

NTS ALERT

International and Regional Response to Human Trafficking

The transnational nature of human trafficking calls for a comprehensive approach in understanding and resolving the issue. Having a series of legal frameworks is crucial in dealing with the problem. This edition of the NTS-Alert looks at the existing legal frameworks that deal with the issue of human trafficking at the international and regional level, with particular focus on Asia.

The Transnational Challenges of Human Trafficking

The United Nations Office on Drugs and Crime (UNODC) estimates that about 2.5 million people from all over the world are exploited through human trafficking one way or the other at any given time. The issue of human trafficking could neither be linked to any country or region in particular nor be directly attributed to any specific economic or socio-economic conditions. Human trafficking exists in almost all countries

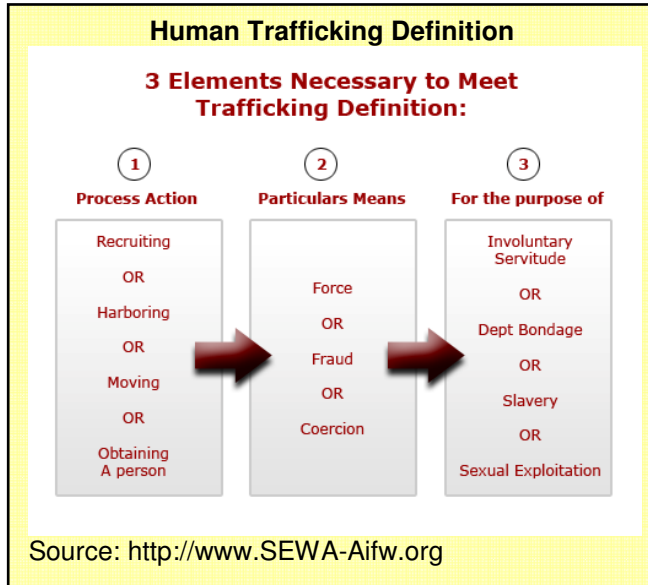
across a myriad of political ideology and different stages of economic development. This means that this form of ‘modern-day slavery’ is not a product of economic underdevelopment or political oppression. It is crucial to make this distinction in order to appreciate the magnitude of the challenges, from the perspective of law enforcement and legal processes that is faced by the international community in tackling the problem of human trafficking.

It is useful to note that there are different frameworks in place which deal with human trafficking, each with its own specific advantages and disadvantages. Dina Francesca Haynes, the Deputy Director of the Human Rights Department for the OSCE Mission to Bosnia and Herzegovina, characterised these three approaches as the “*Arrest and Deport the Victim*” model, the “*Jail the Offender*” model and the “*Protect the Victim*” model.

The first model, which was used by receiving nations till the late 1980’s, treated trafficking victims as illegal immigrants and prosecuted them as such. Many women who were promised jobs as nannies, entertainers, or cleaners in

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developed countries were deceived, and were forced to become prostitutes instead. Despite the fact that these women were already victimized, the state did not confer any legal protection on them, and had them deported. The poor living conditions that these women faced in their home countries made attempts to re-enter developed countries a common occurrence.

The second model granted some legal and social welfare benefits to trafficked persons, but *only if* they cooperated with the state by acting as witnesses. Special temporary visas would be granted for the victim, with some countries like the US offering permanent residency under special conditions. However, the granting of these special visas is highly regulated, perhaps because of fears of a ‘flood of migrants’ entering the country through this loophole in immigration law.

Finally, the last model considers the welfare of trafficking victims as a primary concern for government officials. This framework relies on international conventions and norms and gives a special priority to the protection of human rights by ensuring that victims are granted asylum or a temporary right to stay in the country, unconditionally. However, the weakness of this framework is that while it assists victims of trafficking, it does not address the transnational criminal networks that enable human trafficking.

While myriad frameworks exist across different levels of international society, many nations still choose to adopt the second model of addressing trafficking, with varying levels of success. Dina Haynes suggests that a fusion of the second and third models may be necessary to create a holistic solution to human trafficking.

International Protocols

The international law on human trafficking is framed under the overarching United Nations Convention against Transnational Organised Crime which was adopted in Palermo, Italy in 2000. This Convention is supplemented by two other protocols which address issues specifically pertaining to human trafficking and smuggling. The two supplementary protocols are: The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and the Protocol Against the Smuggling of Migrants by Land, Sea and Air. These two protocols are referred to as the Trafficking Protocol and Smuggling Protocol respectively. Both protocols are under the purview of United Nations Office on Drugs and Crime (UNODC).

The Palermo Convention and the Trafficking Protocol entered into force in September 2003. They symbolised the international community’s measures against transnational organised crime. The Trafficking Protocol aims to prevent and combat trafficking, protects and assists victims of trafficking and to promote cooperation between states to those ends while the Smuggling Protocol aims at preventing and combating the smuggling of migrants and also the protection of migrants’ rights. The Smuggling Protocol came into force in 2004. With the enforcement of the Trafficking Protocol, there is now a convergence in the definition and interpretation of human trafficking.

Although the convention and protocols provide the conceptual and legal framework for the international community, regional institutions and individual countries are also empowered to enact their own specific protocols and framework as long as these remain consistent with the UN convention. More importantly, while the convention signals a concerted effort on the part

of the international community to address human trafficking, this convention provides the participating states the much needed legal apparatus to act against transnational crime organisations.

Inevitably, one of the challenges facing law enforcement is the identification and thus persecution of human traffickers given the transnational nature of the problem. For instance, how does one differentiate between an asylum and a victim of trafficking? Also, given the fact that human trafficking is a transnational activity, national capacity to detect this kind of activities is crucial if this problem were to

be effectively addressed. Much would depend on available intelligence and other relevant information. Perhaps, herein lies one of the drawbacks of the global battle against human trafficking. A state-centric approach based on border controls measures reflects a passive model which relies on detection rather than an active interventionist model which emphasizes more on prevention.

European Regional Frameworks

Europe has two important instruments that deal specifically with human trafficking: The Brussels Declaration, and the EU Council Framework

Clearing the Confusion (Between Human Trafficking and Smuggling)

Other than the transnational dimension of human trafficking which poses serious questions to the effectiveness of the law enforcement agencies in breaking down the human trafficking network, the effectiveness of the judiciary system in prosecuting human traffickers is also hampered by the consistency and consensus on the legal definition of trafficking and smuggling. To criminalise human trafficking, the legal apparatus has to be clear on what constitutes and differentiates trafficking from smuggling.

The UN Trafficking in Persons Protocol thus represents a concerted effort among member states to harmonize a common appreciation of the concept and intricacies of trafficking and smuggling. Article 3(a) of the Trafficking in Persons Protocol states that Trafficking in Persons refers to:

“... the recruitment, transportation, transfer, harbouring or receipt of persons, by means of a 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.”

Article 3(a) of the UN Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling Protocol) refers to smuggling as:

“... 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 Party of which the person is not a national or a permanent resident.”

In summary, there are three main differences between trafficking and smuggling. They are Consent, Transnationality and Exploitation. According to the United Nations Toolkit To Combat Trafficking in Persons, on the issue of Consent, smuggled victims usually consent to being smuggled while the consent of the trafficker is rendered meaningless by the actions of the trafficker. On Transnationality, smuggling usually involves the crossing and entry into another country while trafficking may occur within the borders. On Exploitation, the commercial relationship between the smuggler and the migrant usually ends after the crossing of the border while in human trafficking, that relationship involves ongoing exploitation of the person (victim) in the pursuit of profit. This means that smugglers profit from transporting or moving people across borders while traffickers receive additional profit from further exploitation of the victims.





Decision on Combating Trafficking in Human Beings.

The former, established in September 2002, was designed to develop common goals for the EU and its partners in dealing with Human Trafficking. Among these goals were to develop cooperation by identifying concrete measures, standards, best practices and mechanisms; to intensify cooperation between governments, NGOs and international bodies, to grant victims of trafficking access to support measures, including shelter, health care and the right to seek asylum. While the declaration of common goals for the European community was groundbreaking, it did not specify what measures member-states could take to codify victim protection into law, and did not set standards for penalties against human trafficking.

The latter, on the other hand, attempted to set standards for member states to follow in prosecuting human traffickers and to allow each member-state of the EU to prosecute trafficking in the following cases: when the offense is committed on its territory, when the offender is the state's national, and when the offense is committed for the benefit of the person 'established' in the territory of that member state. Interestingly, the maximum penalty for trafficking established by the EU was set to be no less than 8 years imprisonment. This is surprising considering the penalties for drug trafficking ranged all the way to life imprisonment. Dina Haynes in particular criticised the Framework for being too skeletal: ambiguous in some areas, specific in others. The problem of creating a guide for member-states to legislate a comprehensive solution to fight human trafficking was not completely addressed by the framework, and is still unresolved.

The European frameworks provide common language and goals for counter-trafficking activities, but the translation of these frameworks into actual implementation of trafficking suppression has not lived up to the goals its framers set for it. Whether the frameworks will continue to gradually orient towards a victim-centred approach or remain oriented towards jailing the offender remains to be seen.

Asian Regional Frameworks

Many frameworks exist in Asia that deal with human trafficking. The Asian Regional Initiative Against Trafficking (ARIAT) in Women and Children was established in Manila in March of 2000, which include governments across the Asia Pacific region, the EU, ASEAN the Ford Foundation, IOM, the World Bank and other foundations, international institutions, and NGOs. Its action plan was anchored on preventing successful trafficking of people, protecting victims' welfare and legal rights, and prosecuting traffickers and seizing their gains to defray the cost of assisting victims.

The mechanisms that would be created by this action plan include a common data bank that would record incidences of trafficking, that would then be used to identify patterns in the region for targetting. Bilateral and regional arrangements against trafficking would also be rationalised and standardised to enable cross-border cooperation. Housing, economic, medical and psychological assistance would also be standardised for victims. Criminalisation of trafficking would be legislated for states that do not have anti-trafficking laws in place, and be expanded to cover all aspects of trafficking. Finally, reintegration programmes would be established to allow for the dignified return of victims to their home countries, and assistance to allow them to gain employment and access to health and legal services would be instituted.

The Bali Process, or the Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime, which was first convened in February 2002 and again in April 2003 attempted to tackle more fundamental measures to reduce human trafficking. A framework was established that include improving legislation, law enforcement, information sharing, better border control and visa systems, and increasing public awareness of the risks and dangers of becoming a trafficking victim.

It is noteworthy that both initiatives place more emphasis on state security rather than the human rights of the trafficked persons. In fact, regional

Asian frameworks in general have not integrated human rights discourse in responses to human trafficking to the level that some European or American frameworks have. This may be due to the fact that regional cooperation in Asia has not generally been developed to the level that it has been in Europe, and while frameworks for human trafficking exist, they may be focused on sub-regional or bilateral approaches.

ASEAN's Response

The issue of human trafficking in ASEAN was placed on the regional agenda since the early 1990s. The key commitments by member states are framed within three legal instruments which are the ASEAN Vision 2020, ASEAN Declaration on Transnational Crime and ASEAN Declaration Against Trafficking in Persons, Particularly Women and Children.

In the ASEAN Vision 2020 which was signed in 1997, member states explicitly agreed to collaborate towards an “agreed rules of behaviour and cooperative measures” on transnational issues particularly on trafficking in women and children.

With regard to the declaration on transnational crime, member states agreed to take specific measures in dealing with transnational crimes. Under the declaration, member states agreed to strengthen cooperation at the regional level, expand the scope of their efforts, convene an ASEAN ministerial meeting on transnational crime which would coordinate activities on transnational crime and finally to hold discussions between member states on bilateral and regional agreements.

On the declaration against trafficking particularly in women and children, ASEAN member states have agreed to align the region's approach to that of the UNODC's Convention against Transnational Crime and its associated protocols on human trafficking and smuggling. This declaration thus laid the groundwork for coordinated regional immigration and law enforcement entities.

The earlier two declarations are important in a sense that they bound member states in a strategic

alliance in the form of an ASEAN Framework in addressing transnational crime within the region. The third declaration then takes the initiative a step further by transforming these shared ideals and values into a concerted regional response.

The concerted regional response as outlined by the third declaration includes ensuring that trafficking in persons is a crime within the legal system of every member states. Member states are also required to ensure that national policies on trafficking are consistent with one another. States are to work towards a common platform for the respective states' law enforcement officials to work together and take part in joint training programs. Finally, ASEAN is to develop a regional training program which aims to assist victims of trafficking.

Apart from the three declarations, another avenue which also actively addresses the issue of human trafficking is the ASEAN Chiefs of National Police Meeting (ASEANAPOL). Currently in its 28th year, this annual meeting has agreed in recent years to enhance the information exchange among member countries on the identities, movements and activities of known transnational criminal organisations in human trafficking. Among other initiatives, members have also agreed to enhance cooperation in border-control management and greater exchange of information on human traffickers.

Trans-Regional Response

Other than aligning its mission and objectives with the larger international convention, ASEAN also pursues a strategy of collaboration with its dialogue partners such as China and the United States (US) and Australia.

In 2002, ASEAN member countries and the US signed the Joint Declaration for Cooperation to Combat International Terrorism and Human Trafficking was identified as a future area of cooperation. A year later, in 2003, the Australian government has been funding the Asia Regional Cooperation to Prevent People Trafficking (ARCPPT) project which aims to strengthen ASEAN member states' criminal justice response to human trafficking. In 2004, the ASEAN and China signed a Memorandum of Understanding





in the Field of Non-Traditional Security Issues with the intent to forge cooperation in combating transnational crime.

Sub-Regional Response

Within ASEAN itself, several member states in the Mekong region have been involved in the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) process. Other than China, the five ASEAN member states are Cambodia, Laos, Myanmar, Thailand and Vietnam. Other than improving the capacity of participating states via greater information exchange, this sub-regional collaboration also works towards a common approach by developing sub-regional and national plans and course of actions.

The COMMIT framework is noteworthy because it puts emphasis on the rights of victims and makes this central in developing counter-trafficking measures in both law enforcement and jurisprudence. The framework broadly covers Prevention, Prosecution, Protection and Policy. Strong levels of national ownership were also allotted to enable greater accountability over the implementation of COMMIT’s provisions.

COMMIT was evaluated in 2007, and the following achievements were highlighted: a comprehensive training course in member-states’ native languages was developed for government and non-government officials, National Plans of Action and bilateral cooperation mechanisms were established, mechanisms for handling trafficking victims were standardised, and

observable improvements in national legal frameworks were noted.

The 3Ps of Anti-Human Trafficking Strategy

Regardless of the different protocols, be it UN overarching convention and supplementary protocols and other existing regional agreements, the basic premise of the international movement against trafficking in person revolves around the 3PS which are Prevention, Prosecution and Protection in addition to the conventional judiciary and law enforcement response.

According to the UN Global Initiative to Fight Human Trafficking report, a multi-pronged strategy is one where the state works with other agencies such as the media, law enforcement agencies, non-governmental organisations (NGOs) and corporations to create the awareness such as asserting pressure to tackle the ‘demand-side’ of human trafficking such as demand for child labour and demand for children in sex tourism.

On prosecution, NGOs are encouraged to develop programs which would prepare victims to assist the court as witnesses while the media endeavours to provide full and sustained coverage. The third strategy is enlisting the help of other stakeholders such as civil society organisations and business houses to provide the victims with socio-economic support and livelihood opportunities.

A Record of COMMIT's Progress	
	Progress
China	Acknowledged the influence of COMMIT in developing national plan of action in human trafficking.
Myanmar	Passed new national law against trafficking, with emphasis on the human rights of victims.
Laos & Thailand	New bilateral arrangement between the two countries to use community-based information to trace missing persons and aid repatriation.
Cambodia	Now promoting child-safe tourism and strengthening law enforcement.
Vietnam	Implementing national plan of action, but needs better capacity with regards to repatriation and reintegration.

Source: compiled from humantrafficking.org

Conclusion: An Alphabet Soup of Frameworks?

The bewildering array of frameworks dealing with human trafficking have one important element in common: they are all relatively new. Implementation of the frameworks is mostly in initial stages, and the legislation of the provisions of the frameworks has some way to go before they can succeed in dampening human trafficking. While regional cooperation is still in its infancy, more specific and mandatory agreements may eventually be necessary to ensure that common standards of prosecution and protection are eventually established.

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