptance of the treaty.⁶¹

Structuring maritime offenses to include cross-referencing all fourteen instruments, unless a reservation is made, will promote the widest regional cooperation available.⁶² Including instruments to which ASEAN member

55. ACCT, *supra* note 13, art. 2(1).

56. *Id.* art. 7(1)(b).

57. *Id.* art. 2(2).

58. Vienna Convention on the Law of Treaties art. 2(1)(d), May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VCLT].

59. ACCT, *supra* note 13, arts. 6–14.

60. VCLT, *supra* note 58, arts. 20(1), 21(1).

61. *Id.* arts. 19, 23; *contra* Section IV(E), *infra*.

62. ACCT, *supra* note 13, art. 1.

States are not a party also holds the potential for greater regional cooperation than currently available at the global level.

However, the ACCT cross-references two treaties that do not define offenses but rather employ the same cross-referencing/reservation technique, namely the ICSFT and the 2005 Protocol to the SUA Convention.⁶³ Any reservation limiting offenses under the ICSFT or the 2005 Protocol to the SUA Convention will also limit the relevant offenses under the ACCT. Maritime terrorism offenses may, therefore, only be defined by analyzing the ACCT's wider context and the cumulative impact of reservations, if any, submitted under the ACCT, the ICSFT, and the 2005 Protocol to the SUA Convention. This relationship between reservations is best demonstrated by comparing ASEAN member States' reservations to the ACCT and the ICSFT because all ASEAN member States are parties to both conventions. ICSFT offenses are also ACCT offenses by way of Article 2(1)(j) of the ACCT.

Regardless of whether the ICSFT contracting party is also party to the instruments cross-referenced by the ICSFT,⁶⁴ all nine instruments cross-referenced apply in defining the ICSFT offenses *unless* an exclusionary reservation is made.⁶⁵ All nine of the ICSFT cross-referenced instruments are also on the list of the fourteen ACCT cross-referenced instruments. Therefore, any inconsistencies in a State's reservations to the ICSFT and the ACCT can, as seen below, have profound impacts on the applicable definition of maritime terrorism. If the ICSFT were amended to expand the instruments cross-referenced,⁶⁶ any further overlap with the ACCT would require careful consideration by ASEAN member States to avoid further divergent reservations and definitional difficulties for maritime terrorism.

63. ICSFT, *supra* note 19, art. 2(1)(a); SUA 2005, *supra* note 36, art. 3ter.

64. ICSFT, *supra* note 19, annex.

65. *Id.* art. 2(2)(a).

66. *Id.* art. 23; *see* Council of Europe, Explanatory Report to the Council of Europe Convention on the Prevention of Terrorism, ¶ 50, C.E.T.S. No. 196 (2005), <https://rm.coe.int/16800d3811> (establishing precedent).

III. ANALYSIS AND IMPLICATIONS FOR COOPERATION

This Part will highlight the importance of identifying the definition of maritime terrorism applicable to a contracting party—or among contracting parties—for the interpretation and application of the vast majority of the provisions of the ACCT and other comparable counterterrorism treaties.

In general, legal uncertainties or the misalignment of domestic laws with international treaty obligations will undermine national counterterrorism efforts and regional or global cooperation. Likewise, frustrations may arise if domestic resources are expended to fulfil counterproductive obligations resulting from these reservations (see, for example, Section IV(C)'s discussion of the punishment of those providing financial assistance but not those committing the terrorist act).

For example, if we consider the importance of every State fully implementing the obligation to establish jurisdiction over all terrorist offenses accepted and binding by virtue of Article 2 of the ACCT, a basic premise of domestic enforcement responses and legal certainty is that the terrorist act is prescribed as an offense in domestic law, with appropriate penalties. We can note its acute importance in the context of maritime terrorism, where we might otherwise have a result where the States with the primary jurisdictional rights and opportunities are unwilling or unable to respond to maritime terrorism threats or acts. Among other factors in the maritime domain pushing towards the need for express and widespread establishment of jurisdiction in a manner consistent with States' treaty obligations are: the porous jurisdictional boundaries at sea, large exclusive economic zones and areas beyond national jurisdiction, loose requirements on establishing primary jurisdiction ("genuine link"), inequalities between vast maritime interests and narrow maritime enforcement capacities, and the presumption against the extraterritorial application of law unless expressly provided.

The obligation to establish the defined acts as criminal offenses punishable by appropriate penalties will establish domestic jurisdiction and should avoid any difficulties in a lack of implementing legislation to address suspected offenders. If sufficiently implemented by enough States, the availability of safe havens for maritime terrorism offenders, as a matter of law, will be greatly reduced. While monist States might suggest the offenses are automatically incorporated into domestic law upon ratification of the ACCT, one may caution that implementing legislation is still necessary for establishing appropriate penalties and establishing jurisdiction over convention offenses

based on the subsequent territorial presence of an offender.⁶⁷ The same might be said of the duty to adopt measures to ensure that terrorism offenses “are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.”⁶⁸ What is more, establishing jurisdiction over accepted offenses, in turn, underpins the vast majority of the cooperative framework, such as the cornerstones of mandatory referral to examination by prosecutors or the “extradite or prosecute” principle.⁶⁹ As national courts are the only available forum for the criminal prosecution of maritime terrorism offenses, implementing legislation is essential for the prosecution of actors.⁷⁰ Attempts to include similar cross-referencing techniques to define terrorism offenses for the purposes of the jurisdiction of the International Criminal Court (ICC) were unsuccessful beyond the 1994 Draft Statute of the ICC.⁷¹

What is more, regional counterterrorism treaties present many potential benefits to contracting parties to entice ratification. However, legal uncertainties and differences in the definition of terrorism will also detract from these benefits. In a 2005 article, Gregory Rose and Diana Nestorovska identified many of the necessary elements and potential benefits of a regional counterterrorism treaty:

Examples of such elements are: national adoption of common terms and definitions, obligations to indict or to extradite, and reciprocal provisions governing mutual legal assistance and punishment. It examines ways a regional treaty might promote harmonised definition, application and enforcement of national counter-terrorism laws. Ideally, the treaty should promote its own implementation by building regional capacity to enforce

67. Robert Beckman & Tara Davenport, *Maritime Terrorism and the Law of the Sea: Basic Principles and New Challenges*, in *THE LAW OF THE SEA CONVENTION: U.S. ACCESSION AND GLOBALIZATION* 227, 256 (Myron H. Nordquist et al. eds., 2012).

68. ACCT, *supra* note 13, art. 9(1).

69. U.N. OFFICE ON DRUGS AND CRIME, LEGISLATIVE GUIDE TO THE UNIVERSAL REGIME AGAINST TERRORISM 37, U.N. Sales No. E.08.V.9 (2008), <https://digitallibrary.un.org/record/648342>; *see also* Arrest Warrant of 11 April 2000 (Dem. Rep. of Congo v. Belg.), Judgment, 2002 I.C.J. 3, 39 (Feb. 14) (separate opinion by Judge Guillaume) (“the obligation to prosecute was no longer conditional on the existence of jurisdiction, but rather jurisdiction itself had to be established in order to make prosecution possible”).

70. Karim, *supra* note 27, ch. 3.

71. ARNOLD, *supra* note 23, at 52–57; *see* 2 YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 1994, U.N. Doc. A/CN.4/SER.A/1994/Add.1 (Part 2), at 38, 67–68 (draft Article 20 and annex of International Criminal Court).

national laws through cooperative intelligence gathering, prevention strategies, crisis management and investigation efforts.

...

A definition of terrorism in international law is necessary to provide a clear reference point for triggering and limiting international obligations to cooperate across a broad range of relevant law enforcement, intelligence-gathering, incident prevention and emergency response measures.⁷²

Many of these elements are reflected in the subsequent 2007 ACCT. The ACCT is designed with strong regional characteristics in mind and is thus only open to ASEAN member States.⁷³ The ACCT is the principal instrument for strengthening regional counterterrorism efforts in the ASEAN region and is ASEAN's first binding counterterrorism instrument adopted. ASEAN cooperation therein can be undertaken in a more comprehensive manner than that available in global instruments, including in addressing terrorism prevention, law enforcement, eradication, and rehabilitation. The necessities of cooperation in counterterrorism efforts were identified in instruments preceding the ACCT⁷⁴ and subsequent to the ACCT.⁷⁵ But, in contrast to the ACCT, those instruments address political and non-binding aspirations to strengthen cooperation or seek to identify regional guidelines or policies.

Furthermore, the ACCT includes many progressive provisions, including the guaranteeing of fair treatment.⁷⁶ While fair treatment is now evident in more recent global instruments, by virtue of the ACCT this principle is extended to proceedings concerning earlier cross-referenced global instruments, which were silent on the treatment standards for suspects. Endeav-

72. Gregory Rose & Diana Nestorovska, *Towards an ASEAN Counter-Terrorism Treaty*, 9 SINGAPORE YEAR BOOK OF INTERNATIONAL LAW 157, 157–58 (2005).

73. ACCT, *supra* note 13, art. 20, pmbl (defining “the Parties”).

74. ASEAN Declaration on Transnational Crime, ¶ 8 (Dec. 20, 1997), <https://asean.org/wp-content/uploads/2012/05/ASEAN-Declaration-on-Transnational-Crime-1997.pdf>; 2001 ASEAN Declaration on Joint Action to Counter Terrorism, ¶¶ 2, 4, 9 (Nov. 5, 2001), <https://asean.org/wp-content/uploads/2012/05/2001-ASEAN-Declaration-on-Joint-Action-to-Counter-Terrorism.pdf>.

75. ASEAN Plan of Action 2016–2025, *supra* note 1, Legal Matters ¶ 2 at 5; ASEAN, Plan of Action to Implement the ASEAN-EU Strategic Partnership (2023–2027), ¶ 1.3(c) (Aug. 4, 2022), <https://asean.org/wp-content/uploads/2022/08/ASEAN-EU-Plan-of-Action-2023-2027-FINAL.pdf>.

76. ACCT, *supra* note 13, art. 8.

oring “to promote the sharing of best practices on rehabilitative programmes” is another development witnessed at the regional ASEAN level.⁷⁷ Perhaps the most promising provision for regional responses is Article 6 of the ACCT. Article 6 provides an extensive and non-exhaustive list of identified areas of cooperation that may be undertaken to address terrorism.⁷⁸

Unfortunately, the benefits of the ACCT have not yet been fully utilized⁷⁹ and elements requiring regional implementation have not yet been fully established.⁸⁰ Efforts have progressed, such as enhanced intelligence exchange and sharing of information through the newly established Counter-Terrorism Information Facility or the (formally ASEAN-minus) Our Eyes Initiative. Nonetheless, these appear to be with “like-minded countries” and not under the ACCT.⁸¹ Continued efforts by ASEAN and ASEAN member States to fully implement and utilize the ACCT should therefore be encouraged and commended.

However, legal uncertainties regarding the definition of maritime terrorism applicable to each ASEAN member State will, until resolved, hinder further utilization and regional cooperation. This is because regional cooperation under the ACCT largely extends only as far as a clearly defined and shared definition of terrorist offenses is established between the respective

77. *Id.* art. 11.

78. *Id.* art 6. (information exchange is promoted on numerous occasions in Article 6, and further called for in Article 9(2)).

79. Letter dated 18 January 2016 from the Chair of the Security Council Committee Established Pursuant to Resolution 1373 (2001) Concerning Counter-terrorism Addressed to the President of the Security Council, U.N. Doc. S/2016/49, annex ¶¶ 183–84 (Jan. 20, 2016).

80. See Marguerite Borelli, *ASEAN Counter-Terrorism Weaknesses*, 9 COUNTER TERRORIST TRENDS AND ANALYSES 9, 14, 16 (Sept. 2017) (“As of July 2017, important ACCT provisions such as the creation of a common regional intelligence database to facilitate cooperation between national intelligence services, law enforcement agencies, militaries and judiciaries has yet to be implemented at the regional level”).

81. ACCT *supra* note 13, art. 6(1)(h); Statement by Ms. Jophie Tang, Deputy Permanent Representative of the Republic of Singapore to the United Nations, on Agenda Item 111: On Measures to Eliminate International Terrorism, Sixth Committee ¶ 6 (Oct. 5, 2021), https://www.un.org/en/ga/sixth/76/pdfs/statements/int_terrorism/01mtg_singapore.pdf; Prashanth Parameswaran, *ASEAN Our Eyes Meeting Spotlights Counterterrorism Cooperation*, THE DIPLOMAT (Mar. 10, 2020), <https://thediplomat.com/2020/03/asean-our-eyes-meeting-spotlights-counterterrorism-cooperation/>.

contracting parties. Cooperation, in many cases, also only applies “in conformity with their respective domestic laws.”⁸² For example, if the foreign State has not implemented offenses defined in SUA Platforms 2005 as part of its ACCT obligations, it will not be an extradition offense in Singaporean law.⁸³

In short, definitions matter. Numerous rights or cooperative arrangements under the ACCT would be affected by legal uncertainties related to unharmonized, unimplemented, or conflicting definitions of maritime terrorism. Even the question of whether the convention does *not* apply to an offense (Article 5 of the ACCT) depends upon whether another party has a basis under the ACCT to exercise jurisdiction over the offense. This can only be answered by examining whether a valid reservation under Article 2(2) of the ACCT has been submitted and thus the scope of maritime terrorism offenses are within their jurisdiction under Article 2(1) of the ACCT.

On implementation in concrete cases, the definition of regional terrorism offenses applicable to each State is determinative of the scope of their obligation to investigate alleged offenses under Article 8(2) of the ACCT. Should a person then be taken into custody or prosecuted, the State is obliged to notify other contracting parties that have established jurisdiction under Article 7(1)–(2) of the ACCT.⁸⁴ Again, identifying the contracting parties to notify can only be determined by examining the definition of offenses applicable to the other contracting parties under Article 2 of the ACCT (i.e., all cross-referenced instruments or subject to reservation) and then whether jurisdiction under Article 7 of the ACCT has been established for that particular offense.

In a similar manner, the duty to prosecute or extradite is a cornerstone of counterterrorism instruments but only concerns the definitions of terrorism offenses in that particular instrument. For cross-referencing treaties, this will depend for each State upon: (a) the list of instruments, (b) the scope of its reservation, if any, to each of those instruments, and (c) the scope of other

82. ACCT, *supra* note 13, art. 10 (denial of asylum applications to offenders), art. 12 (mutual legal assistance), art. 13(2)–(3) (interpretation, application, and negotiation of extradition treaties).

83. Extradition Act 1968, ch. 103, No. 18, § 1, Fourth Schedule (2022 rev. ed.) (Sing.), <https://sso.agc.gov.sg/Act/EA1968> (as amended up until Act 17 of 2022). Such acts/omissions would not meet the conditions of being either (a) an offense against the law of the foreign State and equivalent to an offense in Singaporean law, nor (b) a “convention offence” as detailed in the Fourth Schedule.

84. ACCT, *supra* note 13, arts. 8(6), 9(3).

contracting parties' reservations, if any, to each of those instruments. For the ACCT, the duty to prosecute or extradite applies when the alleged offender is present in a State's territory and that State has jurisdiction under Article 7 of the ACCT.⁸⁵ Obligatory jurisdiction under Article 7(1) of the ACCT only concerns the definition of offenses applicable to that State under Article 2 of the ACCT (i.e., all cross-referenced instruments or subject to reservation). Obligatory jurisdiction under Article 7(3) of the ACCT for offenders present in a State's jurisdiction only concerns the definition of offenses applicable *and* when "it does not extradite that person to any of the Parties *that have established their jurisdiction in accordance with paragraph 1 or 2 of this Article.*"⁸⁶ Again, the latter condition can only be answered by examining the definition of the offenses applicable to any of the other parties under Article 2 of the ACCT (i.e., all cross-referenced instruments or subject to reservation) and then whether their Article 7 rights and obligations are implemented. The clear trend is that in most instances the contracting parties must not only be aware of their own position under Article 2 of the ACCT, but also the positions of all other contracting parties when implementing and operationalizing the ACCT.

Finally, more broadly, the detailing of the definition of maritime terrorism offenses applicable to each of the ACCT contracting parties—and thus the scope of their treaty obligations—enables ASEAN States to take their obligations seriously and achieve full and effective implementation.⁸⁷ If by virtue of the ASEAN Charter the centrality of the "ASEAN Way" has been "supplemented by a new culture of adherence to rules,"⁸⁸ then in those cases where the ASEAN community has decided to impose binding obligations a greater degree of domestic implementation and legal certainty is expected to distinguish agreed rules from shared guidance.⁸⁹

85. *Id.* art. 13(1). Domestic proceedings can only be brought in accordance with the domestic laws of that party, excluding prosecution for offenses subject to a reservation or not fully implemented in domestic law.

86. *Id.* art. 7(3) (emphasis added).

87. As desired by the Eminent Persons Group, "ASEAN must have a culture of commitment to honour and implement decisions, agreements and timelines." Report of the Eminent Persons Group on the ASEAN Charter 4 (Dec. 2006), <https://www.asean.org/wp-content/uploads/images/archive/19247.pdf>.

88. Tommy Koh et al., *Charter Makes ASEAN Stronger, More United and Effective*, THE STRAITS TIMES, Aug. 8, 2007.

89. ASEAN Charter, Nov. 20, 2007, 2624 U.N.T.S. 223.

To conclude, whenever a treaty presents contracting parties with an optional reservation clause that will profoundly shape their rights and obligations, that treaty and its depository must clearly signpost to signatories the importance of their instruments of ratification and whether reservations are included therein. This is even more important when a State's obligations under one optional reservation treaty will interact or overlap with that State's obligations under another optional reservation treaty. This is exactly the case of the ACCT and the ICSFT. As will be seen in the next Part, the practical results of ASEAN member States' practices when ratifying the ACCT and the ICSFT suggest non-compliance results from a lack of clarity on these cross-referencing provisions as opposed to any willful intent. The treaty drafters also do not appear to have fully considered the interaction of cross-referencing treaties and reservations when crafting the definitions of terrorism offenses.

IV. THE IMPACT OF RESERVATIONS ON DEFINING MARITIME TERRORISM

Reservations play an important role in allowing States to exclude any cross-referenced treaty to which they are not a party and are currently unwilling or unable to implement.⁹⁰ Table 1 summarizes the dates of ratification and relevant reservations of ASEAN member States to the ACCT and the ICSFT definitions of offenses, respectively.⁹¹

90. One example for excluding a cross-referenced treaty is due to the legislative or financial impact. *See* Report of the Foreign Affairs, Defence and Trade Committee (N.Z.), International Treaty Examination of the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, app. B ¶¶ 18–43 (June 2009), <https://www.parliament.nz/resource/0000082905>.

91. ASEAN Secretariat, *ASEAN Legal Instruments*, <http://agreement.asean.org/agreement/detail/49.html> (last visited Mar. 2, 2023) (listing ratifications to the ASEAN Convention on Counter Terrorism); U.N., Status of the International Convention for the Suppression of the Financing of Terrorism, <https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XVIII/XVIII-11.en.pdf> (last visited Mar. 2, 2023).

Table 1. Reservations on the Definition of Offenses by ASEAN Members

State	ACCT Reservation	ICSFT Reservation
Brunei	4 May 2011 Nuclear Material Convention; Nuclear Terrorism Convention; 2005 Amendment to the Nuclear Material Convention; 2005 Pro- tocol to the SUA Convention; SUA Platforms 2005	4 Dec. 2002 No reservation
Cambodia	28 June 2010 No reservation	12 Dec. 2005 No reservation
Indonesia	28 June 2012 No reservation	26 June 2006 Protection of Diplomats Con- vention; Hostages Convention; Montreal Supplementary Proto- col; SUA Convention 1988; SUA Platforms 1988
Lao PDR	28 Nov. 2012 No reservation	29 Sept. 2008 No reservation
Malaysia	11 Jan. 2013 Nuclear Material Convention; SUA Convention 1988; SUA Platforms 1988; Nuclear Terror- ism Convention; 2005 Amend- ment to the Nuclear Material Convention [‡] ; 2005 Protocol to the SUA Convention; SUA Plat- forms 2005	29 May 2007 No reservation
Myanmar	21 Feb. 2012 Nuclear Material Convention*; Montreal Supplementary Proto- col [‡] ; Nuclear Terrorism Conven- tion; 2005 Amendment to the Nuclear Material Convention*; 2005 Protocol to the SUA Con- vention; SUA Platforms 2005	16 Aug. 2006 Nuclear Material Convention*
Philippines	27 Apr. 2010 No reservation	7 Jan. 2004 Montreal Supplementary Proto- col*; SUA Convention 1988*; SUA Platforms 1988*; Terrorist Bombings Convention*

State	ACCT Reservation	ICSFT Reservation
Singapore	31 Oct. 2007 All Non-Contracting Party Treaties (Protection of Diplomats Convention*; Hostages Convention*; Nuclear Material Convention*; SUA Platforms 1988*; Terrorist Bombings Convention*; Nuclear Terrorism Convention*; 2005 Amendment to the Nuclear Material Convention*; 2005 Protocol to the SUA Convention; SUA Platforms 2005)	30 Dec. 2002 All Non-Contracting Party Treaties (Protection of Diplomats Convention*; Hostages Convention*; Nuclear Material Convention*; SUA Convention 1988*; SUA Platforms 1988*; Terrorist Bombings Convention*)
Thailand	21 Feb. 2008 Nuclear Material Convention*; SUA Convention 1988; SUA Platforms 1988; Nuclear Terrorism Convention*; 2005 Amendment to the Nuclear Material Convention*; 2005 Protocol to the SUA Convention; SUA Platforms 2005	29 Sept. 2004 Protection of Diplomats Convention*; Hostages Convention*; Nuclear Material Convention*; SUA Convention 1988; SUA Platforms 1988; Terrorist Bombings Convention*
Vietnam	25 Feb. 2011 Hostages Convention*; Nuclear Material Convention*; Terrorist Bombings Convention*; Nuclear Terrorism Convention*; 2005 Amendment to the Nuclear Material Convention*; 2005 Protocol to the SUA Convention; SUA Platforms 2005	25 Sept. 2002 (Revised 14 Feb. 2014) Hostages Convention*; Nuclear Material Convention*; Terrorist Bombings Convention*
* Has since become a contracting party—reservation is extinguished † Incompatible reservation without effect ‡ Typographical error in reservation referring to Article 1(1)(i) of ACCT		

A. Minimum Application of the Treaties' Definitions of Maritime Offenses

States may join the ACCT to deepen regional cooperation on offenses defined in global instruments to which they are a contracting party. Likewise, States may join the ICSFT to introduce financing offenses that supplement instruments to which they are a contracting party. These States will include a reservation that excludes cross-referencing any treaty to which they are a

non-contracting party. To do otherwise would expand the definition of offenses binding upon that State.

The practice of Singapore, Thailand, and Vietnam is illustrative of this approach. The declarations of Thailand and Vietnam clearly follow the ACCT and the ICSFT by explicitly listing the treaties excluded from their definition of offenses. Singapore simply submits “a treaty to which the Republic of Singapore is not a party shall be deemed not to be included.”⁹² Singapore’s reservation is less transparent but legally compatible. For instance, North Korea, Egypt, Israel, and Moldova adopted similar all-encompassing ICSFT reservations without any objection from other ICSFT contracting parties.

The “declaration shall cease to have effect as soon as the treaty enters into force for the State party, which shall notify the depository of this fact.”⁹³ No ACCT notifications are visible. This is unfortunate, but there do not appear to be any legal consequences following a failure to notify. International law, in general, suffers from the patchy implementation of notification requirements, as evident in the incompleteness of the data available via the United Nations Treaty Series. For the ICSFT, only Vietnam has refined its reservation, removing the Hostages Convention and Terrorist Bombings Convention in 2014 after those treaties’ entry into force for Vietnam. Curiously, Vietnam’s revised reservation still includes the Nuclear Material Convention despite Vietnam becoming a party in 2012. Nonetheless, a reservation’s legal effect is removed upon a convention’s entry into force and not the procedural obligation to notify the depository.

Following numerous ratifications by all three States, their reservations have considerably narrowed in scope. The failure of Thailand, Vietnam, and Singapore to notify the depositories is immaterial to including these subsequently binding treaties in their definition of ACCT and ICSFT maritime offenses. For the ICSFT, the only remaining reservation is Thailand’s exclusion of the funding of offenses under SUA Convention 1988 and SUA Platforms 1988. All three States exclude the 2005 Protocol to the SUA Convention and SUA Platforms 2005 from ACCT offenses.

92. Singapore, Instrument of Ratification to the ASEAN Convention on Counter Terrorism (Oct. 31, 2007), <http://agreement.asean.org/media/download/20131229172838.pdf>.

93. ACCT, *supra* note 13, art. 2(2); ICSFT, *supra* note 19, art. 2(2)(a).

We may take Singapore as an example of domestic laws fulfilling the obligation to establish jurisdiction over the applicable ACCT terrorism offenses, including for the purposes of possible prosecution. Because Singapore excludes treaties to which Singapore is not a party from defining its ACCT obligations, Singapore's existing counterterrorism implementation practice also implements its Article 7 obligations. The following acts correlate to the applicable offenses defined in Article 2(1)(a)–(l) of the ACCT: (a)–(b) and (f)—Hijacking of Aircraft and Protection of Aircraft and International Airports Act 1978;⁹⁴ (c)—Internationally Protected Persons Act 2008;⁹⁵ (d)—Hostage-Taking Act 2010;⁹⁶ (e) and (l)—Radiation Protection Act 2007;⁹⁷ (g)–(h)—Maritime Offences Act 2003,⁹⁸ (i)—Terrorism (Suppression of Bombings) Act 2007;⁹⁹ (j)—Terrorism (Suppression of Financing) Act 2002;¹⁰⁰ and (k)—Terrorism (Suppression of Misuse of Radioactive Material) Act 2017.¹⁰¹ As ACCT obligations relating to offenses defined in (m) (2005 Protocol to the SUA Convention) and (n) (SUA Platforms 2005) are excluded by Singapore's reservation, no implementing legislation is mandated, nor does it currently exist.

A similar story is evident in Singaporean domestic laws concerning the applicability of the ICSFT offenses. Singapore's initial reservations to Article

94. Hijacking of Aircraft and Protection of Aircraft and International Airports Act 1978, § 2-9B (2020 rev. ed.) (Sing.), <https://sso.agc.gov.sg/Act/HAPAIAA1978>.

95. Internationally Protected Persons Act 2008, §§ 2, 4-7 (Act 8 of 2008 as amended until Act 17 of 2022) (2020 rev. ed.) (Sing.), <https://sso.agc.gov.sg/Act/IPPA2008>.

96. Hostage-Taking Act 2010, §§ 2, 3 (Act 19 of 2010 as amended up until Act 17 of 2022) (2020 rev. ed.) (Sing.), <https://sso.agc.gov.sg/Act/HTA2010>.

97. Radiation Protection Act 2007, §§ 2, 29-33 (Act 27 of 2007 as amended up until Act 17 of 2022) (2020 rev. ed.) (Sing.), <https://sso.agc.gov.sg/Act/RPA2007>.

98. Maritime Offences Act 2003, §§ 2–11 (Act 26 of 2003 as amended up until Act 17 of 2022) (2020 rev. ed.) (Sing.), <https://sso.agc.gov.sg/Act/MOA2003>.

99. Terrorism (Suppression of Bombings) Act 2007, §§ 2–4 (Act 50 of 2007 as amended up until Act 17 of 2022) (2020 rev. ed.) (Sing.), <https://sso.agc.gov.sg/Act/TSBA2007>.

100. Terrorism (Suppression of Financing) Act 2002, §§ 2(1)-(2), 3-6B, Second Schedule (Act 16 of 2002 as amended up until Act 17 of 2022) (2020 rev. ed.) (Sing.), <https://sso.agc.gov.sg/Act/TSFA2002>.

101. Terrorism (Suppression of Misuse of Radioactive Material) Act 2017, §§ 2, 4–10 (Act 27 of 2017 as amended up until Act 17 of 2022) (2020 rev. ed.) (Sing.), <https://sso.agc.gov.sg/Act/TSMRMA2017>.

2(1) of the ICSFT have since been extinguished. This is reflected in the Terrorism (Suppression of Financing) Act 2002, which includes and goes beyond all instruments cross-referenced in the ICSFT annex.¹⁰²

To conclude, cautious and step-by-step approaches to undertaking substantive obligations in international law are reflected in cautious and step-by-step domestic implementation. Emphasis is placed on compliance with substantive obligations, while practice on procedural duties is mixed.

B. Full Application of the Treaties' Definitions of Maritime Offenses

Likewise, a State may become party to the ICSFT and the ACCT without depositing any reservation on defining maritime offenses. The practice of Cambodia and Lao PDR is illustrative of this approach.

Offenses under all fourteen of the ACCT cross-referenced treaties are the ACCT offenses for the purpose of these States' ACCT rights and obligations. For Cambodia and Lao PDR, this includes establishing jurisdiction over ACCT maritime offenses within the scope of the four instruments to which they are non-contracting parties, namely the 2005 Protocol to the SUA Convention, SUA Platforms 2005, the Nuclear Terrorism Convention, and the 2005 Amendment to the Nuclear Material Convention.

Equally, ICSFT offenses would have included all nine of the ICSFT cross-referenced treaties for the purpose of these States' ICSFT rights and obligations. Cambodia and Lao PDR have since joined all treaties cross-referenced by the ICSFT. However, upon becoming an ICSFT contracting party, Cambodia would have accepted cross-referencing of the Protection of Diplomats Convention, Hostages Convention, Nuclear Material Convention, SUA Convention 1988, SUA Platforms 1988, and the Terrorist Bombings Convention, despite not being a party thereof. Obligations to establish jurisdiction over the actual terrorist acts in these conventions only occurred later in 2006, following Cambodia joining said conventions. Lao PDR was not a party to the Nuclear Material Convention, SUA Convention 1988, and SUA Platforms 1988 when joining ICSFT, resulting in similar breadth and disparities in Laotian obligations under international law.

102. Terrorism (Suppression of Financing) Act 2002, §§ 2(1)-(2), 3-6B, Second Schedule (Act 16 of 2002 as amended up until Act 17 of 2022) (2020 rev. ed.) (Sing.), <https://sso.agc.gov.sg/Act/TSFA2002>.

This practice challenges whether attempts to define terrorist acts broadly and comprehensively by cross-referencing a long list of treaties, unless a reservation is made, has had its intended effect beyond imposing obligations on paper. One expects criminalization and cooperation on maritime terrorism to be deepest between the most affected States, namely Indonesia, Malaysia, Singapore, and the Philippines.¹⁰³ Cambodia and Lao PDR are understandably not at the forefront of interests, efforts, or dedicating resources to combat maritime terrorism. For one, Lao PDR is a landlocked State with other regulatory agendas and a comparatively small fleet of seagoing vessels registered under its flag.

According to this author's research,¹⁰⁴ it is doubtful that Lao PDR or Cambodia have adopted legislation explicitly criminalizing maritime terrorist acts as defined in all fourteen treaties cross-referenced by the ACCT, nor have they put in place the administrative frameworks necessary to fulfill obligations on investigating reported incidents and possible prosecution or extradition. The same can be said of the ICSFT and its even broader obligations.¹⁰⁵ For example, Cambodia's 2007 Law on Counter Terrorism is an extensive piece of domestic implementation covering offenses under numerous treaties to which Cambodia has become a contracting party, even the Nuclear Terrorism Convention, to which Cambodia is only a signatory.¹⁰⁶ Since ratification of the ACCT in 2010, this would likewise implement Cambodia's ACCT obligations in so far as establishing jurisdiction over offenses defined in cross-referenced treaties to which it is a party. However, Cambodia, perhaps understandably, did not domestically implement the other treaties later cross-referenced by the ACCT, to which it was neither a signatory nor a party. Nonetheless, following the ratification and entry into force of the ACCT for Cambodia—with no reservation to Article 2(1)—Cambodia

103. UNSC Counter-Terrorism Letter, *supra* note 52, ¶¶ 181, 183 (on the maritime context of the Philippines and Indonesia as archipelagic States).

104. As a caveat for any comparative research into ten diverse legal systems, this author has attempted to be thorough in the research conducted, but may have missed less-accessible implementing practice, or domestic nuances. Such matters are best addressed by local expertise in separate and national-focused articles, which could build on the groundwork here.

105. ICSFT, *supra* note 19, arts. 4–19.

106. Law on Counter Terrorism arts. 4–7, 15–23, 30–34, 39–48, 75–78, Annex, Royal Kram No. NS/RKM/007/018 (July 20, 2007) (Cambodia), <https://www.icj.org/wp-content/uploads/2013/04/Cambodia-Law-on-Counter-Terrorism-2007-eng.pdf>; *see also id.* arts. 72–73 (addressing offenses under the Explosives Convention).

has not amended the Law on Counter Terrorism to add the 2005 Protocol to the SUA Convention, SUA Platforms 2005, or the 2005 Amendment to the Nuclear Material Convention, as required to fully implement the ACCT. As noted above in Part III, this will have wider implications for Cambodia's regional cooperation under the ACCT concerning the binding but unimplemented ACCT terrorism offenses defined in the 2005 Protocol to the SUA Convention, SUA Platforms 2005, and the 2005 Amendment to the Nuclear Material Convention.

By contrast, Cambodia's Law on Counter Terrorism and Law on Anti-Money Laundering and Combating the Financing of Terrorism establish funding offenses relating to all the ICSFT cross-referenced treaties. This is consistent with the fact that Cambodia is a contracting party to all the ICSFT cross-referenced treaties.¹⁰⁷

The position in Lao PDR is somewhat more complicated in that the penal code does include a broad provision that could be interpreted as establishing jurisdiction and prescribing punishments for all ACCT offenses, but there is little to confirm such intent.¹⁰⁸ Nonetheless, at face value Article 120 of the Penal Code defines terrorism acts as including "acts which constitute acts of terrorism as provided for in the Laws, Treaties and International Conventions to which the Lao PDR is a party."¹⁰⁹ While acts of terrorism defined in the 2005 Protocol to the SUA Convention, SUA Platforms 2005, the Nuclear Terrorism Convention, and the 2005 Amendment to the Nuclear Material Convention would not be directly applicable via the Laotian penal code, these are, via cross-referencing, acts of terrorism under Article 2(1)(k)–(n) of the ACCT, to which Lao PDR is a party. Article 120 of the Penal Code, combined with a lack of reservation by Lao PDR under Article 2(2) of the ACCT, could therefore define terrorism in Laotian law as including any of the offenses defined in all fourteen treaties cross-referenced by the ACCT.

To conclude, counterterrorism instruments that hope to expand the scope of cooperation by cross-referencing, by default, offenses under treaties

107. Law on Anti-Money Laundering and Combating the Financing of Terrorism art. 44, Royal Kram No. NS/RKM/0620/021 (June 27, 2020) (Cambodia), <https://www.nbc.org.kh/cafiu/download/Laws%20and%20Prakas/AML%20CFT%20Law%20in%20English.pdf>.

108. Penal Code (Law No. 013/NA) (Laos), http://laofficialgazette.gov.la/kcfinder/upload/files/1Oct2020_Lao%20Penal%20Code_English%20version.pdf; *see also id.* art. 131 (financing of terrorism offenses).

109. *Id.* art. 120(6).

to which a State is not a contracting party will only achieve this benefit if States are conscious of such a provision. States may be unaware of the consequences of ratifying the ACCT and the ICSFT without a reservation, let alone implementing their resulting obligations. The domestic implementation of offenses by States ratifying both instruments without any reservations is a testament to this. Likewise, it may not be in the interests of other States to hold States to account if the breadth of obligations accepted was unintended and the current need for domestic implementation and cooperation by said States is minimal.

C. Broader Terrorist Funding Offenses Than Terrorist Act Offenses

Defining maritime offenses becomes further complicated—or confusing—when a State’s policy has changed between joining the ICSFT and joining the ACCT. Brunei and Malaysia include no relevant reservations to the ICSFT yet take a more nuanced approach to the ACCT by excluding treaties to which they are not party. Alone, each appears reasonable. Combined, the result is somewhat illogical from a generalist’s perspective.

Take Brunei, which due to lack of a reservation is bound by the ICSFT and ACCT to establish jurisdiction over funding a terrorist act in the Nuclear Material Convention. However, Brunei’s clear policy, reiterated in its ACCT reservation, is to exclude obligations concerning terrorist acts under the Nuclear Material Convention because it is not a contracting party.

For Malaysia, funding acts under the Nuclear Material Convention, SUA Convention 1988, and SUA Platforms 1988 are binding offenses under the ICSFT and ACCT. But terrorist acts constituting actual offenses under the Nuclear Material Convention, SUA Convention 1988, and SUA Platforms 1988 remain excluded from Malaysia’s treaty obligations.

The reasoning for a policy that selects the broadest definition of “funding” offenses, followed by the narrowest definition of “act” offenses, remains elusive. No explicit policy statements appear to support the acceptance of treaty rights and obligations to combat persons funding terrorist offenses while excluding persons committing terrorist offenses. ACCT offenses include both act and funding offenses, with any reservation to the ICSFT being brought forward into its ACCT definition.¹¹⁰ It is difficult to conceive that coastal States with considerable maritime security interests and

110. The reservation refines a State’s “offences within the scope of and as defined in” ICSFT, ACCT, *supra* note 13, art. 2(1)(j).

vulnerabilities, such as Malaysia, would purposefully craft their obligations to include addressing the funding offenses of the SUA Convention 1988 and the SUA Platforms 1988 while simultaneously excluding acts constituting offenses under the SUA Convention 1988 and SUA Platforms 1988. Legally, this is the cumulative impact of Malaysia's reservations. Practically, it suggests States must carefully analyze their global and regional treaty practice to ensure the appropriate design of mutually supportive reservations. This is especially so if a reservation in one treaty is authoritative in another.

Assuming this change in practice concerning reservations is based on national policy and that legal obligations arising from the ACCT and ICSFT are to be equally implemented, one would expect narrower domestic laws concerning terrorist acts than terrorist financing. An examination of the laws of Brunei demonstrates alignment with its Article 2(2) reservation to the ACCT. For example, Section 3 of the Anti-Terrorism Order prescribes the commission of terrorist acts as an offense subject to significant punishments.¹¹¹ "Terrorist act" includes "an act or omission in or outside Brunei Darussalam which constitutes an offence within the scope of a counter-terrorism convention," which does establish jurisdiction over the applicable ACCT terrorism offenses (Articles 2(1)(a)–(d) and 2(f)–(j)).¹¹² Other laws exist to give effect to specific counterterrorism treaties to which Brunei has become a contracting party.¹¹³ The offenses prescribed in instruments excluded by Brunei's ACCT reservation are not included (Articles 2(e) and 2(k)–(n)).

However, concerning terrorist financing offenses, this careful and detailed approach is less apparent. General terrorist finance offenses are prescribed in Sections 4–8 of the Anti-Terrorism Order, but interestingly the

111. Anti-Terrorism Order, 2011 § 3 (S 45/2011) (Brunei), https://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2011/EN/s045.pdf.

112. *Id.* § 2(2)(a), Schedule.

113. *See, e.g.*, Tokyo Convention Act (S 42/00), B.L.R.O. 7/2008 1 CAP. 198 (rev. ed. 2008) (Brunei), http://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/cap198.pdf; Internationally Protected Persons Act (Act 8 of 1982), B.L.R.O. 1/1984 1 CAP. 16 (rev. ed. 1984) (Brunei), https://www.agc.gov.bn/AGC%20Images/LAWS/ACT_PDF/I/CHAPTER%20016.pdf; Maritime Offences (Ships and Fixed Platforms) Order (S 61/2007) (Brunei), https://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2007/EN/S061.pdf; Emergency (Hijacking and Protection of Aircraft) Order (S 41/2000) (Brunei), https://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2000/EN/s041.pdf.

aforementioned “commission of terrorist act” offense includes acts/omissions constituting an offense under the ICSFT.¹¹⁴ Due to the lack of a reservation to the ICSFT, “funding” a terrorist act in the Nuclear Material Convention could fall under the Brunei offense of the “commission of a terrorist act,” but a terrorist act in the Nuclear Material Convention would not fall under the Brunei offense of the “commission of a terrorist act.” The intention or rationale for such a conclusion is not readily apparent but results from Brunei’s practice on the submission of reservations and broadly defined offenses.

D. Broader Terrorist Act Offenses Than Terrorist Funding Offenses

Alternatively, an exclusionary ICSFT reservation may be followed by joining ACCT without reservation. The ACCT terrorist acts are then defined by all fourteen cross-referenced treaties, while funding offenses are limited to the nine ICSFT cross-referenced treaties, as further refined by the ICSFT reservation. Indonesia and the Philippines chose this course of action.

For the ICSFT, the Philippines’s reservation excluded the Montreal Supplementary Protocol, SUA Convention 1988, SUA Platforms 1988, and Terrorist Bombings Convention. All four instruments were already ratified by the Philippines but were awaiting entry into force in respect of the Philippines.¹¹⁵ This careful and temporary reservation stands in stark contrast to the Philippines’s silence on joining the ACCT, despite the ACCT’s cross-referencing four conventions to which the Philippines was not a contracting party.¹¹⁶ These four conventions, namely the Nuclear Terrorism Convention, 2005 Amendment to the Nuclear Material Convention (since ratified in 2021), 2005 Protocol to the SUA Convention, and SUA Platforms 2005, include more far reaching maritime offenses and related obligations for non-contracting parties who join the ACCT without reservation.

Indonesian practice is similar, whereby it has exercised its prerogative to not become a contracting party to numerous conventions and excluded these

114. Anti-Terrorism Order, *supra* note 111, § 3, Schedule ¶ 11.

115. ACCT, *supra* note 13, art. 2(2) (extinguishing the reservation).

116. The Nuclear Terrorism Convention was signed by the Philippines in 2005—prior to the Philippines’ ratification of the ACCT—but has not since been ratified. The 2005 Protocol to the SUA Convention and SUA Platforms 2005 have also not been ratified by the Philippines. The Philippines did ratify the 2005 Amendment to the Nuclear Material Convention in 2021.

conventions from defining ICSFT “funding” offenses but not excluded these conventions from defining ACCT “act” offenses. Exceptionally, the Terrorist Bombings Convention was not excluded from the ICSFT. However, Indonesia acceded to the Terrorist Bombings Convention three days later and so this was largely inconsequential. The Protection of Diplomats Convention, Hostages Convention, Montreal Supplementary Protocol, SUA Convention 1988, and SUA Platforms 1988 continue to be excluded from funding offenses but do define act offenses. In addition, ACCT offenses include cross-referencing the Nuclear Terrorism Convention (since ratified), 2005 Amendment to the Nuclear Material Convention (since ratified), 2005 Protocol to the SUA Convention, and SUA Platforms 2005. Many obligations within these global instruments will be fulfilled if Indonesia is fully implementing its ACCT obligations. Tellingly, no ratifications have followed in the eight years since the ACCT entered into force for Indonesia.

In the abstract, defining broader “act” offenses than “funding” offenses is intuitively more acceptable and rational than vice versa (Section IV(C)). For example, this could be a matter of concentrating one’s resources on addressing maritime terrorists directly, extending responses to those supporting terrorism when ready and necessary to do so.

However, the ACCT’s inclusion of the 2005 Protocol to the SUA Convention offenses—and the lack of any Indonesian or Filipino reservation—raises doubts about this rationale, even in the abstract. The 2005 Protocol to the SUA Convention, and the ACCT’s cross-reference,¹¹⁷ requires States to criminalize and exercise jurisdiction over a supporting offense:

unlawfully and intentionally transports another person on board a ship knowing that the person has committed an act that constitutes an offence set forth in article 3, 3*bis* or 3*quater* or an offence set forth in any treaty listed in the Annex and intending to assist that person to evade criminal prosecution.¹¹⁸

In addressing supporters of maritime terrorism, preventative measures to remove the financiers should take priority over responsive measures to those knowingly providing offenders with subsequent transportation to evade prosecution. Indonesia’s reservations result in the exact opposite for

117. ACCT, *supra* note 13, art. 2(1)(m).

118. SUA 2005, *supra* note 36, art. 3ter.

the funding/transport of offenders related to acts in the Protection of Diplomats Convention, Hostages Convention, Montreal Supplementary Protocol, 2005 Protocol to the SUA Convention, and SUA Platforms 1988.

To examine if defining maritime terrorism by cross-references and reservations has had the intended impact on the scope of the contracting parties' domestic implementation of convention offenses, one may look to Indonesian law and whether it establishes jurisdiction over terrorism offenses aboard, or in respect of, fixed platforms at sea. This is because criminalizing SUA Platforms 1988 and SUA Platforms 2005 offenses are only binding on Indonesia via the ACCT. The general provision of the Law Concerning Eradication of the Criminal Act of Terrorism,¹¹⁹ including the 2018 Amendment,¹²⁰ establishes jurisdiction concerning criminal acts of terrorism on the basis of the principles of territoriality, active personality, passive personality, protective jurisdiction, flag State jurisdiction, and State of registry jurisdiction concerning aircraft.¹²¹ The applicability provision of the Law Concerning Eradication of the Criminal Act of Terrorism is thus silent on fixed platforms at sea. This silence is notwithstanding the fact the Law Concerning Eradication of the Criminal Act of Terrorism was amended after the entry into force of the ACCT for Indonesia and its apparent acceptance of obligations concerning SUA Platforms 1988 and SUA Platforms 2005 offenses.

Similarly, the definition of criminal acts of terrorism in the Law Concerning Eradication of the Criminal Act of Terrorism focuses on acts that would fall under the international conventions cross-referenced by the ACCT, to which Indonesia is a contracting party.¹²² Other domestic laws

119. Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 Concerning Eradication of Criminal Acts of Terrorism Becomes Law (Law No. 15/2003) (Indon.), <https://peraturan.bpk.go.id/Home/Details/43015/uu-no-15-tahun-2003>; Government Regulation in Lieu of Legislation of the Republic of Indonesia No. 1/2002 Concerning Eradication of Criminal Acts of Terrorism (Indon.), <https://cyrilla.org/en/entity/zx5im94xuxe> [hereinafter Law Concerning Eradication of the Criminal Act of Terrorism].

120. Amendment to the Law No. 15/2003 Concerning Eradication of the Criminal Act of Terrorism (Law No. 5/2018) (Indon.), <https://cyrilla.org/en/entity/p6xgesz5cv>.

121. Law Concerning Eradication of the Criminal Act of Terrorism, *supra* note 119, §§ 3–4.

122. *Id.* §§ 6–16; Amendment to the Law No. 15/2003, *supra* note 120, §§ 10A, 12A, 12B, 13A (inserting new offenses, but not relating to platforms at sea or the scope of SUA Platforms 1988 and SUA Platforms 2005).

addressing terrorism offenses, notably the Penal Code of Indonesia,¹²³ include amendments specifically following the ratification of counterterrorism instruments.¹²⁴ But, again, the author was unable to find domestic laws implementing SUA Platforms 1988 and SUA Platforms 2005 offenses, as mandated by Indonesia's ratification of the ACCT and its entry into force. The forthcoming new Criminal Code also does not appear to explicitly address SUA Platforms 1988 and SUA Platforms 2005 offenses.¹²⁵

In conclusion, States are free to take differing approaches at the global and regional levels in their submission of reservations concerning the definition of terrorism offenses. There may be perfectly valid reasons to adopt such positions. However, in respect of the ACCT and, in particular, its cross-referencing to SUA instruments, both the abstract rationale and practical implementation suggest unintended consequences.

E. Incompatible Reservations

Myanmar's practice first appears comparable to Malaysia and Brunei (Section IV(C)), excluding the Montreal Supplementary Protocol for ACCT "act" offenses but not ICSFT "funding" offenses. However, the Montreal Supplementary Protocol's depositories record suggests Myanmar has been a contracting party since 1996. In purporting to exclude a convention to which Myanmar is a party, this element of Myanmar's reservation is unsanctioned by the ACCT and incompatible with its object and purpose.¹²⁶ It is, therefore, without legal effect¹²⁷ and the Montreal Supplementary Protocol is included in defining ACCT offenses and Myanmar's rights and obligations. Support

123. Penal Code of Indonesia (Wetboek van Strafrecht voor Indonesia (Staatsblad 1915 No. 732) Law No. 73/1958 as amended up until Law 27/1999) arts. 438–79 (crimes relating to vessel navigation), 479a–479r (crimes relating to aviation and aviation facilities) (Indon.), <https://www.refworld.org/docid/3ffc09ae2.html>.

124. *Id.* arts. 479a–479r were added by the Amendments and Additions to Several Articles in the Penal Code relating to the Expansion of the Applicability of Provisions for Criminal Law, Aviation Crimes, and Crimes Against Aviation Facilities/Infrastructure (Law No/ 4/1976) (Indon.), <https://peraturan.bpk.go.id/Home/Details/47208/uu-no-4-tahun-1976>.

125. Law on the Criminal Code (Law No. 1/2023) (not in force until January 2026) ch. 31 (Indon.), <https://peraturan.bpk.go.id/Home/Details/234935/uu-no-1-tahun-2023>.

126. VCLT, *supra* note 58, art. 19(b)–(c).

127. *Id.* art. 21.

for this argument is found in the numerous States objecting to North Korea's attempt to exclude conventions to which it was a contracting party from its ICSFT definition of offenses.¹²⁸ Myanmar's actual position is comparable to Singapore, Thailand, and Vietnam (Section IV(A)).

Furthermore, as far as it concerns the obligation to establish jurisdiction over the ACCT applicable offenses in domestic law, Section 10 of the Counter Terrorism Law of Myanmar establishes the terrorist offenses in the Montreal Supplementary Protocol as terrorist offenses in Myanmar law.¹²⁹ In this instance, the incompatible reservation was not only without legal effect but was also unnecessary.

F. *Partial Reservations*

Establishing offenses within treaties cross-referenced by the ICSFT is straightforward, as all nine include explicit definitions. The ACCT and the 2005 Protocol to the SUA Convention are complicated by cross-referencing a cross-referencing treaty, namely the ICSFT itself. At all stages in this chain of cross-references a reservation may refine the definition of offenses. For example, a State could hypothetically be party to all three treaties, submitting a relevant reservation to all. An ACCT offense would then include a cross-reference to a 2005 Protocol to the SUA Convention offense (ACCT, Article 2(1)(m)), which in turn includes a cross-reference to an ICSFT offense (2005 Protocol to the SUA Convention, Annex paragraph 9), which in turn includes a cross-reference to a Hostages Convention offense (ICSFT, Article 2(1)(a), Annex paragraph 4). While convoluted, this approach could balance the aims of promoting a comprehensive framework while respecting the foundation of State consent.¹³⁰

However, if a State is not party to any of the treaties in this chain of cross-references, flexibility and consent are less readily apparent. The ACCT, ICSFT, and the 2005 Protocol to the SUA Convention only provide for reservations on "that" or "the" treaty to which a State is not party. This binary

128. See statements by the Netherlands, France, Norway, Spain, Sweden, UK, Moldova, Germany, and Argentina.

129. The Counter Terrorism Law (The Pyidaungsu Hluttaw Law No. 23 of 2014), § 10, (Myan.), <http://www.mlis.gov.mm/lscPop.do?lawordListId=7399>. Other applicable convention terrorism offenses are defined in Sections 7–9, 15, 17, 19–20, 23–24, 27, 33, 35, 39, 41–44.

130. The infamous "rules of law binding upon States therefore emanate from their own free will." S.S. Lotus (Fr. v. Turk.), Judgment, 1927 P.C.I.J. (ser. A) No. 10, at 18 (Sept. 7).

acceptance or rejection of a treaty is well-suited to cross-referencing treaties that directly define offenses. It is ill-suited to cross-referencing a cross-referencing treaty where a more nuanced application might be merited. A non-contracting party to the 2005 Protocol to the SUA Convention or the ICSFT might be willing to accept its partial application in the ACCT in so far as it defines offenses related to treaties to which it is party, for instance including the funding of an offense under the Hostages Convention but not SUA Platforms 1988. This would require broadly interpreting Article 2(2) of the ACCT to allow partial reservations that allow selective cross-referencing of a treaty to which a State is not a contracting party.

Partial reservations are not explicitly prohibited. While not visible in any State practice, partial reservations could promote a more comprehensive framework that still respects consent. Offenses defined in the ICSFT and the 2005 Protocol to the SUA Convention are not package deals and therefore partial application by non-contracting parties within the ACCT should be legally valid.

A right to include partial reservations when a chain of cross-references arises would also avoid discrimination in the application of the parent treaty vis-à-vis contracting parties or non-contracting parties to the cross-referenced treaties. Parties to all instruments in the chain of cross-referenced instruments can carefully craft their rights and obligations under all instruments through their submission of reservations in each case. To accommodate equal rights for States joining a parent treaty that are not parties to all instruments in the chain of cross-referenced instruments, a right to include partial and not just full reservations should exist, at least as far as the ICSFT and the 2005 Protocol to the SUA Convention are concerned for those ratifying the ACCT.

G. *Withdrawal from a Cross-Referenced Treaty*

When a State is party to a cross-referenced treaty it shall, without exception, be included in defining maritime offenses.¹³¹ Any exclusionary reservation ceases to have effect. On the other hand, when a State withdraws from a cross-referenced treaty this does not automatically impact the definition of offenses. The definition of offenses will only change if the State *also* exercises

131. ACCT, *supra* note 13, art. 2(2); ICSFT, *supra* note 19, art. 2(2)(a); SUA 2005, *supra* note 36, art. 21(1).

its discretion to make a reservation “with respect to that treaty” when withdrawing from a cross-referenced treaty.¹³²

Neither a treaty withdrawal nor a corresponding reservation has occurred in practice concerning the ASEAN region. Nonetheless, the discretion to submit additional reservations revives many of the issues discussed (Sections IV(A), (C), (D), and (F)). Reservations are only possible on two occasions: when “depositing its instrument of ratification or approval” or “when a Party ceases to be a Party to a treaty listed.”¹³³ Claw-back reservations are therefore excluded by the ACCT, ICSFT, and the 2005 Protocol to the SUA Convention. Once these parent treaties have been ratified without an applicable reservation, a party cannot submit a reservation to their definitions of offenses at a later date. Likewise, if a reservation is not submitted when withdrawing from a cross-referenced treaty, a party cannot submit a similar reservation at a later date. Whether any other party would object to a subsequent claw-back reservation is, however, debatable, especially if no domestic implementation of the clawed-back offense has actually occurred.

H. *Amending the Definition of Maritime Offenses*

The ACCT definition of offenses may be expanded by amending the list of cross-referenced treaties. Amendments occur through the mutual written consent of the contracting parties.¹³⁴ The number of ASEAN member States party to existing instruments cross-referenced by the ACCT varies wildly (Appendix 1). One cannot, therefore, reasonably predict which instruments, if any, would be added should the ACCT be amended.

Concerning maritime offenses, the four global instruments not currently cross-referenced could be added (Part II).¹³⁵ The inclusion of Tokyo Convention offenses in the ACCT would present little difficulties as all ASEAN member States are already contracting parties to the Tokyo Convention.

132. ACCT *supra* note 13, art. 2(3); ICSFT, *supra* note 19, art. 2(2)(b); SUA 2005, *supra* note 36, art. 21(2).

133. ACCT, *supra* note 13, art. 2(2)–(3).

134. *Id.* art. 21(4).

135. The Explosives Convention is excluded as inapplicable.

However, ASEAN clearly decided not to cross-reference the Tokyo Convention in the ACCT.¹³⁶ This leaves post-ACCT instruments. There is limited ASEAN member State enthusiasm for the Beijing Convention 2010 (Myanmar and Singapore parties; Indonesia signatory), the Beijing Protocol 2010 (Myanmar and Singapore parties; Indonesia signatory), or the Montreal Protocol 2014 (Malaysia and Singapore parties; Cambodia signatory). These global instruments, therefore, also currently seem unlikely candidates for addition via amendment of the ACCT.

Amendments to the ACCT would enter into force at an agreed date.¹³⁷ The ACCT is silent on the matter, but this arguably includes the right to submit a reservation excluding any instrument added to Article 2(1) of the ACCT to which a State is not a contracting party. This proposal is consistent with the interests of the ACCT parties and would follow the ACCT drafters' intent already evident in the existing list of instruments. The existing ACCT list of instruments demonstrates that ASEAN member States welcomed regional cooperation among other ASEAN member States concerning offenses defined in instruments to which they are not a party and to which they were not seeking cooperation under the ACCT. As it is highly likely that any amendments to Article 2(1) of the ACCT would concern adding instruments to which not all ASEAN member States are parties, it therefore logically follows that an option to submit a reservation to the amended definition in Article 2(1) of the ACCT should arise. If Article 2(2) of the ACCT were narrowly interpreted to exclude a subsequent reservation to amendments of Article 2(1) of the ACCT, this would have a chilling effect on expanding the definition of terrorism offenses and cooperation therewith. Consistent with the spirit of Article 2(2) of the ACCT, reservations to the amended definition of maritime terrorism offenses should only be acceptable if submitted upon the amendment's entry into force.

136. *Contra* The Arab Convention on the Suppression of Terrorism art. 1(3)(a), Apr. 22, 1998, https://www.unodc.org/images/tldb-f/conv_arab_terrorism.en.pdf [hereinafter Arab Terrorism Convention]; Convention of the Organisation of the Islamic Conference on Combating International Terrorism art. 1(4)(a), July 1, 1999, Annex to Res. No. 59/26-P [hereinafter OIC Terrorism Convention].

137. ACCT, *supra* note 13, art. 21(4).

V. CONCLUSION

Multilaterally defining terrorist acts in international treaties and then promoting their universal adoption was posited as a working provisional solution to the international community's deadlock in defining terrorism. Subsequent reservations play a fundamental role in defining those acts accepted as offenses by each State when ratifying any international or regional treaty that cross-references another for the purposes of defining terrorist acts. In this sense, Article 2 of the ACCT provides a compromise between promoting universality and preserving State sovereignty when defining regional terrorism offenses. All cross-referenced instruments shall apply to the definition of ACCT offenses *unless* a State excludes, by reservation, a cross-referenced instrument to which it is not a party. The ICSFT and the 2005 Protocol to the SUA Convention provide similar compromissory definitions concerning the offenses of financing or transporting terrorists, respectively. The fact that these three treaties include overlapping lists of cross-referenced instruments, as well as cross-references to each other, further complicates and heightens the importance for States to consider if an exclusionary reservation should be submitted and whether it is coherent with their other exclusionary reservations practice under the other two treaties.

This article demonstrates that divergence or convergence between a State's reservations to global and regional counterterrorism instruments can have profound impacts on the definition of terrorist offenses binding upon each State to implement under international law. The results range from carefully considered positions to illogical, unworkable, unimplemented, and probably unforeseen definitions of maritime terrorism. The cumulative impact of a State's reservations can thus, on occasion, result in definitions of terrorism offenses that will challenge full and effective cooperation at the global and regional level. At the most basic level this challenge is evident in the lack of the full and effective implementation of a State's treaty obligations. This is most evident when domestic measures establishing jurisdiction over terrorism offenses are not fully implemented in scope (Sections IV(B)–(D)). If regional terrorism offenses are not yet offenses in domestic law, other cooperative rights, obligations, or efforts under the ACCT (Part III) are also likely to not be fully implemented or at the very least will be hindered. In short, whenever treaty rights are tied to the contents of an instrument of ratification or approval, a State should not deposit a generalized instrument of ratification but should explicitly address said rights. This is all

the more so in the case of the ACCT and ICSFT because this deposition-linked right fundamentally shapes the scope of terrorism offenses to which all other treaty rights and obligations under the ACCT or ICSFT apply. Arguably, even if a State wished to accept offenses under all fourteen ACCT cross-referenced treaties as ACCT offenses, a positive statement to this effect would be beneficial for clarity and demonstrative of due consideration.

ASEAN is strongly committed to eradicating the scourge of terrorism in their region and globally. The ASEAN Comprehensive Plan of Action on Counter Terrorism, together with the ASEAN Convention on Counter Terrorism, which has been ratified by all ten ASEAN member States, serve as a framework for regional cooperation to prevent and suppress extremism while deepening counterterrorism coordination.¹³⁸

With the ASEAN counterterrorism framework continuing to call upon ASEAN member States to fully and effectively implement their global and regional (ACCT) counterterrorism obligations, these definitional difficulties are not going away anytime soon.¹³⁹ This includes ASEAN's numerous further explicit references to the full implementation of the ACCT by all ASEAN member States in internal and external action plans¹⁴⁰—a call fundamentally shaped by the definition of terrorism offenses applicable to each ASEAN member State and, thus, the scope of obligations thereof. It is argued here that as the “indicative activities” for effective implementation include “identify weak areas of ACCT and [ASEAN Comprehensive Plan of Action on Counter Terrorism] implementation,”¹⁴¹ the question of defining regional terrorist offenses under Article 2 of the ACCT should be one of the

138. Statement by Ms. Somaly Chea, Counsellor, Permanent Mission of the Kingdom of Cambodia to the United Nations on behalf of the Association of Southeast Asian Nations (ASEAN), Sixth Committee Agenda Item 111: Measures to Eliminate International Terrorism (Oct. 5, 2021), https://www.un.org/en/ga/sixth/76/pdfs/statements/int_terrorism/01mtg_asean.pdf.

139. ASEAN Comprehensive Plan of Action on Counter Terrorism, ¶¶ 3.1, 4.1 (Sept. 20, 2017), <https://asean.org/wp-content/uploads/2012/05/ACPoA-on-CT-Adopted-by-11th-AMMTC.pdf>.

140. ASEAN Plan of Action to Prevent and Counter the Rise of Radicalisation and Violent Extremism (2018–2025), ¶¶ 3.1–3.3 (Oct. 31, 2018), <https://asean.org/wp-content/uploads/2021/01/Adopted-ASEAN-PoA-to-Prevent-and-Counter-PCVE-1.pdf>.

141. ASEAN Work Plan of the ASEAN Plan of Action to Prevent and Counter the Rise of Radicalisation and Violent Extremism (2019–2025), at 26 (Nov. 27, 2019), <https://asean.org/wp-content/uploads/2021/01/Bali-Work-Plan-Narrative-and-Matrix-adopted-27November2019-1.pdf>.

most pressing areas for ASEAN consideration moving forward. This provision formally shapes nearly all areas of ACCT cooperation and implementation, yet an awareness of the impact of this provision on the differing obligations upon the parties in practice appears to have, to date, not been addressed. Likewise, regional lessons or solutions developed here could then be taken to the global level where, at least in respect of the ICSFT, similar concerns arise.

Looking further afield, the ACCT is not alone in defining offenses by cross-reference. This suggests a possible systemic fault in the current drafting of counterterrorism conventions could arise if such progressive provisions are being ratified by States without an awareness of the need to assess the question of including a reservation on cross-referencing other treaties or the coherency of its position in respect of terrorism offenses that are binding under other regional and global counterterrorism instruments ratified by the State. Applying the broadest possible shared definition of terrorism offenses by default looks great on paper in international law but, in practice, will be ineffective if the offenses in a cross-referenced instrument to which a State is not a party are not implemented in domestic law, notwithstanding the apparent scope of the ACCT/ICSFT obligations “accepted.” For example, on maritime terrorism, shared definitions are the foundation of counterterrorism cooperation at sea. This is unlikely to proceed for offenses in cross-referenced instruments if cooperative steps at the domestic level are reserved for those offenses found in cross-referenced instruments that are already ratified. Concerns raised here may therefore require stepping back and re-evaluating the current definition of maritime terrorism in ASEAN and beyond.

This issue could be addressed in future treaties by requiring *purposive* statements for including non-binding treaties in a State’s definition of offenses. This would continue to promote regional cooperation beyond what currently exists at the global level but could more accurately capture the true scope of a State’s consent. This would increase the average likelihood of full and effective domestic implementation and, thus, cooperation in practice. Alternatively, future treaties could take a more reserved approach, as witnessed in the Arab Terrorism Convention and the Organisation of Islamic Cooperation Terrorism Convention.¹⁴² In this instance, regional cooperation

142. See Arab Terrorism Convention, *supra* note 136, art. 1(3); OIC Terrorism Convention, *supra* note 136, art. 1(4) (both limit the definition of offenses to the cross-referencing of treaties *ratified* by each State).

can go beyond what currently exists at the global level, but only in respect of offenses that have already been accepted by the region as legally-binding terrorism offenses.

Moving forward, for existing treaties that employ cross-referencing, States must be reminded of the cumulative impact of their reservations—or lack thereof—when ratifying counterterrorism instruments. ASEAN and other international bodies could assist in conducting such national impact assessments, if necessary, crafting an appropriate reservation for ratifying/approving States to consider. The same holds true whenever a State withdraws from a cross-referenced treaty, whereupon it should be reminded and consider its discretion to make a reservation with respect to that treaty (Section IV(G)). To do otherwise can result in expanding “acceptance” that looks great on paper, but actual implementation—if any—suffers. Furthermore, in both the future design and execution of parent treaties involving a chain of cross-references, such as the ACCT does, reservations to the definition of terrorism offenses should accommodate partial reservations to avoid discrimination in the rights of contracting parties to the parent treaty (Section IV(F)).

Finally, for the ACCT’s future, any dispute on its definition of offenses is only subject to consultation and negotiation.¹⁴³ This reaffirms that *avoiding* non-compliance through appropriately crafted treaty provisions on definitions, including capacity assistance during the ratification process, will be more effective at preventing disputes from arising than any reliance on subsequent dispute settlement to *resolve* non-compliance. This is all the more so when treaties such as the ACCT do not provide for the possibility of submitting subsequent claw-back reservations (Section IV(G)). Any ASEAN member State wishing to ensure the full and effective implementation of the definition of regional terrorism offenses accepted by each ASEAN member State (Part IV), including questions of a breach of international obligations for failure to implement, will need to turn to dialogue. It will largely be upon the “relevant ASEAN sectorial bodies” to proactively take up their responsibilities to monitor and review implementation of the ACCT, including the maritime terrorism definitions adopted by each party.¹⁴⁴ This task now falls on the shoulders of the ASEAN Senior Officials Meeting on Transnational Crime Working Group on Counter Terrorism, which serves as a permanent monitoring and review mechanism for ACCT implementation. The working

143. ACCT, *supra* note 13, art. 19.

144. *Id.* art. 16.

group meets on a yearly basis (pre-COVID) but, sadly, without any publicly available substantive output on the ACCT to date.¹⁴⁵

For the ICSFT's future, any dispute on its definition of offenses or implementation is to be principally settled through negotiation. However, after a reasonable period of negotiation, and subject to any applicable reservations, any one of the parties to the dispute may request third-party dispute settlement via arbitration and, failing this, the International Court of Justice.¹⁴⁶ Concerning ASEAN member States, one can note that Brunei, Cambodia, and Lao PDR have not excluded compulsory ICSFT third-party dispute settlement, while Indonesia, Malaysia, Myanmar, Singapore, Thailand, and Vietnam have excluded compulsory ICSFT third-party dispute settlement via reservation.¹⁴⁷

145. ASEAN Terms of Reference of the ASEAN Senior Officials Meeting on Transnational Crime Working Group on Counter Terrorism (June 16, 2008), <https://asean.org/wp-content/uploads/2021/01/DOC-10-TOR-WG-on-CT-adopted-2008-2.pdf>.

146. ICSFT, *supra* note 19, art 24(1).

147. Status of the International Convention for the Suppression of the Financing of Terrorism, *supra* note 91.

Appendix 1 (Part 1): Entry Into Force of Instruments Cross-Referenced by ACCT

Instrument	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia
Hijacking Convention	16/05/1986	08/12/1996	26/09/1976	06/05/1989	03/06/1985
Montreal Convention 1971	16/05/1986	08/12/1996	26/09/1976	06/05/1989	03/06/1985
Protection of Diplomats Convention	13/12/1997	26/08/2006	-	21/09/2002	24/10/2003
Hostages Convention	17/11/1988	26/08/2006	-	21/09/2002	28/06/2007
Nuclear Material Convention	-	03/09/2006	08/02/1987	29/10/2010	-
Montreal Supplementary Protocol	19/01/2001	08/12/1996	- Signatory 24/02/1988	06/11/2002	08/10/2006
SUA Convention 1988	03/03/2004	16/11/2006	-	18/06/2012	-
SUA Platforms 1988	03/03/2004	16/11/2006	-	18/06/2012	-
Terrorist Bombings Convention	13/04/2002	30/08/2006	29/07/2006	21/09/2002	24/10/2003
ICSFT	03/01/2003	11/01/2006	26/07/200	29/10/2008	28/06/2007
Nuclear Terrorism Convention	-	- Signatory 07/12/2006	30/10/2014	-	- Signatory 16/09/2005
2005 Amend to Nuclear Material Convention	-	-	08/05/2016	-	-
2005 Protocol to SUA	-	-	-	-	-
SUA Platforms 2005	-	-	-	-	-

Appendix 1 (Part 2): Entry Into Force of Instruments Cross-Referenced by ACCT

Instrument	Myanmar	Philippines	Singapore	Thailand	Vietnam
Hijacking Convention	21/06/1996	25/04/1973	12/05/1978	15/06/1978	17/10/1979
Montreal Convention 1971	21/06/1996	25/04/1973	12/05/1978	15/06/1978	17/10/1979
Protection of Diplomats Convention	04/07/2004	20/02/1977	01/06/2008	25/03/2007	01/06/2002
Hostages Convention	04/07/2004	03/06/1983	21/11/2010	01/11/2007	08/02/2014
Nuclear Material Convention	05/01/2017	08/02/1987	22/10/2014	19/07/2018	03/11/2012
Montreal Supplementary Protocol	21/06/1996	16/01/2004	22/12/1996	13/06/1996	24/09/1999
SUA Convention 1988	18/12/2003	05/04/2004	03/05/2004	-	10/10/2002
SUA Platforms 1988	18/12/2003	05/04/2004	10/11/2015	-	10/10/2002
Terrorist Bombings Convention	12/12/2001	06/02/2004	30/01/2008	12/07/2007	08/02/2014
ICSFT	15/09/2006	06/02/2004	29/01/2003	29/10/2004	25/10/2002
Nuclear Terrorism Convention	-	- Signatory 15/09/2005	01/09/2017	01/06/2019	23/10/2016
2005 Amend to Nuclear Material Convention	05/01/2017	16/06/2021	08/05/2016	19/07/2018	08/05/2016
2005 Protocol to SUA	-	-	-	-	-
SUA Platforms 2005	-	-	-	-	-

Appendix 2: Analysis of Applicability to ASEAN Member States

Maritime Terrorism Offence	Binding Offence under Global Instrument	Binding Offence under ACCT	No Applicable Treaty for Offence	Binding ICSFT and ACCT Funding of Maritime Terrorism Offence	No Applicable Treaty for Funding Offence
Hijacking Convention, Article 1	Brunei Cambodia Indonesia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Vietnam	Brunei Cambodia Indonesia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Vietnam	-	Brunei Cambodia Indonesia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Vietnam	-
Montreal Convention 1971, Article 1	Brunei Cambodia Indonesia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Vietnam	Brunei Cambodia Indonesia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Vietnam	-	Brunei Cambodia Indonesia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Vietnam	
Protection of Diplomats Convention, Article 2	Brunei Cambodia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Vietnam	Brunei Cambodia Indonesia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Vietnam	-	Brunei Cambodia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Vietnam	Indonesia

Maritime Terrorism Offence	Binding Offence under Global Instrument	Binding Offence under ACCT	No Applicable Treaty for Offence	Binding ICSFT and ACCT Funding of Maritime Terrorism Offence	No Applicable Treaty for Funding Offence
Hostages Convention, Article 1	Brunei Cambodia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Vietnam	Brunei Cambodia Indonesia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Vietnam	-	Brunei Cambodia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Vietnam	Indonesia
Nuclear Material Convention, Article 7	Cambodia Indonesia Lao PDR Myanmar Philippines Singapore Thailand Vietnam	Cambodia Indonesia Lao PDR Myanmar Philippines Singapore Thailand Vietnam	Brunei Malaysia	Brunei Cambodia Indonesia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Vietnam	-
Montreal Supplementary Protocol, Article 1bis (ACCT terrorist act without explicit maritime offence)	Brunei Cambodia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Vietnam	Brunei Cambodia Indonesia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Vietnam	-	Brunei Cambodia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Vietnam	Indonesia
SUA Convention 1988, Article 3	Brunei Cambodia Lao PDR Myanmar Philippines Singapore Vietnam	Brunei Cambodia Indonesia Lao PDR Myanmar Philippines Singapore Vietnam	Malaysia Thailand	Brunei Cambodia Lao PDR Malaysia Myanmar Philippines Singapore Vietnam	Indonesia Thailand

Maritime Terrorism Offence	Binding Offence under Global Instrument	Binding Offence under ACCT	No Applicable Treaty for Offence	Binding ICSFT and ACCT Funding of Maritime Terrorism Offence	No Applicable Treaty for Funding Offence
SUA Platforms 1988, Article 2	Brunei Cambodia Indonesia Lao PDR Myanmar Philippines Singapore Vietnam	Brunei Cambodia Indonesia Lao PDR Myanmar Philippines Singapore Vietnam	Malaysia Thailand	Brunei Cambodia Lao PDR Malaysia Myanmar Philippines Singapore Vietnam	Indonesia Thailand
Terrorist Bombings Convention, Article 2	Brunei Cambodia Indonesia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Vietnam	Brunei Cambodia Indonesia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Vietnam	-	Brunei Cambodia Indonesia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Vietnam	-
ICSFT, Article 2 (Further offences independent of the cross-referencing offences in Article 2(1)(a) discussed above)	N/A	N/A	N/A	Brunei Cambodia Indonesia Lao PDR Malaysia Myanmar Philippines Singapore Thailand Vietnam	-
Nuclear Terrorism Convention, Article 2	Indonesia Singapore Thailand Vietnam	Cambodia Indonesia Lao PDR Philippines Singapore Thailand Vietnam	Brunei Malaysia Myanmar	N/A	N/A

Maritime Terrorism Offence	Binding Offence under Global Instrument	Binding Offence under ACCT	No Applicable Treaty for Offence	Binding ICSFT and ACCT Funding of Maritime Terrorism Offence	No Applicable Treaty for Funding Offence
2005 Amendment to the Nuclear Material Convention, Article 7	Indonesia Myanmar Singapore Thailand Vietnam Philippines	Cambodia Indonesia Lao PDR Myanmar Philippines Singapore Thailand Vietnam	Brunei Malaysia	N/A	N/A
2005 Protocol to the SUA Convention, Articles 3bis, 3ter, and 3quater	-	Indonesia* Lao PDR Philippines	Brunei Cambodia Malaysia Myanmar Singapore Thailand Vietnam	N/A	N/A
SUA Platforms 2005, Articles 2bis and 2ter	-	Indonesia Lao PDR Philippines	Brunei Cambodia Malaysia Myanmar Singapore Thailand Vietnam	N/A	N/A
Tokyo Convention, Article 1	Brunei Cambodia Indonesia Lao PDR Malaysia† Myanmar Philippines Singapore† Thailand Vietnam	N/A	-	N/A	N/A

Maritime Terrorism Offence	Binding Offence under Global Instrument	Binding Offence under ACCT	No Applicable Treaty for Offence	Binding ICSFT and ACCT Funding of Maritime Terrorism Offence	No Applicable Treaty for Funding Offence
Beijing Convention, Article 1	Myanmar Singapore	N/A	Brunei Cambodia Indonesia Lao PDR Malaysia Philippines Singapore Thailand Vietnam	N/A	N/A
Beijing Protocol, Article 1	Myanmar Singapore	N/A	Brunei Cambodia Indonesia Lao PDR Malaysia Philippines Thailand Vietnam	N/A	N/A

* Indonesia’s ICSFT reservation limits the scope of the 2005 Protocol to the SUA Convention, art. 3ter concerning transport of ICSFT offenders.

† As amended Montreal Protocol 2014 (no new offences).