The Effect of ASEAN on Human Trafficking in Southeast Asia

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Honors Capstone, Spring, 2013
Abstract: This paper examines the trafficking of vulnerable populations in Southeast Asia and the effectiveness of the Association of Southeast Asian Nations in combating human trafficking in the region. Human trafficking is one of the most egregious and persistent human rights violations throughout Southeast Asia, and increases in regional migration and lack of inter-governmental coordination have consistently exacerbated this issue. ASEAN’s establishment in 1967 has since facilitated regional cooperation in Southeast Asia, and with the adoption of the ASEAN Declaration of Human Rights in 2012, the grouping is expected to put greater emphasis on addressing human trafficking issues in the region. This paper critically evaluates the success of ASEAN’s anti-trafficking initiatives by researching different trafficked groups in Southeast Asia (labor, sexual, child, etc.), examining the trafficking laws of countries with significant trafficked populations, and assessing the effectiveness of existing ASEAN policies. It is concluded that ASEAN has not yet had a significant impact on reducing human trafficking throughout Southeast Asia. However, increased inter-governmental cooperation and accountability mechanisms promoted by ASEAN may lead to improvements in the future. This research sheds light on the effectiveness of ASEAN as an international human rights actor as well as providing recommendations for the improvement of the organization’s anti-trafficking endeavors.

We would like to sincerely thank Professor Pek Koon Heng-Blackburn for advising us in this project. Without her continued suggestions, critiques, and expertise, this project would not have been possible.
# Table of Contents

**Acronyms** .................................................................................................................. 4

**Introduction** .................................................................................................................. 5-6

**Methods** ........................................................................................................................ 6-8

**Literature review**  
Definitions of human trafficking ................................................................. 8-10  
Evaluating trafficking in Southeast Asia ......................................................... 11  
Scope and Nature of the issue ................................................................. 11-14  
Human security ........................................................................................................... 14-16

**ASEAN and Human Trafficking**  
Background .................................................................................................................. 17-20  
Human Rights in ASEAN ................................................................................. 20-29  
Confronting Human Trafficking in the ASEAN Region ......................... 29-36  
Transnational Crime Perspective .................................................................. 36-39

**Case Studies**  
Mekong Region: Burma and Thailand .......................................................... 39-49  
Malay Archipelago: Indonesia and Malaysia .................................................. 49-58  
Best Practices: The Philippines ........................................................................ 58-62

**Analysis**  
Evaluation  
ASEAN as an Anti-Trafficking Actor .......................................................... 62-63  
ASEAN as a Human Rights Actor ................................................................. 63-65  
Recommendations ................................................................................................. 65-66

**Conclusion** .................................................................................................................. 66-67

**Notes** ........................................................................................................................... 68-77

**Bibliography** ................................................................................................................ 78-81
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
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<tr>
<td>ACMW</td>
<td>ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers</td>
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<td>ACWC</td>
<td>ASEAN Commission on Women and Children</td>
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<td>ADB</td>
<td>Asian Development Bank</td>
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<td>AHG</td>
<td>Ad hoc Expert Group</td>
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<td>AICHR</td>
<td>ASEAN Intergovernmental Commission on Human Rights</td>
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<td>AIMW</td>
<td>ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers</td>
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<td>AMM</td>
<td>ASEAN Foreign Minister’s Meeting</td>
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<td>AHRD</td>
<td>ASEAN Human Rights Declaration</td>
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<td>ARTIP</td>
<td>Asia Regional Project on Trafficking in Persons</td>
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<td>COC</td>
<td>Code of Conduct</td>
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<td>DPPMW</td>
<td>Declaration on the Protection and Promotion of the Rights of Migrant Workers</td>
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<td>IDP</td>
<td>Internally displaced person</td>
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<td>ILO</td>
<td>International Labor Organization</td>
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<td>IOM</td>
<td>International Organization for Migration</td>
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<td>RCEP</td>
<td>Regional Comprehensive Economic Partnership</td>
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<td>RCF</td>
<td>Bali Process Regional Cooperation Framework</td>
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<td>RSO</td>
<td>Regional Support Office</td>
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<td>SLOM</td>
<td>Senior Labour Officials Meeting</td>
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<td>SOMTC</td>
<td>Senior Officials Meeting on Transnational Crime</td>
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In the 21st century, there is perhaps no more heinous transnational crime than human trafficking. Defined as the trade of human beings for profit, human trafficking has become the modern equivalent of the international slave trade. While slavery is outlawed in every country in the world, there continues to be more slaves today than at any point in history and human trafficking is one of the world’s most lucrative illegal industries.

While human trafficking can occur domestically or across state borders, this problem has become increasingly linked to the issue of international migration. As growing numbers of people travel throughout the globe in search of employment and improved prosperity, larger populations than ever are left vulnerable to human trafficking organizations. Although undocumented immigrants are particularly susceptible to exploitation, even individuals with appropriate travel/working papers can fall prey to traffickers.

In no region is the dangerous relationship between migration and human trafficking more evident than in Southeast Asia. The trafficking of persons in this region has long been a notorious issue that has garnered recent international attention. Human trafficking levels have become exacerbated by increasing inter-regional migration. Inspired by a variety of “push and pull” factors throughout the region, migration throughout Southeast Asia has dramatically increased since the 1980s, and so too has the prevalence of human trafficking.

Global pressure to combat human trafficking in Southeast Asia has fallen upon the region’s premier international organization, the Association of Southeast Asian Nations. While ASEAN has traditionally placed a greater emphasis on economic
prosperity and development rather than human rights, the organization has increasingly engaged in human rights discourses, including the issue of human trafficking.

This paper will focus specifically on the relationship between human trafficking and transnational migration throughout Southeast Asia. Through examining existing international and ASEAN protocols on human trafficking, as well as presenting various case studies exploring specific trafficking and migration trends, this paper will address the nature and scope of human trafficking within Southeast Asia and the effectiveness of ASEAN on combating this complex problem.

Methods

This paper will utilize a mixed methodology to examine the effect of ASEAN on human trafficking in Southeast Asia, using both qualitative analysis and case studies. This method has been selected to incorporate both a broad-reaching evaluation of mechanisms within the ASEAN region directed at combating human trafficking and a detail-focused perspective of how these mechanisms have affected trafficking patterns throughout ASEAN member states.

To comprehensively evaluate the effectiveness of ASEAN in combating human trafficking within Southeast Asia, the qualitative analysis used in this paper is based on the US Department of State’s Trafficking in Persons Reports. These reports evaluate both the realities of human trafficking within a nation as well governmental and judicial response to trafficking issues. The TIPs reports use a system of three “P”s and three “R”s to evaluate countries on their responses to human trafficking. The three P’s represent Prevention, Prosecution, and Protection. Prevention are those techniques used by a
government to identify possible trafficking victims and successfully prevent their recruitment for human trafficking. Prosecution is the ability of victims to file against their exploiters, as well as the effectiveness of the government in prosecuting cases against human traffickers. Protection deals with the safety of trafficked individuals once they have been identified. A government must provide adequate resources and security to these trafficking victims.

The three R’s are rescue, rehabilitation, and reintegration. The rescue component deals with the ability of a nation to identify and liberate trafficked person. The rehabilitation element indicates that a nation must provide the proper resources for recovery to trafficked individuals. The reintegrating aspect requires nations to have a comprehensive course of action for returning trafficked individuals into society in a way that makes them significantly less susceptible to further exploitation or re-trafficking.

The TIPs reports then categorize each nation within a system of three tiers (and one sub-tier) to portray the overall status of human trafficking with the country. Tier 1 category status indicates that though human trafficking may be present in a nation, the government and judicial system have taken appropriate action to prevent future trafficking, prosecute traffickers, and protect victims of human trafficking, as well as fully complying with the Trafficking Victim’s Protection Act (TVPA.) Tier 2 category status indicates that while a country does have a significant trafficking problem and does not fully comply with TVPA standards, the government has demonstrated a significant effort to comply with this standard and to reduce the severity of human trafficking. Tier 2 Watch List sub-category status indicates that a country has a significant human trafficking problem, does not comply with TVPA standards, has a significant number of
victims of severe forms of trafficking, and demonstrates a failure to provide evidence of increasing anti-trafficking efforts. However, placement at the Tier 2 Watch List indicates that the nation has made at significant efforts to comply with at least the minimum standards required by the TVPA. The lowest tier, Tier 3, is categorized by a significant human trafficking presence within a country, a failure of the government to comply with TVPA standards, and little to no effort by the government to meet these standards.\textsuperscript{i}

This report will use the tier ranking assigned by the US Department of State as a qualitative “yard stick” by which to observe individual ASEAN nations progressions in combating human trafficking.

**Literature Review**

**Definitions of human trafficking**

This paper utilizes the international legal framework established by the United Nations Convention against Transnational Organized Crime (UNTOC) in 2000\textsuperscript{ii}, which is supplemented by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children\textsuperscript{iii} (Trafficking in Persons Protocol) in 2003 and the Protocol against the Smuggling of Migrants of Land, Sea and Air\textsuperscript{iv} (Migrant Smuggling Protocol) in 2004.

According to the Trafficking in Persons Protocol\textsuperscript{v}, “trafficking in persons” is understood to mean:

*the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person*
having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

“Trafficking in persons” for men and women involves three necessary elements in order for the situation to be categorized as trafficking: action, means and purpose. There is a separate protocol of children under the age of 18, where only action and purpose are required to constitute trafficking.

“Migrant smuggling” as defined by the Migrant Smuggling Protocol is understood to mean:

The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State of which the person is not a national or permanent resident;

And

Enabling a person who is not a national or permanent resident to remain in the State concerned without complying which the necessary requirements for legally remaining, through any illegal means.

Although both “trafficking in persons” and “migrant smuggling” fall under the UNTOC, it is important to understand that these two terms are categorically different under international law. As noted in the ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases, “migrant smuggling” only refers to the illegal movement of persons across international borders and therefore does not require an exploitative purpose or the element of force, deception or fraud, which is required under TIP report definitions. In contrast, trafficking can occur either within a country
or between countries, as long as the conditions under which victims are treated are exploitative and involuntary in nature.¹ Smuggling is generally a crime against the government as it is a violation of immigrant laws, which normally ends when the person arrives at their destination. Trafficking however is a crime against an individual, which involves exploitation that can continue even after the arrival at their destination.

Despite their different legal definitions, it is often difficult to distinguish between migrant smuggling and trafficking in persons. For example, a person can start as a smuggled migrant – with the intent to move illegally – but end up a victim of exploitation commonly associated with trafficking after he/she arrives at their destination. Furthermore, the legal definition of trafficking itself is complex as it involves the intention to exploit, which is difficult to verify in relation to merely smuggled migrants.

Therefore for the purpose of this paper, the authors have decided to use both “smuggled migrant” and “trafficking in persons” together in order to paint a more complete picture of human trafficking as it is understood in the regional context of Southeast Asia. This method is supported empirically by the results of the United Nations Office on Drugs and Crime report *Migrant Smuggling in Asia: A Thematic Review of Literature,*¹ which surveyed 154 documents on the issue of migrant smuggling over a period of eight years. The report was published in 2012 (conducted in support of the Bali Process) and the results revealed that “migrant smuggling,” “irregular migration” and “human trafficking” are the three most commonly used words for such situations,¹² conclusions which conform with the two protocols of the UNTOC.
Evaluating Trafficking in Southeast Asia

The nature of trafficking itself makes reliable data collection challenging, as this problem involves a black-market community of largely undocumented workers and immigrants, often children. Definite statistics on trafficking throughout the ASEAN region have been generally difficult to calculate, as victims are often never discovered and rarely report the crime to governmental authorities. In addition, research on this issue is further muddled by the lack of an overarching definition of human trafficking throughout the region and varying degrees of governmental reporting transparencies.

However, recent emphasis on trafficking issues by organizations such as the United Nations (UN), US Department of State, US Department of Justice, and numerous international NGOs has led to an influx of data on trafficked populations in Southeast Asia, which shed new light on the realities of this complex problem.

Scope and Nature of the Issue:

Human trafficking in the ASEAN region has been a persistent and complex problem for decades. The region continues to have one of the largest populations of trafficked persons in the world. An estimated one third of all women and children trafficked worldwide are from Southeast Asia, with 60% of these individuals residing in the ASEAN region (2006.)xiii Trafficking takes many forms throughout the region, with the major categories being labor, sex, and child trafficking.

The labor sector of human trafficking is the largest source of trafficked individuals throughout the ASEAN region. Labor trafficking has been driven by the demand for cheap workers throughout the region, and migrant workers are particularly
susceptible to this form of trafficking. This form of trafficking is particularly difficult to identify, as many migrant voluntarily consent to work, but become trafficking victims when they are under/ unpaid, subjected to abuse, or are unable to leave their place of employment. Trafficked workers are subjected to deplorable working conditions, including inhumane hours, poor sanitation, and in some cases, no payment for their services. 

Sex trafficking has a long and notorious history in the region and reports indicate that the practice is continuing to grow. The arrival of the Internet and the increase in so-called “sex tourism” have facilitated the quick and easy purchase of sex for both Southeast Asian natives and foreign tourists. The Southeast Asian sex industry is reported to be worth billions of dollars, even as prostitutes in the region are paid the least in comparison to other regions (an average of $15 for various services.) This immense potential for profit drives traffickers to seek vulnerable individuals for exploitation. Estimates place the total of individuals forced into prostitution in the Asian and Pacific region at roughly 1,119,000 (2010.)

Child trafficking occurs within both the labor and sex markets, but also constitutes irregular adoptions, forced begging and criminal activities, and the removal of body organs for sale. This paper has specifically separated the trafficking of children from general labor or sex trafficking due to the distinct definitions on child trafficking vs. the trafficking of adults over 18. While there are cases of abduction, the majority of children trafficked in the region have not been kidnapped or subsequently forced into servitude. Largely, they have either been traded to a trafficking organization as debt
payment for a relative or have turned to trafficking organizations out of desperation to acquire food and shelter.\textsuperscript{xix}

Different theories exist on why Southeast Asia has been so significantly affected by human trafficking. Many arguments are based in cultural and historical practices, such as discrimination against women and minorities, classism, colonial sex trading, endemic prostitution, and concubinage.\textsuperscript{xx} Others theorize that the trend is a lasting tradition started during the Vietnam War, when US soldiers would vacation in Southeast Asian countries. These soldiers’ demands for young prostitutes fueled the emergence of trafficking rings, and the practice has persisted into the modern era.\textsuperscript{xxi}

However, the most significant influence on the preeminence of human trafficking throughout Southeast Asia today is the rise of migration, specifically inter-regional migration. While migration in the region was previously dominated by men, the majority of migrant workers within the ASEAN region are now predominantly women who move throughout Southeast Asia in search of higher wages and better employment.\textsuperscript{xxii}

The recent migration in ASEAN is largely due to a complex web of “push and pull” factors throughout the region. The rapid growth of some ASEAN economies “pulls” low-income workers from surrounding nations, and these workers are largely undocumented. Other countries experience “push” factors, due to poverty, conflict, or governmental oppression, that cause large numbers of migrants to seek work abroad.

Recent estimates indicate that 30%-40% of all migration in Southeast Asia is through undocumented channels (2010.)\textsuperscript{xxiii} There are two major migration patterns within the ASEAN region: the Mekong region and the Malay Archipelago.\textsuperscript{xxiv} The major destination countries are Thailand in the Mekong sub-region and Malaysia in the
archipelago, averaging a total of over three million undocumented migrant workers between the two nations.\textsuperscript{xxv}

Most migration, even undocumented migration, in the ASEAN region is taken on voluntarily by workers seeking better opportunities abroad. While there are reported cases of kidnapping of women and children for human trafficking, prior research indicates that the majority of trafficked individuals are those who have either turned to trafficking organizations to aid them in their transnational movement, or have been exploited once they arrive in their destination country, most likely due to their undocumented status.\textsuperscript{xxvi}

As they have limited rights or even illegal status in their destination countries, these undocumented migrant workers are particularly vulnerable to human trafficking.\textsuperscript{xxvii} Trafficking organizations utilize numerous methods to exploit migrant workers, such as the withholding of official documentation (specifically passports) and the implementation of debt bondage.\textsuperscript{xxviii}

**Human Security**

It is important to address the issue of human security when examining human trafficking, as this new paradigm promises another way by which ASEAN can frame human trafficking to elicit more policy responses by its member states and by the organization as a whole. As Amitav Acharya argued in his UNESCO report on promoting human security in Southeast Asia, the concept of human security can be a new basis for regional cooperation in the region, especially by ASEAN.\textsuperscript{xxix} In order to do that, he
argues that it “requires localizing” of the idea within the existing security concepts and approaches of ASEAN.xxx

Before delving deeper into how the human security paradigm can help frame the problem of human trafficking in Southeast Asia, the scholarly discourse on this paradigm must be addressed. This new paradigm dates back to the 1994 Human Development Report by the UNDP, which included the new concept of security (human security) to compensate for what UNDP thought was a failure of existing security concepts to look at the “legitimate concerns of ordinary people who sought security in their daily lives.”**xxxii

The report identified seven specific elements of human security: (1) economic security (assured basic income); (2) food security (physical and economic access to food); (3) health security (relative freedom from disease and infection); (4) environmental security (access to water, clean air); (5) personal security (security from physical violence and threats); (6) community security (cultural identity); and (7) political security (protection of basic human rights and freedoms).**xxxii The UNDP’s 1994 definition of human security remains the most widely cited and “most authoritative” conception of the paradigm.xxxiii

As Pauline Kerr argued in her examination of the human security paradigm,**xxxiv from a normative perspective, human security has been a motivation for the Universal Declaration of Human Rights, the UN Charter, the Geneva Conventions, the Ottawa Treaty, and the International Criminal Court. It has become the umbrella norm by which treaties and conventions have been adopted to protect vulnerable people, especially from the state. She highlights the importance of good global norms, which is facilitated by human security in developing the moral and ethical reasons for tackling these problems, accomplished by bringing the issue to a larger discourse.
This is where the line between human security and state-centric security can be discerned. Traditional state-centric security (such as realism) focuses on the protection of the state from threats through deterrence and military force, justified by infringements of sovereignty for the legitimate use of force. The state in this argument is the referent object of security, but in human security, people are the referent object. However, the human security paradigm is not any different from other theories in that there are various schools of thought. The debate in this case is over the meaning of threats to, and the means to, human security. On one hand, there is the narrow school with its focus on the freedom from fear, or the threats of violence, while on the other hand, there is the broad school, with its focus on freedom from want, or threats because of underdevelopment.

Despite the different interpretations from the two schools, human security as a whole is a useful framework by which to view human trafficking. One can easily see a mixture of both schools, the freedom from fear in the sense that victims are often coerced through violence, while the freedom from want is manifested clearly in the poverty that creates the conditions for human trafficking in those countries in the first place. Most importantly, the human security’s focus on people as the referent object is critical, as states have normally framed human trafficking through the lens of state-security. Without any great crises, this way of framing often understates the importance of the problem, and therefore we see the lack of extraordinary measures necessary to combat it. However, by framing it through the lens of human security, and by putting people’s security at the forefront, the discourse will become more relevant at both the national and regional level as it becomes localized into the daily lives of people. This creates hopes for better policy responses to address the issue, and ultimately a solution to the problem.
ASEAN and Human Trafficking

Background

ASEAN as a Regional and International Actor

The Association of Southeast Asian Nations (ASEAN)\textsuperscript{xxxvii} was founded on August 8, 1967 by the foreign ministers of Indonesia, Malaysia, the Philippines, Singapore, and Thailand under the ASEAN Declaration (Bangkok Declaration). Brunei Darussalam (1984), Vietnam (1995), Lao PDR (1997), Myanmar (1997), and Cambodia (1999) joined ASEAN later to make up the current ten-member states.

The aims and purposes of ASEAN were proclaimed to represent “the collective will of the nations of Southeast Asia to bind themselves together in friendship and cooperation and, through joint efforts and sacrifices, secure for their peoples and for posterity the blessings of peace, freedom and prosperity.”\textsuperscript{xxxviii} ASEAN has done considerably well in its 45-year existence in securing these conditions for its group of small and medium-sized countries in a world dominated by major world powers, even in periods characterized by Cold War rivalry. ASEAN has since been confronted an even greater challenge, the growing Sino-U.S. rivalry at the beginning of the 21\textsuperscript{st} century and the arrival of the popularly dubbed “Asian Century.”

The ASEAN Charter

The adoption of the ASEAN Charter is one of the historic milestones in the institutional history of ASEAN. Adopted by the ten member states during the 13\textsuperscript{th} ASEAN Summit (2007) in Singapore and entered into force on December 15, 2008, the
charter conferred legal personality upon ASEAN as a legal entity, created an institutional framework to handle the numerous new ASEAN bodies, the growing number of meetings and new issues, enhanced the capabilities of the ASEAN Secretariat, formalized the ASEAN Community, and lastly codified ASEAN norms, rules and values in a legally binding agreement.

The drafting of the ASEAN Charter started as part of the Vientiane Action Programme adopted at the 10th ASEAN Summit in Laos in 2004. In December of the following year, the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter was adopted. As part of the declaration, an Eminent Persons Group (EPG) was appointed to make proposals for an ASEAN Charter, a group which included former high-ranking government officials such as former Philippine President Fidel V. Ramos and Malaysian Deputy Prime Minister Musa Hitam. The Cebu Declaration on the Blueprint of the ASEAN Charter in January 2007 continued progress on the drafting stage, until the ASEAN Charter was finally adopted later that year in Singapore.

Despite the eventual adoption of the declaration, the drafting process for the ASEAN Charter revealed a troublesome division between the founding member states and the CLMV states for the future of ASEAN. On one hand, the founding members wanted “a more cohesive regional organization and supported an ASEAN that could make and implement decisions more efficiently,” while on the other hand the CLMV states wanted an ASEAN that remains only as a mediator.

Furthermore, there were divisions within these respective camps as well, as Indonesia, Thailand and the Philippines argued for a charter that can better protect human rights and democratic values, while Singapore and Malaysia sided with the CLMV states.
in their calls for an ASEAN that retains greater control over dissidents. Overall, this conflict speaks to the divergent perspectives of ASEAN member states on the purpose of “the ASEAN Way”, the much-noted modus operandi of the institution. The original ASEAN 6 saw the ASEAN Way as “a norm to facilitate cooperation,” while the new states – CLMV – saw it more as “a norm of non-interference.” As is evident throughout this examination, this fundamental dispute continues to affect every level of ASEAN activities.

**Modern Challenges to ASEAN**

Since the Obama Administration’s “pivot” or “rebalancing” in 2011, ASEAN has increasingly been put under the spotlight, which can been seen either as a benefit or liability, depending on one’s view of the ASEAN evaluation spectrum. There is no doubt however that ASEAN, described as the “fulcrum” of regional security architecture by former Secretary of State Hilary Clinton, has become a legitimate player in its own right.

However, as often is the case, with recognition comes greater responsibilities, as actors within the international system can attest to (China comes to mind as many calls for it to be a “responsible stakeholder.”) There are already numerous calls from both inside and outside the Southeast Asian region for the ASEAN to take a greater role in facing challenges and to contribute more to global commons.

Recently, ASEAN has seen systemic and institutional changes that have both improved and challenged ASEAN throughout 2012. The low point for ASEAN came during the ASEAN Foreign Ministers’ Meeting (AMM) in Phnom Penh in July, when
conflicts between Cambodia – the chair of ASEAN in 2012 – and the Philippines and Vietnam over the Code of Conduct (COC) on the South China Seas resulted in the failure to issue a joint communiqué for the first time in ASEAN history. That drama came back again during the 21st ASEAN Summit on November 18, when Cambodia once again stirred up troubles by going against the other member states in supporting China in the South China Seas issue – it was revealed later that China had provided substantial economic aid to Cambodia for its stance. In the aftermath of these two incidents, ASEAN-skeptics immediately predicted the end of ASEAN and its vaunted “ASEAN Way,” while others were more optimistic, believing the experience was a good lesson for ASEAN.

Despite these problems, ASEAN had a productive year, with two developments receiving the most international attention. First was the long-awaited ASEAN Human Rights Declaration (AHRD), unveiled during the ASEAN Summit in November. Second was the launch of the Regional Comprehensive Economic Partnership (RCEP), and free trade agreement between the ASEAN + 6. During such an eventful year, one critical issue remains in limbo without any substantial progress being made: the issue of migrant workers and human trafficking. This continuing problem has definitive significance for the security of the region, and that can potentially dent the success of the envisioned ASEAN Community and the entire Southeast Asian region.

Human Rights in ASEAN

ASEAN Human Rights Declaration
The landmark ASEAN Human Rights Declaration was finally adopted on November 18, 2012 by ASEAN during the ASEAN summit in Phnom Penh, Cambodia. The AHRD marked a new milestone in ASEAN efforts to advance human rights in the region.

However, the Declaration was received with lukewarm regional and international response. Some of the key concerns regarding AHRD’s principles included the subjecting human rights to limitations of national security and public morality, specifying that certain basic rights have to conform to domestic law, and placing human rights within the “regional and national context.”

Criticisms indicated a lack of transparency in the document’s drafting process and claimed that some provisions might actually weaken international human rights standards. For example, the U.S. Department of State expressed concern that “many of the ASEAN declaration’s principles and articles could weaken and erode universal human rights and fundamental freedoms as contained in the Universal Declaration of Human rights.”

The response from ASEAN officials to many of the criticisms aimed at the AHRD indicate that the Declaration is a “living document,” and therefore it is subject to continual review and improvement. Indeed, despite criticisms, the adoption of the AHRD is worth celebrating, as it is a step forward for an institution that was established without any mention of human rights in its founding declaration. Although it took more than forty years to adopt such a document, ASEAN’s continuing use of human rights language should be seen as a positive progression for the organization. The drafting for the AHRD by the ASEAN Intergovernmental Council on Human Rights began in 2011.
and two formal consultations were held with selected civil society groups in 2012. One of the unintended benefits of the drafting process is that it brought together civil society groups from all over ASEAN, which has “enabled human rights discourse to penetrate some of ASEAN’s less accessible societies.” This has allowed for a better and more coordinated advocacy framework to be developed across the region. Furthermore, the long list of civil, political, economic, social, and cultural rights enumerated within the AHRD is a notable new development for ASEAN. At the very least, the AHRD has brought human rights into the national discourse, at least in the elite and civil society levels, which bodes well for future improvements in regional human rights.

It is worth reiterating again that for ASEAN, an institution that has long jealously guarded its principles of consensus and noninterference, an adoption of a human rights declaration that crosses borders and involves many actors is a step forward. In the road ahead, hopefully this momentum can be carried over to future hurdles, including the Migrant Workers Convention and its awaited adoption in the near future.

*International Human Rights Agreements*

The ASEAN member states are part of two major international human rights treaties that have specific references to trafficking. The first is the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), where Article 6 specifically prohibits the trafficking and exploitation of the prostitution of women.

The second treaty is the *Convention on the Rights of the Child* (CRC), which prohibits the trafficking, the sexual exploitation, and forced or exploitative labor of
These two treaties constitute ASEAN’s commitment to combating trafficking on an international level.

*International Standards on Migrant Worker Rights*

The “right” to social security or social protection has been recognized and codified by international and regional standards for more than half a century, especially when it comes to migrant worker rights. The most important international standard on migrant worker rights is the 1990 United Nations *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (UN Migrant Workers Convention), which was implemented in 2003.

In addition, the preamble of the International Labor Organization’s Constitution calls for the protection of “the interests of workers when employed in countries other than their own.” The ILO took another step forward in its commitment to protecting worker’s rights when in 1998 it adopted the *Declaration on Fundamental Principles and Rights at Work*, which specifically emphasized the importance of the protection and the promotion of migrant worker rights.

Furthermore, the ILO adopted the *Resolution Concerning a Fair Deal for Migrant Workers in a Global Economy* in 2004. Other key ILO conventions include the *Migration for Employment Convention (Revised) 1949* (ILO C 97) and *Migrant Workers (Supplementary Provisions) Convention 1975* (ILO C 14). The ILO adopted a *Multilateral Framework on Labour Migration* in 2007 to serve as a guide and to establish a set of best practices for the regulation and protection of migrant workers. The key section of this framework, Section 9 states that “all international labour standards apply
Moreover, the ILO adopted an international framework of non-discrimination for migrant workers to grant them rights similar to nationals in a host state, known as the *International Convention on the Elimination of All Forms of Racial Discrimination*. Lastly, in 2011 the organization adopted ILO Convention No. 189 – *Convention Concerning Decent Work for Domestic Workers* – which protects migrant workers by requiring governments to investigate abuse complaints, to regulate employment recruitment and to set standards for basic rights. It is clear from this long list of ILO conventions that there is a comprehensive set of international standards for the protection of migrant workers, but more central to the examination of this project are the corresponding ASEAN standards on migrant worker protection.

**ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers**

The **ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers** (AIMW) was mandated by the Vientiane Action Programme in 2004. When it was first declared, the AIMW was proudly advertised as a major milestone in strengthening the ASEAN Community by “promoting the full potential and dignity of migrant workers in a climate of freedom, equity, and stability in accordance with the laws, regulations, and policies of respective ASEAN Member Countries.” As enumerated within the AIMW, the obligations and commitments for receiving countries, sending countries, and ASEAN are all different but the “promotion of rights, protection, capacity building, access to justice, provision of consular assistance, and regularization of recruitment services” are uniform across parties.
Declaration on the Protection and Promotion of the Rights of Migrant Workers

The next step came in January 2007, when at the 12th ASEAN Summit in Cebu, Philippines, ASEAN adopted the Declaration on the Protection and Promotion of the Rights of Migrant Workers (DPPMW), which spelled out the “basic principles for safeguarding migrant workers and the obligations of both labor-receiving and sending ASEAN countries.”\textsuperscript{lx} The Cebu declaration was summarily hailed as “an important step forward to protect the human and labor rights of migrant workers within the ASEAN.”\textsuperscript{lxi}

That gap was ultimately remedied in 2009, when ASEAN finally created such a body in the ASEAN Intergovernmental Commission on Human Rights (AICHR). The purpose of AICHR was a mandate to develop the AHRD and strategies for the promotion and protection of human rights in ASEAN.

ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers

The progress of the ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) is an important indicator of ASEAN’s commitment to combat the pressing problem of migrant labor exploitation. However, the implications of this committee have been in limbo since its adoption in 2007. Although Indonesia urged ASEAN to implement the ACMW at the ASEAN Labor Ministers’ Meeting on May 10, 2012, the year ended with no further progress and there has not been any breakthrough yet in the first few months of 2013 so far.
The ACMW was established at the initiative of the ASEAN Foreign Ministers in July 2007, and it reports to the Senior Labour Officials Meeting (SLOM). The committee, which comprises representatives from the member states, was tasked with completing the critical AIMW. In its first meeting in 2008, a terms of reference, a work plan and four priorities were established and a drafting team was created, which consisted of two labor-sending countries, Indonesia and the Philippines, and two labor-receiving countries, Thailand and Malaysia. However, the drafting process has stalled due to conflicts of interests among the member states, and as a result a preliminary draft has yet to be produced in five years. Critics, most notably civil service organizations (CSOs), have derided this lack of progress as the “zero” draft. Within the ACMW, Malaysia is one of the drafting states with the most vocal complaints, where it vehemently insists that states should maintain their sovereignty over migration policy, a point shared by other receiving ASEAN states.

**ASEAN Social-Cultural Community (ASCC) Blueprint**

The ASEAN Social-Cultural Community Blueprint was adopted along with the ASEAN Political Security Community (APSC) and ASEAN Economic Community (AEC) Blueprints in the Cha-am Hua Hin Declaration on the Roadmap for the ASEAN Community at the 14th ASEAN Summit on March 2009. Social justice and rights were included as key characteristics for the community within the blueprint for the ASCC. The promotion and protection of migrant worker rights were also prioritized within this blueprint, with the strategic objective “to ensure fair and comprehensive migration policies and adequate protection for all migrant workers in accordance with the laws,
regulations and policies of respective ASEAN Member States as well implement the DPPMW\textsuperscript{lxv}, which can be found in paragraph 28 of the plan.

In order to accomplish its objective, the blueprint outlined a set of actions: operationalize the ACMW, implement the DPPMW, develop the AIMW, institutionalize the ASEAN Forum on Migrant Labour, promote better employment protection, increase information sharing, and strengthen policies and procedures dealing with recruitment, deployment, repatriation and reintegration.\textsuperscript{lxvi}

The ASCC Blueprint was updated by the Roadmap for an ASEAN Community in 2009, where four actions were proposed: (1) develop the AIMW; (2) strengthen the protection of female migrant workers; (3) provide more support for developing the capacity to manage overseas employment programs; and (4) create clear procedures and documentation to help foster safe and regular migration.\textsuperscript{lxvii}

The ASEAN Labour Ministers have also taken up the ASSC cause for migrant worker rights, by focusing on holding regional meetings with member states and stakeholders to facilitate cooperation and to expand common interests. In its ASEAN Labour Ministers’ Work Programme 2010-2015, the ALLM designated the ACMW as the mechanism by which the ASEAN Forum on Migrant Labour will be conducted on an annual basis.

\textit{ASEAN Commission on Women and Children}

Similar to the ACMW is the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) adopted in 2010 at the 16\textsuperscript{th} ASEAN Summit in Hanoi, Vietnam. The commission supports the framework set by the
The origins of the ACWC come from the Vientiane Action Program (2004-2010) adopted at the 10th ASEAN Summit in November 2004, which called for the establishment of such a body to deal with issues of women and children. The calls were reiterated once again by the ASSC Blueprint in 2009.

The ACWC was established with the aim of promoting the “well-being, development, empowerment and participation of women and children in the ASEAN Community building process” and to realize the goals set out by the ASEAN Charter. The major purposes of the ACWC, as defined in its terms of reference (TOR), are to promote and protect the human rights and fundamental freedoms of women and children, promote their well-being, development, empowerment and participation, enhance regional/international cooperation on this issue, uphold the rights enumerated in the CEDAW, CRC, and other international human rights instruments related to women’s and children’s rights, and lastly to promote stability, harmony, friendship and cooperation in the region. In the principles enumerated within the TOR, the provisions recognizing that the “primary responsibility to promote and protect women’s and children’s rights rests with each Member State,” and pursuing a “non-confrontational and cooperative approach” once again speaks to the ASEAN Way.

*The Road Ahead for Human Rights in ASEAN*

The common weakness shared by both the ACMW and the ACWC is the lack of any compliance or enforcement procedures, which renders it a declaration without teeth, and exposes glaring weaknesses in ASEAN’s commitment to combat human trafficking.
and migrant smuggling. The draft of Migrant Workers Convention, which has been in the works for quite a few years now, will provide much needed boost to ASEAN’s fight against human trafficking if it is finally adopted. However, this remains merely a hope, given the lack of progress on this issue so far this year and the myriad of other issues high on ASEAN’s agenda, such as the continuing saga in the South China Seas, negotiations on the RCEP, the uneasy relationship with China, and of course the fast-track efforts to complete the most ambitious project in ASEAN history, the three pillars of the ASEAN Community by 2015.

It is important to clarify once again that institutions such as the ACMW, the AMC, or the other institutions mentioned earlier have no compliance or enforcement procedures. Therefore, these institutions lack comprehensive mechanisms through which “to submit complaints and receive binding judgments and remedies.” This is indicative of the ASEAN Way, with its slow-moving and non-binding institutions. However, it is still a mistake to ignore steps, no matter how incremental, that ASEAN is taking for the first time in its history to acknowledge a wider framework for human rights discourse.

**Confronting Human Trafficking in the ASEAN Region**

Human trafficking in the ASEAN region has become an international phenomenon that has gained increasing negative attention over the last decade. According to David A. Feingold, a renowned scholar on trafficking who has worked with UNESCO, “the coerced movement of people across borders is as old as the laws of supply and demand,” a statement which clearly dispels the common misconceptions that this is a new occurrence. Nowhere is this problem more pronounced than in
Southeast Asia, the infamous hotbed for human trafficking and migrant smuggling in the world.

In 2005, ASEAN has about 13.5 million migrant workers working throughout the globe, 5 million of whom were working within ASEAN itself.\textsuperscript{lxiii} Although the number has gone down in the last few years, due in part to the Great Recession of 2007-2008 and the slow down in global economy, it continues to be a worrisome problem when one examines the glaring lack of adequate protection for migrant workers in the region. An estimate by the International Organisation for Migration (IOM) in 2010 have place the total of migrants within ASEAN 10.2 million, with 6.7 million of them working within ASEAN member states, 3.2 million in the U.S., and the rest dispersed around the world, primarily to the Gulf countries\textsuperscript{lxiv}. Compared to counterparts elsewhere around the world, the ASEAN member states still fall short of international standards when it comes to protecting and promoting the rights of migrant workers in terms of providing basic labor and social protection for them.\textsuperscript{lxxv}

With the mandate to complete the ASEAN Community by 2015 winding down, driven primarily by the rapid economic integration of the region into a “single market and production base”, one must wonder why ASEAN has not yet done more to protect workers, who are undoubtedly the backbone of the region’s vibrant economic success. According to an estimate by Sinapan Samydorai, convener of the Task Force on ASEAN Migrant Workers (TF-AMV), around 60% of workers in ASEAN are located within the informal sector with little or no social protection.\textsuperscript{lxvi} Samydorai indicated that new legal instruments for protecting migrant workers should be placed on par with economic integration in terms of priority. He argues that ASEAN needs “new deal” for migrant
workers, a deal in which “basic rights of workers are enforced, laws and policies are harmonized with international labour standards, and social protection assured for all workers and their families.” Only when ASEAN finally takes care of its own citizens can the organization be taken seriously for some of the growing roles it aspired to both regionally and globally.

*ASEAN steps to combat Trafficking in Persons*

The issue of trafficking in persons first appeared on the ASEAN agenda in the 1990s, punctuated by the adoption of ASEAN Vision 2020 and the ASEAN Declaration on Transnational Crime in 1997. In ASEAN Vision 2020, the member states agreed to work together to combat trafficking in women and children, one of the “problems that can only be met on a regional scale.”

*ASEAN Declaration against Trafficking in Persons, Particularly Women and Children*

This 2004 declaration by ASEAN established the groundwork for a regional approach to combating human trafficking in Southeast Asia. The declaration was adopted in an ASEAN Ministers Meeting and it reaffirmed the member states’ commitment to improving coordination and cooperation, and it identified “the need for a strong, victim-centered criminal justice response.” Furthermore, the member states agreed to respect and safeguard the dignity and human rights of victims of trafficking.

*Bali Process*

The Bali Process remains the largest and most comprehensive regional consultative process in the Asia-Pacific to combat human trafficking and migrant
smuggling since its inception at the “Regional Ministerial Conference on people Smuggling, Trafficking in Persons and Related Transnational Crime” held in Bali, Indonesia between February 26 and 28 in 2002. The first meeting was co-chaired by Australia and Indonesia and was attended by 38 nations, the Director General of the International Organisation for Migration (IOM) and a representative of the United Nations High Commissioner for Refugees (UNHCR). All ten members of ASEAN are participants in the Bali Process.

Three main points were reached in the first meeting. The three were: (1) a formal acknowledgement of the growing problem of irregular migration, which the Ministers believe creates “significant political, economic, social and security challenges”; (2) the participants’ shared denunciation of migrant smuggling and trafficking in persons; and (3) a voluntary commitment by the states to cooperate as a region to combat the two problems “within the framework of their international obligations” and “respective national circumstances,” with the caveat that each state maintained its sovereign right in implementing its own laws to address these issues. The organizational structure of the Bali Process, developed at the Bali I and Bali II (April 29-30, 2003) meetings have remained relatively unchanged in ten years. The process continues to be led by a Steering Group of four countries (Australia, Indonesia, New Zealand and Thailand), UNHCR and IOM, with Australia and Indonesia acting as co-chairs.

The main objective of the Bali Process is to “raise awareness of, encourage cooperative action and develop practical regional measures to prevent, intercept and disrupt people smuggling, human trafficking and transnational crime.” In order to accomplish this, five goals were agreed upon in the Bali I meeting (2002) to collectively
find practical measures to help combat the three major problems. Examples of these measures include information and intelligence sharing, networking, capacity building, pooling of common technical resources, exchange of best practices, and technical workshops. The core objectives of the Bali Process were expanded at Bali III (December 3 to 15, 2007) to reflect a greater “humanitarian approach” and to identify the “root causes” of these problems, which now extends the objectives to a total of ten goals.

Since then, the Bali Process have enlarged to include 43 member nations, 18 observer countries and other organizations, including the Asian Development Bank (ADB), World Bank, the ILO, and Interpol. Although the Bali Process has been a remarkable diplomatic feat for building cooperation among a group of nations around an inherently political and divisive topic, or the “elevated atmosphere of collaboration” as the IOM dubbed it, but in reality the process has failed to produce few practical outcomes. This lack of concrete actions was in part due to the relative decline in smuggling activity around the region, which led to a doldrums of activities between 2004 and 2009, a decline demonstrated most clearly by the suspension of the Ad hoc Expert Group (AHG) in 2004. Retrospectively, this lack of interest during a period of low-activity reveals a troubling concern over the member states’ commitment. If members of the Bali Process were only interested in fighting the fire when it becomes too hot, not on extinguishing the embers themselves to eradicate the problem completely, the fire might come back to burn them one day.

It was not until 2008 that renewed interest fostered the revival of the Bali Process. The largest interest this time came from Australia, which was experiencing a dramatic increase in the number of unauthorized boat arrivals, and so commenced the Bali III
meeting, which brought back the Ad hoc Expert Group with a new mandate. That mandate was to develop practical outcomes, the enhance information sharing, and to report to the Co-Chairs of the Steering Group with recommendations.\textsuperscript{lxxxviii} 

The momentum carried on to Bali IV (March 2011), where it was agreed that the AHG was to be retained to help implement the Bali Process Regional Cooperation Framework (RCF), which was established by the Bali Process on March 30, 2011. The framework was established to “provide a more effective way for interested parties to cooperate to reduce irregular movement through the region.”\textsuperscript{lxxxix} The RCF hopes to achieve that through the “consistent processing of asylum claims, durable solutions for refugees, the sustainable return of those not owed protection and targeting of people smuggling enterprises.”\textsuperscript{xc} Once again, the caveat was that the framework is not a binding or enforceable instrument, but nevertheless from an optimistic view, it represents another step in the Bali Process slow journey to combat these problems.

The Regional Support Office (RSO) was established later that year on October 12 and tasked with the facilitation and operationalization of the RCF.\textsuperscript{xi} The RSO is responsible for serving as a central point for coordination and support for Bali Process members. It officially opened in Bangkok on September 2012.

The mission of the Bali Process complements the work of ASEAN in combating human trafficking, transnational crime and people smuggling not only because both organizations includes the same members, but also because the projects of each are endorsed by each other, which adds to the credibility and the commitment to these efforts. Furthermore, as Linda Amalia Sari, the Indonesian Minister for Women Empowerment and Children Protection pointed during her keynote address at the 4\textsuperscript{th} Bali
Process Regional Ministerial Conference held on March 20, 2011, intraregional cooperation in combating trafficking in persons consists of efforts under ASEAN, Bali Process and the UN. Therefore it is clear that both ASEAN and Bali Process serve as cooperative actors in this mission to combat human trafficking and people smuggling. Lastly, the membership of the Bali Process with its 40+ members adds clout and a stronger voice to the efforts of ASEAN member states to combat the problems that are so detrimental to their interests by bringing an international dimension to the debate.

Critics of the Bali Process have pointed to its dominant focus on law enforcement and border control strategies for leading to its failure to foster a dialogue on human rights or refugee protection, an issue voiced by the US human rights NGO, Human Rights Watch. In addition, there are also criticisms of state interests, often directed at Australia and other main donors, for the lack of accountability and transparency in the Bali Process, such as the absence of an independent oversight body. The Bali Process took a hit to its credibility when Australia, one of its biggest donor and a co-chair, failed to establish a regional processing center for asylum seekers in 2011 and had the dramatic embarrassing episode with Malaysia later that year over the asylum seekers exchange program, which ultimately was struck down by the High Court of Australia.

This episode started when the Malaysian government proposed a bilateral agreement with the government of Australia in which 800 boat people from Australia will be sent to Malaysia for processing in exchange for 4,000 registered refugees from Malaysia over the next four years. Although the deal was signed in July of 2011 in the face of widespread condemnations by human rights groups, it was soon struck down by the Australian High Court, who cited the bad conditions in Malaysian detention-
processing facilities as the main reason why the deal should not be implemented. This ruling raises a renewed debate on the human rights situation in Malaysia, which as noted in successive U.S. Department of State TIPs reports, is an area of serious concern. Furthermore, it put the spotlight on the Malaysian government once again to carry out more reforms on its policy towards refugees, which came at a time when there were widespread speculations throughout the year whether Malaysian Prime Minister Najib will the general elections that will finally give him the people’s mandate, and also a time when there were questions about his seemingly reformist agenda as he worked to win back people support for UMNO and the National Front.

**Transnational Crime Perspective**

In terms of non-traditional security (NTS) issues, human trafficking is one of the least securitized issues in the discourse throughout Southeast Asia. As Rizal Sukma discussed in his examination of human trafficking in Indonesia, issues such as “infectious diseases, natural disasters, migration and piracy” has been heavily covered by securitization literature in and on the region, but it has only been very recently that human trafficking got the same attention in terms of securitization studies. When it finally happened, human trafficking was discussed under the framework of combating trans-national crimes (TNCs).

This breakthrough came in November 2004, when ASEAN finally expressed its views on this issue under its ASEAN Declaration Against Trafficking in Persons Particularly Women and Children in Vientiane, Laos. During this declaration, ASEAN was seen to have elevated the status of human-trafficking issue, which was then
overshadowed by drug trafficking and terrorism, to “become a specific problem that requires a specific mechanism and extraordinary policy measures to address it.”

Furthermore, ASEAN also elevated the problem to a regional level, moving beyond the traditional category of national problem for the first time, reflecting how urgent the problem has become for ASEAN member states.

In addition, Rizal also posits that such new emphasis by ASEAN member states parallels the securitization of human trafficking at the global level. The global level discourse was carried out by the IOM, the UN, the European Union and the U.S., and the way these “securitizing actors” utilized the language of security to describe the problem was later adopted by ASEAN.

Rizal argues that despite the declaration of good intention and some limited cooperation among ASEAN member states, actual policy response continues to be lacking. Many of the responses today are limited to the area of “information exchange, training among responsible officials and law enforcement agencies, and workshops,” largely because ASEAN has failed to treat the issue as a security problem that requires stronger measures, rather than as the ordinary crime problem it now treats it as. To sum up ASEAN response in a nutshell, there is recognition of the problem but not the measures needed to address it.

**ASEAN Declaration on Transnational Crime**

The ASEAN Declaration on Transnational Crime displayed ASEAN’s commitment to take “firm and stern measures” to combat transitional crime, including the trafficking of women and children. The Declaration included commitments to strengthen
and expand the scope of regional cooperation, to convene an ASEAN Ministerial Meeting on Transnational Crime, and to hold discussions among member states about bilateral/regional agreements on issues like mutual legal assistance.

Following this Declaration, ASEAN has since adopted a series of “soft law” instruments – those that are not legally enforceable but reiterate and expand existing legal principles – to deal with the growing problem of trafficking in persons in the region. Some of the more notable instruments are the 2004 ASEAN Declaration Against Trafficking in Persons, Particularly Women and Children, a Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-region in 2004, and the 2007 ASEAN Practitioner Guidelines on Effective Criminal Justice Responses to Trafficking in Persons (ASEAN Practitioner Guidelines).

ASEAN Chiefs of Police

In 2004, the Chiefs of Police from each of the ASEAN member states took part in the ASEAN Chiefs of National Police (ASEANAPOL) meeting. The ASEANAPOL “deals with the preventive, enforcement and operational aspects of cooperation against crime,” and are involved in sharing of knowledge and expertise on policing, enforcement, law, criminal justice, and transnational and international crimes. Though not a part of the official ASEAN structure, the ASEANOLPLOL meetings identified trafficking as a priority for cooperation. In their meeting, they agreed to: enhance information exchange; nominate contact points for liaison; and encourage agreements on combating human trafficking and border-control management. The cooperation of ASEANAPOL is a
primary example of an institution that has flourished due to shared desire to combat transnational crime within the region.

**Case Studies**

After evaluating the ASEAN mechanisms relating to human rights and trafficking issues, it is important to observe the reality of trafficking within the ASEAN region and to observe the progress of these nations in combating human trafficking, as per ASEAN and international standards. The following case studies focus on two major migratory patterns within the ASEAN region, the Mekong region (with migration from Burma to Thailand) and the Malay Archipelago (with migration Indonesia to Malaysia.) Within these studies is an overview of each case’s migratory and trafficking patterns, a assessment of individual governmental responses to migration and trafficking issues, and a critical evaluation on the effect of ASEAN in promoting human rights and anti-trafficking progression within these nations.

In addition, a case study of the Philippines will be presented to provide an alternative model for the protection of migrant workers from human trafficking. The Philippines has been regionally and internationally praised for its commitment to protecting its citizens working abroad, and this case study will be examined as a case of best practices within the ASEAN region.

**Mekong Region: Burma and Thailand**

*Migration and Trafficking Patterns*
The increasing migration between Burma and Thailand over the past three decades has exacerbated human trafficking issues in these two countries, which are already plagued by severe human rights abuses. Estimates indicate that over three million people have recently migrated out of Burma, at least half of them to Thailand (2010.) ciii Poor economic conditions and harsh military governmental rule within Burma are significant push factors, driving many low-income Burmese citizens to find work abroad. It is often difficult to distinguish between voluntary migrants and refugees fleeing governmental oppression. Thailand continues to be the most popular destination for Burmese migrants, due to its proximity, relative ease of border crossing, and economic opportunity. civ Whatever their motivations for entering Thailand, Burmese migrant’s low-income and often uneducated status make them prime targets for traffickers. Upon arrival into Thailand, many Burmese workers are subjected to conditions of indentured servitude, by means such as debt bondage, coercion, intimidation, or violent force. Thailand continually remains one of the largest perpetrators of human trafficking in Southeast Asia, with an estimated trafficked population reaching tens of thousands (2012.) cv. An estimated 75%-80% of illegal workers in Thailand originate from Burma (2010.) cvi Burmese migrants are prevalent in all sectors of human trafficking within Thailand.

Within the labor sector, there are widespread abuses of Burmese migrants, specifically in Thailand’s fishing industry. An estimated 90% of fishing laborers in the Samut Sakhon region are Burmese (2007.) cvii As fishing industries throughout this region are largely unregulated, Burmese seafood workers are highly vulnerable to forced labor while at sea. cviii Roughly 200,000 migrant laborers work on Thai fishing boats, while only
one third are registered workers (2007). 95% of surveyed migrant laborers indicated they did not have a working contract with any fishing company (2007). Widespread abuses have been documented within Thailand’s fishing vessels, including reports of migrant workers subjected to years at sea with no pay, inhumane working hours, poor sanitation, and even frequent physical violence. An estimated 57% of Burmese workers in the Samut Sakhon area have experienced conditions of trafficking (2012).

The domestic service sector is also a hotbed of human trafficking within Thailand, and consists primarily of Burmese women, with an estimated 100,000 of these women working in every major Thai city (2012). The majority of these women are between the ages of 13-24 and perform tasks such as cleaning, cooking, and caring for children and the elderly. As domestic workers are not protected under Thai labor laws, these women remain particularly vulnerable to trafficking. Domestic laborers are isolated in their employer’s homes and are therefore at high risk for mental, physical, and sexual abuse without outside intervention. These workers are often not allowed contact with friends and family, some reports finding as high as 80% of domestic workers restricted from using the home telephone and 35% not allowed to receive mail (2007). Debt bondage remains a common method of exploitation against domestic workers in Thailand, with almost 17% of these workers paying off debt to a labor broker (2007).

Sex trafficking is also highly prominent within Thailand, bolstered by the preeminence of “sex tourism” within the nation. The sex industry contributes an estimated $22 billion annually to Thailand’s domestic GDP (2010). The majority of sex work within Thailand occurs in highly controlled massage parlors, bars, and hotels, many of which are overseen by organized crime groups, such as Thai crime syndicates.
and the Russian mafia. Burmese migrants are consistently exploited in the Thai sex industry, with an estimated 80% of sex workers in northern Thailand coming from Burma (2007.) Young women are specifically vulnerable to this form of trafficking, as Burmese law prevents them from migrating legally overland, and they therefore often turn to trafficking organizations to facilitate their movement. While Burmese girls and women are at the highest risk for sex trafficking within Thailand, there are also increasing reports of boys and men being exploited. Trafficking groups force Burmese migrants into prostitution by means of debt bondage, coercion, threats, and physical/sexual abuse. These migrants are largely not paid for their sexual services, but rather receive “tips” from their clients, while the majority of their earnings is given directly to pimps and traffickers.

The exploitation of children within Thailand remains one of the kingdom’s largest trafficking issues, with the estimated trafficked child population reaching as high as two million (2010.) Many of these trafficked children originate from Burma, who have either migrated with their family or have been transported into Thailand by trafficking organizations. Burmese children are forced into a variety of human trafficking sectors, including street begging, factory work, or forced marriages. Additionally, many of these trafficked children are employed in the Thai sex market, with reports indicating that up to 33,000 children work in the Thai sex industry and roughly 75,000 children under 16 are employed in brothels, nightclubs, and bars throughout the kingdom (2010.) While debt bondage is still prevalent amongst trafficked children, the debt is usually held by a family member who has traded the child to traffickers in lieu of payment. Other
exploitation methods include physical violence and abduction, while many children “voluntarily” turn to Thai trafficking groups to avoid homelessness and starvation.

**Governmental Responses**

Lack of adequate laws and legal structures to combat undocumented migration and human trafficking within both Thailand and Burma consistently contribute to the continuation of this problem between the two countries. Thailand does not have a single comprehensive law on human trafficking. The current criminalization of trafficking within the kingdom is an amalgamation of sections from multiple legal declarations, including the Prostitution Prevention and Suppression Act of 1996 and the Measures in Prevention and Suppression of Trafficking in Women and Children Act of 1997. The kingdom’s official policy on trafficking is outlined in the Nation Plan and Policy on Prevention and Resolution of Domestic and Cross-border Trafficking in Children and Women. In addition, Thailand has signed onto international agreements relating to human trafficking, including the 1992 UN Convention of the Rights of a Child and the COMMIT process, which includes five other Mekong sub-region states cooperating to address human trafficking issues.

Despite this existing legal framework within the kingdom to address trafficking, the Thai government consistently fails to properly identify trafficking victims and protect their rights and safety, thereby failing to meet the Prevention requirements of the TIPs reports. While in 2011, nearly 2000 public officials were trained by the Thai government to identify victims of trafficking, these officers regularly misidentified trafficked individuals. This failure is due to a combination of inadequate training on
trafficking issues throughout the Thai government and high levels of corruption amongst Thai law enforcement personnel. This endemic corruption is evident throughout Thailand, as illustrated by frequent reports of officials protecting brothels, fishing vessels, and sweatshops from investigation in return for monetary and sexual payment.

While Thai law officially protects victims from being prosecuted for acts committed as a result of trafficking (a necessary part of the Prosecution component of the TIPs reports), inconsistent legal prosecution and stringent immigration policies often lead trafficking victims to be criminally charged (in cases of forced prostitution) or deported (in cases of undocumented labor). These consequences, as well as drawn-out criminal proceedings, often discourage trafficking victims from coming forward or seeking governmental assistance. In addition, the current legal framework on trafficking within Thailand is geared almost exclusively towards women and children, excluding men exploited for labor. Trafficked men have few avenues for legal action against human trafficking within Thailand and are consistently overlooked by the kingdom’s anti-trafficking efforts.

In Burma, the government not only lacks comprehensive strategies to combat human trafficking, but also continues to perpetrate and exacerbate trafficking both internally and abroad. Burma consistently lacks progressive action on the TIPs reports three P’s or three R’s. However, recent developments do indicate that the Burmese government is beginning to recognize the severity of human trafficking and has made some steps to reduce this problem. In 2005, the Burmese government officially recognized the existence of trafficking with the implementation of the Anti-Trafficking in Persons Law. This law established the Working Group on Repatriation, Reintegration,
and Rehabilitation of Trafficked Victims, which is aimed at coordinating between the Burmese governments and international NGOs on trafficking issues.\textsuperscript{cxxxiii} Since then, the government has implemented a hotline that allows trafficked women and girls to report sex trafficking, repealed several law that sanctioned the use of force labor, and constructed a new plan in conjunction with the International Labor Association on the eradication of forced labor by 2015.\textsuperscript{cxxxiv} Additionally, anti-trafficking law enforcement units have been trained and located in strategic urban locations throughout the country.\textsuperscript{cxxxv}

Even with these significant steps, forced labor and prostitution remain problematic amongst Burmese migrants. Corruption remains high both in governmental and judicial positions, largely due to their lack of independence from military control.\textsuperscript{cxxxvi} This lack of transparency and accountability is especially prevalent in the issue of trafficked Burmese victims returning from Thailand, where reports indicate that border patrol officers, rather than returning victims to Burma, resell individuals to trafficking organizations for personal profit.\textsuperscript{cxxxvii}

Judicial accessibility is consistently lacking for victims of human trafficking within both Burma and Thailand, as criminal proceedings can be drawn out, and most victims are forced to remain in governmental facilities throughout the process. Additionally, there are currently few governmental shelters for male trafficking victims, and these individuals are forced to try to obtain shelter from international NGO’s.\textsuperscript{cxxxviii} While trafficking victims have the right to file civil suits against their exploiters, both the Thai and Burmese governments continually fail to provide proper legal representation for victims to do so.\textsuperscript{cxxxix}
One notable change in Burma in the last three years that holds tentative promise for better governmental response to human trafficking is the dramatic step taken towards a more democratic governmental system. In 2010, the long-ruling military junta held elections (albeit flawed elections) that led to the inauguration of the first civilian government in 50 years on March 2011, under the leadership of reformist/moderate president Thein Sein.\textsuperscript{cxl} The release of democracy icon Aung San Suu Kyi and her eventual election into office in April of 2012 on the heels of her party, the National League for Democracy’s tremendous victory in the parliamentary by-elections, marked yet another milestone in the democratic changes taking place in Burma.\textsuperscript{cxl}

Perhaps even more importantly, the decision by Western states to suspend economic sanctions and increase aid, and the high-profile visit by U.S. President Barack Obama to the country in November 2012 reveals how much change has transpired within Burma in a short period of time. Although problems remain, most notably the continued violence in the Kachin and Rakhine States, and the plight of the Rohingyas that has resurfaced violently this year, Burma appears to be a more positive trajectory, unimaginable just three years ago.

This holds great promise for the future efforts to combat human trafficking in the Burma, as many trafficking victims are refugees of the ethnic conflicts within the country. If Thein Sein and Aung San Suu Kyi can work together to resolve the ethnic conflicts that have blighted Burma since independence, the problem of human trafficking will undoubtedly improve, as less people will be forced to escape violence by fleeing over the Thai border. One can even optimistically argue that democracy in Burma was the missing link to solving many of the problems in the country, with human trafficking
one of the many important security problems facing the state. This path of
democratization, if sustained in the long term, argues well for the fight against human
trafficking in the country.

*Effect of ASEAN*

ASEAN interventions have had minimal success in combating human trafficking
between Burma and Thailand. According to the US Department of State TIPs Reports,
there has been little significant improvement in either Burma or Thailand in the reduction
of human trafficking or in more proactive governmental response to this issue. Thailand
has maintained a Tier 2 Watch Level status for the past three years and Burma has moved
to a Tier 2 Watch Level in status 2012 from its previous Tier 3 status of past three
evaluating years.

Standards and improvements as outlined by the ASEAN Declaration Against
Trafficking in Persons Particularly Women and Children have not been successfully met
or significantly implemented in either Burma or Thailand. Specifically, ASEAN has
failed to encourage cooperation between Thailand and Burma on the issues of migrant
labor and human trafficking, nor has it had marked on the proper identification of
trafficking victims in either nation.

ASEAN lacks the proper enforcement mechanisms needed to encourage standards
from its Declaration Against Trafficking in Persons. The issue of state sovereignty
continues to hinder the success of ASEAN responses in human trafficking between the
two countries. However, unlike other ASEAN states, Thailand has shown considerable
flexibility in reference to state sovereignty in order to combat transnational crime,
including human trafficking. Driven by the rising consequences for public health and safety due to human and drug trafficking into Thailand, the nation proposed a more “flexible engagement” with ASEAN, to allow for transnational crime prevention and prosecution. Additionally, Thailand has shown further promise in its future engagement with ASEAN on trafficking issues, as evidenced by their participation in the Senior Officials Meeting on Transnational Crime. This program was aimed at developing and distributing a broad range of training materials on human trafficking to front-line law enforcement, investigators, and prosecutors throughout the Mekong sub-region.

However, while participation in these training exercises represents a positive step in combating human trafficking, the overall effect of this program is still unknown, and is unlikely to create significant changes in trafficking patterns until it is more widely implemented throughout the region.

While some progress is evident within Thailand, ASEAN human trafficking intervention methods have had negligible effect within Burma. The human rights violations and widespread violence perpetrated by Burma’s military government continually exacerbate the issue of human trafficking by creating large numbers of internally displaced and migrant refugees. Roughly 750,000 of these refugees have migrated to other ASEAN countries, specifically Thailand (2010). ASEAN has generally left this mass exodus unaddressed.

ASEAN’s inability to address underlying issues of trafficking and/or intervention methods in Burma are again largely tied to the principle of non-interference. Even with the recent implementation of new human rights mechanisms within the ASEAN system, fundamental non-interventionist strategies within the organization make implementation
and enforcement of human rights rhetoric especially difficult in such autocratic states as Burma. ASEAN remains unable to address even basic human rights abuses within Burma, and therefore does not have a considerable impact on trafficking out of the nation.

Additionally, ASEAN has failed to take a holistic approach to human trafficking intervention within Burma, forgoing thorough examinations on human freedoms and overall economic development. ASEAN has instead approached Burmese human trafficking abuses through a criminal justice framework, which can often lead to judicial persecution of victims. This criminalization of victims can further exacerbate the issue of trafficking, as victims are less likely to step forward, and those who do but are tried criminally are at high risk of being re-trafficked.

Without the ability to implement strategies across national borders, ASEAN has been unable to successfully limit undocumented Burmese immigration into Thailand. Additionally, lack of enforcement mechanisms make the prosecution of human trafficking a consistent challenge to any ASEAN intervention attempt.

The Malay Archipelago: Indonesia and Malaysia

**Migration and Trafficking Patterns**

While less severe than the extreme levels of undocumented immigration between Burma and Thailand, migration from Indonesia into Malaysia also constitutes a large human trafficking problem within the ASEAN region. Due to increased prosperity within Malaysia over the past decades, the nation has become the has become an
attractive destination for migrant laborers, specifically from Malaysia’s southern neighbor, Indonesia. As in the case of Burma and Thailand, migration from Indonesia into Malaysia is facilitated by relative ease of border crossing with a tourist or visitor visa, which can later be transferred to a working permit. Human trafficking within Malaysia is somewhat more decentralized than in Thailand, with many individual business owners perpetuating conditions of exploitation, but international crime syndicates have also been cited in human trafficking throughout Malaysia.

Of the over 4 million estimated migrant laborers in Malaysia, over 50% of these workers are Indonesian (2010.) Estimates indicate that anywhere from 400,000 to 1,000,000 migrants leave Indonesia each year, a large majority of which traveling to Malaysia (2010.) Each of Indonesia’s thirty-three provinces are sources for migrants (specifically West Java, Central Java, East Java, Banten, and West Nussa Tenggara) and roughly 69% of these Indonesian migrants are female (2012.) Immigration from Indonesia into Malaysia is largely undocumented, with some estimates suggesting that there are over one million undocumented Indonesian workers within Malaysia. This widespread undocumented immigration creates the ideal environment for the exploitation of Indonesians across multiple trafficking sectors, with an estimated 20% of all Indonesian immigrants experiencing conditions of human trafficking (2010.)

The predominant sector of human trafficking within Malaysia is labor exploitation. Malaysia’s economic success has lead to increased labor demands, a significant “pull” for migrants who pour into Malaysia seeking employment, and all too often end up in situations of indentured servitude. Indonesian immigrants constitute the majority of these exploited laborers, prevalent in areas such as agriculture and
An estimated two-thirds of all immigrants in the Malaysian construction industry originate from Indonesia (2010). Another large portion of exploited Indonesian workers within Malaysia are in the domestic service sector. Roughly 90% of all domestic service workers in Malaysia are Indonesian (2012). As in Thailand, domestic workers in Malaysia are not protected by governmental labor laws, and are therefore particularly susceptible to conditions of trafficking. Additionally, the confiscation of domestic worker passports by their employers remains a common practice throughout Malaysia, and is not criminalized under Malaysian law. The large majority of Indonesian domestic workers within Malaysia are women, and these individuals are subject to a wide variety of exploitation within their workplaces, including forced labor, debt bondage, and verbal, physical, or sexual abuse. Many of these domestic workers are unpaid or only partially paid for their services, which can include cleaning, cooking, and child and elderly care for up to seven days a week with no holiday breaks.

While the sex industry of Malaysia is significantly smaller and less developed than that of Thailand, sexual trafficking is also highly prevalent amongst Indonesians within Malaysia. Commercial sex work is illegal throughout Malaysia, yet estimates place the number of prostituted persons in Malaysia at roughly 500,000, many of whom are migrant laborers (2012). Sex tourism is again prevalent in Malaysia, and this demand for cheap sex drives traffickers to exploit ever-growing numbers of women. Victims of sex trafficking in Malaysia are predominately women, many of whom entered with promises of jobs in the nation’s growing tourist industry, only to be forced into prostitution upon their arrival. These women work in a network of karaoke cars, massage
parlors, and hotels and are forced to provide sexual services to pay a trafficker or pimp.\textsuperscript{clvii}

The trafficking of children also constitutes a large portion of migration between Indonesia and Malaysia, mainly stemming from the vulnerability of Indonesian youths. Though education is officially free in Indonesia, in practice most school require fees not accessible to the country’s poorest classes, and as a result a quarter of junior secondary school age students do not attend school. In addition, 60\% of children under the age of five do not have official Indonesian birth certificates (2012).\textsuperscript{clviii} This combination of low-education levels and undocumented status leaves many Indonesian children at high risk for human trafficking. The majority of trafficked Indonesian children are young girls working in industries such as domestic servitude and forced prostitution.\textsuperscript{clix} As in the case of Burmese children in Thailand, exploited Indonesian children in Malaysia are exploited by means of debt bondage, with this debt most often being held by a parent or close family member. Additionally, many Indonesian children are recruited into sexual servitude by Malaysian Internet marketing.\textsuperscript{clx}

It is important to keep in mind the most distinct push and pull factoring affecting the relationship between Indonesia and Malaysia: poverty. The promise of greater economic opportunities in Malaysia is the biggest factor drawing Indonesians into its neighboring country and migrants arrive through all channels, through legal or illegal, voluntary or involuntary. Although Indonesia has experienced great economic growth in the post-Suharto era, the reality remains that many of the 251 million Indonesians (2013) live in poverty, while most of its 29.6 million Malaysian neighbors (2013) live in relative prosperity.\textsuperscript{clxi} Furthermore, the demand for workers in Malaysia (whose own workforce is
not able to meet the country’s growing labor demands) is readily fulfill by the large workforce in Indonesia. These Indonesian workers come across the Straits of Malacca to work in plantations, construction projects and domestic service positions. The promise of a better life in Malaysia, which for the most part shares similar culture, language and religion, for Indonesians, will remain an attractive alternative for the foreseeable future as poverty and limited advancement opportunity persist in Indonesia. Unless the economic conditions for poor Indonesians improve, the trafficking on Indonesians into Malaysia is sure to continue.

**Governmental Responses**

While both countries have comprehensive laws criminalizing human trafficking, the governments of Malaysia and Indonesia suffer from lack of governmental oversight, endemic corruption, and in many cases, general ambivalence regarding human trafficking. In Malaysia, the 2010 Trafficking in Persons Act officially criminalized sex and labor trafficking. This law also created the Labor Department within the Ministry of Human Resources to act as an enforcement agency for anti-trafficking efforts. Additionally, the government of Malaysia has organized the National Council for Anti-trafficking in Persons (MAPO) to facilitate anti-trafficking programs within Malaysia as well as coordinating with international NGOs on trafficking related issues. Malaysia has signed on to international protocols regarding human trafficking, including the 1992 UN Convention of the Rights of a Child. Additionally, in 2010 the Prime Minister of Malaysia formally recognized the problem of human trafficking within Malaysia.
Despite these official acknowledgements of human trafficking, the Malaysian government consistently fails to properly identify victims of trafficking and to prevent human trafficking across various sectors within Malaysia. There are extremely limited systems for monitoring employment conditions for migrant workers throughout Malaysia and no official system of monitoring the placement of domestic service workers.\textsuperscript{clxv} Frequent reports indicate poor treatment of identified trafficking victims within Malaysia, including criminal prosecution and long periods of confinement in government facilities prior to deportation.\textsuperscript{clxvi} Additionally, while the government has shown progress in the prosecution of sexual traffickers, it has been stagnant in enforcing criminal action against labor trafficking, the nation’s primary human trafficking sector.

Specifically in relation to trafficking from Indonesia, the Malaysian government has shown considerable inflexibility in adopting strategies to prevent human trafficking. Specifically, the Malaysia is unwilling to renegotiate its Memorandum of Understanding (MOU) with Indonesia. While this MOU does provide some protections for Indonesian migrant workers in Malaysia, it also sanctions exploitative practices such as prohibiting migrant workers from marrying and allowing passport confiscation.\textsuperscript{clxvii} Passport confiscation is a primary tactic used in human trafficking and labor exploitation, and the continuation of this practice in Malaysia significantly contributes to trafficking, especially within the domestic service sector. While the Indonesian government continually attempts to restructure this MOU to condemn passport confiscation, the issue has been stalled by the Malaysian government since 2010, due to disputes over basic migrant worker’s rights and minimum wage.\textsuperscript{clxviii}
The Indonesian government has criminalized all forms of human trafficking through the implementation of a comprehensive anti-trafficking law in 2009 and well as implementing the National Plan of Action for the Elimination of Trafficking in Women in Children from 2002-2007. Perhaps most importantly, as Indonesia is primarily a source country for exploited migrants, the government has taken significant efforts to protect Indonesians abroad through the National Agency for the Placement and Protection of Indonesian Overseas Workers (BNP2TKI). This program aims at preventing the trafficking of Indonesian migrant workers by providing such services as the distribution of biometric identity cards to migrants, the implementation of a national human trafficking hotline, and the regulation of a national database of registered migrants leaving Indonesia to find work abroad. The BNP2TKI program significantly contributes to the Indonesian government’s ability to protect Indonesian migrant workers working in Malaysia. Additionally, the Indonesian government has attempted to reduce childhood vulnerability to human trafficking through such programs as the Child Protection Act and the National Coalition for the Elimination of Commercial Sexual Exploitation of Children, which aims at addressing the socio-economic reasons behind the exploitation of children for labor and prostitution.

Within ASEAN, Indonesia has been one of the strongest supporters in pushing for the adoption of an ASEAN protocol on human trafficking, and it remains active in ASEAN forum and the Bali Process. The Indonesian government adopts a human trafficking policy based on three main elements, prevention, treatment and empowerment. Prevention consists of taking measures such as disseminating and advocating information and activities on combating human trafficking. Treatment deals
with two elements: victim treatment and action against perpetrators, with the treatment focused on health recovery, social rehabilitation, and re-integration, and action in terms of law enforcement. Lastly, the empowerment component focuses on re-integration.

These three elements might seem familiar to some and one might not be far off if they draw comparisons with the U.S. Department of State Trafficking in Persons Report’s own three P’s (prosecution, protection, and prevention) and three R’s (rescue, rehabilitation and reintegration). For the doubters of the effectiveness of the TIPs reports, Indonesia is a clear demonstration the importance of these annual reports. The principles of the TIPs reports are manifested directly in guiding the Indonesian government’s policies.

However, even with the implementation of significant laws and anti-trafficking initiatives, the Indonesian government continually fails to adequately address the issue of human trafficking due to the endemic corruption prevalent throughout the country’s governmental and judicial systems. Reports from international NGOs consistently indicate corruption across many tiers of the Indonesian government, including lax border control policies, the issuing of false travel documents to traffickers, and overarching tolerance of sex sites which recruit and traffic migrant workers and children. \textsuperscript{143}

\textit{Effect of ASEAN}

ASEAN initiatives have had limited influence on human trafficking between Indonesia and Malaysia. The State Department TIP reports indicate that there has been little progression by either nation in complying with TVPA standards or taken significant steps to combat human trafficking. Indonesia has remained at a Tier 2 status for the last
four reporting years, while Malaysia has maintained a Tier 2 Watch Level status for the last three years.

The effectiveness of the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children standards has varied between Indonesia and Malaysia. While hampered significantly by nation-wide corruption, Indonesia’s government has attempted to implement several standards outlined in the declaration, specifically in reference to safeguarding “dignity and human rights of genuine victims of trafficking in persons”, specifically as it pertains to migrant Indonesian workers with projects such as BNP2TKI. Additionally, Indonesia has attempted to create an environment of cooperation on migration and trafficking and issues, particularly with Malaysia, as evidenced by the current MOU between the two nations and Indonesia’s frequent attempts to negotiate terms of this agreement to more adequately prevent human rights abuses against Indonesian workers. In contrast, the Declaration Against Trafficking in Persons has had little effect on the actions of the Malaysian government, as they have no made significant efforts to adequately identify or support victims of human trafficking, nor have they endeavored to foster a cooperative relationship with nations such as Indonesia on trafficking issues.

The failure of ASEAN initiatives to have a significant impact on human trafficking between Indonesia and Malaysia stems from the organization’s inability to create proper incentives for the wealthier country (Malaysia) to change its policies on migration and labor practices. Specifically in reference to labor exploitation, Malaysian business owners benefit significantly from the cheap (or in some cases free) labor or exploited Indonesian workers. While clearly labor trafficking is an egregious human
rights abuse, it has become a mainstay of the Malaysian economy. Without the ability to significantly intervene in the labor practices and standards within Malaysia, ASEAN is unlikely to be able to pressure the Malaysian government to more adequately monitor labor conditions for migrant workers.

**Best Practices: The Philippines**

*Migration and Trafficking Pattern*

While outside of the two major trafficking patterns within Southeast Asia, the Philippines contributes one of the largest populations of migrant laborers in the world, an estimated 12 million workers (2013). Filipinos migrant workers are found prominently within ASEAN member states, specifically Malaysia and Singapore, but vast numbers of these workers also travel to Western nations like the United States, and increasingly to the Middle East. Saudi Arabia remains a popular destination country for Filipino migrant workers. The migrant laborers constitute a large portion of the Philippines workforce, contributing 14% of the country’s GDP in remittances, an average of $20 billion dollars each year (2013).

While both Filipino men and women travel outside of their home countries to find work, the majority of these migrant laborers are women seeking employment in the domestic service sector. These women occupy positions as nannies, maids, cooks, and caretakers, often living in the homes of their employers.

As is in the case of Burmese and Indonesian migrant workers, Filipinos face significant challenges while abroad, including a high risk of human trafficking. Reports of abuse have been particularly high amongst young female domestic workers, who cite
physical and emotional abuse within their homes of employment, or even cases of forced prostitution.

However, what sets the Philippines apart from other source countries of migrant workers through the ASEAN region is the Filipino government’s proactive and comprehensive response to protecting the country’s migrant workers while abroad. These practices should be carefully observed by the ASEAN community, as many practices can be emulated throughout the region to prevent and combat human trafficking.

*Governmental Responses*

The government of the Philippines has taken significant steps in protecting the country’s migrant workers while abroad, as well as educating the general Filipino population about the dangers of human trafficking. Through a comprehensive set of laws and educational programs, the Philippines has become an example of best practices for the ASEAN region in combating human trafficking.

The first of these programs is the Migrant Workers Act of 1995. This comprehensive law is aimed at defending the rights of Filipino migrant workers and represents one of the most significant steps by any ASEAN country to prevent the exploitation of its foreign workers. Within this law are a myriad of defensive mechanisms to protect migrant laborers, such as definite punishments against those who recruit Filipinos into conditions of exploitation, the establishment of global monitoring systems for migrant workers abroad, mandatory repatriation of underage Filipino migrant workers found abroad. eixxv
In conjunction with Migrant Workers Act, the Philippines government has taken a proactive approach in forming Bilateral Labor Agreements with destination countries. The agreements help to promote basic working standards and rights for Filipino workers. The exact terms of these agreements are often hard to enforce, specifically within the domestic service sector, but they are essential in creating greater accountability by both source and destination countries in preventing and prosecuting human trafficking.\textsuperscript{clxxvi}

While the Philippines legal system to combat human trafficking is an example to the ASEAN community of a comprehensive legal system against exploitative labor, it is the country’s extensive educational programs for migrant and potential migrant workers that truly makes the Philippines a case of best practices for the region.

The most significant training program instituted by the Filipino government is the Pre-Employment Training Seminar (PEOS). This program, required of all migrant laborers who seek to travel aboard on Filipino working visas, helps educate workers on the rights and protections they are entitled to in their destination country. This aspect is particularly essential, as many migrant laborers are unaware if they are experiencing true conditions of trafficking. These programs also carefully train migrant laborers on how to identify exploitative recruiters, as well as giving these workers the told to contact the Filipino government for repatriation if they are ever in a situation of trafficking.\textsuperscript{clxxvii}

The PEOS program is a truly revolutionary approach to combating human trafficking in adults, but the Philippines educational program do not stop there. The government has instituted educational programs for primary and secondary school students to educate them on issues of human trafficking. Through such activities as
speeches and community plays, children are taught how to identify an exploitative recruiter, as well as how to contact the proper authorities if they recruited or forced into a situation of forced labor or prostitution.

*Lessons for the ASEAN Community*

The ASEAN Community can utilize the specific techniques in the Philippines to help combat human trafficking throughout the region. The use of legal systems to protect migrant laborers (both in source and destination countries) must be more frequently used, as in the Philippines. Countries such as Thailand that lack specified mechanisms against exploitation do not have significant legal action against human trafficking. Additionally, the use of Bilateral Labor Agreements is essential in an area of such increasing interconnectivity. While the use of MOU is used between several countries (notably Indonesia and Malaysia) these agreements are not adequate substitutes for comprehensive labor agreements.

Perhaps the most significant tool that should be adopted by the ASEAN community is Philippines use of education to combat trafficking. Both the Philippines POES’s and primary school educational programs should set an example to the transformative effect education can have on empowering migrant workers to know and protect their rights as workers and as individuals.

While the Philippines is certainly not a perfect case (it maintains a Tier 2 status in TIP rankings), the country’s protection of migrant laborers should be seen as a case of best practices in the region. Both member states and ASEAN itself should utilize the techniques implemented by the Philippines to prevent trafficking. Specifically in the use
of education, ASEAN has the resources to implement such training and educational programming throughout the region. The use of the programs would likely seem less controversial to member states than ASEAN attempting to fully change country laws and practices. The use of education would be a valuable first step by ASEAN in combating trafficking throughout Southeast Asia.

However, the ASEAN community must also expand upon the foundations of the Philippines education of migrant workers to a more holistic approach within source countries. Education must be made a wider priority throughout the ASEAN nations to create more functional, inclusive economic development in low-income countries. Merely educating migrants to leave the country is a cosmetic response to a much deeper issue. Only with the expansion of education will low-income populations be more likely to remain in their home country, creating a more stable and functional economy.

**Analysis**

**Evaluation**

*ASEAN as an Anti-Trafficking Agent*

In accessing the overall effectiveness of ASEAN in combating human trafficking throughout Southeast Asia, it is evident that the organization has taken significant steps, but has not been able to successfully implement genuine human rights standards throughout its member states. As evidenced by the previous case studies, ASEAN lacks the necessary enforcement mechanisms to implement anti-trafficking strategies across state borders. Additionally, regional states such as Burma, Malaysia, and Thailand
continually violate international and ASEAN human rights regulations, both in their response to human trafficking and treatment of migrant laborers.

ASEAN’s inability to tangibly implement anti-trafficking standards stems from two major obstacles. First is the organization’s firm stance on state sovereignty and anti-interventionism. Southeast Asian states have continually operated with deference to their individual laws and statutes and ASEAN standards are consistently placed behind national interests. Traditionally, ASEAN has respected this dynamic of highly independent nation states working loosely together in a socio-economic community. However, in the issue of human trafficking, this strict adherence to national sovereignty continually hampers ASEAN’s efforts. As human trafficking combines the trans-regional issue of migration as well as incorporating the layer or human rights discourse, any effective intervention method must have access to both the governmental and societal levels of all effected nations. Without the ability to observe, report, and combat human trafficking within each nation, ASEAN declarations merely represent optimistic goals, rather than achievable standards.

The second obstacle ASEAN faces in implementing anti-trafficking protocols is a lack of incentives for change in the region’s wealthier nations. Inter-regional migration has had many positive economic outcomes throughout Southeast Asia. Business owners in wealthier nations benefit from the use of cheap, migrant labor, and this promotes growth in the overall national economy. Even covert markets, like the sex industry in Thailand, can contribute millions of dollars to the nation’s GDP. Inter-regional migration also has tangible economic benefits for poor nations, as money earned aboard is often sent back home to be spent in the national economy. However, human trafficking largely
negates these positive migration benefits for poor nations, as migrant laborers that are
exploited do not make adequate wages to send back to their home country. While low-
income countries experience an economic push to oppose trafficking, rich nations have
little economic incentive to drastically overhaul their migration and labor standards to
combat human trafficking.

ASEAN as a Human Rights Actor

While the use of human rights discourse as an incentive for regional change has
seemed largely unsuccessful throughout ASEAN, it is important to note the steps the
organization has taken on human rights issues within a relatively short time frame. Severe
rights infringements are still perpetrated by both Southeast Asian governments and
individual regional actors (business owners, labor brokers, trafficking rights, etc.) and
ASEAN has not demonstrated an ability to effectively and appropriately address these
challenges. However, social justice and human rights issues have not traditionally been
the emphasis of ASEAN’s regional efforts, and the language of human rights throughout
declarations and regional protocols represents a significant step by the organization in
implementing international human rights norms.

The most recent and significant ASEAN human rights statement, the 2012
ASEAN Human Rights Declaration, cannot be seen as an overwhelming success, as it has
been met with substantial scrutiny from both the ASEAN and international communities.
However, the Declaration does represent the conglomeration of increasing human rights
ideals throughout Southeast Asia and provides a definitive example of ASEAN’s
commitment to human rights promotion. Even if human rights rhetoric is at this point
only a superficial mechanism, the use of rights discourse in ASEAN proceedings is a positive indicator of the nation’s ability to encourage human rights standards throughout Southeast Asia.

**Recommendations**

To more adequately address migration and human trafficking issues in the immediate future, ASEAN needs to reframe this problem in ways that creates positive incentives for nations willing to address trafficking issues. ASEAN can accomplish this by emphasizing the transnational criminal nature of human trafficking.

While ASEAN has previously approached trafficking issues through a mixed lens of criminal justice and human rights, greater emphasis should be placed on human trafficking as an issue of transnational security. Nations such as Thailand have already indicated a willingness to relax state sovereignty and allow ASEAN greater regional access in reference to transnational crime issues. Transnational criminal issues and border security receive more national funding and provide more tangible socio-economic benefits to countries unwilling to respond to mere human rights arguments for the elimination of human trafficking.

However, in the long term, ASEAN should continue to use human rights language in its calls for greater regional anti-trafficking advocacy. The constant use this language of rights throughout the ASEAN region provides legitimacy to human rights as an incentive for social change. As human rights rhetoric is more widely used through ASEAN literature and activities, basic rights standards are more likely to be institutionalized as regional standards. Employers of migrant laborers must especially be
exposed to human rights standards, and the implementation of these standards must become commonplace within source country economies. Migrant laborers themselves must be exposed to basic human rights language, so that they may know and better protect their rights while abroad. Without this basis in rights, the issue of human trafficking will constantly be subjected to changes in political attention and public support. Only through the changing of fundamental value structures on human trafficking and bonded labor throughout the Southeast Asian region can truly create a lasting change in regards to this complex problem.

**Conclusion**

This paper has given an overview of the issue of human trafficking in the Southeast Asian region, as well as presenting the variety of ASEAN mechanisms in place to combat this issue and promote human rights. Through an examination of existing ASEAN declarations and protocols, as well as the evaluation of two case studies, it is concluded that ASEAN has not had a tangible effect in reducing the severity of trafficking in Southeast Asia. This failure is concluded to be the result of strict state sovereignty practices and lack of proper incentives outside of human rights arguments for ASEAN nations to change their migratory and trafficking practices. However, this examination also concludes that the continued and increasing use of human rights rhetoric throughout ASEAN is a positive development that may lead to greater legitimacy being given regional human rights discourse. Finally, this paper recommends, that in the short term, ASEAN should reframe the issue of human trafficking through a transnational crime and regional security lens, but continue the use of human rights language to
promote the long-term legitimization of human rights issues throughout Southeast Asia.
Notes

1 US Department of State. *Trafficking in Persons* (2012), 51

ii Also known as the Palermo Convention, it has been signed by 147 countries (including all members of ASEAN) and 168 parties by June 2012 and has three protocols. The convention and the protocols fall under the jurisdiction of the United Nations Office on Drugs and Crime (UNODC)


v Within ASEAN, Malaysia, Singapore, Brunei and Vietnam have not ratified this protocol.

vi Trafficking in Persons Protocol, Article 3

vii Within ASEAN, Singapore and Brunei have not ratified this protocol.

viii Migrant Smuggling Protocol, Articles 3(a) and 6(1)(c).

ix The handbook was endorsed by the ASEAN’s Senior Officials Meeting on Transnational Crime (SOMTC) in 2008, and the guide was published by the Asia Regional Project on Trafficking in Persons (ARTIP) on August 2010, which was supported by the Australian Agency for International Development, AusAID.


xii *Migrant Smuggling*, 14.
While men and boys are victims of sexual trafficking, heterosexual prostitution remains most prevalent in the region, and thus women and girls are most likely to be targets for sex trafficking organizations.


Blackburn, Taylor, and Davis, 115


Muecke, M. Mother sold food, daughter sells her body: The cultural Continuity of Prostitution. Social Science & Medicine 35 (1991), 891–901


Kerr, 93-94.

Kerr, 98.

The Member States of the Association are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam.

“History: The Founding of ASEAN,” ASEAN official website.
http://www.asean.org/asean/about-asean/history

“Charter of the Association of Southeast Asian Nations,” ASEAN official website.

Hernandez, Carolina G. “Institution Building Through an ASEAN Charter.” Panorama: A journal on Southeast Asian and European Affairs 9, 1(August 2007),15

Cambodia, Laos, Myanmar, and Viet Nam.


Ibid.

Leviter, 195.

The six are Australia, China, India, Japan, New Zealand and South Korea.

Ibid

Southwock, Katherine G. “Bumpy Road to the ASEAN Human Rights Declaration.” Asia Pacific Bulletin, East-West Center, Number 197, January 22, 2013.

Southwick, 2.


ASEAN handbook, 15.


ASEAN Handbook, 16.

Hall, 17.

Hall, 18-19.

Ibid

“Recent key developments and new resources,” Asia Regional Trafficking in Persons Project.

Hall, 25

Ibid


Ibid


Bacalla
Douglas, 6
Douglas, 7


Australia and Indonesia (Co-Chairs) ‘Co-Chairs’ Statement’ (Bali Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime, Bali, 14-15 February 2009), 18

All ten members of ASEAN are included

Frédérique Channac, ‘Global or International Governance for Migration? Building up a Co-operation and Enhancing Multilateralism from Regional to Global Level’, Garnet Working Paper no. 19/07, 13


Australia and Indonesia (Co-Chairs), ‘Co-Chairs’ Statement’ (Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime, Bali, 14-15 February 2009)

Australia and Indonesia (Co-Chairs), ‘Co-Chairs’ Statement’ (Fourth Meeting of Ad Hoc Group Senior Officials, Bali, 9 March 2011)


Ibid
vcvii Rizal, 2

cxcviii Ibid

cxcix Ibid.

c ASEAN Handbook, 17.


cii Ibid.

ciii Cameron, 57

civ Ibid


cvi Larson, 2

cvii Cameron 103

cviii Cameron 101

cix Cameron, 15

cx Ibid

cxi US Department of State (2012), 338

cxii Ibid

cxiii Cameron, 152

cxiv Ibid

cxv Cameron, 153

cxvi Ibid

cxvii Blackburn, Taylor, and Davis, 107

cxviii Ibid


However, as only Thailand and the Philippines have agreed to this strategy, it has not been largely implemented within the ASEAN system.


Ibid

Ibid

Wuiling, 54

International Organization for Migration "Labor Migration from Indonesia: An Overview of Migration to Selected Destinations in Asia and the Middle East." (2010), 41

Larson, 2

US Department of State (2012), 186

Ibid

Ibid

Larson, 4

Larson, 3

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