



CAUTIOUS, CONSENSUS-DRIVEN COMMITMENT

Contextualising ASEAN's 30-Year Evolution in Extradition Cooperation From Political Aspiration To Formal Treaty

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CONTENTS

1. Background
2. Understanding ASEAN Norms within Criminal Matters Cooperation
 - Acharya: APSC Norms
 - Tan: Concordance Legalisation
3. Thesis
4. Three Decades of Extradition Cooperation
 - 1990s to 2005: Balancing Acts and Early Cooperation
 - 2005 to 2015: Legal Identity and Normative Commitments
 - 2015 to 2025: The Model and Final Extradition Treaties
5. Conclusion

BACKGROUND & THESIS

What is Extradition?

- Extradition refers to requests from one state to another to surrender a fugitive for criminal prosecution for specific offences.

What is the ASEAN Treaty on Extradition (ATE)?

- Signed on 14 November 2025 at the sidelines of the 13th ASEAN Law Ministers Meeting.
- Conclusion after 4 years, 14 rounds of negotiations.
- Developed by the Working Group on the ASEAN Extradition Treaty (WG-AET).
- 29 Articles – substantive, procedural, institutional

BACKGROUND & THESIS

First Suggestions of Extradition?

- 1976 Treaty of Amity and Cooperation:
“... promote regional peace and stability through abiding respect for justice and rule of law”.
- 1976 Bali Concord I:
“Study on how to develop judicial cooperation including the possibility of an ASEAN Extradition Treaty.”

How did the 2025 ATE come about?

UNDERSTANDING ASEAN NORMS AND INTEGRATION: TWO THEORIES

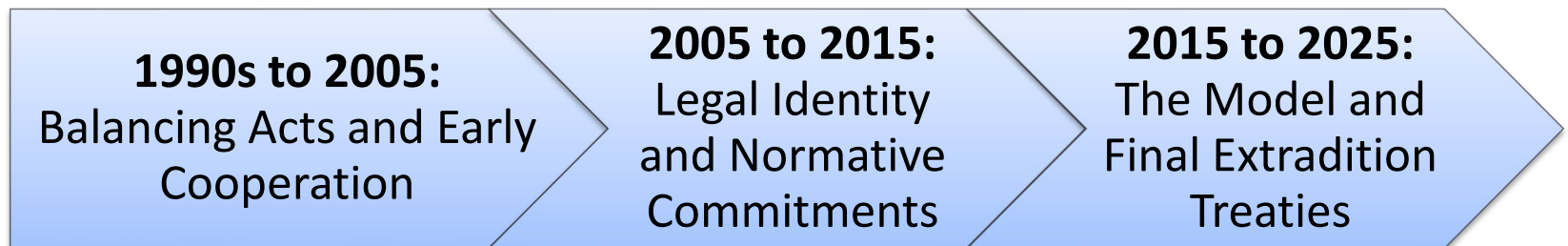
Acharya (Norms, Identity)

- ASEAN security cooperation follows the 'ASEAN Way' of consultation and consensus-driven negotiations.
- The “moral importance and functional value of [these] norms ... change over time”, ever responsive to new regional challenges -- but without completely foregoing core norms of sovereignty or intergovernmentalism.

Tan (Concordance Legalisation)

- ASEAN legalisation follows a layered, intergovernmental process that uses consensus to identify common ideals, which then allows for normative commitments to evolve through meetings, soft-law, and eventually, hard law instruments.
- ASEAN's norms are non-static, evolve gradually, and can emboldens legal transformation over time.

- The **2025 ATE** shows **maturity of ASEAN's commitment with extradition**, allowing compromise on non-interference and sovereignty principles in favour of consensus-driven, but ultimately, rules-based cooperation as a bloc.



1990S TO 2005: BALANCING ACTS AND EARLY COOPERATION

Political Statements, Meetings	Bilateral Extradition Treaties	2004 MLAT
Building amicable relations in improved security environment	AMS concluded more BETs, especially after CLMV joined ASEAN	Procedural precursor to the ATE; facilitates cooperative criminal investigations among AMS
Declarations, statements discussing loose extradition cooperation in specific contexts like terrorism, etc.	Maps, identifies differing or common standards between AMS on extradition matters	Sensitised AMS to cooperation duties
Incremental process with strategic diplomacy employed to align AMS interests	Exposed loopholes, gaps in BET model; fuels efforts to move towards a regional model	Positive experiences; highly utilised treaty; encourages greater cooperation

2005 TO 2015: LEGAL IDENTITY AND NORMATIVE COMMITMENTS

2007 ASEAN Charter	2009 APSC Blueprint	2007 ACCT	2015 ACTIP
Transformation of ASEAN into a rules-based entity intent on deeper legal integration	Operationalises the Charter ; reidentifies extradition cooperation as a major objective	Extradition obliged for terrorism : AMS must extradite or prosecute offenders	Extradition obliged for TIP : AMS must extradite or prosecute offenders
Entrenched new norms including shared responsibility for security matters, human rights, etc.	Shifting towards new regional agendas through soft law	But extradition obligation was never invoked; largely still a facilitative instrument	But extradition obligation was never invoked; largely still a facilitative instrument

2015 TO 2025: THE MODEL AND FINAL EXTRADITION TREATIES

2019 MAET	2025 ATE
Negotiations sought to align extradition operations across AMS' differing legal systems	Crucially, ATE reflects ASEAN's evolved legal and normative commitment to extradition taking in years or dialogue, trial and error in other treaties, and negotiations.
MAET gave AMS different options to choose from across all issues	Broader than ACCT, ACTIP in covering all extraditable offences, which are balanced against sovereignty/non-interference grounds of refusal which also have limits
Endorsed in 2018 and used to guide eventual ATE negotiations	Reservations not allowed; ATE does not affect other extradition obligations so the ATE can still apply to situations where there is no extradition obligation/AMS cannot invoke a BET

Issue	2007 ACCT	2015 ACTIP	2025 ATE
Obligation to extradite	<u>Article XIII(3)</u> Vague; parties may consider ACCT to be the legal basis for extradition	<u>Article 19(2)</u> Vague; parties may consider ACTIP to be the legal basis for extradition	<u>Article 1</u> Treaty creates legal obligation for all extraditable offences under Article 2
Grounds for refusal	<u>Article XIV</u> Can refuse for political offences <u>Article XIII(1)</u> Caveat for refusing on nationality grounds	Generally, no binding obligation to extradite. <u>Article 19(4)</u> Caveat for refusing on nationality grounds	<u>Article 5</u> Specific, mandatory grounds of refusal <u>Article 6</u> Specific, discretionary grounds of refusal <u>Article 7</u> Caveat for refusing on nationality grounds
Dispute resolution clause	<u>Article</u> Yes, via consultation or negotiation or any other peaceful means of dispute settlement	<u>Article 27</u> Yes, via consultation or negotiation or any other peaceful means of dispute settlement	<u>Article 24</u> Yes, via consultation or negotiation or any other peaceful means of dispute settlement
Non-interference clause	<u>Article III</u> Non-interference in other party's affairs	None, but possible to glean from other provisions	None, but possible to glean from other provisions
Sovereignty clause	<u>Article IV</u> Protection of sovereignty; parties cannot exercise jurisdiction in other party	<u>Article 4</u> Protection of sovereignty; parties cannot exercise jurisdiction in other party	None, but possible to glean from other provisions
Reservations clause	None	None	<u>Article 26</u> Reservations expressly prohibited
How many ratifications to enter into force?	<u>Article XXI(1)</u> Six instruments of ratification	<u>Article 29(a)</u> Six instruments of ratification	<u>Article 29.2</u> Six instruments of ratification

CONCLUSION: SO WHAT?

- The ATE's historiography is a **contemporary example** of ASEAN's continued legal and normative transformation.
- The ATE reminds us that ASEAN's socio-political **infrastructure is not immutable** to new emerging trends or threats in the region.
- This paper is one of the **earliest discussions** of ASEAN's newest hard law instruments.

THANK YOU!

+SHAMEFUL SELF-PROMOTION

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ASEAN FOCUS PLUS

The ASEAN Treaty on Extradition: ASEAN's Commitment to Cross-Border Justice

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YVETTE FOO

Yvette Foo argues that while the ASEAN Treaty on Extradition is ambiguous in several areas, it represents ASEAN's commitment towards strengthening regional capacity on crime prevention and criminal justice.

← FULCRUM COMMENTARY



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