

Suppression of Human Trafficking: Reflections of the Role of ASEAN Political-Security Community

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Abstract

Notwithstanding the fact that, at present, the Pillar concerning the ASEAN Political-Security Community (APSC) has been established and mobilizing Action Plans to achieve solidarity in the region; to create a peaceful, yet, strong and accountable community ready to resolve any security issues. Nevertheless, the Royal Thai Police's apparent enthusiasm to reorient its operations in preventing human trafficking since 2014 onwards has proven that, under the pressure of the superpower, the region's mechanisms may not be an effective one. This also reflects that, eventually, the APSC still remains an intellectual ideology which has yet to create any transformative implications.

Keywords: Human Trafficking, ASEAN Political-Security Community, Royal Thai Police

Introduction

Association of Southeast Asian Nations or ASEAN was established on the basis of the traditional threat concept which addresses the necessity of forming a regional forum with an aim to boost economic growth, promote social and cultural development amongst ASEAN member countries, maintain peace and security within the region, and provide further opportunities for peaceful dispute resolution amongst the member countries (Strategy and Evaluation Department, 2013)

ASEAN thereafter had developed a framework regarding security issues according to the concept of non-traditional threat after which the ASEAN Political-Security Community (APSC) was established. To date, various activities have been encouraged by ASEAN Political-Security Community Council so as to support the fulfillment of ASEAN Political-Security Community Blueprint and realization of its objectives. The APSC Council was amongst many other units inaugurated following the implementation of the ASEAN Charter comprising of Foreign Ministers from each ASEAN member country whose main duties include seeking new approaches to develop cooperation amongst the ASEAN members in the area of political-security through measures as stipulated in the APSC Blueprint. (Tangtrongpaioj, 2011)

APSC's three key goals to achieve are as follows (Department of ASEAN Affairs, 2012)

1) A rules-based community of shared values and norms with the following two principles which counter-balance one another: 1) intervention in other countries' internal affairs, and 2) strengthening community values.

2) A community that forges a cohesive, peaceful and resilient region unity with shared responsibility to achieve comprehensive security - an effort to enhance ASEAN's capacity towards better utilizing its own mechanism in dealing with multiple obstacles and challenges in the region (this issue has been strongly driven by Indonesia).

3) A community that creates a dynamic and outward looking region in increasingly integrated and interdependent world.

From the ASEAN Political-Security Community Blueprint, it can be observed that one of the immediate actions addressed by the APSC Council is the strengthening of regional cooperation against people smuggling as well as the necessity of drafting an ASEAN treaty on trafficking in persons and migrant workers as the region has, until now, witnessed the highest number of trafficking in persons, especially women and children. (Perry, Kelsey McGregor & McEwing, Lindsay, 2013) The majority of this sort of trade takes place within the ASEAN region.

Nevertheless, human trafficking issue was addressed for the first time amongst the ASEAN leaders during the ASEAN Summit Retreat which happened in 1997. Establishment of severe measures against transnational crimes including trafficking in women and children was high on the agenda. What was furthermore adopted at this meeting was the ASEAN Community Vision 2020 which also discussed the setting up of guidelines and coordination and cooperation measures against regional trafficking of women and children. (Department of ASEAN Affairs, 2012)

It was then in 1998 where the Ha Noi Plan of Action was adopted by the ASEAN leaders as the ASEAN Master Plan on social and economic recovery after the 1997 Asian financial crisis. The Master Plan called for the reinforcement of regional cooperation against trafficking and abuse of women and children. Subsequently, at 10th ASEAN Summit hosted in Vientiane in November 2004, the ASEAN Declaration against Trafficking in Persons Particularly Women and Children was adopted with cooperation guidelines for all ASEAN immigration agencies being established and the Vientiane Action Programme-VAP adopted. Additionally, this Action Programme also covers enhancement of cooperation against trafficking. (Department of ASEAN Affairs, 2017)

Furthermore, over the decades starting from 1997 to 2007, all ASEAN member countries had agreed to sign in bilateral memorandums of understanding which involved governments of origin and destination countries so as to provide trafficking victims proper support, rehabilitation and reintegration. This concerted effort also helped improve effectiveness in the suppression and prosecution process. (Sombat, L., 2013) Other collaborative mechanisms include the Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Lao People's Democratic Republic on cooperation against trafficking in persons particularly women and children as well as the Memorandum of Understanding between the Government of the Kingdom of Thailand and Government of the Kingdom of Cambodia on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking in hopes that operations against human trafficking would be facilitated in the most effective way possible.

All in all, the issue of human trafficking in the region, over the decades, has been recognized by all ASEAN member countries with constant effort put into the development of mechanisms in different areas, whether it be legal, or bilateral collaboration mechanisms in order to resolve the issue.

Considering the scope of every aforementioned mechanism, while collaborative mechanisms against human trafficking have been developed by APSC in order to operate alongside bilateral-level mechanisms and those previously employed global collaboration mechanisms, it might be a

question of the level of involvement and approaches the APSC has taken, in actuality, to resolve the issue of human trafficking in the region given the fact that the intensity level of the issue in the Southeast Asia region has yet to be mitigated. As of 2014, the result from the minimum standards for the elimination of trafficking in persons assessment following the US's Trafficking Victim Protection Act 2000 (TVPA) clearly indicates that none of the ASEAN countries had reached Tier 1. Brunei, Indonesia, the Philippines, Singapore, and Vietnam made their way to Tier 2 with Cambodia, Laos, and Myanmar being placed on Tier 2 Watch List whereas Thailand alongside Malaysia were put into Tier 3 after the aforementioned assessment.

Obstacles in Combatting Human Trafficking

To examine the role of APSC in the prevention of trafficking in persons, general obstacles found in preventive operations against human trafficking shall be discussed in the first place. Studies pertaining to collaborative mechanisms against trafficking in persons show that as for prevention, protection, and prosecution mechanisms against trafficking in persons in the international level, despite the fact that every ASEAN member country has already signed and ratified the United Nations Convention against Transnational Organized Crime (UNTOC), Convention on the Rights of the Child (CRC) and Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (Sombat, 2013), major problems in resolving human trafficking are found in the form of insufficient multilateral cooperation. Moreover, issues of legal inequality and lack of unity can still be observed in this region. (Talabthong, 2013)

Meanwhile studies pertaining to key factors leading to trafficking in persons in the Southeast Asia region indicate that many of the incidents are actually labor trafficking rather than prostitution (Feingold, 2005). And Thailand is globally known for human trafficking issues. Due to its convenient location for delivering and maintaining migration flows. (Santad, and Ratchadapunnathikul, 2018) Then again trafficking in persons is linked to migration as pointed out by Orathai Chulasuwannarak (2007) that migration phenomenon is a necessity just as much as a need for people both in the origin country and destination country. Under certain circumstances in the country of origin such as deprivation of citizenship people are incapable of residing in the same State. Migration of young adults not only reflects the need for economic transformation but also implies the act of entering modernity, consuming media, and living in a culture full of new values. In the past, this managing effort which was not properly executed in compliance with the diverse forms of arriving migrant workers subsequently caused exploitation and eventually led to trafficking in persons. This corresponds to the view of Emmers, Ralf., Greener-Barcham, Beth., & Thomas, Nicholas (2006) proposing that the rising supply and demand in human trafficking consequently leads to increased human trafficking issues with the supply-push factors being poverty, financial struggle, environmental conditions and/or personal instability. As for the pull factor, employment opportunities to achieve a better quality of life and access to resources is the key. Demand-wise, the fact that cheap labors are constantly needed and an apparently lack of preventive and penal measures to handle crime of trafficking in human beings provide the space for the issue of human trafficking to persist.

According to studies pertaining to difficulties in the operational level encountered by officers, in Thailand, problems and obstacles in prevention and suppression of trafficking in persons lie in operational officers as well as internal conflicts in the unit. These officers are lack of necessary tools and equipment, they work without sufficient and updated operational technology. They are unequipped with necessary and thorough knowledge and understanding concerning relevant laws which is a consequence of the fact that, for some of these officers, it was not their choice to be

working in this position and under this unit from the start. As a result, they work without much passion and enthusiasm to gain more knowledge and skills pertaining to their job. Most units are faced with inadequate personnel particularly female investigators. Budget-wise, the division dealing with prevention and suppression still lacks unit-owned vehicles, and not to mention their poor welfare and low wages especially among investigators. While some officers are engaged in misconduct at work; they become involved in the process of human trafficking through bribery; some of them are not willing to cooperate and enforce laws. According to law and enforcement, some enforcers still lack proper understanding when it comes to intendment of law, while some established legal punishments for those involved in trafficking in persons are largely complicated. Lack of facility to accommodate victims of trafficking in persons results in many of them having to return to their respective hometowns and their lawsuits consequently becoming incoherent and inconsistent which means the prosecution process will most likely be pending (Plodlek, 2013). At the same time, as their work in prevention and suppression overlaps some influential mafia circles, there is tremendous fear of the invisible power. The fact that human trafficking is an organized act makes it much more difficult for these officers to complete their duties (Wiriwittaya, 2010). Moreover, the corruption problem of the area officials enables the business to continue implementation, being different from law enforcement of other countries in the Greater Mekong Subregion. (Trimek, Jernsittiparsert, Akahat, Sieangsung, and Ratchaphan, 2016)

Examining human trafficking, it appears that challenges and obstacles could be identified in every aspect; problems in utilizing collaborative mechanisms; complex circumstances caused by growing inclination among people to migrate; technical challenges among unit officers and police officers in particular. These problems may partly reflect the present role of APSC, yet once assessed thoroughly, it could be deduced that APSC's role in operations against human trafficking of member countries is rather miniscule. However, lack of adequate multilateral collaboration within the region, legal inequality and incoherence may not be the only factors as the core of these obstacles belongs to a much larger problem. Unsteady and vacillating existence of APSC has failed to create sufficient pressure in putting an end to the issue of human trafficking in the region, especially when compared to that exerted in international relations with the superpowers. In this case, the work of the Royal Thai Police in suppressing trafficking in persons could be proposed as a clear example.

Suppression of Human Trafficking in Thailand

In Thailand, the Royal Thai Police functions as the main agency in suppressing crime of trafficking in persons. Since 1928, the Royal Thai Police has been setting up guidelines and making constant adjustments to its operation concerning human trafficking in compliance with several legal frameworks which include the enforcement of the Trafficking in Women and Young Girls Act in 1928, the signing of the United Nations Convention against Transnational Organized Crime (UNTOC) in 2000 and enforcement of the Anti-Human Trafficking Act in 2008. The most apparent adjustment on the part of the Royal Thai Police, however, happened in 2014 when the agency produced the Prevention and Suppression Plan against Human Trafficking along with its effort to include crime of trafficking in persons into its 2015 fiscal year's policy development during the period after the US Embassy in Thailand had published the 2014 annual report on human trafficking. Meanwhile, the ASEAN Community under the APSC pillar leaders had only succeeded to have all ASEAN leaders adopt and sign the ASEAN Convention against Trafficking in Persons, Especially Women and Children (ACTIP) on 21st November 2015 in

Kuala Lumpur which has been implemented to date after 8th March 2017, and only after all the 6 member countries had managed to deliver the ratified documents.

This indicates that throughout the period of unsatisfactory assessment of human trafficking situation in Thailand, the ASEAN Community failed to develop any mechanisms in dealing with the situation. Although Thailand had established international cooperation at the ASEAN regional level with 5 memorandums of understanding being created together with other countries in the Greater Mekong Sub-region which covers cooperation from every neighboring country: the Kingdom of Cambodia, the Lao People's Democratic Republic, the Republic of Union of Myanmar, and the Socialist Republic of Vietnam, together with a multilateral mechanism against trafficking in persons through producing the Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-region, yet all of these efforts were essentially consequential cooperation on the international level to resolve human trafficking that happened even a decade before the founding of APSC.

The overview of the legislative development, the signing of multilevel mechanisms vital to combating human trafficking situation in Thailand as well as key situations for all of the anti-trafficking operations in Thailand shall be summarized as follows.

1928: Enactment of the Trafficking in Women and Young Girls Act

1948: Signing of the Universal Declaration of Human Rights

1979: Signing of the Convention on the Elimination of All Forms of Discrimination Against Women

2000: Signing of the United Nations Convention against Transnational Organized Crime

2000: Enactment of Trafficking Victims Protection Act: TVPA in the US (foreign affairs policy from a superpower)

2001: Signing of the International Labor Organization Convention

2003-2009: Developing Memorandums of Understanding on the Elimination of Trafficking in Children and Women and Assisting Victims of Trafficking together with Cambodia, Laos, Vietnam, and Myanmar.

2004: the government announced that "Human Trafficking is a national agenda."

2008: the Anti-Human Trafficking Act

2013: the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters was signed.

2014: Thailand was removed from the Tier 2 watch list to Tier 3.

2014-2015: Immediate measure was undertaken by the government to resolve allegations in the U.S. Department of State's annual report.

2016: Thailand was promoted to Tier 2 watch list.

2017: ASEAN Convention against Trafficking in Persons, Especially Women and Children (ACTIP) was signed.

These key situations suggest that Thailand has participated in only 4 major collaborative mechanisms against trafficking in persons at the regional level. These 4 collaborative mechanisms are:

1) Memorandums of Understanding on the Elimination of Trafficking in Children and Women and Assisting Victims of Trafficking which was created between 2003 to 2009 to involve Cambodia, Laos, Vietnam, and Myanmar. The memorandum appears to be an effort to merely respond to trafficking mechanism on the global level rather than an effort born of sheer awareness regarding the importance of creating a union towards building regional collaboration. Moreover, the ASEAN Community had not been established at the time.

2) ASEAN Declaration against Trafficking in Persons Particularly Women and Children which Thailand joined as an official member in 2004 emphasizes law enforcement, segregation of victims from traffickers and establishment of severe penalties for those convicted of trafficking in persons. Nevertheless, the declaration has yet to be enforced by any member countries.

3) ASEAN Treaty on Mutual Legal Assistance in Criminal Matters was signed in 2013 yet found to be lacking of proper coordination amongst agencies. Other problematic feedbacks include slow procedures, high operating cost across borders, legal and operational issues during extradition as well as lack of appropriate measures in promoting international cooperation under the treaty (Supha, 2016).

4) ASEAN Convention against Trafficking in Persons Especially Women and Children signed in 2014. The main content of this Convention suggests that trafficking in persons, participation in all sorts of organized crime, act of laundering crime-related money, corruption and obstruction of justice are considered criminal offense. In addition, collaborative measures and areas regarding prevention of trafficking in persons, protection of victims of trafficking, and mutual assistance in criminal matters were clearly established in this convention. Nonetheless, the ASEAN Convention against Trafficking in Persons Especially Women and Children has recently been implemented and therefore produced somewhat small concrete results so far.

Until now, despite the fact that the ASEAN Convention against Trafficking in Persons, Especially Women and Children (ACTIP) has been implemented since 2017, none of the member countries has developed any pragmatic guidelines or policies in compliance with the convention itself.

Then again, one obvious and enthusiastic adjustment on the part of the Royal Thai Police with regard to suppression of human trafficking may be perceived through its effort to include the crime of trafficking in persons in its administrative policy for 2015 fiscal year. The purpose of this addition was to mobilize operations among its subordinates in the most precise, tangible, and effective way.

The initiation of such administrative policy was done after Thailand had been placed on Tier 3 following situation assessment with regard to the minimum standards for the elimination of trafficking in persons. Countries that are put on Tier 3 suggest that their governments do not fully meet the minimum standards and are not making significant efforts to do so. Certain anxiety was on the rise after the assessment in Thailand for fear that the categorization could have a direct effect on the relations between Thailand and the US. The US could, for example, stop providing humanitarian and trade assistance; they could hold back their budget support for government employees of a country on Tier 3 for participation in educational and cultural exchange programs or even object any assistance the government of that country may have received from international financial institutions, such as the International Monetary Fund and the World Bank.

Nevertheless, for countries that have been demoted on Tier 3, the support suspension measure does not automatically come into effect right after a given country has been placed on Tier 3. This is due to the fact that the US President is entitled to apply the Presidential Waiver for any countries that have landed on Tier 3 if the President establishes that the decision would benefit the US, or if the waiver would avoid causing any indirect impact on vulnerable population including women and children (The Secretariat of the House of Representatives, 2015). Thai government has made efforts to deal with human trafficking by conducting national policy, implementing preventive measures and engaging in law enforcement measures. However, it would be difficult to pinpoint to what degree Thailand fit into proper legal tools. This is because

the nature of trafficking crime is often transnational in both commission and complicating the investigation and prosecution. (Muangtham, 2016)

On the whole, there have been reports on the US's sanctions announcement on countries already known for other ongoing disputes, such as Myanmar and North Korea. This could also indicate that, in the case of the US, applying one's own standards to assess other influential countries, such as China and Saudi Arabia would most likely create more challenges to the operation against trafficking in persons since these countries may reveal less key information pertaining to trafficking situations in their countries which could limit further international cooperation beneficial to anti-human trafficking operations (Feingold, 2005).

Nonetheless, Thailand appears to be guarding a lot of anxiety concerning the US's assessment. As a consequence, The Royal Thai Police's direction in prevention and suppression of trafficking in persons has been adjusted accordingly and immediately. Using the result of the US's assessment published in the 2014 report on human trafficking as the main reference, particularly in parts where it points out that Thailand lacks law enforcement; officers failing to investigate and prosecute; prevalent corruptions amongst officers at every level of the unit; ineffective segregation process; incompetent labor protection especially among those working in fishing industry.

As a consequence, numerous reading materials for meetings, reports, and 2014 work plan regarding the suppression of trafficking in persons produced by the Royal Thai Police would often refer to particular accusations in the US's report on human trafficking key situations for trafficking situation in Thailand. For instance, in the reading materials on policies and guidelines delivery regarding trafficking in persons, the measures corresponding to the US's accusations were clearly stated one by one which proves that these measures had been merely established to resolve the US's accusations rather than being developed independently based on realistic trafficking situations in Thailand, or genuinely created to respond to regional collaborative mechanisms.

Therefore the context of APSC has not, in any way, influenced the forming of measure or policy direction concerning operations against trafficking in persons of the Royal Thai Police, especially when compared to the amount of pressure from the superpower such as the US and, not to mention, an anxious society that fears Thailand would be losing its benefit with the US sanctions.

ASEAN Political-Security Community: An Ideology Yet to Be Realized

The enthusiastic movement on the part of the Royal Thai Police in adjusting its anti-trafficking operations, in a sense, proves to provide an extraordinarily positive input to the work against trafficking in persons in Thailand as a whole. Yet on the flip side, this reflects the US's significant role in applying pressure on Thailand. Furthermore, this also reflects the APSC's failure in its effort to encourage the ASEAN community in relying on its own mechanisms when it comes to resolving certain obstacles and challenges in the region.

All in all, the factors leading to APSC's current state of powerlessness may be summarized, structurally, as follows. The ASEAN community has not succeeded in building common values due to the diversity of political cultures amongst the member countries and that each of them has yet to indisputably direct themselves towards building community interests. This is partly due to ASEAN's weak institutional infrastructure in promoting the common ASEAN values, especially that of the ASEAN Secretariat (Kanjanaikit, 2016), combining with the regional practice of

“ASEAN Way” that does not allow intervention in the domestic affairs of each member country. All of these have limited ASEAN to effectively mobilize their cooperation.

Furthermore, highly sensitive issues instilled in each member country or amongst all of them are still much prevalent and are preventing the community to utilize their mechanisms in resolving and dealing with challenging issues. To provide a clear example, almost every country has not shown a willingness to accept ASEAN’s assistance when it comes to their internal affairs in spite of the implications or effect these issues could have on the whole region; whether regarding the development in Myanmar or the air pollution issue. Likewise, bilateral issues especially along the borderline would also decline ASEAN’s involvement (as for the case of Singapore and Malaysia in 2009, both countries preferred to use the mechanism of the International Court of Justice - ICJ rather than ASEAN’s own in resolving the disputes).

Meanwhile, despite ASEAN’s effort to create the principle of “ASEAN centrality” in the region, the interactions among the superpowers have created limitations for ASEAN in driving regional mechanisms towards becoming an “ASEAN agenda”, especially concerning regional stability which still largely relies on the active role of other countries beyond the region. Therefore, it appears to be crucial for ASEAN to build important partnership with countries outside the ASEAN community. In some cases, balance of power may be needed so as to set boundaries against domination from any of the superpowers (Department of ASEAN Affairs, 2011) which could prevent ASEAN from achieving genuine solidarity.

Notwithstanding the fact that, at present, the Pillar concerning the APSC has been established and mobilizing Action Plans to achieve solidarity in the region; to create a peaceful, yet, strong and accountable community ready to resolve any security issues in the region in every dimension; and a community that would create a dynamic region, with vision towards the outer world where more and more inclination towards interdependence and building unions could be perceived. Nevertheless, the Royal Thai Police’s apparent enthusiasm to reorient its operations in preventing human trafficking since 2014 onwards has proven that, under the pressure of the superpower, the region’s mechanisms may not be an effective one. This also reflects that, eventually, the APSC still remains an intellectual ideology which has yet to create any transformative implications.

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