Chapter 3

ASEAN’s Struggle to Combat Human Trafficking

Human trafficking has tremendously affected the ASEAN region and has been on the ASEAN transnational crime agenda since the 1990s.¹ In an effort to tackle this scourge, ASEAN has created counter-human trafficking strategies, addressed it in various agreements as a transnational crime,² designed structures to counter-human trafficking,³ and assigned two human rights bodies: ASEAN Inter-Governmental Commission on Human Rights (AICHR) and ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) to deal with this phenomena.⁴

Although ASEAN has established various legal instruments and guidelines, they contain ineffective mechanisms to deal with human trafficking. These instruments are unequal in their approaches at gender sensitivity, contain ambiguous and insufficient anti-human trafficking content, lack trafficking victims protection, and exhibit no common anti-human trafficking norms. In addition, even though ASEAN has created a three-pillar community to promote and protect the rights of people (including protection from human trafficking), it is ill-suited to this purpose because it separates the issue from labor migration, which is closely intertwined with the issue of human trafficking. Lastly, although ASEAN created AICHR and ACWC to protect the rights of all

¹ See Annuska Derks, Combating Trafficking in South-East Asia: Review of Policy and Programme Response 16 and 20 (2000).
and prevent exploitation, ASEAN has failed to authorize them with the fundamental functions needed to do so, in particular a monitoring system.

Chapter 5 will further discuss the recommendation that ASEAN draft the ASEAN Declaration on the Promotion and Protection of the Rights of Trafficking Victims (ADTV), a new regional anti-human trafficking law which will stipulate sufficient measures of prevention, protection, and prosecution. These measures will be effectuated through the ASEAN Commission on the Promotion and Protection of Trafficking Victims (ACTV) a monitoring human rights body which will specialize in preventing human trafficking, protecting all groups of trafficking victims, and prosecuting perpetrators of human trafficking. This chapter, Chapter 3, is divided into three sections, which will cover the inadequacy of the current counter-human trafficking law, its dysfunctional counter-human trafficking structure, and insufficient powers for existing human rights bodies dealing with human trafficking in an effort to show the need for the creation of the ADTV and ACTV.

3.1 **Inadequacy of Counter-Human Trafficking Law of ASEAN**

Most significantly, ASEAN lacks common norms to address the crisis of human trafficking in its region. Despite this lack of cohesiveness, ASEAN has made an effort to curb human trafficking by creating various agreements. These agreements and legal instruments have numerous shortcomings that confirm the need to draft an instrument such as the ADTV. These laws have been criticized based on their lack of force through the use of "hard" law. It will be posited that ASEAN’s traditional use of "soft" law mechanisms may very well be effective in tackling the problem of human trafficking in the region if coupled with a monitoring body that can help ASEAN strengthen its human trafficking laws and their implementation. A discussion of the advantages and disadvantages of using hard and soft law is necessary to better understand ASEAN’s preferences in creating their laws and guidelines.

3.1.1 **Lack of Common Counter-Human Trafficking Norms**

Since not all of the ASEAN member countries have ratified the U.N. Palermo Protocol, the region lacks common standards for addressing human trafficking. The majority of the member countries, except Brunei, Singapore, and

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