

Voluntarism and Regional Integration: ASEAN's 20 Years of Cooperation on Human Trafficking

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Abstract: What does ASEAN's twenty-year cooperation on human trafficking say about regional integration? This paper assesses ASEAN's capacity to solve the region's long-lasting human trafficking problem. ASEAN is generally treated as a weak institution in one of the most state-centric regions, and human trafficking is a difficult problem even for strong institutions due to its transnational nature and push-and-pull incentives. The approach in this paper is to find the causal mechanisms between international organizations and effective international cooperation in this least-likely case. By compiling ASEAN's policy documents and examining its institutional arrangements and national implementation from 1997 to 2015, this study has two major findings. First, ASEAN's human trafficking cooperation emerged as an initiative to rebuild its organizational integrity during the 1997 Asian Financial Crisis, but it has been incrementally developed and maintained through its initially non-binding agreements. Second, ASEAN's cooperation on human trafficking was not merely on paper, but was implemented at the domestic level in the form of legal harmonization, which is a sign of ASEAN's progress towards regional integration. By highlighting voluntary and slowly formalizing cooperation this study presents a more hopeful picture of ASEAN cooperation, and suggests a new approach to studying regional integration.

Keywords: ASEAN, Human Trafficking, International Migration, Refugee Crises, International Organisations, International Cooperation, Non-Traditional Security, Regional Integration

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“ASEAN's integration should be rule-based and supported by a better institutionalized regional cooperation. [...] Being based more on personal and informal relations, ASEAN will no longer be adequate for the future.”¹

1 Introduction

Before 1997 the Association of Southeast Asian Nations (ASEAN) countries focused their cooperation almost exclusively in the areas of military and economic affairs. To ensure peace and security during the Cold War, the non-communist, small to medium-sized Southeast Asian states founded ASEAN in the late 1960s to balance against their communist neighbors. For three decades, ASEAN countries' cooperation was deepened but it was still confined to the military and economic cooperation that was its original *raison d'être*. Throughout the first few decades of its existence ASEAN was regarded as a 'dictators' club' – it was not only criticized for members' poor human rights records, but also its “weak institutions, effects of familiarity, consensus building, consultation, non-coercive argumentation, avoidance of legalist solutions to distribution problems”.² Before the late 1990s, ASEAN members seemingly did not care about this criticism. Instead, they took pride in the 'ASEAN Way', stressing non-interference and peaceful conflict management, as opposed to the deep integration and institutionalization of its counterpart, the European Union (EU). An article from The Straits Times showed that the ASEAN's informality was deeply entrenched:

“But he [a delegate from the ASEAN Inter-Parliamentary Organization] agreed with an MP [Member of Parliament] from the Australian observer delegation who said he learnt more during ‘very fruitful’ discussions with local MPs and ministers over dinners than in the formal meetings. Herein lies the gathering's real value, for much is gained from the social functions in terms of building the personal ties so vital to the organization.”³

In the late 1990s ASEAN nevertheless expanded their cooperation into areas outside of the traditional scope of the regional organization. One of the changes was that it started cooperating in human rights areas, including human trafficking, one of the many human rights issues that had existed in the region but been ignored by the organization. Another change is that they initiated a long process of making rules and institutions to gradually formalize those cooperative policies. The transformation of ASEAN is conspicuous especially when the two quotes above, including the one on top, are compared together. After almost 20 years, in November 2015, ASEAN countries signed the ASEAN Convention Against Trafficking in Persons, Especially Women and Children.

Although ASEAN is generally considered a weak regional institution, it has nevertheless been able to address human trafficking, a non-traditional security problem that is inherently

¹ Jusuf Wanandi, “Is ASEAN dead? – Revamp needed to become a community,” *The Straits Times*, December 20, 1998.

² Alastair Iain Johnston, “Socialization in International Institutions: The ASEAN Way and International Relations Theory,” *International Relations Theory and the Asia-Pacific*, ed. John Ikenberry and Michael Mastanduno (New York: Columbia University Press, 2003), 107.

³ Koh Buck Song, “Is Aipo Meeting held just for social talkshop?,” *The Straits Times*, September 20, 1998.

difficult to be addressed and resolved. Furthermore, it has addressed it in a way that produced a legally binding agreement. This raises the critical question of how did this happen.

To answer the question, I used process tracing in this least-likely case to find the causal mechanisms that could link a regional organization with the resolution of regional problems. Starting from 1997 to 2015, ASEAN's policy documents and progress reports provide empirical data regarding two aspects in interest: its institutional development, and national implementation.

Based on the longitudinal institutional analysis, the study finds a clear trajectory of incremental institutional development and legal harmonization, and therefore a deepening cooperation in ASEAN, at least in the area of human trafficking. Since 1997 ASEAN has deepened and formalized its human trafficking cooperation through successive agreements, with the later building of formal structures around the consensus established in the previous. Before the legally binding convention was signed in 2015, any of the treaties signed before had been described as toothless. However, when seen together, these treaties describe a larger trajectory, the current end product of which is legal harmonization. Even without the legally binding document, the ten ASEAN countries have generally complied with their agreements. Specifically, they shared not only common legislation, common law enforcement guidelines and practices, but they have also established criminal justice networks and specialist anti-trafficking units that would allow regional intelligence exchange, integration of training programs, cross-border coordination and shared investigative capacity. From a comparative perspective, criminal justice networks have had a long history and are well-established in Europe. All of these characteristics can be seen in the ASEAN implementation efforts.

From the study, we can see that recent criticism of ASEAN overlook the long-term trajectory of institutional reforms. These findings suggest that regional integration is not a state, but a slow-moving change. The more general contribution is that these findings, different from previous studies which show ASEAN integration in a rather bleak light, suggest that the emphasis on legally-binding agreements by International Relations might deserve a revisit, as much of ASEAN's cooperation appears to be voluntary, and deepening over time.

This research paper continues as follows. After the introduction, Section 2 reviews ASEAN's human trafficking cooperation in three aspects: the human trafficking problem in Southeast Asia, ASEAN's policy responses, and literature on the cooperation. Section 3 then describes the study's methodology and data sources. The results are presented in Section 4, which is followed by the discussion of a new approach to assessing regional integration in Section 5. Finally, the paper is concluded in Section 6.

2 ASEAN's Human Trafficking Cooperation

2.1 Human Trafficking in Southeast Asia

Human trafficking is one of the non-traditional security threats that has confronted Southeast Asia. Southeast Asia has had one of the largest populations of trafficked persons in the world. According to a study conducted by United Nations Office on Drugs and Crime (UNODC), Asia in general is the region where victims of trafficking are trafficked to the widest range of destinations.⁴ Despite the lack of good data recording the global trafficking trends, some scholars, international organizations and media tried to capture the general picture. For example, a 2006 study reported that one third of all women and children trafficked worldwide

⁴ "How Widespread Is Human Trafficking?," Human Trafficking FAQs, *UNODC*, accessed September 21, 2015, http://www.unodc.org/unodc/en/human-trafficking/faqs.html#How_widespread_is_human_trafficking.

are from Southeast Asia, with 60 per cent of these individuals residing in the ASEAN region.⁵ In 2015, the International Organization for Migration (IOM) reposted an article published by National Geographic, which collected data from the IOM and United Nations High Commissioner for Refugees (UNHCR) among other organizations. It shows that human trafficking is rife in Southeast Asia, with the increase of mass migration routes set off by sea usually from less developed countries such as Bangladesh, Indonesia, Myanmar and Thailand to relatively more developed countries such as Singapore and Australia (see Figure 1).

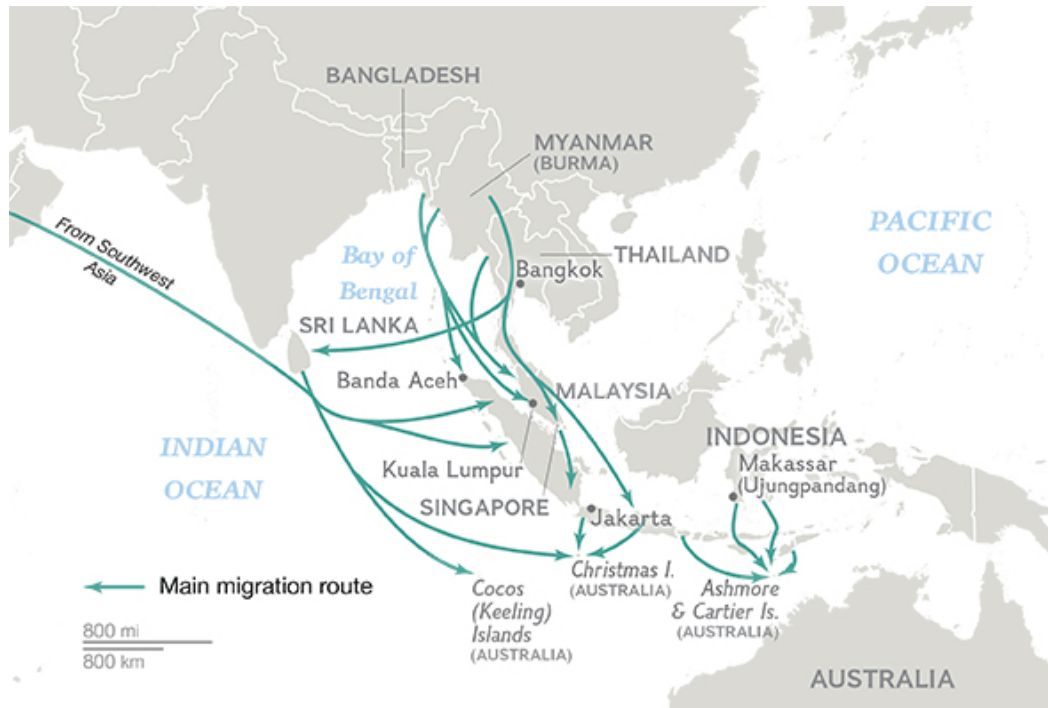


Figure 1. Human Migration Routes in Southeast Asia⁶

A more recent example of internal trafficking in Southeast Asian is the Rohingya Refugee Crisis, during which a large group of Rohingya fled from Myanmar to Indonesia, Malaysia and Thailand. According to UNHCR's report, there were as many as 25,000 people being trafficked in the meantime. In general, people are usually trafficked to Thailand in the Mekong sub-region and Malaysia in the archipelago, averaging a total of over three million undocumented migration workers between these two nations.⁷ Human trafficking takes many forms in the region, mainly in the categories of labour, sex and child trafficking.⁸ The reasons why human trafficking is widespread in Southeast Asia remain debatable. Some argue it is due to cultural and historical practices, such as "discrimination against women and minorities, classism,

⁵ Cheah Wuiling, "Assessing criminal justice and human rights models in the fight against sex trafficking: A case study of the ASEAN region," *Essex Human Rights Review* 3 (2006): 56.

⁶ Eve Conant, "The World's Congested Human Migration Routes in 5 Maps," *National Geographic*, September 19, 2015, <http://news.nationalgeographic.com/2015/09/150919-data-points-refugees-migrants-maps-human-migrations-syria-world/>.

⁷ Yvonne Rafferty, "Children for sale: Child trafficking in Southeast Asia," *Child Abuse Review* 16 (2007): 408; Jacqueline J. Larsen, "Migration and people trafficking in Southeast Asia," *Australian Institute of Criminology, Trends & issues in crime and criminal justice* 401 (November, 2010): 2, http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi401.pdf.

⁸ Kelsey Lee and Sau Lim, "The Effect of ASEAN on Human Trafficking in Southeast Asia," unpublished (university honors's thesis, American University, 2013).

colonial sex trading, endemic prostitution and concubinage”.⁹ Others believe that it is caused by complex push and pull factors. The rapid growth of some ASEAN economies pull low-income, largely undocumented workers from surrounding nations, while other countries experience push a large number of migrants to seek work abroad due to poverty, conflict or government oppression.¹⁰ The situation is exacerbated as the regional development level is becoming more uneven (see Figure 2).

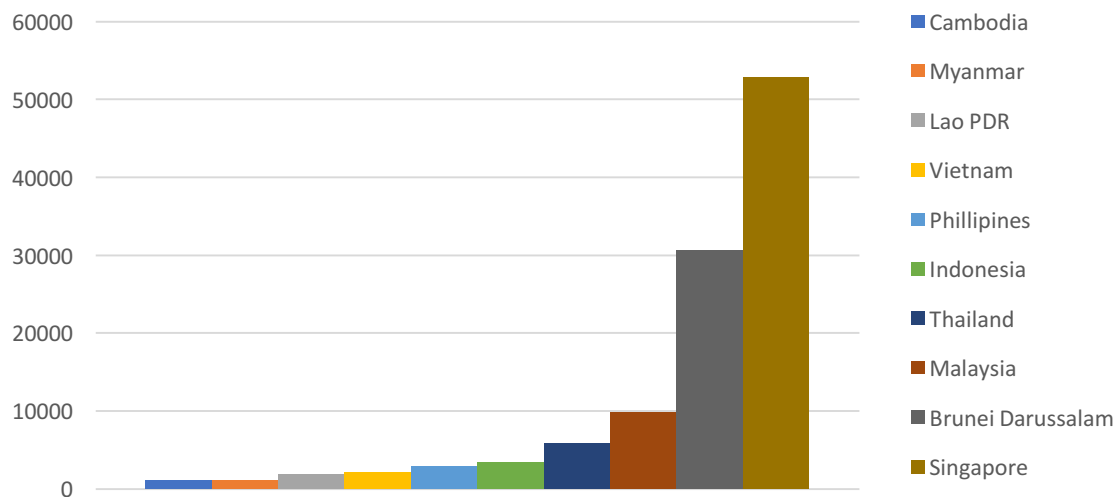


Figure 2. GDP Per Capita (Current US\$) by ASEAN Country

2.2 ASEAN's Policy Responses

Although human trafficking had long existed in Southeast, ASEAN as the major actor in the region did not cooperate on resolving the problem until the late 1990s. Its first policy document that addressed human trafficking was ASEAN Vision 2020. It was to “envision the evolution in Southeast Asia of agreed rules of behavior and cooperative measures to deal with problems that can be met only on a regional scale, including environmental pollution and degradation, drug trafficking, trafficking in women and children, and other transnational crimes”.¹¹ Then during the first ASEAN Conference on Transnational Crime in Manila on December 20, 1997, ten ASEAN countries signed the ASEAN Declaration on Transnational Crime to promulgate the earlier ASEAN Vision 2020. The declaration was aimed at eight transnational crimes that “can be met only at a regional scale”, one of which is trafficking in women and children.¹²

Later in 2004, ASEAN adopted the ASEAN Declaration against Trafficking in Persons, Particularly Women and Children in an ASEAN Ministers Meeting, identifying “the need for a strong, victim-centered criminal justice response”.¹³ As a follow-up measure to monitor and report the implementation progress, ASEAN has published three progress reports. They are (1)

⁹ Andrea Marie Bertone, “Sexual trafficking in women: International political economy and the politics of sex,” *Gender Issues* 18, no. 1 (1999), 4-22.

¹⁰ Kelsey Lee and Sau Lim, “The Effect of ASEAN on Human Trafficking in Southeast Asia,” unpublished (university honors’s thesis, American University, 2013), 11.

¹¹ “ASEAN Vision 2020,” Kuala Lumpur, 15 December 1997, available from http://asean.org/?static_post=asean-vision-2020.

¹² “1997 ASEAN Declaration on Transnational Crime,” Manila, December 20, 1997, available from http://www.asean.org/?static_post=asean-declaration-on-transnational-crime-manila-20-december-1997.

¹³ “2004 ASEAN Declaration against Trafficking in Persons, Particularly Women and Children,” Vientiane, November 29, 2004, available from http://www.no-trafficking.org/reports_docs/lao/laws/ASEAN-Declaration-29-November-2004-ENG.pdf.

ASEAN Responses to Trafficking in Persons: Ending Impunity for Traffickers and Securing Justice for Victims published in 2006; (2) Update and Supplement to the 2006 Study: ASEAN Responses to Trafficking in Persons: Ending Impunity for Traffickers and Securing Justice for Victims published in 2007; and finally (3) Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region published in 2011. In the meanwhile, some other relevant institutional arrangements including but not limited to plans of action, work plans, and criminal justice response guidelines for practitioners have also been developed.

On November 21, 2015, ASEAN leaders finally signed a legally binding anti-human trafficking convention, namely ASEAN Convention Against Trafficking in Persons Especially Women and Children, at the 27th ASEAN Summit in Kuala Lumpur, Malaysia. The discussion of developing such a convention on human trafficking started in 2011, when the ASEAN Leaders' Joint Statement in Enhancing Cooperation against Trafficking in Persons in Southeast Asia was adopted. The Heads of State/Government of the ASEAN countries acknowledged "the decision by the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) to explore the possibility of developing an ASEAN Convention on Trafficking in Persons".¹⁴

2.3 Literature and Research Lacunae

Despite the limited literature on ASEAN's cooperation in human trafficking as one of the NTS challenges, the literature has almost unanimously criticized the aforementioned instruments and cooperation. Neglecting the most recent 2015 Convention that is legally binding, other institutional arrangements were described as merely soft-law instruments which merely reiterated and expanded existing legal principles but are not legally enforceable.¹⁵ Rizal Sukma, the IR scholar specializing in Southeast Asia and ASEAN security issues, criticized that these measures were only constrained to the areas of information exchange, training and workshops for legal officials, and thus actual policy responses continued to be lacking.¹⁶ Ralf Emmers also criticized that the ASEAN's policy change in transnational crimes was merely a "rhetorical device, giving an illusion of progress".¹⁷ He pinpointed that it was a "non-binding, unspecific measure without addressing the question of funding, setting target dates, and establishing monitoring mechanisms to assess progress".¹⁸

One of the weaknesses of these studies seems to be that they do not follow longer period of ASEAN's cooperation and institutional development. It is possible that by looking at merely one point in the whole process, ASEAN progress becomes occluded. But if one looks at the whole institutional development process, it is likely that improvements in the cooperation can be found. This paper therefore assesses the effectiveness of ASEAN's human trafficking cooperation by taking a longitudinal approach.

¹⁴ "ASEAN Leaders' Joint Statement in Enhancing Cooperation Against Trafficking in Persons in Southeast Asia," Jakarta, Indonesia, May 8, 2011, available from http://www.asean.org/wp-content/uploads/images/archive/Joint_Statement_TIP.pdf.

¹⁵ Kelsey Lee and Sau Lim, "The effect of ASEAN on human trafficking in Southeast Asia," unpublished (university honors's thesis, American University, 2013), 38.

¹⁶ Rizal Sukma, "The Securitization of Human Trafficking in Indonesia" (working paper, no. 162, S. Rajaratnam School of International Studies, Singapore, 2008).

¹⁷ Ralf Emmers, "ASEAN and the securitization of transnational crime in Southeast Asia," *The Pacific Review* 16 (2003): 430.

¹⁸ *Ibid.*

3 Methodology

3.1 Least-Likely Case Study and Process Tracing

This is a qualitative study. I chose ASEAN and its human trafficking cooperation as the focuses of the study because the former has been commonly regarded as a weak institution, while the latter is inherently difficult to be achieved due to the regional scale of the problem. The push and pull factors also shape an unbalanced incentive structure which makes the ASEAN countries hard to cooperate. Combining these two factors constitutes a least-likely case study that allows us to find the causal mechanisms between regional organizations and the resolution of regional problems.

Given that previous studies on ASEAN's human trafficking cooperation do not follow longer periods of institutional development, I chose process tracing as the method for the longitudinal institutional analysis and therefore the assessment of the cooperation. It allowed me to trace the progress of national implementation for a longer period. Also, it could also capture the continuity and inter-relationship between its different institutional arrangements.

3.2 Data Sources

The nature of trafficking itself makes reliable data collection difficult, because of three identified difficulties exposed in previous literature.¹⁹ First, human trafficking involves a black-market community of largely undocumented workers and immigrants. Second, trafficked victims are seldom discovered and even when they are, the crimes are rarely reported to government authorities for the interest of the victims. Third, the degree of governmental transparency varies between countries and political institutions, further muddling the research on this issue and increasing the difficulty of collecting data with regard to human trafficking.

For international efforts to collect data and report the human trafficking situation worldwide, there are two major organizations which are taking up this responsibility. They are the US Department of State, which publishes trafficking reports annually,²⁰ and UNODC, which irregularly publishes the Global Reports on Trafficking in Persons.²¹ Although some may argue that these reports have led to an influx of data on trafficked populations internationally, they are still largely flawed as they have failed to collect complete, quantitative and comparable data. Some of them are even accused of being biased. For example, the annual reports of US Department of State classify countries into three 'Tiers' according to the human trafficking situation and the governments' responses. Critics have raised concerns about the inconsistency of US reports with the factual human trafficking situations in some countries due to the US government's political considerations. Thailand is one of the affected countries as it has been kept in Tier 3 (the worst one) despite its increasing efforts in combatting human trafficking, which some claim could be connected to the strained Thai-US relations since the military coup in Bangkok.²² As for UNODC's reports, not only are they published irregularly, the data is inconsistent in that the availability of different types of human trafficking-related data varies

¹⁹ Kelsey Lee and Sau Lim, "The Effect of ASEAN on Human Trafficking in Southeast Asia," unpublished (university honors's thesis, American University, 2013), 11.

²⁰ See <http://www.state.gov/j/tip/rls/tiprpt/>.

²¹ See <http://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html>.

²² Simon Tay, "Human-trafficking must be a priority for the ASEAN community, not just to please the US but for the good of its own people," *South China Morning Post*, January 24, 2016, accessed February 2, 2016, <http://www.scmp.com/comment/insight-opinion/article/1903821/human-trafficking-must-be-priority-asean-community-not-just>.

from country to country. These issues put together makes data from these reports less than ideal for inter-state comparison.

Apart from the current lack of reliable and systematic data, another area that makes data collection and analysis of human trafficking even more difficult is probably the ambiguity of the data. Most of the reports use domestic crime figures, such as persons investigated, arrested or charged with human trafficking offences, victims of trafficking identified, cases prosecuted for trafficking, etc. This type of data do not necessarily contribute to any meaningful inference, as high crime figures can either represent seriousness of human trafficking in a country, or merely the government's capacity to identify human trafficking crimes.

Conducting the institutional analysis means that my evaluation of ASEAN's cooperation measures "outputs" rather than "outcomes". Social outcomes can be affected by many things besides government, or, in this case, a regional organization. My study focuses on two aspects of outputs: institutional development, and national implementation. Institutional development is conceptualized as the extent to which ASEAN establishes an institution that can help "provide information, reduce transaction costs, make commitments more credible, establish focal points for coordination and, in general, facilitate the operation of reciprocity".²³ National implementation is then the ideal product of institutional development that countries comply with and implement what they agree to at the international level.

ASEAN's policy documents and progress reports on human trafficking from 1997 to 2015 provide empirical data regarding two aspects in interest: its institutional development, and national implementation. With regard to the institutional development, I selected ASEAN's three major institutional arrangements on human trafficking in addition to their follow-up documents such as plans of actions and work plans. The three agreements are chosen because they mark the key progress in ASEAN's human trafficking cooperation. They are:

- 1) ASEAN Declaration on Transnational Crime (1997);
- 2) ASEAN Declaration against Trafficking in Persons, Particularly Women and Children (2004); and
- 3) ASEAN Convention against Trafficking in Persons Especially Women and Children (2015)

Data regarding the national implementation, on the other hand, was collected from ASEAN progress reports. There have so far been only three available progress reports published by the ASEAN Secretariat. Requested by the Senior Officials Meeting on Transnational Crime (SOMTC), the ASEAN Secretariat was responsible for documenting achievements and progress of ASEAN's human trafficking cooperation. These progress reports include:

- 1) ASEAN Responses to Trafficking in Persons: Ending Impunity for Traffickers and Securing Justice for Victims (2006);
- 2) Update and Supplement to the 2006 Study: ASEAN Responses to Trafficking in Persons: Ending Impunity for Traffickers and Securing Justice for Victims (2007); and
- 3) Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region (2011)

Since there is no more progress report published after 2011, additional data was also collected from government websites for the national implementation progress.

²³ This conceptualization references Robert O. Keohane and Lisa L. Martin's. See Robert O. Keohane and Lisa L. Martin, "The promise of institutional theory," *International Security* 20 (1995): 42.

4 Results

4.1 Incremental Institutional Development

The institutional analysis of the three agreements in 1997, 2004, and 2015 shows that ASEAN countries have achieved striking progress in the regional cooperation on human trafficking. Although they have different focuses, there is one thing in common: one agreement contributes to the formation and enhancement of the subsequent, by providing breadth, depth, and legal status eventually. Without reading them in sequence the achievements of the regional cooperation on human trafficking is, as shown in previous literature, easily overlooked. In the following, the achievements of these three agreements are examined, followed by the discussion of their inter-relationship.

4.1.1 1997 ASEAN Declaration on Transnational Crime

At first glance, the 1997 Declaration does not fulfill what is required for it to be a legally binding agreement and thus would seem to have a limited effect on resolving the region's human trafficking problem. However, by closely examining the 1997 Declaration, the achievements of the agreement can be mainly categorized in two areas: (a) making long-term commitments possible; and (b) establishing a framework for coordination.

First, the agreement made long-term commitments possible. The 1997 Declaration established the regularly occurring ASEAN Ministerial Meeting on Transnational Crime (AMMTC). It serves as the primary vehicle to coordinate regional actions and continue the discussion of the issue by having the ASEAN Ministers met at least once every two years. Another institutional body, the Senior Officials Meeting on Transnational Crime (SOMTC), was also formed by the 1999 ASEAN Plan of Action to Combat Transnational Crime (1999 Plan of Action), a follow-up of the 1997 Declaration. It is convened annually and headed up by the AMMTC chair, which can also ensure that the issue is put on the agenda and discussed continuously.

Second, it established a framework for regional coordination. In the 1999 Plan of Action, the areas of actions to combat transnational crime were specified, including information exchange, legal matters, law enforcement matters, training, institutional capacity-building and extra-regional cooperation. By establishing the AMMTC and SOMTC, the general framework created at the beginning could be seen to be further specified, implemented and reviewed in the annual and biennial meetings later. This continuity is especially obvious in the 2004 Declaration, which is discussed in the next subsection. On top of that, putting forward the 1999 Plan of Action and 2002 Work Program to Implement the ASEAN Plan of Action to Combat Transnational Crime (2002 Work Program) is an example of how the initial efforts were followed up.

As a declaration that was put forward by ASEAN for the first time regarding transnational crimes, recognizing the issue at the regional level, establishing institutional bodies to ensure an ongoing discussion and commitments, and laying down the framework for future cooperation, the 1997 Declaration became a cornerstone for its regional effort in combating human trafficking in the future. That the 1997 Declaration was weak does not matter if one sees it as the first step in a long journey, and criticism of its weakness tend to miss its long-term importance.

4.1.2 2004 ASEAN Declaration Against Trafficking in Persons Particularly Women and Children

If the 1997 Declaration was the first ASEAN instrument targeting transnational crimes in general, then the 2004 Declaration was the first one ever that ASEAN adopted to specifically

combat human trafficking. From its substance, one thing that can be concluded as the most important achievement in the 2004 Declaration is that it seems to have a narrower focus not only of the issue itself (what), but also the way how ASEAN dealt with the issue (how).

First, it is no longer a declaration covering all the transnational crimes, but elevating the status of and targeting at human trafficking by itself, which had been “overshadowed by drug trafficking and terrorism”.²⁴ Second, the 2004 Declaration also illustrated a change in the way ASEAN intended to solve the problem of human trafficking, which was to focus on the criminal justice response. This further specified the areas of cooperation compared to the ones stated on the 1999 Plan of Action. Instead of embracing all areas including information exchange, legal matters, law enforcement matters, training, institutional capacity-building and extra-regional cooperation, the 2004 Declaration recognized “the need to strengthen legislative, law enforcement and judicial responses to ensure deterrent action is taken against persons involved in individual or syndicated activities of trafficking in persons, particularly women and children”.²⁵ Other than this statement, six out of eight provisions in the 2004 Declaration were also related to legal and law enforcement matters. Table 1 summarizes the 2007-2009 Work Plan to Implement the 2004 ASEAN Declaration against Trafficking in Persons, Particularly Women and Children, which illustrates what ASEAN countries agreed to cooperate in different areas. The focus on criminal justice response was later reaffirmed when the ASEAN Secretariat published the progress reports on ASEAN countries’ implementation of the 2004 Declaration.²⁶

This criminal justice approach has been criticized. For example, Rizal Sukma argued that it led to a lack of actual policy response when ASEAN treated the issue as an ordinary crime problem instead of “a security problem that requires stronger measure”.²⁷ However, having the focal point of coordination, i.e. to harmonize criminal justice response among the ASEAN countries is a necessary and significant step to deal with a cross-national problem like human trafficking. Without having the same laws, effective cooperation between cross-boundary law enforcement agencies, and an adherence to the same international standard, there is hardly any basis of cooperation among the ASEAN member states to begin with for combating human trafficking at the regional level.

Some other scholars also argued that the 2004 Declaration could not ensure enforcement because it is not legally binding.²⁸ Hao Duy Phan specifically criticized that the declaration is only like “general political commitment by nature rather than plans to take concrete steps”, without a “strong monitoring and reporting procedure”.²⁹ However, this is an overstatement. It is worth to emphasize again that any of these agreements cannot be analyzed by itself. After the 2004 Declaration, an ad-hoc working group on trafficking in persons was established in

²⁴ Kelsey Lee and Sau Lim, “The Effect of ASEAN on Human Trafficking in Southeast Asia,” unpublished (university honors’s thesis, American University, 2013), 36-37.

²⁵ “2004 ASEAN Declaration against Trafficking in Persons, Particularly Women and Children,” Vientiane, November 29, 2004, available from http://www.no-trafficking.org/reports_docs/lao/laws/ASEAN-Declaration-29-November-2004-ENG.pdf.

²⁶ They include the three progress reports published by ASEAN Secretariat, respectively “ASEAN responses to trafficking in persons: ending impunity for traffickers and securing justice for victims” (2006), “Update and supplement to the 2006 study: ASEAN responses to trafficking in persons: ending impunity for traffickers and securing justice for victims” (2007), and finally “Progress report on criminal justice responses to trafficking in persons in the ASEAN region” (2011).

²⁷ Rizal Sukma, “The Securitization of Human Trafficking in Indonesia” (working paper, no. 162, S. Rajaratnam School of International Studies, Singapore, 2008).

²⁸ *Ibid.*; Hao Duy Phan, *A Selective Approach to Establishing a Human Rights Mechanism in Southeast Asia: The Case for a Southeast Asian Court of Human Rights* (Leiden: Martinus Nijhoff Publishers, 2012), 89.

²⁹ *Ibid.*

2006 by SOMTC to oversee the execution of the anti-trafficking agenda. There was also the 2007-2009 Work Plan to Implement the 2004 ASEAN Declaration against Trafficking in Persons, Particularly Women and Children, similar to the 2002 Work Program for the 1997 Declaration as a follow-up with more concrete actions and timelines.³⁰ The document includes clear and detailed action lines, logistical or financial aspects of the actions, and time-lines to complement the declaration, showing the commitment of ASEAN countries to making the 2004 Declaration specific actions. Therefore, it appears that since the 2004 Declaration, there has been a deepening cooperation in human trafficking, particularly in the criminal justice aspect compared to the 1997 Declaration.

4.1.3 2015 ASEAN Convention Against Trafficking in Persons

If the major limitation of the previous two declarations is their non-binding nature, the ASEAN Convention against Trafficking in Persons that was adopted recently in 2015 appears to overcome the weakness as it is the first regionally binding instrument on trafficking in persons across the ASEAN region. However, the largest achievement reflected in the Convention should be that it turns the preceding declarations and other relevant policy documents, such as the Criminal Justice Responses to Trafficking in Persons: ASEAN Practitioner Guidelines, into a legally-binding instrument that is enforceable. From the text of the 2015 Convention, we can see substantial continuity. For one thing, the criminal justice approach was continued. A significant proportion of the 2015 Convention addresses ‘criminalization’, ‘prevention’, ‘protection’, ‘law enforcement’, and ‘international cooperation’.³¹ These areas of cooperation have been largely established from the 2004 Declaration, and were then continued and incorporated in the 2015 Convention.

In fact, not only is there continuity, the legal framework for the regional cooperation on human trafficking also appears to be further deepened. For example, the stipulations provide more specificity. In the section of criminalization, it not only urges for the criminalization of trafficking in persons, but it also specifies other relevant subfields that need to be criminalized, such as participation in an organized criminal group, corruption and obstruction of justice, etc.

4.1.4 Incremental Institutional Development

Summarizing all three ASEAN agreements on human trafficking, it can be found that these agreements are gradual and evolutionary. Having a legally binding agreement has been considered one of the most effective forms of international cooperation. A legally binding agreement can, indeed, ensure enforcement. In this case, the 2015 Convention would be the single most important agreement.

However, taking a longitudinal approach, since 1997 ASEAN has deepened and formalized its human trafficking cooperation through successive agreements, with the later building of formal structures around the consensus established in the previous (illustrated in Figure 3). When seen together, these agreements describe a larger trajectory of institutional reforms, which has been overlooked by criticisms against ASEAN. What this study’s findings illustrate is the importance of the cooperation’s beginning stages, which can be preparatory and experimental. Without the admission of a problem, the exploration of solutions, the deliberation process, and actual and continuous experiments, international cooperation just like

³⁰ “2007-2009 Work Plan to Implement the ASEAN Declaration against Trafficking in Persons, Particularly Women and Children,” Vientiane, June 25, 2007, in Update and Supplement to the 2006 Study: ASEAN Responses to Trafficking in Persons: Ending Impunity for Traffickers and Security Justice for Victims (Jakarta: ASEAN Secretariat, 2007), Appendix 5, 40-49, available from http://www.aaptip.org/2006/artip-tip-cjs/resources/specialised_publications/ASEAN%20Responses%20to%20TIP%20Study_Supplement_2007.pdf.

³¹ These areas of cooperation respectively constitute one chapter of the 2015 Convention.

any other domestic policymaking can hardly be effective. The study's institutional analysis therefore shows that ASEAN's human trafficking cooperation in human trafficking has achieved incremental and deepening institutional development.

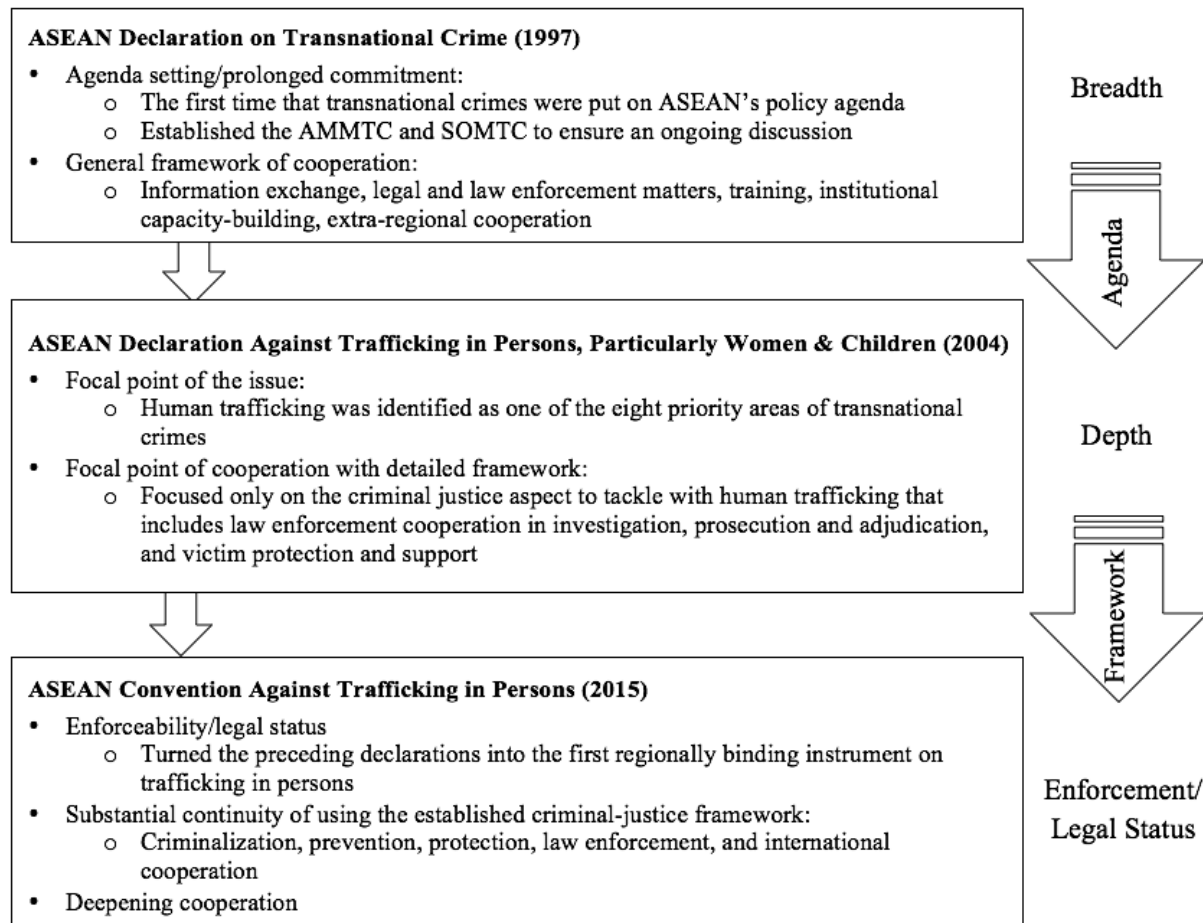


Figure 3. Incremental Institutional Development

4.2 Legal Harmonization

4.2.1 Criminalization

Criminalizing human trafficking is a significant step as it allows countries to record statistics, identify cases, and increase awareness more easily. More important, it allows the countries in the region to follow the same legal standards. After the ASEAN countries signed the 2004 Declaration which called for strong criminal justice responses, all ASEAN countries have developed specific laws on trafficking (see Table 1). It demonstrates their general compliance with the 2004 Declaration, despite its non-legally binding nature. One exception is the Philippines, which made its specific human trafficking law already before the agreement. According to the progress reports published by the ASEAN Secretariat, six countries including Brunei Darussalam, Indonesia, Lao PDR, Myanmar, the Philippines and Thailand incorporated the universal definition of trafficking in persons provided in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons into their national laws.

SPECIFIC NATIONAL LAWS ON HUMAN TRAFFICKING

BRUNEI DARUSSALAM	The Trafficking and Smuggling of Persons Order (2004)
CAMBODIA	The Law on Suppression of Human Trafficking and Sexual Exploitation (2008)
INDONESIA	The Act on Elimination of People Trafficking, Law No. 21/2007 (2007)
LAO PDR	The Law on the Development and Protection of Women (2004)
MALAYSIA	Anti-Trafficking in Persons Act (Act 670) (2007)
MYANMAR	The Anti-Trafficking in Persons Law (2005)
THE PHILIPPINES	The Anti-Trafficking Act (Republic Act No. 9208) (2003)
SINGAPORE	The Prevention of Human Trafficking Act (2015)
THAILAND	Anti-Trafficking in Persons Act B.E 2551 (2008)
VIETNAM	Law on Prevention and Suppression Against Human Trafficking (2012)

Table 1. Criminalization

4.2.2 Specialization in Law Enforcement

The second thing the ASEAN governments did with the criminal justice responses was to develop specialized law enforcement units, including police, prosecutors and judges, for human trafficking crimes. After the 2004 Declaration was signed, the ten ASEAN countries drafted a regional practitioner guideline, which recognizes that specialist trafficking units within national police forces is “key to a strong and effective criminal justice response to trafficking in persons”.³² The guideline also emphasizes the need to have prosecutors and judges who are “specially prepared and designed to undertake the preparation and presentation of TIP [Trafficking in Persons] and related prosecution” and can “undertake the management and adjudication of TIP related trials”.³³

As can be seen in Table 2, so far eight ASEAN countries have developed specialist anti-human trafficking units. Five out of seven ASEAN countries which provide available information have conducted special trainings for prosecutors and judges. Special legal protection and support for victims of trafficking are available in all ASEAN countries. Among them Lao PDF, Myanmar, Singapore and Vietnam provide relatively limited legal support and services to certain groups of trafficked victims, e.g. victims who are women or children.

³² “Criminal Justice Responses to Trafficking in Persons: ASEAN Practitioner Guidelines,” Vientiane, June 27, 2007, in Update and Supplement to the 2006 Study: ASEAN Responses to Trafficking in Persons: Ending Impunity for Traffickers and Security Justice for Victims (Jakarta: ASEAN Secretariat, 2007), Appendix 4, 34-39, available from http://www.aaptip.org/2006/artip-tip-cjs/resources/specialised_publications/ASEAN%20Responses%20to%20TIP%20Study_Supplement_2007.pdf

³³ *Ibid.*

	SPECIALIST TRAFFICKING UNITS	TRAINING FOR PROSECUTORS & JUDGES	VICTIM SUPPORT
BRUNEI DARUSSALAM	✓	✗	✓
CAMBODIA	✓	✓	✓
INDONESIA	✓	✓ (but limited)	✓
LAO PDR	✓	Information unavailable	✓ (but limited)
MALAYSIA	✗	Information unavailable	✓
MYANMAR	✓	✗	✓ (but limited)
THE PHILIPPINES	✓	✓	✓
SINGAPORE	✗	Information unavailable	✓ (but limited)
THAILAND	✓	✓	✓
VIETNAM	✓	✓	✓ (but limited)

Table 2. Specialization in Law Enforcement

4.2.3 Regional Institutions

The ASEAN governments did not stop at harmonizing domestic legislations and law enforcement and judicial support. Given the transnational nature of human trafficking, ASEAN governments have formed two important regional institutions (see Table 3). One is the Treaty on Mutual Legal Assistance in Criminal Matters among Like Minded ASEAN Countries (MLAT). The other is the Heads of Specialist Trafficking Units (HSU) Process.

MLAT, a regional treaty on mutual legal assistance that have been ratified by all ASEAN countries, has been recognized as “one of the most important legal tools enabling national authorities to counter transnational crime”.³⁴ It allows the countries to seek legal assistance from one another, typically to “obtain evidence, recover illegal profits of crime or obtain statements or documents for investigations or prosecution”.³⁵ If anything, its establishment illustrates mutual trust and willingness to cooperate among the ASEAN countries.

The HSU Process is a mechanism developed to facilitate police-to-police cooperation among the ASEAN countries. It is a formal process of communication between specialist anti-trafficking units established in 2004, originally supported by an Australian project called Asian Regional Cooperation to Prevent People Trafficking Project. It is to facilitate practical cooperation and intelligence exchange that are usually required during the investigation process. Originally comprised of four founding members, Cambodia, Lao PDF, Myanmar and Thailand, the HSU Process nowadays involve all ten ASEAN countries as members or observers. In 2009, it was formally incorporated into the ASEAN SOMTC structure.

The police-to-police cooperation among the ASEAN Member States cannot be underestimated as this high-level law enforcement cooperation is described as one of a kind. Through regular interactions between the heads of specialist anti-trafficking units, a strong inter-relationship can be shaped, forming an effective criminal justice network in which the

³⁴ “UNODC promotes regional extradition and mutual legal assistance network,” UNODC, <https://www.unodc.org/southeastasiaandpacific/en/2013/07/mla-workshop/story.html>.

³⁵ *Ibid.*

member states can work together to “identify and effect the rescue of previously unidentified victims, detain suspects both in the country of origin and destination, and secure high-quality evidence relating to these crimes.”

ASEAN MLAT		HSU PROCESS
BRUNEI DARUSSALAM	(2006)	Participant
CAMBODIA	(2010)	
INDONESIA	(2008)	
LAO PDR	(2007)	
MALAYSIA	(2005)	
MYANMAR	(2009)	
THE PHILIPPINES	(2008)	
SINGAPORE	(2005)	
THAILAND	(2013)	
VIETNAM	(2005)	
	Ratified	

Table 3. Regional Institutions

4.2.4 Ratification of International Treaties

Last but not least, almost all ASEAN countries are party to United Nations Convention against Transnational Organized Crime (UNTOC), and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Trafficking Protocol) (see Table 4). The ratification is important because it obliges the countries to criminalize and prevent trafficking, as well as to include core elements of human trafficking’s universal definition to ensure criminalization of all forms of trafficking. For instance, a definition that only includes trafficking for exploitation, trafficking in women and children, or does not distinguish between trafficking in children and in adults would not meet the international legal standards.³⁶ The fact that almost all ASEAN countries ratified both treaties implies they share the common legal standards, a precondition for regional cooperation on human trafficking.

	UNTOC ³⁷	UN TRAFFICKING PROTOCOL ³⁸
BRUNEI DARUSSALAM	✓ (2008)	✗
CAMBODIA	✓ (2005)	✓ (2007)
INDONESIA	✓ (2009)	✓ (2009)
LAO PDR	✓ (2003)	✓ (2003)
MALAYSIA	✓ (2004)	✓ (2009)
MYANMAR	✓ (2004)	✓ (2004)

³⁶ ASEAN, ASEAN Secretariat, Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region (July 2011), 7, available from http://www.ungift.org/doc/knowledgehub/resource-centre/ASEAN_Progress_Report_TIP.pdf.

³⁷ For details of the treaty, see https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=en.

³⁸ For details of the treaty, see https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&clang=en.

THE PHILIPPINES	✓ (2002)	✓ (2002)
SINGAPORE	✓ (2007)	✓ (2015)
THAILAND	✓ (2013)	✓ (2013)
VIETNAM	✓ (2012)	✓ (2012)

Table 4. Ratification of International Treaties

4.2.5 Legal Harmonization

Overall, it finds that the ASEAN countries have generally maintained compliance with the agreed obligations according to the 1997 Declaration and 2004 Declaration despite the lack of a legally binding agreement before 2015. From criminalization, specialization in law enforcement, regional institutions, and ratification of international treaties, ASEAN's human trafficking cooperation has demonstrated an unprecedented achievement and potential: legal harmonization.

From a comparative perspective, criminal justice networks have had a long history and are well-established in Europe. In general, there is a convergence of crime control laws, policies and practices among the European Union (EU) countries. Regarding human trafficking particularly, the European Police Office, a formal entity of the European Union, functions as a central mechanism for cooperation and communication among EU police agencies. Recognizing the commonly agreed international legal framework, which provides the universal definition of human trafficking, Europol helps prevent and combat trafficking with common operational standards and cross-border trafficking investigations.

Astonishingly, the above characteristics have been illustrated in ASEAN's human trafficking cooperation. In almost two decades since the first human trafficking-related declaration was made in 1997, based on the information collected from the three progress reports, and the updated data collected, ASEAN countries have shared common legislations, common law enforcement guidelines and practices in accordance with the key international treaties at the domestic level. Furthermore, they have also established criminal justice networks that would allow their specialist anti-trafficking units to cooperate. Examples include intelligence exchange, integration of training programs, cross-border coordination and shared investigative capacity. With the efforts of ASEAN, a process of legal harmonization in the regional human trafficking cooperation is, therefore, shown in Southeast Asia.

5 Towards a New Approach to Assessing Regional Integration

Many scholars have criticized the ASEAN for its lack of substantial regional integration. Any of the human trafficking cooperative efforts studied here have been described as toothless, especially compared to the supranational mechanisms that define the EU. That description, however, seems fair only when they are described in isolation. When seen together, the agreements including the 1997 and 2004 declarations and the 2015 Convention describe a larger trajectory, the current end products of which are incremental institutional development and legal harmonization.

ASEAN countries are, in the area of human trafficking, committed to developing further institutions and complying with similar laws. This is in some ways more impressive than the supranational integration of the EU, whose leaders see themselves as part of a historical mission to abolish inter-European wars, who lead countries that are quite similar in terms of culture, development level, and basic governance. The ASEAN countries, by contrast, are widely divergent in culture and development level, and their leaders are not compelled by their interpretation of history to bind themselves together so as to prevent future internecine wars.

Seen over two decades, ASEAN collaboration in the area of human trafficking represents genuine integration of a region, which at first glance might not be expected to be as ready for it as other regions. Furthermore, if one considers that the EU Migrant Crisis is largely the result of the EU's failure to maintain external borders, while the Rohingya Refugee Crisis is the product of Thailand's ability and willingness to crack down on human trafficking syndicates, then the relatively poorly integrated ASEAN is apparently a more effective institution than the EU.

At first glance, ASEAN, which has been roundly criticized as an apparently weak institution, might seem a poor candidate for a study on regional cooperation. It is, however, the generally accepted existence of those weaknesses that makes it so interesting as a case. The arguable success of the EU has provided one template of regional integration. ASEAN offers a possible second model of regional integration that is more bottom-up, based on voluntary collaboration, rather than top-down, based on supranational agreements and institutions. Non-traditional security in general, and human trafficking in particular, is a good area of cooperation to study because they serve as a benchmark of the process of regional integration, as scholars argue that it is multi-dimensional by nature.³⁹

6 Conclusion

So far studies on ASEAN have almost unanimously criticized it as a weak institution. In the case of its human trafficking cooperation, Ralf Emmers et al. argued that it was mainly about 'normative statement' and 'soft mechanisms' and doubted the effectiveness of its human trafficking cooperation.⁴⁰ The longitudinal institutional analysis of the cooperation shows that Emmers et al. were both right and wrong. They were certainly right that there were mainly normative statements and soft mechanisms in ASEAN's first two declarations on transnational crimes and human trafficking. But they clearly underestimated its long-term trajectory of institutional development. For many political systems including inter-governmental organizations, the beginning stages of policy making start with admission of a problem, the exploration of general directions and solutions, the deliberation process, and actual and continuous experiments. But it was through this process ASEAN countries found the focal point of coordination, i.e. the criminal justice approach. Such approach has led to the current product of legal harmonization in Southeast Asia.

This brief account tracked the process of ASEAN's human trafficking cooperation, a natural least-likely case study, and causal mechanisms that could link a regional organization with the resolution of regional problems. Two conclusions can be drawn from the preceding discussion. First, ASEAN's human trafficking cooperation shows that it has deepened and formalized its cooperation through successive agreements, with later agreements building formal structures around the consensus established in the previous. ASEAN's human trafficking cooperation can therefore be considered a long-term formalizing and institutionalizing process. Second, ASEAN's human trafficking cooperation has demonstrated an unprecedented achievement and potential: legal harmonization, an end product of its incremental institutional development. The

³⁹ Mely Caballero-Anthony, "Non-traditional security challenges, regional governance, and the ASEAN political-security community (APSC)," in *ASEAN and the Institutionalization of East Asia*, ed. Ralf Emmers (New York: Routledge, 2012), 29; Björn Hettne, "Beyond the 'new' regionalism," *New Political Economy* 10 (2005): 544; Kanishka Jayasuriya, "Embedded mercantilism and open regionalism: the crisis of a regional political project," *Third World Quarterly* 24 (2003): 339-355; Jean B. Grugel, "New regionalism and modes of governance – comparing US and EU strategies in Latin America," *European Journal of International Relations* 10 (2004): 606.

⁴⁰ Ralf Emmers, Beth Greener-Barcham, and Nicholas Thomas, "Institutional Arrangements to Counter Human Trafficking in the Asia Pacific," *Contemporary Southeast Asia* 28, no. 3 (2006): 504.

process of legal harmonization is particularly manifested in the aspects of criminalization, specialization in law enforcement, regional institutions, and ratification of international treaties.

The contribution of this paper to the study of regional cooperation in general and ASEAN in particular is that by studying ASEAN agreements over time, a clear trajectory becomes apparent. Regional integration is not a state, but a slow-moving change. Seen this way, the regional integration and institutionalization of the past two decades is striking. The more general contribution is that these findings suggest that the emphasis on legally binding agreements by IR might deserve a revisit, as much of ASEAN's cooperation appears to be voluntary. It also suggests that ASEAN offers a possible second model of regional integration that is more bottom-up, based on voluntary collaboration, a contrast to EU's template of regional integration that is top-down, based on supra-national agreements and institutions.

The key limitation of this paper is that without good data on human trafficking, the effectiveness of the ASEAN cooperation is largely inferential. If there is any good data that is made available in the future, a promising next step would be to do lower-level case studies to capture the on-the-ground changes brought by ASEAN's deepening cooperation. A second avenue of future research would be to do a more in-depth comparison between the EU and ASEAN's handling of their respective migration crises to better understand how and why these organizations failed or succeeded to respond to their respective crises. Finally, and tangentially related to this, given the apparent potential of large-scale irregular migration to challenge or destabilize the international system and regional organizations, it would be relevant to integrate the study of the push-and-pull factors that underlie irregular migration, such as development, insurgencies and arguably, climate change, into international relation study.