

Comparison of Anti-Trafficking Legal Regimes and Actions in the Council of Europe and ASEAN: Realities, Frameworks and Possibilities for Collaboration



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The opinions expressed in this work are the responsibility of the author and do not necessarily reflect the official policy of the Council of Europe.

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List of acronyms used

AAPTIP	Australia-Asia Program to Combat Trafficking in Persons
ACMW	ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers
ACW	ASEAN Committee on Women
ACWC	ASEAN Committee on Women and Children
AEC	ASEAN Economic Community
AHRD	ASEAN Human Rights Declaration
AICHR	ASEAN Inter-Governmental Commission on Human Rights
AIPA	ASEAN Inter-Parliamentary Assembly
AMM	ASEAN Ministerial Meeting
AMMSWD	ASEAN Ministerial Meeting on Social Welfare and Development
AMMTC	ASEAN Ministerial Meeting on Transnational Crime
APA	ASEAN Plan of Action against Trafficking in Persons, Especially Women and Children
APSC	ASEAN Political-Security Community
ARCPPT	Asia Regional Cooperation to Prevent People Trafficking Project
ARTIP	Asia Regional Trafficking in Persons Project
ASCC	ASEAN Socio-Cultural Community
ASEAN	Association of Southeast Asian Nations
ASEANAPOL	ASEAN National Police
ASEC	ASEAN Secretariat
ASEM	Asia-Europe Meeting
ASOD	ASEAN Senior Officials on Drug Matters
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CM	Committee of Ministers of the Council of Europe
CoE	Council of Europe

COMMIT	Coordinated Mekong Ministerial Initiative against Human Trafficking
CPR	Committee of Permanent Representatives
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
DGICM	Director-General of Immigration and Consular Matters
EC	European Commission
ECHR	European Convention on Human Rights
ECRI	European Commission against Racism and Intolerance
ECSR	European Committee of Social Rights
ECtHR	European Court of Human Rights
EU	European Union
EUROPOL	European Union Agency for Law Enforcement Cooperation
GRECO	Group of States against Corruption
GRETA	Group of Experts on Action against Trafficking in Human Beings
GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence
IAI	Initiative for ASEAN Integration
ICCPR	International Covenant on Civil and Political Rights (ICCPR)
ICMPD	International Centre for Migration Policy Development
ILO	International Labour Organisation
INTERPOL	International Criminal Police Organisation
IOM	International Organisation for Migration
MLAT	Mutual Legal Assistance Treaty
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
OSCE	Organization for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
READI	Regional EU-ASEAN Dialogue Instrument

SAARC	South Asian Association for Regional Cooperation
SOMSWD	Senior Officials Meeting on Social Welfare and Development
SOMTC	Senior Officials Meeting on Transnational Crime
TAC	Treaty of Amity and Cooperation
UN	United Nations
UN-ACT	United Nations Action for Cooperation against Trafficking in Persons
UNDP	United Nations Development Programme
UNHCR	Office of the United Nations High Commissioner for Refugees
UNIAP	United Nations Inter-Agency Project on Human Trafficking
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime

About the author

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I. Introduction

The last two decades have seen increased attention to the phenomenon of trafficking in human beings (THB), leading to many initiatives on the international, regional and national levels. THB has been recognised as one of the major global challenges of the 21st century¹ due to its overwhelming extent and presence throughout the world.

Europe, especially Western Europe, is one of the main destinations for trafficked people from across the world, with a large volume of intra-regional trafficking. A significant number of victims also come from Southeast Asia, especially Viet Nam, Thailand and Philippines. Furthermore, Southeast Asia is considered as 'a notorious hotbed for human trafficking'² in different forms and manifestations, including for sexual exploitation, forced begging, forced marriage, as well as trafficking and exploitation of workers in the fishing industries, garment production and construction work.³

Europe and Southeast Asia are the only regions in the world to have adopted comprehensive legally binding anti-trafficking conventions: the Council of Europe Convention on Action against Trafficking in Human Beings (CoE Trafficking Convention),⁴ adopted in 2005, and the ASEAN⁵ Convention Against Trafficking in Persons, Especially Women and Children (ASEAN Trafficking Convention),⁶ adopted in 2015.⁷ Yet, comparative analyses of these two anti-trafficking frameworks with a view to exploring avenues and obstacles for collaboration between the two regional organisations in addressing this global phenomenon have been wanting.⁸ This study seeks to bridge this gap by analysing the anti-trafficking frameworks and developments in the CoE and ASEAN to be used by experts, policy makers and practitioners.

¹ The European Conference on Preventing and Combating Trafficking in Human Beings: Global Challenge for the 21st Century (18-20 September 2002). See also the Brussels Declaration on Preventing and Combating Trafficking in Human Beings (14981/02, 29 November 2002).

² Jaya Anil Kumar, 'The Impact of Human Trafficking in ASEAN: Singapore as a Case-Study' (2016) *Asian Journal of International Law* 1.

³ Sallie Yea, *Human Trafficking in ASEAN* (Routledge 2014).

⁴ Convention on Action against Trafficking in Human Beings (adopted on 16 May 2005, entry into force 1 February 2008), CETS 197.

⁵ ASEAN has 10 member States: Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, and the Socialist Republic of Viet Nam. For more information on ASEAN as a regional organisation, see Annex 1.

⁶ ASEAN Convention Against Trafficking in Persons, Especially Women and Children (adopted on 21 November 2015, entry into force 8 March 2017).

⁷ In 2002, another Asian regional intergovernmental organisation - the South Asian Association for Regional Cooperation (SAARC) - adopted the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, which entered into force in 2006. However, this instrument takes a rather limited approach to human trafficking with the definition covering only trafficking for commercial sexual exploitation. See Ryszard Piotrowicz, 'South Asian Initiatives in the Fight Against People Trafficking', (2002) 76 *Australian Law Journal* 609; Asian Development Bank (ADB) and International Organization for Migration (IOM), 'Review of the SAARC Convention and the Current Status of Implementation in Bangladesh' (October 2009) available at http://ndc.gov.bd/lib_mgmt/webroot/earticle/371/Review_of_the_SAARC_Trafficking_Convention_Bangladesh.pdf; Anne Gallagher, *The International Law on Human Trafficking* (CUP 2010).

⁸ See, for example, Konrad Adenauer EU-Asia Dialogue, 'Trafficking in Human Beings: Learning from Asian and European Experiences' (2014); however, this study predated the ASEAN Trafficking Convention.

1.1. Human trafficking - key features and global trends

Human trafficking is a complex crime that involves exploiting people for economic gain through particular actions and means used as a way to secure control over them. It is thus different from people smuggling which refers to the procurement or facilitation of 'voluntary' and illegal cross-border transport of people in return for direct or indirect financial or other material benefit. In human trafficking, the ultimate purpose is *exploitation* of the individual concerned.⁹ While these two phenomena are formally distinguished by the adoption of the two Protocols supplementing the UN Transnational Organized Crime Convention, which contain their first universally agreed definitions,¹⁰ such difference is difficult to maintain in practice.¹¹

People are trafficked for numerous purposes including sexual exploitation, forced labour or services, domestic servitude or forced marriage, to name a few. The increased awareness of, and attention to, this phenomenon by international organisations, governments, civil society and the academic community have brought to light new types of exploitation such as forced begging, forced criminality, trafficking for the purpose of organ harvesting or trafficking of pregnant women to sell their new-born babies.¹² Men are exploited in labour intensive industries such as fishing, agriculture, construction and garment manufacturing, women are usually subjected to sex trafficking, forced marriage, domestic servitude or forced labour in garment manufacturing, while children are in addition trafficked for forced begging or child soldiering.¹³

Despite the variety of exploitative purposes, trafficking operations have one key element in common: the business around the exploitation of the victims.¹⁴ Accordingly, human trafficking represents a profit-driven exploitative practice in which human beings are treated as commodities. Owing to its high-profit/low-risk ratio, human trafficking has become an attractive venture for organised criminal groups, many of which are said to have shifted away from trafficking in arms, drugs and tobacco toward trade in humans.¹⁵ For example, human trafficking is one of the most lucrative illicit businesses in Europe, where criminals are reportedly making around 2.5 billion euros per year through sexual exploitation alone.¹⁶ According to ILO, forced labour¹⁷ in the private economy generates US\$ 150 billion in illegal profits per year globally, of which US\$ 51.80 billion are annual profits from forced labour in Asia-Pacific only.¹⁸

⁹ Council of Europe, Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings (2005), para 7.

¹⁰ Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime (adopted on 15 November 2000, entered into force on 28 January 2004) 2241 UNTS 507 and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (adopted on 15 November 2000) 2237 UNTS 319 (Palermo Protocol).

¹¹ Anne Gallagher, *The International Law of Human Trafficking* (CUP 2010). See also Tom Obokata, 'Smuggling of Human Beings from a Human Rights Perspective: Obligations of Non-State and State Actors under International Human Rights Law' (2005) 1(2) *International Journal of Refugee Law* 394.

¹² Anti-Slavery International, 'Trafficking for Forced Criminal Activities and Begging in Europe Exploratory Study and Good Practice Examples' (September 2014); UNODC, 'Trafficking in Persons for the Purpose of Organ Removal' (2015); David Smith, 'Nigerian 'Baby Farm' Raided - 32 Pregnant Girls Rescued' (The Guardian, 2 June 2011); available at <https://www.theguardian.com/law/2011/jun/02/nigeria-baby-farm-raided-human-trafficking>; 'Police in China Bust Baby Trafficking Ring, Rescue 37 Infants' (The Straits Times, 13 January 2015) available at <http://www.straitstimes.com/asia/east-asia/police-in-china-bust-baby-trafficking-ring-rescue-37-infants>.

¹³ UN-ACT, 'Sold to the Sea: Human Trafficking in Thailand's Fishing Industry' (2013); International Organization for Migration (IOM), 'Report on Human Trafficking, Forced Labour and Fisheries Crime in the Indonesian Fishing Industry' (2016); UNODC, 'Trafficking in Persons from Cambodia, Lao PDR and Myanmar to Thailand' (2017); Bridget Anderson, 'Worker, Helper, Auntie, Maid?: Working Conditions and Attitudes Experienced by Migrant Domestic Workers in Thailand and Malaysia' (ILO 13 December 2016); UN-ACT, 'Human Trafficking Vulnerabilities in Asia: A Study on Forced Marriage between Cambodia and China' (2016). See further Section II.2.

¹⁴ UNODC, 'Global Report on Trafficking in Persons 2014' (November 2014) 46.

¹⁵ John Salt and Jeremy Stein, 'Migration as a Business: The Case of Trafficking' (1997) 35(4) *International Migration* 467; Donna M Hughes, 'The "Natasha" Trade: The Transnational Shadow Market of Trafficking in Women' (2005) 53 *Journal of International Affairs* 625; Kimberly Thachuk (ed), *Transnational Threats* (Greenwood Publishing Group 2007); Louise Shelley, *Human Trafficking: A Global Perspective* (CUP 2010) 194.

¹⁶ UNODC, 'Trafficking in Persons to Europe for Sexual Exploitation' (2010) 7.

¹⁷ The ILO estimate captures virtually the full spectrum of human trafficking abuses, with the exceptions of trafficking for organ removal, forced marriage or adoption, unless the latter practices result in forced labour.

¹⁸ ILO, 'Profits and Poverty: The Economics of Forced Labour' (20 May 2014) 13.

As to the scale of the problem, ILO reports that at any given time in 2016, an estimated 40.3 million people are in 'modern slavery',¹⁹ including 24.9 in forced labour and 15.4 million in forced marriage.²⁰ These estimates are in a stark disproportion with the available data on prosecution and conviction rates worldwide. Thus, according to the United Nations Office on Drugs and Crime (UNODC), in the period between 2010 and 2012, some 40 per cent of countries reported less than 10 convictions per year and some 15 per cent of the 128 countries covered in the report did not record a single conviction.²¹ Worldwide convictions of human traffickers in 2016 were fewer than 10,000.²²

The global nature and patterns of human trafficking necessitate international collaboration. Yet national responses often impede this due to non-harmonised or often inadequate legal frameworks. Traffickers capitalise on the lack of co-operation between governments. The obstacles to effective international co-operation between states include non-harmonised legislation, too formal procedures for legal co-operation, problems with collecting evidence, difficulties in conducting financial investigations internationally, jurisdictional issues, as well as unequal training of officials and/or available resources.

Section II provides more detailed information on the patterns and trends in human trafficking specific to the two regions, followed by an outline of their anti-trafficking initiatives (Section III) and a detailed analysis of the two regional treaties (Section IV).

1.2. International anti-trafficking initiatives and legal framework

The UN Palermo Protocol was the first step in facilitating international collaboration through the adoption of a universal definition of human trafficking to be transposed in national jurisdictions and specifying other procedures for international co-operation. By October 2017 it had 171 parties, including all Council of Europe Member States and all Member States of ASEAN except Brunei Darussalam.²³ The Palermo Protocol's greatest success was the agreement on the first universal definition of human trafficking, which has since been adopted in a series of international and national legal and policy instruments, including both regional anti-trafficking treaties.²⁴ It also creates obligations of co-operation and information-sharing among States' law enforcement, immigration and other relevant authorities to investigate and prosecute trafficking.²⁵ Still, it has been criticised for its narrow focus on criminal law as a means to address the complex phenomenon of human trafficking.

Subsequent international initiatives shifted the focus from prosecution of traffickers to victim protection and prevention of THB. However, except for regional instruments adopted within Europe and ASEAN that will be analysed in detail below, much of the international efforts have been limited to 'soft law' instruments which, while contributing to a better understanding of this phenomenon and the best ways of addressing it, do not impose legal obligations on states.

¹⁹ According to ILO, the term 'modern slavery' covers 'a set of specific legal concepts including forced labour, debt bondage, forced marriage, slavery and slavery-like practices, and human trafficking.' International Labour Organization (ILO) and Walk Free Foundation, 'Global estimates of modern slavery: Forced labour and forced marriage' (2017). This typology is nevertheless questionable, since the term 'modern slavery' has not been defined in any international instrument.

²⁰ ILO, 'Global Estimates of Modern Slavery: Forced Labour and Forced Marriage' (September 2017).

²¹ UNODC, 'Global Report on Trafficking in Persons 2014' (November 2014). See also EUROSTAT, 'Trafficking in Human Beings' (2015) and European Commission Report, 'Report on the progress made in the fight against trafficking in human beings' (2016).

²² US TIP 2017 Report.

²³ https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsq_no=XVIII12a&chapter=18&clang=en (accessed 26 September 2017).

²⁴ However, 'substantial discrepancies' between EU Member States concerning national legislation to prohibit human trafficking and definitions (or interpretations) of what constitutes trafficking have been demonstrated by Mike Dottridge, 'Report on the Implementation of Anti-Trafficking Policies and Interventions in the 27 EU Member States from a Human Rights Perspective (2008 and 2009)' (E-notes 2010). See also Michelle Madden Dempsey, Carolyn Hoyle and Mary Bosworth, 'Defining Sex Trafficking in International and Domestic Law: Mind the Gaps' (2012) 26(1) *Emory International Law Review* 137; Jean Allain, 'No Effective Trafficking Definition Exists: Domestic Implementation of The Palermo Protocol' (2014) 7 *Albany Government Law Review* 111, who argues that States, during their domestic legislating processes, have developed a large range of very diverse readings of what constitutes 'trafficking in persons'.

²⁵ Articles 2 and 10, Palermo Protocol.

In addition to the specialised anti-trafficking treaties, also relevant are instruments providing protection to refugees and asylum seekers,²⁶ migrant workers²⁷ and persons with disabilities.²⁸

1.3. Regional initiatives

Many regional anti-trafficking initiatives have taken place since 2000.²⁹ Europe has been at the forefront of these developments with the 2005 CoE Trafficking Convention. Most recently, the Association of Southeast Asian Nations (ASEAN) has sought to develop a regional instrument to coordinate anti-trafficking efforts of its ten Member States. The ASEAN Trafficking Convention was adopted in 2015 and entered into force in March 2017. These two instruments are the specific subject of inquiry of the present study.

The Council of Europe has created the most advanced regional anti-trafficking legal framework. The CoE Trafficking Convention, which entered into force on 1 February 2008, has been celebrated as 'one of the Council of Europe's most important achievements in its 60 years of existence'.³⁰ The Group of Experts on Action against Trafficking in Human Beings (GRETA), set up by the CoE Trafficking Convention, is responsible for monitoring Member States' compliance with the State Parties' commitments under this Convention.³¹ It is considered, alongside the US State Department Trafficking in Persons annual reports, as the 'most important monitoring mechanism available'.³²

Moreover, due to a strong emphasis on the human rights dimension of the trafficking problem, highly relevant for the anti-trafficking action in Europe is also the European Convention on Human Rights (ECHR) and jurisprudence of the European Court of Human Rights, which has ruled that human trafficking violates the right to be free from slavery, servitude and forced labour, imposing upon States a range of positive obligations.³³

In Asia, most regional and sub-regional action against human trafficking has taken place within ASEAN or through bilateral arrangements.³⁴ In November 2015, ASEAN adopted the ASEAN Trafficking Convention, accompanied by the ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children. This coincided with the establishment of the ASEAN Community that is committed to a greater unity among its Member States with a strong focus on human rights protection. The ASEAN Secretary General thus emphasised 'a compelling and urgent need to systematically and purposively address the issue of trafficking in persons in the region'.³⁵ The ASEAN Trafficking Convention does not envisage a robust monitoring mechanism to oversee its implementation. While there are several ASEAN sectoral bodies undertaking work relevant to anti-trafficking action,³⁶ the Senior Officials Meeting on Transnational Crime (SOMTC) Working Group on Trafficking in Persons is officially charged with overseeing the implementation of the Convention and the ASEAN Plan of Action. However, its mandate and powers in performing this task have not been further specified.

²⁶ UN Convention relating to the Status of Refugees (28 July 1951).

²⁷ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (18 December 1990).

²⁸ Convention on the Rights of Persons with Disabilities (13 December 2006) and Optional Protocol to the Convention on the Rights of Persons with Disabilities (13 December 2006).

²⁹ US TIP 2017 Report contains a list of all regional initiatives with their relevant framework documents and respective focal points.

³⁰ Directorate General of Human Rights and Legal Affairs, '[Practical Impact of the Council of Europe Monitoring Mechanisms in Improving Respect for Human Rights and the Rule of Law in Member States](#)' (Council of Europe 2010) 12.

³¹ See further [Section 4.3](#).

³² Jan van Dijk, Fanny Klerx-van Mierlo, 'Quantitative indices for anti-human trafficking policies: based on reports of the U.S. State Department and the Council of Europe' (2014) 61 *Crime, Law and Social Change* 229-250.

³³ *Rantsev v Cyprus and Russia* (App25965/04) (7 January 2010).

³⁴ Asia-Europe Meeting, 'Human Rights & Trafficking in Persons: 15th Informal ASEM Seminar on Human Rights' (2016).

³⁵ H.E. LE Luong Minh, 'Regional Review on Laws, Policies and Practices within ASEAN relating to the Identification, Management and Treatment of Victims' (ASEAN 2016).

³⁶ See further Section 3.2.

1.4. Structure of the study and methodology

One of the main goals of the newly established ASEAN anti-trafficking framework is enhanced co-operation with relevant international organisations to strengthen the region's capacity to effectively combat trafficking in persons and provide assistance to victims of trafficking.³⁷ Accordingly, a careful examination of, and comparison between, the anti-trafficking frameworks, actions and initiatives in these two regional entities, as well as exploring avenues for future collaboration between the two regional bodies, is highly justified.

The following sections contain, first, a review of trafficking data, patterns and trends for the Council of Europe and ASEAN regions with a view to depicting the extent of the problem in these two regions (Section II). The study then outlines anti-trafficking initiatives, legal and policy frameworks and actions in the two regions (Section III) before focusing exclusively on the two anti-trafficking Conventions (Section IV). Finally, the study presents, in Section V, a balanced assessment of the needs and preconditions for successful collaboration between the two regions and any obstacles that may impede such initiatives. The study also contains two Annexes. Annex 1 presents an overview of ASEAN as a regional organisation, its foundations, goals, values and principles of collaboration between the Member States. This is deemed important for readers who are not familiar with ASEAN to enable them to understand the context in which anti-trafficking actions in the two regions have been developed and how this may affect potential collaboration in this field. Annex 2 includes a table that contains the status of ratifications of international treaties relevant for human trafficking by CoE and ASEAN Member States.

The study presents a desktop review of available sources: legal and policy instruments, studies produced by governments, international organisations, non-governmental organisations, and academic literature. In addition to the analysis of the two regional anti-trafficking conventions, the study identifies cross-cutting issues and recurrent themes in anti-trafficking actions in the two regions that invite collaborative engagement. It further offers a view of the possible ways for CoE and ASEAN to collaborate on these matters of common interest.

³⁷ ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children 2015 (APA) section IV, part D, para j.

II. Human trafficking in the Council of Europe and ASEAN Member States

This section offers an overview of data on human trafficking patterns and trends in the two regions, providing information on identified victims, types of exploitation, law enforcement data, as well as the main challenges facing countries in addressing it.

Any statistics on human trafficking must be considered with great caution, since precise data has thus far been impossible to obtain for many reasons, including the clandestine and illicit nature of human trafficking, victims' social 'invisibility' and reluctance to speak to authorities and service providers, and the conflation of trafficking with other crimes.

Most statistical studies use data reported by states and are therefore dependent on governments to be accurate. This is the case with, for example, UNODC, charged with promoting the implementation of the UN Palermo Protocol, which provides biannual reports focused on patterns and flows of human trafficking as well as on legislative and criminal justice responses to trafficking across the globe, divided by regions.³⁸ The annual report of the US Department of the State also provides global law enforcement statistics including data on trafficking victims, investigations, prosecutions, convictions, and sentences, provided by states.³⁹

Statistics on THB at EU level are contained in the reports of Eurostat, the statistical office of the European Union.⁴⁰ The data have been collected from official sources and provide information on registered victims, suspects, prosecutions and convictions. It must be borne in mind, however, that any available data on victims who have been formally identified and assisted by state and non-governmental institutions must not be extrapolated into general conclusions because assisted victims are not necessarily representative of all trafficked persons.⁴¹

For the Council of Europe region, the most authoritative information is provided by GRETA, the body responsible for monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings. GRETA carries out country visits and draws up and publishes country reports evaluating legislative and other measures taken by States Parties to give effect to the provisions of the Convention. GRETA's reports are based on countries' self-reported statistics that are, at times, cross-checked by the information provided by civil society organisations. While GRETA provides detailed individual country reports, it has not so far attempted to provide aggregate data combining statistics on State Parties to depict regional trafficking flows and trends. Likewise, no comparisons are made by GRETA between the performances of different countries nor does the expert group provide a quantifiable rating of THB policies and practices.⁴²

³⁸ UNODC, 'Global Report on Trafficking in Persons 2016' (2016).

³⁹ US TIP 2017 Report.

⁴⁰ EUROSTAT, 'Trafficking in Human Beings' (2015) available at <http://ec.europa.eu/Eurostat/en/web/products-statistical-working-papers/-/KS-TC-14-008-1>.

⁴¹ Rebecca Surtees, 'Another Side of the Story: Challenges in Research with Unidentified and Unassisted Trafficking Victims' in Sallie Yea (ed), *Human Trafficking in Asia: Forcing Issues* (Routledge 2014).

⁴² Jan van Dijk, Fanny Klerx-van Mierlo, 'Quantitative indices for anti-human trafficking policies: based on reports of the U.S. State Department and the Council of Europe' (2014) 61 *Crime, Law and Social Change* 229-250.

Accurate, robust and standardised data on human trafficking in ASEAN is even more wanting.⁴³ Notably, there is no regional analysis of the trafficking flows and trends for Southeast Asia specifically. Thus, the UNODC Global Reports discuss the ASEAN countries within the broader region of East Asia and the Pacific that also includes China, Mongolia, Japan and South Korea, as well as Australia and New Zealand, which makes it difficult to extrapolate any valuable information on the ASEAN region alone. As already noted, the ASEAN Trafficking Convention does not create a monitoring mechanism and does not envisage data collection (see further section 4.3).

Overall, data collection is considered as one of the main areas that need to be improved in order to strengthen global anti-trafficking responses. Accordingly, the information in this subsection are based on individual country reports from sources such as the US State Department, UNODC, the UN Special Rapporteur on Trafficking in Persons, GRETA, European Commission, reports of international and local NGOs, and academic research.

2.1 Human trafficking in the Council of Europe region

The Council of Europe, comprised of 47 states, is a diverse bloc encompassing countries with different socio-economic conditions.⁴⁴ Thus, countries belonging to Western and Southern Europe⁴⁵ are among the world's wealthiest. Central and Southeast Europe includes some EU Member States as well as the countries of the Western Balkans, with most of the countries in this sub-region having transitional economies.⁴⁶ Countries of Eastern Europe include former Soviet Union republics.⁴⁷

Western and Southern European countries are destinations for a large number of trafficking victims. Most trafficking flows, however, do not have a global dimension, and trafficking in human beings remains largely a regional and local phenomenon. A significant number of reported victims in EU are EU citizens (mainly from Central and Southeast Europe).⁴⁸ When it comes to victims from non-EU countries trafficked to the EU, Viet Nam has been on the top of the list over a three-year period, while Philippines and Thailand figure in the top 10.⁴⁹

⁴³ UNODC, 'Global Report on Trafficking in Persons 2014' (November 2014); Ngan Dinh, Conor Hughes, James Hughes, Margaret Maurer-Fazio, 'Human Trafficking in Southeast Asia: Results from a Pilot Project in Vietnam' (20 November 2014) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2528778; Jessie Bruner, 'Inaccurate Numbers, Inadequate Policies: Enhancing Data to Evaluate the Prevalence of Human Trafficking in ASEAN' (East-West Center 2015) available at <http://hl-128-171-57-22.library.manoa.hawaii.edu/handle/10125/37614>.

⁴⁴ There are different geo-schemes of Europe and the resulting country groupings. The one used in this report is based on the UNODC Global Reports on Trafficking in Persons.

⁴⁵ Western and Southern Europe: Andorra, Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey and the United Kingdom.

⁴⁶ Central and Southeast Europe: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia (Central Europe); Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Montenegro, Romania, Serbia, Slovenia and "the former Yugoslav Republic of Macedonia".

⁴⁷ Eastern Europe: Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova, Russian Federation and Ukraine.

⁴⁸ UNODC, 'Global Report on Trafficking in Persons 2016' (2016) 75. While the report draws on statistics covering more than a decade, the focus is on the 2012-2014 period. According to the EUROSTAT, 'Trafficking in human beings' (2015) report, the percentage of internal EU trafficking for the period 2010-2012 was 65 per cent. See also EUROPOL, 'Europol Situation Report: Trafficking in human beings in the EU' (February 2016).

⁴⁹ EUROSTAT, 'Trafficking in human beings' (2015) 39 (containing data for 2010-2012).

Central and Southeast Europe, on the other hand, is mainly an area of origin for victims of trafficking. Most of the trafficking originating in this region is directed towards Western and Southern Europe or to the richer countries in Eastern Europe.⁵⁰ However, this region is also a destination for trafficked persons. Thus, a large number of victims have been trafficked domestically, and about 15 per cent of victims were trafficked from a neighbouring country, especially victims from Eastern Europe. Long-distance flows mainly involve Asian victims trafficked to Central Europe. Victims of human trafficking for sexual exploitation from Philippines were registered in Albania and the Czech Republic.⁵¹ Further, Thai and Vietnamese men and women were subjected to forced labour in Slovakia. Vietnamese trafficking victims have also been reported in Poland (labour exploitation), Czech Republic (both sexual and labour exploitation), Russia (sexual exploitation) and the United Kingdom (illegal cannabis cultivation). Estonia and Lithuania have registered Vietnamese victims in transit towards Western European states.

As already noted, Eastern Europe has traditionally been considered as a place of origin of transnational and local trafficking flows. The UNODC report identifies this region also as a destination of cross-border trafficking flows. The cross-border trafficking flows follow patterns that have been observed in other regions: trafficking generally flows from poorer to richer countries.

Available data makes it clear that 'impunity is still rife' for trafficking in persons across the globe.⁵² Europe represents no exception to these trends. Thus, 4,079 prosecutions and 3,129 convictions for trafficking in human beings were reported in the EU for the period 2013-2014,⁵³ which is consistent with the trends reported in the previous period.⁵⁴ Data from countries beyond the EU, especially in Southeast and East Europe, reveals even lower figures.⁵⁵ GRETA has expressed concern about the gaps between the numbers of identified victims and the much smaller numbers of convictions.⁵⁶

Notably, the latest UNODC Global Report on Trafficking in Persons (2016) reveals that there is a close correlation between the length of time the offence of human trafficking has been on the statute books and the conviction rate.⁵⁷ Thus it takes time, expertise and resources to make progress and overcome challenges in addressing this complex crime.

2.2. Human trafficking in the ASEAN Region

There is a lack of accurate, robust and standardised data on human trafficking in Southeast Asia.⁵⁸ This problem was highlighted already in 2006, following a study by IOM on trafficking data in ASEAN.⁵⁹ A workshop was convened to discuss the research findings and several recommendations were reviewed and adopted by the SOMTC Working Group on Trafficking, including the use of a common definition of trafficking, the establishment of focal points on trafficking data reported to SOMTC, as well as a related template for reporting.⁶⁰ However, to date, progress on this issue has been minimal.

⁵⁰ UNODC, 'Global Report on Trafficking in Persons 2016' (2016) 81.

⁵¹ US TIP 2017 Report.

⁵² UNODC, 'Global Report on Trafficking in Persons 2016' (2016) 51.

⁵³ Report from the Commission to the European Parliament and the Council, 'Report on the progress made in the fight against trafficking in human beings' as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, COM (2016) 267 final (19 May 2016).

⁵⁴ EUROSTAT, 'Trafficking in human beings' (2015) (for the period 2010-2012).

⁵⁵ See for example, GRETA, Country Reports on Albania; Bosnia and Herzegovina; Bulgaria, Georgia; GRETA, Reply from Ukraine to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties Second evaluation round (Reply submitted on 3 July 2017).

⁵⁶ GRETA, '2nd General Report on GRETA's Activities' (2012).

⁵⁷ UNODC, 'Global Report on Trafficking in Persons 2016' (2016) Preface.

⁵⁸ Jessie Bruner, 'Inaccurate Numbers, Inadequate Policies: Enhancing Data to Evaluate the Prevalence of Human Trafficking in ASEAN' (East-West Center 2015) available at

<http://hl-128-171-57-22.library.manoa.hawaii.edu/handle/10125/37614>.

⁵⁹ IOM, 'ASEAN and Trafficking in Persons: Using Data as a Tool to Combat Trafficking in Persons' (2006).

⁶⁰ Jessie Bruner, 'Inaccurate Numbers, Inadequate Policies: Enhancing Data to Evaluate the Prevalence of Human Trafficking in ASEAN' (2005) 37.

Human trafficking in Southeast Asia is predominately a regional problem.⁶¹ Trafficking victims are usually migrants seeking better opportunities abroad who experience labour or sexual exploitation in a destination country. While a certain number of such victims are destined for countries in the Middle East, the US or Europe, the majority oscillate around wealthier countries in the region.

Some ASEAN countries are predominantly viewed as origin, transit or destination for trafficking victims, but there are cases where one country accounts for all. For example, while Singapore does not reportedly experience a high volume of human trafficking, it is considered a destination country for men, women and girls from other Asian countries subjected to sex trafficking and forced labour, a source country for Singaporean women and children subjected to sex trafficking, and a transit country for men from the Philippines, Indonesia, Cambodia and Viet Nam subjected to forced labour on fishing vessels that transit through Singapore or its territorial waters.⁶²

The type of exploitation largely influences trafficking flows. For instance, sex trafficking is significant in Thailand because Thailand's commercial sex industry is vast, with victims (predominantly women) coming from neighbouring countries like Myanmar and Cambodia.⁶³ Thailand is also the largest destination country for migrant workers from Cambodia, Lao PDR and Myanmar, a vast number of whom fall victims of human trafficking.⁶⁴ Victims of trafficking for forced labour and servitude are exploited in the commercial fishing and related industries, the poultry industry, agriculture and domestic work, or are forced into begging.⁶⁵ Thai nationals are trafficked to countries in different regions, including Australia, Bahrain, China, Germany, Israel, Japan, South Africa and the USA.⁶⁶

The Malaysian economy relies heavily on foreign migrant workers, notably from Bangladesh, Cambodia, Indonesia, India, the Lao PDR, Myanmar, Nepal, the Philippines, Thailand and Viet Nam.⁶⁷ While not all cases of migration result in trafficking, a significant number of refugees, asylum seekers and stateless persons, particularly those from the Filipino and Indonesian communities in Sabah and Rohingya from Myanmar, are increasingly reported as victims of trafficking in Malaysia.⁶⁸ Migrant domestic workers comprise mostly women from Cambodia, Indonesia and the Philippines. Though not all domestic workers are victims of trafficking, a large number of women and girls are trafficked into domestic servitude by employment agencies in their home country or employers in Malaysia, at times with the alleged complicity of State officials.⁶⁹ Malaysians on the other hand are trafficked to countries such as China, France, Japan, Singapore, Thailand and the UK.

⁶¹ See, for example, Leslie Holmes (ed), *Trafficking and Human Rights European and Asia-Pacific Perspectives* (Edward Elgar 2010); Michele Ford, Lenore Lyons and Willem van Schendel (eds), *Labour Migration and Human Trafficking in Southeast Asia: Critical Perspectives* (Routledge 2012); Napatran Kranrattanasuit, *ASEAN and Human Trafficking: Case Studies Thailand, Vietnam and Cambodia* (Brill Nijhoff 2014).

⁶² Konrad Adenauer EU-Asia Dialogue, 'Trafficking in Human Beings: Learning from Asian and European Experiences' (2014) 86; US TIP 2017 Report 357.

⁶³ Jaya Anil Kumar, 'The Impact of Human Trafficking in ASEAN: Singapore as a Case-Study' (2016) Asian Journal of International Law 1, 4.

⁶⁴ UN, Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo: Mission to Thailand (2 May 2012) A/HRC/20/18/Add.2; Environmental Justice Foundation, 'Sold to the Sea: Human Trafficking in Thailand's Fishing Industry' (2013); IOM, 'Trafficking of fishermen in Thailand' (2011), <http://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/countries/docs/thailand/Trafficking-of-Fishermen-Thailand.pdf>. See also Susan Kneebone and Julie Debeljak, *Transnational Crime and Human Rights: Responses to Human Trafficking in the Greater Mekong Subregion* (Routledge 2012)

⁶⁵ US TIP 2017 Report 391.

⁶⁶ UN Human Rights Council, Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo: Mission to Thailand (2 May 2012) A/HRC/20/18/Add.2.

⁶⁷ UN Human Rights Council, Report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro: Mission to Malaysia (1 June 2015) A/HRC/29/38/Add.1.

⁶⁸ Ibid.

⁶⁹ Ibid. See also Anderson B, 'Worker, Helper, Auntie, Maid?: Working Conditions and Attitudes Experienced by Migrant Domestic Workers in Thailand and Malaysia' (ILO 13 December 2016)

While Thailand and Malaysia (and Singapore to a certain extent) are predominantly destination countries, the Philippines faces significant challenges as a source country for trafficking. An estimated 10 million Filipinos work abroad, and a significant number of these migrant workers are subjected to sex and labour trafficking - usually via debt bondage - in the fishing, shipping, construction, education, home health care and agricultural industries, as well as in domestic work, janitorial service and other hospitality-related jobs.⁷⁰ In addition, unfavourable socio-economic conditions, armed conflict, clan feuding and natural disasters have resulted in huge internal trafficking within the Philippines, mostly from rural areas to urban cities.⁷¹ According to the US TIP Report 2017, young Filipino girls, boys and sibling groups are increasingly coerced to perform sex acts for live internet broadcast to paying foreigners; this typically occurs in private residences or small internet cafes, and may be facilitated by victims' family members and neighbours.

Like the Philippines, Indonesia is mainly seen as a source, and to a much lesser extent, destination and transit country for women, men and children subjected to forced labour and sex trafficking.⁷² The government estimates that 1.9 million of the 4.5 million Indonesians working abroad (mostly women) are undocumented or have overstayed their visas, increasing their vulnerability to trafficking. Malaysia remains the top destination for Indonesian migrant workers. According to the US State Department, there were extensive reports of Indonesian fishermen in forced labour, who were forced to fish long hours for low or unpaid salaries while incurring severe physical abuse. This occurred both in Indonesian and non-Indonesian waters. Further, Indonesian women and girls are subjected to sex trafficking, primarily in Malaysia, Taiwan and the Middle East.⁷³

Cambodian adults and children migrate to other countries within the region (and increasingly to the Middle East) for work and many are subjected to forced labour on fishing vessels, in agriculture, in construction, in factories and in domestic servitude - often through debt bondage - or to sex trafficking. Significant numbers of male Cambodians are said to be recruited in Thailand to work on fishing boats and subjected to forced labour on Thai-owned vessels in international waters. The UN has reported a significant number of women from rural areas being recruited under false pretences to travel to China to enter into marriages with Chinese men.⁷⁴ They often incur large debts to brokers facilitating the transaction and as a result some of them face forced factory labour or forced prostitution. Children from impoverished families are vulnerable to forced labour, often with the complicity of their families, including domestic servitude and forced begging in Thailand and Viet Nam.

Similarly, trafficking victims from Lao are often migrants seeking better opportunities outside the country who experience labour or sexual exploitation in destination countries, most often Thailand, as well as Viet Nam, Malaysia, China, Taiwan and Japan.⁷⁵ A large number of victims, particularly women and girls, are exploited in Thailand's commercial sex industry and in forced labour in domestic service, factories and agriculture. Lao men and boys are victims of forced labour in Thailand's fishing, construction and agricultural industries. Lao victims of forced labour in the Thai fishing industry have been identified in Indonesian waters.⁷⁶

⁷⁰ US TIP 2017 Report 326.

⁷¹ Human Rights Council, Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo: Mission to the Philippines (19 April 2013) A/HRC/23/48/Add.3.

⁷² US TIP 2017 Report 210.

⁷³ US TIP 2017 Report 211.

⁷⁴ UN-ACT, 'Human Trafficking Vulnerabilities in Asia: A Study on Forced Marriage between Cambodia and China' (UNDP 2016).

⁷⁵ US TIP 2017 Report 245.

⁷⁶ IOM, Report on Human Trafficking, Forced Labour and Fisheries Crime in the Indonesian Fishing Industry (2016).

Viet Nam is also a source country for trafficking victims who migrate abroad for work. Some are subjected to forced labour in construction, fishing, agriculture, mining, logging, and manufacturing, primarily in Taiwan, Malaysia, Republic of Korea, Lao PDR, Angola, United Arab Emirates, and Japan.⁷⁷ There are increasing reports of Vietnamese labour trafficking victims in the UK, continental Europe and the Middle East. Vietnamese-organised criminal networks recruit Vietnamese adults and children under pretence of lucrative job opportunities and transport them to Europe, particularly the UK, in order to subject them to forced labour on cannabis farms. Vietnamese women and children are subjected to sex trafficking abroad; many are misled by fraudulent employment opportunities and sold to brothel operators on the borders of China, Cambodia and the Lao PDR, and elsewhere in Asia, including Thailand, Malaysia, Republic of Korea, Taiwan, and Singapore.⁷⁸ In addition, there are reports of human trafficking within the country, where Vietnamese men, women and children are subjected to forced begging. Some children are also subjected to forced and bonded labour in informal garment and brick factories, in urban family homes, and in privately-run rural mines. Many children from impoverished rural areas, and a rising number from middle class and urban settings, are subjected to sex trafficking.

Myanmar (Burma) remains one of the most problematic countries in the region where human trafficking is concerned. In addition to a large number of Burmese people falling victim of human trafficking abroad, Anti-Slavery International notes that Myanmar is among a small number of countries (alongside Uzbekistan, North Korea and China) where the State or the military is directly responsible for the use of forced labour.⁷⁹ According to the US TIP 2017, officials are accused of using violence or threats to compel civilians into forced labour and activities related to the military's 'self-reliance' policy, under which military battalions are responsible for procuring their own food and labour supplies from local villagers, who in turn are at a significantly elevated risk of forced labour through the arrangement. Moreover, the Burmese military, civilian officials, border guard officials and ethnic armed groups are said to recruit or use child soldiers, particularly in conflict-prone ethnic areas. People from predominantly ethnic minority areas, especially the Rohingya Muslim minority from the Rakhine State, are at the greatest risk of this kind of exploitation. In addition, Burmese women are increasingly transported to China and subjected to sex trafficking and domestic servitude through forced marriages to Chinese men,⁸⁰ and there have been reports that Burmese government officials are occasionally complicit in this form of trafficking, as well as in the facilitation of the smuggling and exploitation of Rohingya migrants.⁸¹ Burmese men are subjected to forced labour in fishing, manufacturing, forestry, agriculture and construction abroad. Exploitation through debt bondage is exemplified by a case in which more than 60 migrant workers were trafficked for forced labour in a garment factory in the Din Daeng area of Bangkok.⁸² Although they were promised a monthly wage ranging from 7,000 to 10,000 baht (USD 223 to 319), they were paid only 200 baht (USD 6.40) per month, as they allegedly owed the employer debts of 15,000 baht (USD 479) for the costs of recruitment.

Finally, Brunei is reportedly a destination and transit country for men, women and children subjected to forced labour and sex trafficking.⁸³ Men and women from Indonesia, Bangladesh, China, the Philippines, Thailand and Malaysia migrate to Brunei primarily for domestic work. Upon arrival, some experience abuse in the form of debt bondage, non-payment of wages, passport confiscation, physical abuse or confinement that may qualify them as trafficking victims. Some migrants who transit Brunei become victims of sex or labour trafficking upon arrival in Malaysia or Indonesia, whereas some Bruneian women and girls are subjected to sex trafficking domestically.⁸⁴

⁷⁷ Ibid.

⁷⁸ Ibid. 427.

⁷⁹ Anti-Slavery International, 'Forced Labour: What is the Problem?' available at http://www.antislavery.org/english/slavery_today/forced_labour/default.aspx.

⁸⁰ BBC News, 'Burmese Girls "Sold as Brides" in Rural China' (24 November 2014) <http://www.bbc.com/news/world-asia-30180340>.

⁸¹ US TIP 2017 Report 108-109.

⁸² UN Human Rights Council, Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo: Mission to Thailand (2 May 2012) A/HRC/20/18/Add.2.

⁸³ Ibid.

⁸⁴ US TIP 2017 Report 101.

The most prominent and widely publicised trafficking cases in the region include exploitation in the Thai fishing industry and trafficking of the Rohingya minority from Myanmar. They attracted significant media attention worldwide and arguably acted as a catalyst for a prompt adoption of the ASEAN Trafficking Convention in November 2015.

Human trafficking of men and boys for exploitation on fishing boats has been 'notoriously widespread' in the region.⁸⁵ Still, it was not until 2015 that these practices were reported by the global media outlets and also connected to large supermarket chains that cater for western consumers. Associated Press thus reported trafficked fishermen from Thailand, Myanmar and Cambodia stranded on remote Indonesian islands, and traced their labour to international fisheries' supply chains.⁸⁶ An estimated 200,000 persons have been trafficked and forced to work in appalling conditions on Thai fishing vessels, with no pay and subjected to brutal subjugation.⁸⁷ Violence, forced detention and even murder are commonplace, while those perpetrating these crimes all too often go unpunished.⁸⁸ Nestlé's internal investigation published in November 2015 found that virtually all American and European companies buying seafood from Thailand are exposed to the same risks of abuse in their supply chains.⁸⁹

Rohingya Muslims are a large ethnic minority group in Myanmar with a long standing conflict with the predominantly Buddhist population of Myanmar. Continuous hostility and fears, exacerbated by their statelessness, led members of the Rohingya community to attempt to escape to other Southeast Asian States (mainly Malaysia, Indonesia and Thailand) via the Strait of Malacca and Andaman Sea. Investigative journalists uncovered evidence of Rohingya men fleeing persecution in Myanmar being sold by traffickers to Thai fishing boats for forced labour, especially if their families were unable to pay the ransom that the traffickers demanded.⁹⁰ In May 2015, graves have been discovered in Thailand in areas that apparently served as 'waiting areas' before transit into Malaysia, as a final destination.⁹¹ Reports have pointed to the involvement of Thai officials who allegedly facilitate or turn a blind eye to the trafficking in return for payments.⁹² Significantly, a court in Thailand recently convicted dozens of persons, including high-ranking officers, a former politician and police officers as well as smugglers in the country's largest ever human trafficking trial.⁹³

⁸⁵ UN Human Rights Council, Report of the Special Rapporteur on Trafficking in Persons Especially Women and Children, Joy Ngozi Ezeilo (2 May 2012) A/HRC/20/18/Add.2, para 9. See also IOM, 'Trafficking of Fisherman in Thailand (14 January 2011).

⁸⁶ Robin Mcdowell & Margie Mason & Martha Mendoza, 'AP Investigation: Are slaves catching the fish you buy?' (AP News, 25 May 2015) available at <https://apnews.com/b9e0fc7155014ba78e07f1a022d90389/ap-investigation-are-slaves-catching-fish-you-buy>.

⁸⁷ Ian Urbina, "'Sea Slaves': The Human Misery That Feeds Pets and Livestock' (The New York Times, 27 July 2017) available at <https://www.nytimes.com/2015/07/27/world/outlaw-ocean-thailand-fishing-sea-slaves-pets.html>.

⁸⁸ Environmental Justice Foundation, 'Sold to the Sea: Human Trafficking in Thailand's Fishing Industry' (2013) 9.

⁸⁹ Martha Mendoza, 'Nestle confirms labor abuse among its Thai seafood suppliers' (Associated Press, 23 November 2015) available at <https://www.ap.org/explore/seafood-from-slaves/nestle-confirms-labor-abuse-among-its-thai-seafood-suppliers.html>.

⁹⁰ Emanuel Stoakes and Chris Kelly, 'Sold From a Jungle Camp to Thailand's Fishing Industry: "I Saw 13 People Die"' (The Guardian, 20 July 2015) available at <https://www.theguardian.com/global-development/2015/jul/20/sold-from-jungle-camp-thailand-fishing-industry-trafficking> and Jason Szep and Stuart Grudgings, 'Special Report: Thai Authorities Implicated in Rohingya Muslim Smuggling Network' (Reuters 17 July 2013) available at <http://www.reuters.com/article/us-myanmar-exodus-specialreport-idUSBRE96G02520130717>.

⁹¹ Amnesty International, 'Deadly Journeys: The Refugee and Trafficking Crisis in Southeast Asia' (October 2015).

⁹² Andrew R.C. Marshall, Jason Szep and Arshad Mohammed, 'UN, US Call for Investigations into Thai Trafficking of Rohingya (Reuters 6 December 2013) available at <http://www.reuters.com/article/us-thailand-rohingya-reaction-idUSBRE9B50F820131206>.

⁹³ Oliver Holmes, 'Thailand Convicts Traffickers after 2015 Mass Graves Discovery' (The Guardian 19 July 2017) available at <https://www.theguardian.com/world/2017/jul/19/thailand-convicts-dozens-of-traffickers-after-mass-graves-discovery>.

Despite significant shortages in the quality of the law enforcement information for ASEAN countries, the limited data from the US State Department shows extremely low prosecution and conviction rates across the region.⁹⁴ Convictions for trafficking in human beings in 2016 in Cambodia, the Lao PDR and Myanmar were fewer than in 2015. Indonesia, Thailand and Viet Nam had the highest reported number of prosecutions (268, 256 and 275 respectively), while Singapore and Brunei only reported two and three convictions respectively.

2.3. Preliminary observations

While nationals of ASEAN Member States do not account for a large number of victims identified in Europe overall, some countries are significantly affected. For example, more children are trafficked into the UK from Viet Nam than from any other country.⁹⁵ UNODC estimates that 30 Vietnamese children arrive illegally in the UK every month, on well-established smuggling routes. An estimated 3,000 Vietnamese children are in forced labour in the UK, used for financial gain by criminal gangs running cannabis factories, nail bars, garment factories, and brothels.⁹⁶ In addition, victims from Viet Nam, Thailand and Philippines have been identified in Switzerland and Poland. Viet Nam is in the top five non-EU countries of origin of victims exploited in the EU.⁹⁷

On the other hand, there has not been much evidence of victims from the CoE region being identified in ASEAN Member States, except the instances of women and children from Azerbaijan subjected to sex trafficking in Malaysia reported in the US TIP 2017 Report.⁹⁸

Even though the available data does not reveal significant cross-regional trafficking between ASEAN and CoE countries, it shows that challenges facing both regions are similar. Victim identification, as one of the most important aspects of the anti-trafficking efforts, poses a significant challenge for many countries, and requires further capacity building for frontline officials, including law enforcement, migration and labour inspectorates. Child trafficking and exploitation remains an acute problem in both regions and requires immediate attention. Furthermore, improving the law enforcement responses is of utmost importance. This calls for improving the training of law enforcement officials, especially on the use of the internet and social media in recruiting victims, which is reported in both regions. Moreover, engaging the private sector in anti-trafficking actions is imperative for Member States of both the CoE and ASEAN, since legitimate businesses are frequently used as a cover for trafficking operations and exploitative practices. Finally, improving data collection is vital for both regions, since the absence of reliable data on the number of victims, investigations and prosecutions makes it difficult for States to design effective trafficking counter-measures. Accordingly, collaboration and exchange of knowledge and information between the CoE and ASEAN on anti-trafficking laws and policies and their implementation, as well on data collection and monitoring, is desirable and should be promoted in future.

⁹⁴ The US TIP reports use the three-tier assessment method of the anti-trafficking efforts of governments worldwide. This placement is based not on the size of the country's problem but on the extent of governments' efforts to meet the minimum standards for the elimination of human trafficking set up by its Trafficking Victims Protection Act of 2000 (TVPA), which are generally consistent with the Palermo Protocol. None of the ASEAN Member States are in Tier 1 of the US TIP Report.

⁹⁵ National Crime Agency, 'National Referral Mechanism Statistics' available at <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics>.

⁹⁶ Annie Kelly and Mei-Ling McNamara, '3,000 children enslaved in Britain after being trafficked from Vietnam' (The Guardian 23 May 2015) available at <https://www.theguardian.com/global-development/2015/may/23/vietnam-children-trafficking-nail-bar-cannabis>.

⁹⁷ European Commission, Report on the progress made in the fight against trafficking in human beings (19.05.2016) COM(2016) 267 final, 4.

⁹⁸ US TIP 2017 Report 76.

III. Overview of anti-trafficking initiatives in CoE and ASEAN

This section provides a review of anti-trafficking initiatives in the CoE and ASEAN, including their legal and policy frameworks, and collaborations with partner organisations on a regional/international level. It focuses on attempts to address the problem on the regional level and thus does not examine actions of individual states.

3.1. Council of Europe

The Council of Europe, with its 47 member States, is one of the three largest regional organisations in Europe with a mandate to address human trafficking, along with the European Union⁹⁹ and the Organization for Security and Co-operation in Europe (OSCE).¹⁰⁰

Human trafficking directly undermines the values on which the Council of Europe is based and cuts across a number of questions that are of immediate concern for the Council of Europe, such as sexual exploitation of women and children, protection of women against violence, organised crime and migration. Therefore, finding solutions to this problem is considered a top priority for the CoE.

The CoE Trafficking Convention was adopted by the Committee of Ministers on 3 May 2005, following a series of other initiatives by the CoE. The Convention entered into force on 1 February 2008 and GRETA, the expert body in charge of monitoring the implementation of the Convention by State Parties, started its work the following year. The Convention is accompanied by an Explanatory Report that represents an official aide for interpretation of its provisions.

There are three important characteristics that set this instrument aside from the previous anti-trafficking efforts. The first added value provided by the CoE Trafficking Convention is the affirmation that trafficking in human beings is a violation of human rights and violates human dignity and integrity, and that greater protection is therefore needed for all of its victims.¹⁰¹ The Convention entitles victims of trafficking to a wide range of mandatory assistance measures.¹⁰² The provisions of the Convention are elaborated in more detail in Section IV.

The second important advantage of the CoE Trafficking Convention is the inclusion of all forms of trafficking (national, transnational, linked or not to organised crime) for different forms of exploitation of women, men, and children. Significantly, the fact that a person is willing to engage in prostitution does not mean that she or he has consented to exploitation, which is explicitly highlighted in the Explanatory Report to the Convention.¹⁰³

As previously noted, the CoE Trafficking Convention sets up a monitoring apparatus to ensure that Parties implement its provisions effectively, consisting of GRETA and the Committee of the Parties. GRETA is comprised of 15 independent experts elected by the Committee of the Parties with a view to ensuring a gender and geographical balance and to securing the representation of the main legal systems.¹⁰⁴ GRETA issues country reports evaluating States Parties' progress in implementing the Convention and outlining the steps that need to be taken to improve compliance. The Committee of the Parties adds a political dimension to the evaluation process, thus giving it more weight.¹⁰⁵

⁹⁹ European Commission, 'Together Against Trafficking in Human Beings' available at <http://ec.europa.eu/anti-trafficking/>.

¹⁰⁰ OSCE, 'Combating human trafficking' available at <http://www.osce.org/combating-human-trafficking>.

¹⁰¹ [Explanatory Report](#), para 36.

¹⁰² Chapter III [CoE Trafficking Convention](#).

¹⁰³ [Explanatory Report](#), para 97.

¹⁰⁴ Council of Europe, 'About GRETA – the Group of Experts on Action against Trafficking in Human Beings' available at <http://www.coe.int/en/web/anti-human-trafficking/greta>.

¹⁰⁵ Chapter VII [CoE Trafficking Convention](#).

GRETA has developed relationships with a number of international organisations engaged in combating human trafficking, including the UN agencies (UNODC, UNICEF, UNHCR, ILO, IOM), EU, OSCE and the International Centre for Migration Policy Development (ICMPD).

3.2. ASEAN

Prior to the adoption of ASEAN Trafficking Convention in 2015, there were efforts to tackle human trafficking through initiatives directed against transnational crime and at protecting women and children. These instruments were non-binding in line with the preference of ASEAN Member States for soft-law over hard-law instruments.

In 1997, ASEAN leaders adopted the ASEAN Vision 2020, which expressed their commitment to working together to formulate 'agreed rules of behaviour and co-operative measures' to deal with 'problems that can only be met on a regional scale'. They specifically agreed to work together to combat trafficking in women and children. This was followed by the adoption of the ASEAN Declaration on Transnational Crime in the same year. The Declaration expressed the commitment to take 'firm and stern measures' to combat transnational crime, including the trafficking of women and children.

In order to give effect to the 1997 Declaration on Transnational Crime, the ASEAN Plan of Action to Combat Transnational Crime was put in place in 1999. To strengthen and co-ordinate ASEAN collaboration in combating transnational crime and implement the Plan of Action, ASEAN Member Countries agreed to establish a specific institutional framework comprised of the ASEAN Ministerial Meeting on Transnational Crime (AMMTC), as the highest policy-making body on co-operation in combating transnational crime, and the Senior Officials Meeting on Transnational Crime (SOMTC) tasked with implementing policies and plans adopted by AMMTC.¹⁰⁶

In 2004, the same year that ASEAN states signed the Declaration on the Elimination of Violence Against Women and agreed upon the Vientiane Action Program,¹⁰⁷ ASEAN states signed the ASEAN Declaration against Trafficking in Persons, Particularly Women and Children.¹⁰⁸ The declaration expressed the urgent need for a comprehensive regional approach to prevent and combat trafficking in persons, particularly women and children. Key commitments in the Declaration included: establishing a regional focal network to prevent and combat trafficking in persons, particularly women and children; undertaking regular exchanges of views and information on relevant migratory flows, trends and patterns; strengthening border control and monitoring mechanisms; and enacting applicable and necessary legislation.

In 2005, the ASEAN Inter-Parliamentary Assembly (AIPA), which contributes to the attainment of the goals and aspirations of ASEAN through inter-parliamentary co-operation,¹⁰⁹ passed a Resolution on Legal Cooperation in Combating Trafficking in Women and Children in the ASEAN region. The Resolution urged ASEAN states to take immediate, comprehensive and concerted actions to support drastic measures in preventing and combating trafficking in women and children, and aimed to ensure the effective implementation of existing laws related to trafficking in women and children through co-ordination of the national, regional and international communities.¹¹⁰

¹⁰⁶ For the ASEAN Organisation Chart, see Annex 1.

¹⁰⁷ 2004-2010 Vientiane Action Programme adopted in Vientiane, Laos on 29 November 2004.

¹⁰⁸ ASEAN Declaration Against Trafficking in Persons Particularly Women and Children 2004.

¹⁰⁹ AIPA, 'Background and History (From AIPO to AIPA)' <http://www.aipasecretariat.org/about-us/background-history/>.

¹¹⁰ ASEAN Inter-Parliamentary Organization, Resolution on Legal Cooperation to Combat Trafficking in Women and Children, Res. 26GA/2004//Soc/03.

SOMTC adopted the Work Plan to implement the 2004 ASEAN Declaration Against Trafficking in Persons, Particularly Women and Children in 2007. The Work Plan expressed the commitment of ASEAN Member States to strengthening the legal and policy framework around trafficking in order to promote more effective national responses as well as greater regional and international co-operation especially in relation to the investigation and prosecution of trafficking cases and the protection of victims.¹¹¹ In line with that goal, SOMTC was tasked with looking into the development of a binding ASEAN Convention to address trafficking in persons. It convened an expert working group to draft such a treaty and a corresponding regional plan of action for the Convention's operationalisation.¹¹²

After nine meetings and deliberations over a span of seven years, the ASEAN Experts Working Group Meeting, composed of experts on law enforcement, prosecution, social welfare, international law and human rights protection from each of the 10 ASEAN Member States, adopted the consensus texts of the provisions of the working draft initially prepared by the Philippines. In the course of drafting the ASEAN Trafficking Convention, SOMTC consulted a number of partners, including the Senior Officials Representatives from UNODC, the Australia-Asia Program to Combat Trafficking in Persons (AAPTIP) and INTERPOL to further strengthen co-operation and collaboration with these organisations.¹¹³

On 21 November 2015, during the 27th ASEAN Summit in Kuala Lumpur, the ASEAN Leaders signed the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ASEAN Trafficking Convention), and the ASEAN Plan of Action against Trafficking in Persons, Especially Women and Children (APA). The Convention entered into force on 8 March 2017, following the deposit of the instrument of ratification by the Philippines. To date, it has been ratified by eight out of 10 ASEAN Member States.¹¹⁴

The Convention designates SOMTC as the main body to oversee its implementation. SOMTC, which is convened at least once a year, implements policies and plans adopted by the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) and develops five-year work programmes to implement the ASEAN Plan of Action on Transnational Crime. SOMTC also promotes co-operation and co-ordination with other ASEAN bodies dealing with transnational crime, such as the ASEAN Senior Officials on Drug Matters (ASOD), the ASEAN Chiefs of National Police (ASEANAPOL), the ASEAN Directors-General of Customs and the ASEAN Directors-General of Immigration and the Heads of Consular Affairs of the Ministries of Foreign Affairs.¹¹⁵ In addition to SOMTC, another ASEAN platform dedicated to facilitating co-operation among ASEAN Member States in combating trafficking in persons is the HSU Meeting (the heads of the Specialist Trafficking Investigation Units of ASEAN Member States).

On the occasion of the 31st ASEAN Summit held in Manila in November 2017, ASEAN finalised the Bohol Trafficking in Persons Work Plan 2017-2020, the first cross-sectoral and cross-pillar action plan developed by ASEAN to address trafficking in persons in the region.¹¹⁶

Besides SOMTC, other ASEAN bodies relevant for the anti-trafficking action are ASEAN Inter-Governmental Commission on Human Rights (AICHR), ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), ASEAN Committee on Women (ACW), and ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW).

¹¹¹ ASEAN Senior Officials Meeting on Transnational Crime (SOMTC), 2007-2009 Work Plan to Implement the ASEAN Declaration Against Trafficking in Persons, Particularly Women and Children, See also ASEAN, 'Handbook on International Legal Cooperation in Trafficking in Persons Cases' (2010) 2.

¹¹² Jessie Brunner, 'Inaccurate Numbers, Inadequate Policies Enhancing Data to Evaluate the Prevalence of Human Trafficking in ASEAN' (East-West Center 2005) 37.

¹¹³ ASEAN, 'ASEAN to Enhance Cooperation in Combating Transnational Crime' (17 June 2015) <http://asean.org/asean-to-enhance-cooperation-in-combating-transnational-crime/>.

¹¹⁴ Indonesia and Brunei Darussalam have not yet ratified the ASEAN Trafficking Convention.

¹¹⁵ ASEAN Plan of Action to Combat Transnational Crime 2012 available at http://asean.org/?static_post=asean-plan-of-action-to-combat-transnational-crime.

¹¹⁶ The Bohol Work Plan has not been made public before the finalisation of this study. See further: <https://www.asean2017.ph/asean-adopts-first-cross-sectoral-work-plan-to-address-trafficking-in-persons/>.

As the main body overseeing human rights protection in ASEAN, the AICHR has a crucial role to play in framing human trafficking as a human rights problem instead of a security threat.¹¹⁷ Thus, it hosted a Regional Workshop on a Human Rights-Based Approach to Combat Trafficking in Persons, Especially Women and Children in November 2013. The Workshop discussed the adoption of a legally binding convention against trafficking in persons and a regional Plan of Action to combat trafficking in persons and highlighted the need 'to infuse the ASEAN Trafficking Convention with a human rights-based approach.'¹¹⁸ It has continuously maintained that regional policy discussions on trafficking should include a human rights dimension and gender perspective. Trafficking in persons has been identified as a thematic issue that will be subject to study in close consultation with sectoral and other relevant ASEAN bodies in its five-year work plan for 2016-20.¹¹⁹

The ACWC was established in 2009 and comprises 20 representatives of ASEAN Member States for women's rights and children's rights. Reporting to the ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD) that belongs to the ASEAN Socio-Cultural Community, the ACWC's mandates and functions include the development of policies, programmes and innovative strategies to promote and protect the rights of women and children. It is also tasked with upholding rights contained in the Convention on the Elimination of Violence Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), which all 10 ASEAN Member States have ratified. The ACWC meets at least twice a year and can hold additional meetings if required. Trafficking was one of the focus areas in its 2012-2016 Work Plan and included reviewing practices on treatment of victims of trafficking in order to strengthen the assistance mechanisms.¹²⁰ In 2016, ACWC produced a study entitled 'Regional Review on Laws, Policies and Practices within ASEAN Relating to the Identification, Management and Treatment of Victims of Trafficking especially Women and Children'. ACWC also produced 'The Gender Sensitive Guideline for Handling Women Victims of Trafficking in Persons' in 2016.¹²¹

The ACW was established in 2010 and is mandated to develop and implement programmes for the promotion and protection of women's rights in the region. It reports to the ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD), which is under the purview of the ASEAN Socio-Cultural Community. The ACW is tasked with addressing and monitoring the implementation of ASEAN's key priorities in the advancement of the status of women in the region.¹²²

The ACMW was established by the ASEAN Foreign Ministers in July 2007. ACMW aims to protect and promote the rights of migrant workers against exploitation and mistreatment; strengthen protection and promotion of the rights of migrant workers by enhancing labour migration governance in ASEAN countries and regional co-operation to fight human trafficking in ASEAN; develop an ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers. The ACMW reports to the Senior Labour Officials Meeting (SLOM).

¹¹⁷ For more information, see Annex 1.

¹¹⁸ Catherine Renshaw, 'Human Trafficking in Southeast Asia: Uncovering the Dynamics of State Commitment and Compliance' 37 Michigan Journal of International Law (2016) 611, 656.

¹¹⁹ AICHR, 'Five-Year Work Plan of the ASEAN Intergovernmental Commission on Human Rights (2010–2015)', available at http://aichr.org/?dl_name=AICHR_Five-Year_Work_Plan_2012-2015.pdf.

¹²⁰ ASEAN Secretariat, ACWC 'Work Plan 2012–2016 and Terms of Reference' (2013) 4, available at <http://202.183.149.112/images/users/admin/images/acwcworkplanandtor.pdf>.

¹²¹ ASEAN Secretariat, 'Gender Sensitive Guideline for Handling Women Victims of Trafficking in Persons' (2006) available at <https://acwc.asean.org/resources/publications/gender-sensitive-guideline-for-handling-women-victims-of-trafficking-in-persons/>.

¹²² Ministry of Social and Family Development, Government of Singapore, 'Singapore To Host Week-Long Series of ASEAN Meetings on Women's and Children's Issues' (2 October 2016), available at <https://www.msf.gov.sg/media-room/Pages/Singapore-to-host-week-long-series-of-ASEAN-meetings-on-women%27s-and-children%27s-issues.aspx>.

Besides the ASEAN Trafficking Convention, other ASEAN trafficking-specific instruments include:

- Guidelines for the protection of the Rights of Trafficked Children in Southeast Asia (2007)
- ASEAN Practitioner Guidelines on an Effective Criminal Justice Response to Trafficking in Persons (2007)
- ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases (2010)
- ASEAN Plan of Action against Trafficking in Persons, Especially Women and Children (2015).

In addition to these trafficking-specific instruments, the 2004 Mutual Legal Assistance Treaty (MLAT)¹²³ is highly relevant for anti-trafficking action. MLAT aims to improve working relationships between security and law enforcement agencies and to enhance the regional response to transnational crime. MLAT provides a process through which countries in the region can request and give assistance to each other in the collection of evidence for criminal investigations and prosecutions, including in trafficking cases.¹²⁴

Another regional instrument relevant to anti-trafficking action is the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (2017), which lays out the requirements for improved protection of migrant workers' rights and welfare, including protection from exploitation and violence, alongside measures for effective prevention and suppression of smuggling and trafficking in persons.

Parallel to the anti-trafficking initiatives and collaboration within ASEAN, ASEAN as a regional organisation and its Member States have been taking part in several international and regional initiatives. Thus, one of the ASEAN's first programmes for combating trafficking was the Asia Regional Cooperation to Prevent People Trafficking Project (2003-2006) (ARCPPT), which was implemented by the Government of Australia. The Project focused on criminal justice responses to trafficking in partner countries. Following its success, the Project was extended in 2011 as the Asia Regional Trafficking in Persons Project (ARTIP).¹²⁵ It was meant to develop an effective criminal justice response to trafficking in persons that is essential to end the current high levels of impunity for traffickers and ensure security and justice for those who have been trafficked. The newest Australia-Asia Program to Combat Trafficking in Persons (AAPTIP: 2013-18) builds on the success of ARCPPT and ARTIP. AAPTIP operates at both regional and national levels. It is meant to provide support to ASEAN, working with the ASEAN Secretariat, regional anti-human trafficking bodies and individual partner countries. It also supports the SOMTC Trafficking in Persons Working Group and the Heads of Specialist Unit (HSU) process.¹²⁶

In addition, ASEAN Member States participate in the Bali Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process), a consultative mechanism launched in 2002 by ministers of over 50 countries in the Asia-Pacific region and beyond, which seeks to raise awareness of the consequences of people smuggling, trafficking and related transnational crime, and to develop strategies and practical co-operation in response.¹²⁷ UNHCR, IOM and UNODC are also involved in this voluntary and non-binding process.

¹²³ Treaty on Mutual Legal Assistance in Criminal Matters signed on 29 November 2004 in Kuala Lumpur, Malaysia.

¹²⁴ ASEAN, 'Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region' (2011) 2.

¹²⁵ ARTIP, 'Asia Regional Trafficking in Persons Project' available at <http://www.aaptip.org/2006/>.

¹²⁶ AAPTIP, 'Australia-Asia Program to Combat Trafficking in Persons (AAPTIP) Program Fact Sheet' (February 2015) available at <http://www.baliprocess.net/UserFiles/baliprocess/File/AAPTIP%20Factsheet%20-%20February%202015.pdf>.

¹²⁷ The Bali Process, 'About the Bali Process' (2016) available at www.baliprocess.net. See further Process Policy Guides at <http://www.baliprocess.net/regional-support-office/policy-guides/> and <http://www.baliprocess-rso-roadmap.net/>.

Furthermore, the Coordinated Mekong Ministerial Initiative against Human Trafficking (COMMIT), comprising six States in the Greater Mekong sub-region (Cambodia, China, the Lao PDR, Myanmar, Thailand and Viet Nam), has been addressing trafficking issues since 2004 through sub-regional plans of action, task forces at various levels and other mechanisms.¹²⁸ The COMMIT process is supported and coordinated with the assistance of the United Nations Action for Co-operation against Trafficking in Persons (UN-ACT), a regional project managed by the United Nations Development Programme (UNDP).¹²⁹ It was established in 2014 and builds upon the work previously undertaken by the United Nations Inter-Agency Project on Human Trafficking (UNIAP) that ran for 15 years.

In addition to these regional initiatives, ASEAN has fostered co-operation with the UN on a range of issues under the auspices of the Joint Declaration of the Comprehensive Partnership between ASEAN and the UN adopted by the 4th ASEAN-UN Summit held on 19 November 2011 in Bali, Indonesia. The new Plan of Action to Implement the Joint Declaration on Comprehensive Partnership between ASEAN and the UN for period 2016-2020 envisages support in the implementation of the UN Transnational Organized Crime Convention and Palermo Protocol, and the ASEAN Trafficking Convention through research, workshops, seminars, training, and other relevant capacity building activities for ASEAN.¹³⁰

Furthermore, collaboration on anti-trafficking action between ASEAN and EU has taken place through the Asia-Europe Meeting (ASEM)¹³¹ and Regional EU-ASEAN Dialogue Instrument Human Rights Facility (READI HRF), which aims at promoting dialogue on human rights issues.¹³² Within READI HRF, and with support of the ASEAN-US Partnership (PROGRESS project), the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) has produced an important study, which provides an up-to-date overview of bilateral and national anti-trafficking instruments.¹³³

3.3. Preliminary observations

Both regions have invested significant efforts in the fight against human trafficking since the adoption of the Palermo Protocol in 2000. While both the CoE and ASEAN have established and carried out fruitful collaborations with different international organisations devoted to tackling human trafficking, collaboration between the two regions has been missing. This is regrettable since both organisations and their Member States have much to gain from such co-operation, especially in the domains of exchange of information and experience on effective policies and best practices, capacity building, including on institutional frameworks and co-ordination on the regional and national levels, research on specific topics of mutual interest, and co-ordinating public outreach and consultation processes.

¹²⁸ Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-region (COMMIT) (2004). See also Susu Thatun, 'Challenges and Break-throughs in Regional Cooperation: the Case of the COMMIT Process' as cited in Susan Kneebone, Julie Debeljak, *Transnational Crime and Human Rights: Responses to Human Trafficking in the Greater Mekong Subregion* (Routledge 2012) 207.

¹²⁹ UN-ACT, 'Homepage' available at <http://un-act.org/>.

¹³⁰ See further ASEAN, 'An Overview of ASEAN-United Nations Cooperation' available at http://asean.org/?static_post=background-overview-united-nations.

¹³¹ ASEM, 'Strengthening Human Rights to combat Human Trafficking' available at <http://www.aseaninfoboard.org/press/strengthening-human-rights-combat-human-trafficking>.

¹³² READI HRF, 'Homepage' available at <http://readi.asean.org/>.

¹³³ ACWC, 'Regional Review on Laws, Policies and Practices within ASEAN relating to the Identification, Management and Treatment of Victims of Trafficking, especially Women and Children' (2016).

IV. The two regional Anti-Trafficking Conventions

A ten-year gap separates the adoption of the CoE Trafficking Convention from its ASEAN counterpart. During that period, the knowledge of, research on and responses to human trafficking have expanded considerably. The Council of Europe has revolutionised the approach to the anti-trafficking action set by the Palermo Protocol by adopting a strong commitment to victim protection. In many respects, the CoE Trafficking Convention represents a significant advancement compared to the UN Palermo Protocol¹³⁴ and it is thus rightly expected that further international developments in this field continue the same trend.

This section examines and compares the provisions of the two conventions with a view to determining the extent to which the ASEAN Trafficking Convention reflects the current understanding and approaches to anti-trafficking action. The section starts with a general overview of the two conventions, their main features, strengths and weaknesses. This is followed by a detailed analysis of the provisions of the two instruments. The analysis is framed around 'four Ps', a universal framework for discussing anti-trafficking actions that includes prosecution of traffickers, protection of victims, prevention of human trafficking and partnership between various stakeholders involved in anti-trafficking action. Finally, the section offers a preliminary conclusion on the extent to which the ASEAN Trafficking Convention reflects the European efforts, the main points of divergence and the avenues for future collaboration between the two regions in this field.

4.1. CoE Trafficking Convention and ASEAN Trafficking Convention in a nutshell

The Council of Europe Trafficking Convention was 'drafted in Europe, but it is not meant just for Europe.'¹³⁵ Notably, it is open for accession by any country in the world, regardless of its membership to the Council of Europe.¹³⁶ Thus, Belarus became the first non-member state to accede to the convention on 26 November 2013.

The CoE Trafficking Convention consists of a Preamble and ten chapters. Chapter I deals with its purposes and scope, the principle of non-discrimination and definitions; Chapter II with prevention, co-operation and other measures; Chapter III with measures to protect and promote the rights of victims, guaranteeing gender equality; Chapter IV with substantive criminal law; Chapter V with investigation, prosecution and procedural law; Chapter VI with international co-operation and co-operation with the civil society; Chapter VII sets out the monitoring mechanism; lastly Chapters VIII, IX and X address the relationship between the Convention and other international instruments, amendments to the Convention and final clauses. The Convention is accompanied by its Explanatory report.¹³⁷

¹³⁴ CoE Trafficking Convention, at Preamble. See also [Explanatory Report](#), at para. 51, which contains a detailed list of the various ways in which the Convention adds value to the pre-existing international legal framework.

¹³⁵ GRETA, '[3rd general Report on GRETA's Activities](#)' (2013) 17, para 15. See also Silvia Scarpa, *Trafficking in Human Beings: Modern Slavery* (Oxford University Press 2008) 144 -149.

¹³⁶ Only the Russian Federation has not yet signed and ratified the CoE Trafficking Convention.

¹³⁷ Council of Europe, '[Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings](#)' (2005).

The CoE Trafficking Convention is the first international instrument to recognise an explicit link between trafficking and human rights law. Already in the Preamble, it is stated that trafficking in human beings constitutes 'a violation of human rights and an offence to the dignity and the integrity of the human being'.¹³⁸ According to the Explanatory Report, the new instrument seeks to strengthen the protection afforded by other instruments relevant to combating human trafficking, 'in particular in relation to the protection of the human rights of the victims of trafficking'.¹³⁹ It is said to embody the 'revolutionary way of thinking about trafficking and about victims of trafficking'.¹⁴⁰ Accordingly, it entitles victims of trafficking to a range of mandatory assistance measures irrespective of their willingness to co-operate with criminal justice authorities (Article 12 (2)), a recovery and reflection period during which no victim or presumed victim can be deported (Article 13), and an independent monitoring body (Chapter VII), to name a few. Furthermore, co-operating victims and witnesses are entitled to extra protection (Articles 28 and 30), and child victims of trafficking are afforded additional and extensive protection.¹⁴¹

Notably, the strengths of the CoE Trafficking Convention extend beyond its victim protection provisions. For example, the requirement to criminalise those knowingly using the services of victims of trafficking (Article 19), corporate liability (Article 22) and the non-punishment provision (Article 26) represent ground-breaking provisions, despite the relatively weak language used. Perceived weaknesses of the CoE Convention include the wording of the various assistance and protection clauses, which avoids the imposition of excessive burdens on states.

The ASEAN Trafficking Convention was adopted on the occasion of the 27th ASEAN Summit in Kuala Lumpur on 21 November 2015, during which ASEAN states established a stronger union committed to building 'politically cohesive, economically integrated, socially responsible and a truly rules-based, people-oriented, people-centred ASEAN'. It contains a Preamble and seven chapters.¹⁴² Chapter I contains general provisions and includes the objectives of the instrument, use of terms, delineates its scope of application and reiterates the importance of the sovereignty principle; Chapter II contains provisions on criminalisation; Chapter III addresses prevention, including co-operation and other measures; Chapter IV is devoted to victim protection, including repatriation and return; Chapter V deals with law enforcement and covers confiscation and seizure of proceeds of crime of trafficking; Chapter VI contains detailed provisions on international co-operation, including mutual legal assistance in criminal matters, extradition and law enforcement co-operation as well as international co-operation for purposes of confiscation and disposal of confiscated proceeds; and Chapter VII contains final provisions that include the establishment of co-ordinating structures, monitoring, reviewing and reporting.

¹³⁸ For a criticism, see Ryszard Piotrowicz, 'The Legal Nature of Trafficking in Human Beings' (2009) 4 *Intercultural Human Rights Law* 175.

¹³⁹ CoE [Trafficking Convention](#), [Explanatory Report](#), paras 8 and 30.

¹⁴⁰ Anne Gallagher, 'Recent Legal Developments in the Field of Human Trafficking: A Critical Review of the 2005 European Convention and Related Instruments' (2006) *European Journal of Migration and Law* 163, 187.

¹⁴¹ Article 5 (5), Article 10 (3) and (4), Article 11 (2), Article 12 (7), Article 14 (2), Article 16 (5) and (7), Article 24, Article 28 (3), Article 30, and Article 33 (2) of the CoE [Trafficking Convention](#). See also Anne Gallagher, *The International Law on Human Trafficking* (CUP 2010) 118-119.

¹⁴² For an overview of the structure and the provisions see Ryszard Piotrowicz, 'ASEAN Takes on Trafficking in Human Beings' (2017) 91 *ALJ* 284-295.

The ASEAN Trafficking Convention declares in its Preamble the commitment to victim protection 'with full respect for their human rights', alongside other objectives, namely, to effectively prevent and combat trafficking in persons, especially women and children, to ensure just and effective punishment of traffickers, and to promote co-operation among the parties in order to meet these objectives. Still, when it comes to victim protection, the provisions of the ASEAN instrument fall short of the standards established by its European counterpart, as the following sections will demonstrate. Furthermore, unlike the CoE Trafficking Convention, the ASEAN instrument makes no reference to gender equality and both its title and the first objective refer to human trafficking 'especially against women and children', reflecting an out-dated view that trafficking mainly affects women and children. Nevertheless, the ASEAN Plan of Action against Trafficking in Persons, Especially Women and Children (APA) does recognise 'the need to respect human rights, child and gender-sensitive issues' in building the capacity of law enforcement, immigration, education, social welfare, labour and other relevant officials in the prevention of trafficking in persons. A passing reference to gender and age is also made in Article 14 (12), which requires State Parties 'to take into account age, gender, and special needs of victims, in particular the special needs of children' when implementing the provisions on victim protection. Another area where the ASEAN Trafficking Convention differs from the CoE instrument is the scope of the treaty. While the latter applies to all human trafficking situations, the ASEAN Trafficking Convention limits its scope to cross-border trafficking (Article 3), leaving internal (intrastate) trafficking to the exclusive jurisdiction of domestic laws.

On the other hand, in the area of substantive criminal law, the ASEAN Trafficking Convention contains provisions that in a number of respects go beyond the requirements of the CoE Trafficking Convention. Thus, for example, the ASEAN Trafficking Convention includes more aggravating circumstances that require higher penalties (Article 5). It also contains additional provisions requiring State Parties to criminalise participation in an organised criminal group (Article 6), criminalisation of the laundering of the proceeds of crime (Article 7), criminalisation of corruption (Article 8) and criminalisation of obstruction of justice (Article 9).

Overall, despite the warranted criticism, the ASEAN Trafficking Convention sets out much clearer regulatory standards on combating human trafficking than its regional predecessor, the ASEAN Declaration, and provides a solid framework for co-ordinating co-operative efforts between State Parties.

4.2. The '4Ps' yardstick

The '4Ps' approach is a conventional method of framing anti-trafficking policies. Each 'P' stands for one aspect of anti-trafficking action. 'Prosecution' represents the most traditional aspect of anti-trafficking initiatives; it covers criminal legislation and law enforcement actions aimed at punishing the perpetrators of this complex and serious crime. 'Protection' refers to a set of legislative and policy measures focused exclusively on victims of trafficking, which range from securing the physical safety of trafficking victims to guaranteeing compensation, granting labour rights and immigration status. 'Prevention' includes a broad range of actions that cover awareness-raising and addressing root causes of human trafficking. Finally, the fourth 'P' stands for partnerships and collaboration and has been added subsequently to the original '3Ps' approach, in recognition of the absolute necessity of co-operation amongst different stakeholders both within one countries and across borders.

4.2.1. Victim protection

When it comes to victim protection, the CoE Trafficking Convention is said to be much more generous, considerably broader, and more strongly worded than the Palermo Protocol.¹⁴³ Its victim protection measures, contained in Chapter III, could be classified in five groups: a) victim identification; b) immediate protection and assistance; c) additional protection and assistance; d) protection of victim-witnesses who provide assistance to law enforcement authorities; and e) legal redress and compensation.

¹⁴³ Anne Gallagher, *The International Law on Human Trafficking* (CUP 2010) 116.

The CoE Trafficking Convention emphasises the paramount importance of victim identification both for the protection of the victims' rights and for criminal proceedings against traffickers where they represent invaluable witnesses (Article 10). This is at the same time one of the most challenging tasks for authorities. Trafficking victims are often confused with smuggled migrants, criminal offenders or simply ignored due to inadequate training of responsible officials to recognise indicators of trafficking. The CoE Trafficking Convention requires each Party to designate competent authorities who are trained and qualified appropriately and ensure that they collaborate with one another, as well as with relevant support organisations and other State Parties, in order to identify victims as appropriate (Article 10 (1) and (2)). The Convention explicitly acknowledges that correct identification of victims is essential to the provision of protection and assistance, and that failure to correctly identify a victim will likely lead to a denial of that person's rights as well as problems in the prosecution process.¹⁴⁴ Furthermore, correct victim identification precludes their further victimisation by being treated as criminals for participation in criminal activities that were part of their exploitation. Accordingly, GRETA's country reports continuously stress that victims of trafficking 'must be identified and recognised as such in order to avoid police and public authorities treating them as "irregular migrants" or criminals'.¹⁴⁵

Victim identification is nonetheless a process that takes time. In the meantime, victims are often in desperate need of immediate protection and assistance. Moreover, they might be at risk of being deported because of their irregular immigration status. For these reasons, the CoE Trafficking Convention prescribes that presumed victims¹⁴⁶ are granted a 'reflection and recovery period' of a minimum of 30 days, during which they are given support and assistance and allowed to decide whether or not to co-operate with the competent authorities (Article 13(1)). Significantly, during this period, presumed victims cannot be repatriated against their will. However, the Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victim status is being claimed improperly (Article 13(3)). This immediate protection and assistance, which is not conditional upon victims' immigration status and/or collaboration with law enforcement bodies, is significant and aims at facilitating their physical, psychological and social recovery. It requires Parties to provide standards of living capable of ensuring subsistence, including appropriate and secure accommodation; psychological and material assistance, access to emergency medical treatment, translation and interpretation services, and counselling, information and assistance, including in relation to the legal process (Article 12 (1) and (2)). It is rightly presumed that granting such unconditional protection and assistance would make victims more likely to collaborate with the authorities because they are reassured that their wellbeing and needs are being considered. It is thus observed that despite their generosity, the victim protection provisions 'are clearly geared toward making sure that criminal justice authorities are given the best possible chance to secure prosecutions and convictions through the co-operation of victims'.¹⁴⁷

Additional protection and assistance depend on the victims' immigration status and their role in the criminal process, if any. Victims who are nationals of the country where they are identified and those who are granted residence are entitled to benefit from a range of measures, including the provision of full medical and other assistance as well as access to the labour market, vocational training and education (Article 10 (1) and (2)). Those victims who are willing and able to help the criminal justice authorities are entitled to further measures of protection, given the heightened risk of retaliation from traffickers. Thus, Article 28 of the CoE Trafficking Convention sets out the specific measures that must be implemented to provide 'effective and appropriate protection' to victims and others (including families, witnesses, and victim support agencies) from potential retaliation and intimidation, in particular during and after the investigation and prosecution process.

Significantly, the CoE Trafficking Convention requires Parties to 'provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so' in accordance with the basic principles of their legal systems (Article 26).

¹⁴⁴ [Explanatory Report](#) para 127.

¹⁴⁵ See the Preamble of any GRETA country evaluation report.

¹⁴⁶ When there are reasonable grounds to believe that the person concerned is a victim.

¹⁴⁷ Anne Gallagher, *The International Law on Human Trafficking* (CUP 2010) 121,122.

Lastly, when it comes to the issue of victim compensation and legal redress, the CoE Trafficking Convention provides that victims have a right to monetary compensation from traffickers in respect of both material injury and suffering (Article 15). Notably, it requires that victims are provided with appropriate information on the procedures they can use to obtain compensation and that they are given access to legal assistance.¹⁴⁸ Yet, since full compensation from traffickers will rarely be an option, the CoE Trafficking Convention requires States Parties to guarantee compensation for victims, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the seized proceeds of trafficking. It is, however, noted that a significant weakness of these provisions is the lack of obligation upon Parties to permit a victim to stay in the country to pursue compensation or other claims.¹⁴⁹

Overall, victims with irregular immigration status have access to fewer rights compared to the nationals of the country where they are identified. Beyond the 30-day reflection and recovery period, they may be granted a further right to stay if that is necessary owing to their personal situation *or* for the purposes of their co-operation in an investigation or prosecution (Article 14). However, this extended stay is optional and States are left to decide when it is appropriate to grant residence permits. Nevertheless, States are not entirely free to return victims to their countries of origin. Thus, provisions that regulate conditions of repatriation set out a number of requirements aimed at protecting the rights and dignity of trafficked persons in the repatriation process, which 'shall preferably be voluntary' (Article 16).

In addition to the protection and assistance measures available to all victims, the CoE Trafficking Convention provides further and comprehensive protection to children.¹⁵⁰

In sum, the CoE Trafficking Convention places strong obligations on States when it comes to victim identification and immediate assistance and protection. Beyond this, further entitlements are couched in a weaker language and access to them largely depends on victims' immigration status and participation in criminal investigations. Lawful residents and those victims who agree to co-operate with law enforcement authorities are afforded further protection. On the other hand, victims with irregular immigration status who are not willing or not even able to offer assistance to criminal proceedings will be repatriated, with little chance to seek redress. Further, the request to avoid criminalisation of victims, while significant because a large number of trafficking victims end up detained, prosecuted, convicted, and summarily deported, remains one of the weakest provisions in the CoE Trafficking Convention.¹⁵¹ Consequently, the risk of being detained, prosecuted and deported is one of the reasons why victims of human trafficking are wary of coming forward to the authorities and is one of the main tools used by traffickers to keep them under control. Not only does this represent an obstacle to their protection, but it also leaves the original offence undetected.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Article 5 (5), Article 10 (3) and (4), Article 11 (2), Article 12 (7), Article 14 (2), Article 16 (5) and (7), Article 24, Article 28 (3), Article 30, and Article 33 (2) of the [CoE Trafficking Convention](#). See also Anne Gallagher, *The International Law on Human Trafficking* (CUP 2010) 118-119.

¹⁵¹ Marija Jovanovic, 'The Principle of Non-Punishment of Victims of Trafficking in Human Beings: A Quest for Rationale and Practical Guidance' (2017) 1 (1) *Journal of Trafficking and Human Exploitation* 41-76; Ryszard Wilson Piotrowicz and Liliana Sorrentino, 'Human Trafficking and the Emergence of the Non-Punishment Principle' 2016 (16) 4 *Human Rights Law Review* 669 – 699.

In the ASEAN Anti-Trafficking Convention, victim protection measures are contained in only two, albeit lengthy, provisions. Effectively, only Article 14 deals with measures of victim protection and support, whereas Article 15 contains provisions on repatriation and return of victims. One of the strongest obligations is concerned with victim identification and requires Parties to establish national guidelines and procedures for the proper identification of victims of trafficking (Article 15 (1)). There is also an obligation to respect and recognise the identification of victims made by the competent authorities of 'the receiving Party'. This effectively means that identification decisions of the victim's country of origin would not produce equal effect in destination states,¹⁵² which may lead to a series of significant consequences for the rights of trafficked persons, especially when it comes to legal redress. The provisions of the two regional treaties concerning victim protection significantly differ in other respects.

Thus, measures of care and support are only available to victims who are successfully identified, which does not take into account the fact that the identification process may require some time. Nor is there a mandatory reflection and recovery period. Thus, Parties 'shall consider adopting' measures that permit victims to remain in their territories, temporarily or permanently (Article 14 (4)). At best, they are required to give appropriate consideration to humanitarian and compassionate factors in making such decisions. The CoE Trafficking Convention, by contrast, explicitly mentions in Art 40(4) the principle of *non-refoulement* as binding the Parties. This could be explained by the fact that the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, which guarantee the principle of *non-refoulement* (the duty not to return a person to a territory where their life is endangered or there is a serious threat to their basic human rights) have been acceded to by only two members of ASEAN, Cambodia and the Philippines.

Those victims who are successfully identified by the competent authorities and who are lawful residents, shall be entitled to care and support such as appropriate housing, counselling and information, in particular as regards their legal rights, in a language they understand; medical, psychological and material assistance, and employment, educational and training opportunities (Article 14 (9) and (10)). In order to provide care and support, Parties are invited to establish appropriate funds, including, 'where applicable, establishing national trust funds' (Article 14 (14)). Parties are only requested to 'endeavour to provide' for the physical safety of victims while within their territory (Article 14 (5)), which is in contrast with the requirements of the CoE Trafficking Convention (Article 12 (2)).

There is no guarantee of the protection of privacy and identity of victims during legal proceedings except 'in appropriate cases and to the extent possible' (Article 14(6)). The protection of privacy is further weakened by instructing the Parties to share information on identified victims, except in case of victims' express disagreement. It is rightly noted that unless previously warned, victims would seldom be aware of their right to request non-disclosure.¹⁵³ Protection of victims and witnesses from intimidation and harassment is further mentioned in the Chapter V of the ASEAN Trafficking Convention dealing with law enforcement, but only as a way of preserving the integrity of the criminal justice process (Article 16 (7)).

¹⁵² The ASEAN Trafficking Convention uses the terms 'sending' and 'receiving' states.

¹⁵³ Ryszard Piotrowicz, 'ASEAN Takes on Trafficking in Human Beings' (2017) 91 ALJ 284, 289.

The non-punishment provision, first introduced by the CoE Trafficking Convention, is included in Article 15 of the ASEAN Trafficking Convention with similar language. Article 15 (7) thus contains the requirement to consider not holding victims of trafficking criminally or administratively liable for unlawful acts committed by them if such acts are directly related to the acts of trafficking. Interestingly, the similar provision in the CoE Trafficking Convention is not part of the chapter on victim protection, but is instead included in the section on substantive criminal law (Chapter IV). In addition, the ASEAN Trafficking Convention requires that Parties refrain from 'unreasonably' holding identified victims of trafficking in detention or in prison (15(8)). While this provision is in principle laudable for expanding the protection from non-punishment to non-detention, the wording is surprising since it is not entirely obvious when, if at all, it would be reasonable to keep victims detained or imprisoned.¹⁵⁴ Still, domestic legislation of some ASEAN Member States prescribes that victims of trafficking may be placed in 'temporary custody' during the investigation (e.g. Article 44(1) of the Malaysian Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007).

In implementing the described victim protection measures, Parties are invited to take into account the age, gender and special needs of victims, in particular children (Article 15 (12)). Notably, this is one of a very few provisions that specifically refers to children, despite them being mentioned in the Convention title.

Article 14 concludes with a provision concerning 'compensation for damage suffered' by victims. This provision requires that Parties ensure that their domestic legal systems contain measures that offer such a possibility (Article 14(13)).

The provisions governing the repatriation and return of victims contained in Article 15 are one of the most strongly worded provisions in the ASEAN Trafficking Convention. While the provisions in the two regional treaties appear similar in this respect, a careful reading shows a few noticeable differences. Namely, Article 16 of the CoE Trafficking Convention requires that the return of victims to the country of their nationality or residence be conducted 'with due regard for his or her rights, safety and dignity'. Article 15 of the ASEAN Trafficking Convention only refers to safety, thus leaving out any consideration for victims' rights and dignity in the return process. Also, the requirement that such a return should 'preferably be voluntary' is missing from the provision of the ASEAN instrument. Most strikingly, despite its explicit commitment to protection of women and children expressed in the title of the ASEAN Trafficking Convention, there is no specific provision that requires child victims not to be returned if such return would not be in their best interests as seen in Article 16 (7) of the CoE Trafficking Convention.

4.2.2. Prosecution (including criminalisation, law enforcement actions, and penalties)

The CoE Trafficking Convention places on States a series of obligations aimed at enabling the effective prosecution of traffickers and ensuring that they are punished in a proportionate and dissuasive manner. These provisions are contained in Chapters IV and V of the Convention. The purpose of these provisions is to ensure the approximation of legislation because harmonised domestic laws help the exchange of useful common data and experiences and facilitate international co-operation, in particular extradition and mutual legal assistance.¹⁵⁵

¹⁵⁴ Ibid.

¹⁵⁵ [Explanatory Report](#), para 216.

In many respects, the CoE Trafficking Convention goes beyond the Palermo Protocol. Thus, in addition to the obligation to criminalise the offence of human trafficking in Article 18, which is identical to that in Article 5 of the Palermo Protocol, Parties 'must consider making it a criminal offence to knowingly use the services of a victim of trafficking' (Article 19). The Explanatory Report, nevertheless, admits that proving such knowledge may be a difficult matter for the prosecution authorities.¹⁵⁶ States are also required to criminalise attempting or being an accomplice in the commission of trafficking offences (Article 21), and to ensure that a legal person can be held liable for a criminal offence (Article 22). This obligation is vital considering the emerging knowledge of exploitative practices being carried out under the cover of legitimate business activities.¹⁵⁷ Finally, States Parties are required to criminalise certain acts committed for the purpose of enabling trafficking, such as document fraud (Article 20).

When it comes to investigation, prosecution and procedural law, the CoE Trafficking Convention requires States to ensure that investigations into, or prosecutions of, human trafficking offences are not dependent upon the report or accusation made by a victim (Article 27), and to co-operate with each other regarding investigations and/or criminal proceedings related to these offences (Article 32). Specifically, Parties are obliged to ensure that there are persons or entities specialised in the fight against trafficking and the protection of victims, which have the necessary independence to carry out their work effectively and free from undue pressure (Article 29 (1)). Parties need to provide training for relevant officials in the prevention of, and fight against, trafficking, including human rights training (Article 29 (3)) and to ensure co-ordination of the policies and actions of their governments' departments and other public agencies by setting up co-ordinating bodies, as appropriate (Article 29 (2)).

Further, the CoE Trafficking Convention establishes a wide compulsory jurisdiction of States Parties, covering territoriality, nationality, and passive personality. Thus, a State Party must establish jurisdiction over an offence when committed in its territory, by one of its nationals, or against one of its nationals (Article 31). In other words, States are required to either prosecute or extradite alleged offenders.

Finally, with regard to penalties, States are required to ensure that the sanctions for the punishable criminal offences are 'effective, proportionate and dissuasive' (Article 23). This means that sanctions need to include penalties involving deprivation of liberty, which can give rise to extradition, an ability to confiscate the instrumentalities and proceeds of trafficking and to close establishments used for trafficking (Article 23). In determining penalties, a number of situations are to be considered 'aggravating circumstances' including: when the offence is committed against a child; by a public official; where it endangered the life of the victim; or where it was committed within the framework of a criminal organisation (Article 24). Significantly, Parties are required to provide for the possibility to consider previous convictions and sentences in foreign courts when determining penalties (Article 25).

¹⁵⁶ Ibid, para 234.

¹⁵⁷ United Nations Global Initiative to Fight Human Trafficking (UN.GIFT), *Human Trafficking and Business: Good Practices to Prevent and Combat Human Trafficking* (2010).

The ASEAN Trafficking Convention contains provisions on criminalisation and law enforcement in Chapters II and V. Certain provisions largely resemble the relevant provisions in the CoE Trafficking Convention, for example, the provision on the criminalisation of the trafficking act, attempt, and aiding and abetting the commission of the trafficking offence (Article 5 (1) and (2)). Yet, in some respects the ASEAN Trafficking Convention goes considerably further, whereas in others, it lags behind its European counterpart. For example, the ASEAN Trafficking Convention does not mention the possibility of criminalisation of acts relating to travel or identity documents, the use of services of a victim, or corporate liability. The ASEAN Action Plan does instruct Parties to 'ensure liability of all categories of perpetrators of trafficking in persons including liability of legal persons and entities'.¹⁵⁸ On the other hand, the ASEAN Trafficking Convention contains additional provisions requiring Parties to criminalise participation in an organised criminal group (Article 6), criminalisation of the laundering of the proceeds of crime (Article 7), criminalisation of corruption (Article 8) and criminalisation of obstruction of justice (Article 9). These comprehensive provisions are significant since corruption is considered one of the main problems jeopardising law enforcement efforts in the region.¹⁵⁹ In fact, the ASEAN Trafficking Convention repeats the obligation to take active steps against corruption, money laundering, participation in an organised criminal group and obstruction of justice, in the provisions on law enforcement and prosecution (Article 16 (2)).

Provisions regarding investigation, prosecution and procedural law differ somewhat from those in the CoE Trafficking Convention. Thus, the ASEAN Trafficking Convention does not provide for *ex parte* and *ex officio* applications, leaving the conduct of criminal investigations and proceedings largely to the discretion of the Parties. Nevertheless, the provisions requiring that competent authorities in each Party are equipped with appropriate skills and knowledge in the fight against trafficking and the protection of victims, on designating specialised units or authorities for this purpose and providing relevant training, as well as on co-ordination of the policies and actions of the government's departments and other public agencies, are equivalent to those provisions in the CoE Trafficking Convention (Article 16 (1), (4) and (6)). On the other hand, the protection of victims-witnesses is limited to the requirement of ensuring the integrity of the criminal justice process (Article 16 (7)).

Furthermore, unlike the compulsory jurisdiction established by the CoE Trafficking Convention, which covers territoriality, nationality and passive personality,¹⁶⁰ the ASEAN Trafficking Convention only prescribes a duty to establish jurisdiction based on a territorial basis, while jurisdiction based on nationality is an option (Article 10 (1) and (2)). In addition, States Parties are required to establish jurisdiction where the alleged offender is present in its territory and it does not extradite him/her solely on the basis of his/her nationality (Article 10 (3) ASEAN Trafficking Convention).

The ASEAN Trafficking Convention does not contain an explicit provision on penalties nor a requirement that Parties ensure effective, proportionate and dissuasive sanctions for trafficking offences like Article 23 of the CoE Trafficking Convention. Still, Article 1, which lists the objectives of the ASEAN Trafficking Convention, explicitly mentions ensuring 'just and effective punishment of traffickers' as one of its main goals. Also, the Action Plan supplementing the Convention requires Parties to 'ensure that penalties are proportionate to the gravity of the crime'.¹⁶¹

¹⁵⁸ ASEAN Trafficking Convention Action Plan para C.i.

¹⁵⁹ See, for example, the US State Department Report for 2017; Patchanee Malikhao and Fiona Servaes, 'Human Trafficking in Thailand: A Culture of Corruption' in Patchanee Malikhao (ed) *Culture and Communication in Thailand* (Springer 2017); Konrad Adenauer EU-Asia Dialogue Trafficking in Human Beings: Learning from Asian and European Experiences (2014).

¹⁶⁰ Though State Parties may put reservations on the last two grounds.

¹⁶¹ ASEAN Trafficking Convention Action plan, para C.c.

When it comes to aggravating circumstances, the ASEAN Trafficking Convention goes beyond the requirements set forth in Article 24 of the CoE Trafficking Convention, and includes grounds such as when the offence involves serious injury to the victim or another person (not just the life of the victim as listed in Article 24 of the CoE Trafficking Convention), particularly vulnerable victims including persons with physical or mental disability (and not just children as per Article 24 of the CoE Trafficking Convention), when the offence exposed victims to a life-threatening illness such as HIV/AIDS, where the offender has been previously convicted of the same or similar offences, and where the offence involves more than one victim (Article 5 (3) of the ASEAN Trafficking Convention).

While the ASEAN Trafficking Convention does not mention specifically the possibility of considering previous convictions and sentences in foreign courts when determining penalties (Article 25 of the CoE Trafficking Convention), it may be implied that this requirement falls under one of the aggravating circumstances where the offender has been previously convicted of the same or similar offences (Article 5 (3) (f) of the ASEAN Trafficking Convention).

Finally, the provisions on confiscation and seizure of proceeds of crime derived from offences covered by the ASEAN Trafficking Convention or property, equipment and other instrumentalities used or destined for use in such offences are extensive and elaborate in contrast with those contained in the CoE Trafficking Convention (Article 17 of the ASEAN Trafficking Convention). This is welcome since, as noted by a member of GRETA, Professor Ryszard Piotrowicz

[Human trafficking] is a way of making money. The traffickers generally have no particular or personal grudge against their victims (...). They just want to exploit them for money, and if they could make more money from selling chocolate or smuggling fruit they would probably do that instead. (...). Therefore, one of the most important ways of punishing traffickers, and perhaps of deterring THB, is to have not just strong criminal penalties but also effective measures to allow confiscation and seizure of assets.¹⁶²

It is rightly noted that the problem with confiscation is that it can only happen after a conviction but once a person has been arrested, he or she may take steps to hide their assets.¹⁶³ For this reason, the ASEAN Trafficking Convention requires the Parties to adopt the necessary measures to enable the identification, tracing and freezing of assets for the purpose of eventual confiscation (Article 17 (2)). There is also a provision to tackle money laundering, which addresses the situation where the proceeds of crime have been 'intermingled' with property acquired legitimately (Article 17 (4)). In such cases the property may be liable to confiscation up to the assessed value of the intermingled proceeds. Income or other benefits derived from the proceeds of crime, as well as property obtained with the proceeds of crime, are also subject to seizure and confiscation (Article 17 (5)). Notably, bank secrecy rules cannot preclude courts from ordering the disclosure or seizure of bank, financial or commercial records (Article 17 (6)), whereas Parties 'may consider' requiring offenders to demonstrate the lawful origin of alleged proceeds of crime or any other property that is liable to confiscation (Article 17 (7)).

4.2.3. Prevention

Prevention of human trafficking includes a wide array of policies and measures. They range from measures aimed at addressing vulnerabilities that make people susceptible to human trafficking in the first place and include general awareness-raising, improvement of socio-economic conditions and addressing gender inequalities, to measures that effectively prevent a specific trafficking act.

¹⁶² Piotrowicz, 'ASEAN Takes on Trafficking in Human Beings' (2017) 91 ALJ 284, 294.

¹⁶³ Ibid.

The CoE Trafficking Convention refers, in Chapter II to 'prevention, co-operation and other measures', which includes different sets of provisions. First, Article 5 refers to measures, policies and programmes to prevent trafficking in human beings, such as research, information, awareness-raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings. The development, implementation and assessment of all the policies and programmes are supposed to be done by promoting a human rights-based approach and using gender mainstreaming and a child-sensitive approach.¹⁶⁴ States are further required by Article 5 to enable migration to take place legally and to reduce children's vulnerability to trafficking, notably by creating a protective environment for them.¹⁶⁵ In fulfilling these obligations, States are required to co-ordinate their efforts with various bodies responsible for preventing and combating trafficking in human beings, including civil society. Further obligations are contained in Article 6 and include legislative, administrative, educational, social, cultural or other measures aimed at discouraging demand. The final set of duties covers border control measures, obligations of commercial carriers, and security and control of travel and identity documents with a strong emphasis on co-operation among border control agencies (Articles 7-9). Nonetheless, the CoE Trafficking Convention's provisions concerned with preventive strategies have been criticised as being 'so broad as to be almost meaningless in terms of monitoring compliance and measuring impact.'¹⁶⁶

The ASEAN Trafficking Convention deals with prevention in Chapter III, which consists of three articles. Article 11 obliges Parties to establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons and to protect victim of trafficking from re-victimisation. The measures suggested as appropriate include research, information and mass media campaigns and social and economic initiatives. This rather weak obligation 'to endeavour to undertake' measures is strengthened in one of the subsequent paragraphs that uses 'shall' to express an obligation for Parties 'to alleviate the factors that makes persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity' (Article 11 (4)). Similarly strong is an obligation to take measures to discourage the demand that fosters exploitation of persons (Article 11(5)), which is slightly less detailed than the provision on discouraging demand in the European counterpart. Like the CoE Trafficking Convention, the ASEAN Trafficking Convention asks Parties to co-operate with non-governmental organisations when 'appropriate' (Article 11 (3)).

Furthermore, despite a separate chapter on international co-operation, discussed in the following subsection, Chapter III of the ASEAN Trafficking Convention includes a lengthy provision outlining areas of co-operation in the context of prevention. In fact, all previously mentioned measures of prevention are mentioned in Article 12 as areas of co-operation including discouraging demand, alleviating factors that make persons vulnerable to trafficking, research, education, awareness-raising, social and economic initiatives and training programmes, enabling legal migration, and promoting capacity-building, including trainings and technical co-operation. Also mentioned is co-operation in the investigation and prosecution of trafficking and ensuring that perpetrators of trafficking are brought to justice. However, this co-operation and suggested measures are not mandatory. Lastly, Article 13 contains provisions on cross-border co-operation, control and validity of documents. While the obligation to conduct effective border control and controls on the issuance of identity and travel documents is couched in a strong language, the Parties 'shall endeavour to' undertake cross-border co-operation through direct communication and exchange of intelligence and information sharing.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ Anne Gallagher, *The International Law on Human Trafficking* (CUP 2010) 125.

4.2.4. Partnerships

Co-operation between various national stakeholders, including civil society organisations as well as international collaboration between States, is a hallmark of the CoE Trafficking Convention. These provisions are therefore integrated into a range of broader obligations concerning prosecution, prevention, and protection of victims such as: development and implementation of prevention strategies, border controls, verification of the legitimacy and validity of travel documents or identity, victim identification and assistance, repatriation, recognition of previous sentences and information exchange. In relation to international co-operation specifically, such collaboration is to be conducted 'to the widest extent possible' and in accordance with the provisions of the CoE Trafficking Convention, as well as through application of relevant applicable international and regional instruments, arrangements agreed on the basis of uniform or reciprocal legislation and internal laws (Article 32).

When it comes to international co-operation specifically concerned with investigations and prosecutions, the CoE Trafficking Convention does not establish a complex system of mutual legal assistance as in the UN Convention against Transnational Organized Crime and the Palermo Protocol. Instead, it refers to bilateral and multilateral agreements already in existence between States Parties.¹⁶⁷ Thus, provisions referring to international co-operation only establish general principles and key areas of collaboration, which mainly concerns information sharing in certain circumstances.

Unlike the CoE Trafficking Convention, the ASEAN Trafficking Convention contains a detailed set of provisions on international co-operation in criminal matters (Chapter VI). Thus, it contains a provision on mutual legal assistance in criminal matters (Article 18), extradition (Article 19), law enforcement co-operation (Article 20) and co-operation for purposes of confiscation and disposal of confiscated proceeds of crime or property (Articles 21 and 22). In addition to Chapter VI, Article 10 (5) on jurisdiction requires States to co-ordinate efforts in situations when one of more State Parties are conducting investigations, prosecutions or judicial proceedings in respect of the same act.

According to these provisions, Parties are required to afford one another 'the widest measure of mutual legal assistance in criminal investigations and prosecutions' (Article 18 (1)). The detailed arrangements concerning the execution of this obligation are contained in a separate Treaty on Mutual Legal Assistance in Criminal Matters.¹⁶⁸

Furthermore, trafficking offences shall be deemed extraditable in any extradition treaty existing between Parties. Significantly, when there is no extradition treaty between two Parties to the ASEAN Trafficking Convention, the latter may be considered the legal basis for extradition (Article 19 (2)). These are important provisions since ASEAN has not yet adopted a regional instrument on extradition, despite continuous deliberations on the matter. Furthermore, while the ASEAN Trafficking Convention encourages Parties to enter into bilateral or multilateral agreements or arrangements on direct co-operation between their law enforcement agencies, in the absence of such agreements, the ASEAN Trafficking Convention may serve as an alternative legal basis for mutual law enforcement co-operation (Article 20 (2)). In addition, cross-border co-operation between national law enforcement agencies in trafficking cases, through information sharing, co-operation on inquiries with respect to specific offences, and even joint investigations is elaborated in detail in the ASEAN Practitioner Guidelines (2007).

¹⁶⁷ [Explanatory Report](#), paras. 335–337. A sample list of relevant mutual legal assistance, extradition, and related matters is set out paras. 343–345.

¹⁶⁸ Treaty on Mutual Legal Assistance in Criminal Matters among Like-Minded ASEAN Member Countries, Nov. 29, 2004, done at Kuala Lumpur, Malaysia. For a detailed analysis of this instrument, see ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases (2010).

Beyond law enforcement matters, international co-operation in other areas, is envisaged in other relevant chapters, such as Chapter III on prevention (see above). Co-operation in providing protection to victims is regulated in chapter IV and mainly concerns collaboration during the repatriation process. While the ASEAN Action Plan recognises the important role of civil society organisations in providing assistance to victims, the ASEAN Trafficking Convention does not make co-operation with these organisations mandatory and allows the parties to determine situations where it is deemed 'appropriate' (Articles 11 (3), 14 (1) and (10)).

4.3. Monitoring

The CoE Trafficking Convention remains a global leader when it comes to the implementation and monitoring. Its permanent monitoring body, GRETA, has the power to visit all Parties in order to assess their compliance with the Convention, and States are obliged to allow such visits and to co-operate with GRETA (Article 38). GRETA issues country reports evaluating State Parties' progress in implementing the Convention and outlining the steps that need to be taken to improve compliance. The Committee of the Parties, which is composed of the representatives of the Parties to the CoE Trafficking Convention, represents a second rung of the monitoring process. GRETA's country evaluation reports are sent to the Committee of the Parties and on their basis the Committee of the Parties adopts recommendations addressed to the Party concerned and follows up on their implementation if necessary (Article 38).

State Parties to the CoE Trafficking Convention are invited to consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of state institutions and the implementation of national legislation requirements (Article 29 (4)). The practice in State Parties shows that the appointment of an independent mechanism to monitor the anti-trafficking activities of state institutions, collect data and promote research on trafficking, such as a National Rapporteur, has been advantageous.¹⁶⁹

By contrast, the ASEAN Trafficking Convention contains a brief provision that states that the ASEAN Senior Officials Meeting on Transnational Crime (SOMTC) 'shall be responsible for promoting, monitoring, reviewing and reporting periodically to the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) on the effective implementation' of the Convention (Article 24). The ASEAN Secretariat is required to provide support and assistance in conducting this mandate but there are no further details that explain the method and procedures of such monitoring exercise. There is no mechanism to bring to light any potential breaches of the Convention requirements by Parties. Furthermore, Article 23 invites each Party to 'consider' establishing coordinating structures in the fight against trafficking including enhancing co-operation under all areas of the Convention. This is a major limitation of the treaty because, as rightly noted, 'such structures are practically essential because of the diverse range of authorities and agencies that may be involved, such as the police, labour inspectorates, social workers, shelters for victims and prosecutors' offices.¹⁷⁰ The CoE Trafficking Convention, on the other hand, creates a duty to adopt such measures as may be necessary to ensure effective co-ordination (Article 29(2)).

The weakness of the ASEAN Trafficking Convention monitoring mechanism is in line with the ASEAN's overall weak system of monitoring compliance and implementation of regionally agreed measures on a national level.¹⁷¹

¹⁶⁹ GRETA, ['Compendium of Good Practices on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings'](#) (2016).

¹⁷⁰ Ryszard Piotrowicz, 'ASEAN Takes on Trafficking in Human Beings' (2017) 91 ALJ 284, 294.

¹⁷¹ Robert Beckman, Leonardo Bernard, Hao Duy Phan, Tan Hsien-Li, Ranyta Yusran, 'Normative and Theoretical Underpinnings of ASEAN Compliance Behaviour' in *Promoting Compliance: The Role of Dispute Settlement and Monitoring Mechanisms in ASEAN Instruments* (CUP 2016).

4.4. Preliminary conclusion - conflicting or comparable?

This section outlines the main findings of the comparative analysis of the provisions of the two instruments according to the four principal area of action (4 Ps).

Protection

While the use of rather weak language to frame victim protection provisions is characteristic of the early anti-trafficking instruments, the ASEAN Trafficking Convention seems to reverse the trend of developing a firmer and more robust victim protection framework. Furthermore, even though the ASEAN Trafficking Convention specifically mentions children in its title, elaborate child protection measures are missing from its text, in stark contrast to the comprehensive provisions of the CoE Trafficking Convention. Similarly weak is the protection of victims as witnesses in the criminal justice process. Also, one of the significant flaws of the ASEAN instrument is the absence of a 'reflection and recovery period' that is meant to guarantee protection for victims during the identification process, which might be lengthy, and to prevent their deportation before identification may be completed. Overall, it may be said that when it comes to victim protection, the ASEAN Trafficking Convention falls short of standards established by its European counterpart.

Reluctance in committing to firmer victim protection measures may be explained by fears among policy makers that legislating such protection would lead to false claims of victim status or even provoke more trafficking. Thus, for example, during a parliamentary debate on the proposed national anti-trafficking legislation in Singapore, one MP argued against 'hardcoding' such victim-centric provisions as he feared that they could be exploited by false claims of having been trafficked.¹⁷² Anne Gallagher notes that

[W]ithin the realities of current migration regimes, there is a natural limit to what States will grant victims of trafficking. It is a common and not altogether unreasonable fear of countries of destination that too much recognition of and support to victims of trafficking will strain resources and capacities and will create a flood of both valid and fraudulent claims - all requiring expensive and time-consuming investigation.¹⁷³

While human rights activists will likely denounce such statements, there has been support for them. Thus, it is noted that

Theory and evidence indicate that better protection policy may encourage potential victims to risk illegal migration, which could lead them to fall prey to traffickers. Human trafficking inflows might therefore increase as a consequence, contradicting the objectives of prosecution and prevention policies.¹⁷⁴

Prosecution

The provisions on criminalisation and law enforcement of both regional instruments seem to be comparable and similarly strong in imposing obligations on states to fight trafficking through criminal law and law enforcement action. In some respects, the CoE Trafficking Convention goes further and contains more detailed provisions. For example, the CoE Trafficking Convention requires states to 'consider' making it a criminal offence to knowingly use the services of a victim of trafficking, even though the requirement is couched in weak language. Also, it provides for the criminal liability of legal persons and establishes a much wider compulsory jurisdiction than the ASEAN Trafficking Convention. In addition, the CoE Trafficking Convention contains more elaborate provisions on the conduct of investigations and prosecutions of human trafficking offences, as well as an express provision on penalties.

¹⁷² Singapore Parliamentary Debates, Prevention of Human Trafficking Bill, 3 November 2014, Vol. 92 (Christopher de Souza, Member of Parliament of Holland-Bukit Timah GRC).

¹⁷³ Anne Gallagher, *The International Law on Human Trafficking* (CUP 2010) 127.

¹⁷⁴ Seo-Young Cho, Axel Dreher, Eric Neumayer, 'The Determinants of Anti-trafficking Policies: Evidence from a New Index' (Economics of Security Working Paper, No. 72). See also R Akee, A Bedi, A. K. Basu and N. H. Chau, *Transnational Trafficking, Law Enforcement and Victim Protection: A Middleman Trafficker's Perspective*, (Discussion Paper No. 6226, November 2011).

On the other hand, in certain other respects, the ASEAN Trafficking Convention is more comprehensive. Thus, it requires criminalisation of acts not covered by the CoE Trafficking Convention, such as: participation in an organised criminal group, criminalisation of the laundering of the proceeds of crime, express criminalisation of corruption, and criminalisation of the obstruction of justice. Furthermore, it includes a longer list of aggravating circumstances that require higher penalties, such as: when the offence is committed against particularly vulnerable victims, including persons with a physical or mental disability (and not just children as per Article 24 of the CoE Trafficking Convention) or when the offence exposed victims to a life-threatening illness such as HIV/AIDS. Finally, the provisions on confiscation and seizure of proceeds of crime are very thorough in contrast with those contained in the CoE Trafficking Convention.

Prevention

Prevention is considered one of the cornerstones of effective strategies to combat trafficking in persons. It is said to require developing and implementing strategies meant to address the 'root causes' of trafficking, such as poverty, under-development, general lack of economic and migration opportunities and gender inequality.¹⁷⁵ These strategies are aimed at decreasing people's vulnerability to trafficking and exploitation. Still, the ASEAN Trafficking Convention places a considerable focus on border controls. Thus, the strongest provision in the chapter on prevention requires from Parties to 'prevent the movement of traffickers and victims (...) by effective border control and controls on the issuance of identity papers and travel documents' (Article 13 (2)), which shows a disproportionate burden being placed on 'sending' states. Unlike the comparable provision in Article 7 of the CoE Trafficking Convention, this provision is not limited by considerations of international commitments in relation to the free movement of people. When it comes to other measures on prevention, both treaties contain broad provisions that lack specificity and normative strength.

Partnerships

International collaboration is of vital importance for addressing cross-border trafficking and the main reason why countries embarked on adopting international and regional instruments in this field. However, while co-operation is vital for every aspect of anti-trafficking action, international instruments are mainly geared towards co-operation in criminal matter. Both regional treaties call for the widest possible level of collaboration between State Parties, but the ASEAN Trafficking Convention contains lengthy provisions on this aspect, while the CoE Trafficking Convention only outlines general principles and key areas of collaboration.

Overall, despite certain flaws, the ASEAN Trafficking Convention represents a step in the right direction, providing a solid basis for improving regional anti-trafficking efforts. While it would have been preferable had the treaty established firmer obligations, when it comes to international law, what matters is not *just* the wording of the instruments but political commitment too. In that respect, developments that followed the adoption of the treaty, including the 2015 Action Plan, which strengthens the commitments expressed at times in rather weak language in the Convention, the Bohol Trafficking in Persons (TIP) Work Plan 2017-2020, the first cross-sectoral action plan that specifies harmonised regional activities in all '4Ps', and the 2017 ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers, provide some grounds for optimism.

¹⁷⁵ UN OHCHR, Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, Maria Grazia Giammarinaro (31 March 2015) A/HRC/29/38.

V. A way forward - concluding observations

This section encapsulates the findings of the previous sections with a view to presenting the need for, possibility and scope of possible collaboration between the CoE and ASEAN in the field of anti-trafficking action. It discusses, first, common challenges in addressing the trafficking problem facing both regions. Next, it outlines areas where collaboration is desirable. Finally, the section proposes the best ways for executing such collaborative actions and examines potential obstacles.

5.1. Main challenges in the anti-trafficking action for two regional organisations

Enhanced victim protection, increased prosecution and conviction rates, and improved prevention are the three main goals of anti-trafficking action. Yet, available records show a huge discrepancy between the estimated numbers and the confirmed numbers of officially identified victims, inadequate protection and assistance schemes, extremely low prosecution and conviction rates and no sign of a decline in human trafficking across the world. Despite increased efforts at the international level to co-ordinate national legislation and policy responses, non-harmonised laws, regulations and policies and their implementation remain one of the most significant tasks in the anti-trafficking action. The following represent common challenges facing countries in both the CoE and ASEAN regions.

Victim identification

Victim identification is one of the most challenging aspects of the fight against trafficking in human beings globally. Not only do problems with victim identification prevent victims from receiving essential protection and assistance, but they also undermine effective law enforcement actions and represent one of the main reasons for extremely low prosecution and conviction rates globally. An additional problem is that countries often hold different views of what might constitute a victim and use different reporting systems. For example, the 2015 Eurostat report notes that in some countries, victims are only registered if they agree to co-operate with the authorities in the investigation and prosecution of traffickers. In other countries, a victim might be registered only when requesting or receiving assistance. And in some countries, according to Eurostat, victims may not be registered at all if they refuse to share their details with the authorities or do not consider themselves to be victims. This creates difficulties for making comparisons between countries, since a higher number of reported cases does not necessarily mean that one country has more victims than another.

Victim identification is also identified as one of the main challenges for all ASEAN Member States in the Plan of Action accompanying the ASEAN Trafficking Convention, which emphasises the need to enhance capabilities of frontline officers for early detection. Victim identification is principally reactive. Moreover, there is a lack of clarity around the nature of, and what constitutes, 'trafficking'. Many governments in Southeast Asia treat human trafficking as a migration and security problem. There is also a tendency to equate human trafficking with prostitution.¹⁷⁶ This misconception has skewed attention to certain forms of trafficking while neglecting other, equally widespread types of exploitation.¹⁷⁷

The victim identification problem is exacerbated by restrictive immigration policies focused on rapid deportation of irregular migrants, which does not provide the opportunity for accurate identification of and provision of assistance to victims of trafficking. Arrest, detention and summary deportation of trafficked persons is common. Thus, the implementation of the non-punishment principle, which allows for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they were compelled to do so, is problematic and needs urgent attention globally and in the two regions in particular.

¹⁷⁶ ACWC, 'Regional Review on the Laws, Policies and Practices within ASEAN relating to the Identification, Management, and Treatment of Victims of Trafficking, especially Women and Children Findings Factsheet 1' (2016).

¹⁷⁷ Report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarino: Mission to Malaysia (15 June 2015) A/HRC/29/38/Add.1.

Child victim identification and assistance

Child victim identification and assistance is an area where both CoE and ASEAN Member States need to step up their efforts. GRETA has identified significant gaps in this area in national responses among Council of Europe Member States.¹⁷⁸ This is particularly important in the context of the increase in the arrival of asylum seekers in Europe, demonstrating the need for protecting affected children and ensuring that they do not fall victim to violence, abuse, exploitation and trafficking. In January 2016, EUROPOL reported that 10,000 refugee children had gone missing, many of whom were feared to have fallen victim to human trafficking. According to the European Commission, child trafficking is 'one of the trends that is increasing most sharply'.¹⁷⁹

The ASEAN Trafficking Convention emphasises special priority for the protection of children by including them in the title, despite the notable absence of comprehensive provisions in the body of the treaty. Still, available data shows the worrying extent of trafficking in children throughout the region, both for sexual exploitation and for forced labour. Children, especially those from indigenous communities and remote areas, are subject to sexual exploitation, forced labour including forced begging, forced marriages, forced criminal offences, and have often been used as soldiers in conflict-riven areas. Thus, there is an urgent need for action in both regions to address the exploitation of the most vulnerable.

Training of frontline staff

Victim identification and protection is dependent on the capacity and resources of frontline officials, including law enforcement, migration and labour inspectorates. The lack of continuous and specialised training of state officials impairs the adequate implementation of anti-trafficking legislation and policies. A recent EU report notes the ad-hoc nature of training activities, the lack of specialised training and a gender-specific and child-centred approach undermines state efforts in tackling human trafficking and is a problem facing both regions.¹⁸⁰

In ASEAN, the capacity to identify victims quickly and accurately among frontline officials, including law enforcement, migration and labour inspectorates, is said to be low¹⁸¹ and adequate training and capacity building of all actors involved in anti-trafficking actions is urgent. It is also important to stress the need for tailor-made training activities, in particular addressing the specificities of different forms of trafficking. In particular, the need for constant and specialised training of law enforcement, prosecution and judiciary professionals, especially in use of new technologies, could not be more emphasised.

The use of the internet and new technologies by human traffickers

The use of the internet and new technologies, including social media, for victim recruitment is a noticeable trend in both regions. According to an EU report, '[t]he internet and new technologies enable organised crime groups to access a large pool of potential victims, hide their activities and carry out a wide range of criminal acts in a shorter period of time and on a much larger scale than ever before'.¹⁸² Accordingly, investigation procedures need to be adjusted to keep pace with these new trends. Evidently, trafficking evolves in parallel with globalisation and technological revolution and keeping pace with the changing modus operandi of human traffickers is thus paramount for improved results in prevention, prosecution and victim identification.¹⁸³ Accordingly, regular and specialised training of law enforcement, prosecution and judiciary professionals on the use of new technologies is a necessity.

¹⁷⁸ GRETA, '[6th General Report on GRETA's Activities](#)' (2017).

¹⁷⁹ Report from the Commission to the European Parliament and the Council, 'Report on the progress made in the fight against trafficking in human beings' as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, COM (2016) 267 final (19 May 2016).

¹⁸⁰ Ibid.

¹⁸¹ ACWC, 'Regional Review on the Laws, Policies and Practices within ASEAN relating to the Identification, Management, and Treatment of Victims of Trafficking, especially Women and Children Findings Factsheet 1' (2016).

¹⁸² Report from the Commission to the European Parliament and the Council, 'Report on the progress made in the fight against trafficking in human beings' as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, COM (2016) 267 final (19 May 2016).

¹⁸³ Athanassia P. Sykiotou, '[Trafficking in Human Beings: Internet Recruitment](#)' (Council of Europe 2007).

Protection of victims in criminal proceedings

In the light of restrictive immigration policies, there are few incentives for victims to testify, since they may be prevented from leaving the country or working during their involvement in criminal proceedings. In addition, lengthy trials place undue burdens on victim-witnesses, who are often not adequately protected from intimidation, reprisals and inducements. While the CoE Trafficking Convention provides certain guarantees to victims and witnesses, these are seldom secured in practice. Victims are often not fully informed of their rights and their privacy is not protected.¹⁸⁴ In several ASEAN countries, adult victims are held in 'protective custody' in shelters, sometimes for extended periods of time.¹⁸⁵ These practices have hindered prosecution rates and negatively affect other anti-trafficking efforts.¹⁸⁶

Confiscation and legal redress for victims

Access to compensation for victims and confiscations of criminal assets derived from trafficking in human beings represent a huge challenge for countries in both regions. Very few victims receive compensation for the harms committed against them. Furthermore, available data shows that the levels of seizures by investigation services and confiscations by courts are not satisfactory. Trafficking in human beings is one of the most lucrative offences, generating substantial proceeds, and cash or property seized and confiscated could be used to guarantee compensation for victims. Despite a relatively satisfactory legal framework, many countries struggle to make effective use of the available legal provisions on seizure and confiscation. There is an urgent need for prosecution authorities and judges to receive adequate training on how to deploy available mechanisms. Moreover, there is a necessity to set up viable compensation schemes accessible to victims of trafficking because available data shows that very few victims have received compensation.

Engaging the private sector

Finding ways to engage the private sector is yet another challenge for states in both regions and globally. Trafficking and business are closely intertwined. Legitimate businesses are used as a cover for illicit activities and these businesses are frequently unaware of what is happening within their purview, largely because they need not be aware. Thus, engaging business should be the corner stone of future anti-trafficking initiatives. Certain efforts have already been made in that respect, for example the 2012 California Transparency in Supply Chains Act or the 2015 UK Modern Slavery Act. The request for states to engage in this field is strengthened by framing this as a positive human rights obligation. Thus, the European Court of Human Rights has ruled that states need 'to put in place adequate measures regulating business often used as a cover for human trafficking.'¹⁸⁷

Human trafficking is also run as a business venture in its own right by crime syndicates. Thus, when it comes to state engagement through law enforcement actions, efforts should also be focused on freezing and confiscation of assets derived from human trafficking in order to dismantle and interrupt their criminal networks, similar to strategies used in the fight against terrorism. It is widely known that profits from human trafficking are enormous, but these measures are rarely used in practice. While the long lasting solution to trafficking and exploitation lies in better protection of those most at risk of becoming victims, when it comes to disrupting existing trafficking operations, the focus should be on its financial aspect in both conducting criminal investigations and imposing appropriate sanctions.

Businesses thus can both perpetuate trafficking in human beings and contribute to its eradication. Thus, governments need to strengthen the role of the private sector in preventing trafficking in human beings and to secure a better enforcement of corporate liability.

¹⁸⁴ ACWC, 'Regional Review on the Laws, Policies and Practices within ASEAN relating to the Identification, Management, and Treatment of Victims of Trafficking, especially Women and Children Findings Factsheet 3' (2016).

¹⁸⁵ Ibid.

¹⁸⁶ ASEAN, 'Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region' (2011).

¹⁸⁷ [Rantsev v Cyprus and Russia](#) (App25965/04) (7 January 2010), para 284.

Tackling corruption

It is noted that traffickers use corruption to guarantee the safety of their operations and escape prosecution.¹⁸⁸ State officials and law enforcement personnel ignore, facilitate and even actively participate in human trafficking by allowing illegal border crossings, producing forged documents, intentionally obstructing investigative efforts, and sometimes even exploiting victims themselves by subjecting their household workers to domestic servitude or knowingly purchasing sexual services from trafficking victims. Many political leaders and government officials benefit from human trafficking and law enforcers receiving bribes from traffickers restrain themselves from conducting proper investigations and prosecutions of the traffickers.¹⁸⁹ This problem has significantly hampered counter-trafficking efforts, secured impunity for the traffickers and obstructed the victims' right to access to justice. Such practices perpetuate and encourage human trafficking. Corruption also contributes to the lack of accuracy in information on human trafficking and the ease of transportation and exploitation of victims.¹⁹⁰ Thus all states have stakes in addressing this problem.

Data collection

Data collection is identified as one of the greatest challenges in anti-trafficking actions. Inadequate data leads to inadequate policies that may be counter-productive and, as such, foster certain forms of human trafficking instead of fighting them. The absence of reliable data on the number of victims, investigations and prosecutions makes it difficult for States to design effective trafficking counter-measures. In addition to the lack of reliable data on the prevalence of trafficking, there is a strong need for reliable data on countries' anti-trafficking policies, which can be compared over time and between countries. Thus, there is a need for developing data-collection systems to monitor and evaluate achievements and challenges faced by regional and national counter-trafficking initiatives.

International co-operation

The transnational nature of a large proportion of trafficking crimes requires increased efforts by governments to co-operate with each other. Strengthening international co-operation for the exchange of information, data collection, research, and monitoring is of supreme importance for maximising the impact of anti-trafficking actions, according to the EU.¹⁹¹ In addition, low levels of operational co-operation between ASEAN Member States is said to impede co-ordination of assistance and support, including in return and integration.¹⁹² As a result, there is an evident lack of co-ordination and collaboration across initiatives, resulting in duplication of efforts between existing bodies that are meant to combat human trafficking. Thus, international, cross-regional and intra-regional co-operation should be promoted and encouraged by establishing effective legal and other mechanisms.

¹⁸⁸ Patchanee Malikhao and Fiona Servaes, 'Human Trafficking in Thailand: A Culture of Corruption' in Patchanee Malikhao (ed), *Culture and Communication in Thailand* (Springer 2017).

¹⁸⁹ Konrad Adenauer EU-Asia Dialogue, 'Trafficking in Human Beings: Learning from Asian and European Experiences' (2014).

¹⁹⁰ Jessie Brunner, 'Inaccurate Numbers, Inadequate Policies: Enhancing Data to Evaluate the Prevalence of Human Trafficking in ASEAN' (East-West Center 2015).

¹⁹¹ Report from the Commission to the European Parliament and the Council, 'Report on the progress made in the fight against trafficking in human beings' as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, COM (2016) 267 final (19 May 2016).

¹⁹² ACWC, 'Regional Review on the Laws, Policies and Practices within ASEAN relating to the Identification, Management, and Treatment of Victims of Trafficking, especially Women and Children Findings Factsheet 2' (2016).

5.2. Potential areas of collaboration

According to the latest UNODC General Report (2016), different parts of the world are at different stages in the implementation of counter-trafficking policies. Moreover, there is an obvious difference in the implementation of different dimensions of anti-trafficking policies, notably prosecution, protection and prevention, across the globe.¹⁹³ Thus, governmental efforts to protect victims of trafficking remain weaker than their efforts to criminalise traffickers and prevent the crime of trafficking. It is also observed that compliance with anti-trafficking policies significantly decreases with corruption and that compliance is higher in countries that are committed to the protection of the rights of women.¹⁹⁴ Moreover, positive correlations are identified between the existence of units of specialised prosecutors and the numbers of convictions of traffickers.¹⁹⁵ These findings reveal obvious advantages of an exchange of knowledge and experience between countries about what works in terms of anti-trafficking policies and how to address those areas in need of improvement.

With ASEAN countries recently introducing the new anti-trafficking legal framework, capacity-building assistance to accelerate the use of national frameworks in accordance with international standards is much needed. In addition to the possibility of emulating specific policies and solutions from the CoE Member States, which may not always be feasible in a different political and socio-economic context, the vast experience of the Council of Europe in anti-trafficking action may be useful for the emerging ASEAN community in other ways.

One example would be in building a mechanism for monitoring state compliance and encouraging the dissemination of the best policies. GRETA has recently compiled a compendium of good practices identified through its monitoring exercise.¹⁹⁶ So far, there has not been a dedicated mechanism for collection and analysis of the data for ASEAN countries alone. Examples of good practices from the region could be found in the US State Department annual reports but these should be consolidated and promoted by ASEAN itself. Thus, the latest US Trafficking in Persons report highlights a practice in the Philippines where the Supreme Court of Philippines instituted the continuous trial system pilot project in 2014 to significantly expedite human trafficking prosecutions. During its first year, the court completed seven trafficking cases in less than one year and it continued to expedite trafficking prosecutions in subsequent years. By comparison, in 2013, trafficking cases prosecuted in the Philippines took an average of three-and-a-half to five years to complete. Another area where the Philippines has showed progress was in raising awareness about human trafficking in communities where recruiters frequently operate, by alerting those likely to be targets of false promises that can lead to their exploitation. Thus, the Philippines Overseas Employment Administration undertakes robust awareness-raising efforts so that Filipino overseas workers can identify warning signs of illegal or unscrupulous recruitment practices. In 2015, the Agency investigated 98 cases of illegal recruitment involving 231 complainants. This resulted in the closure of 12 non-licensed establishments and the referral of 84 cases for criminal investigation. Presumably, there are other examples of good practice that could be shared between ASEAN Member States and beyond. However, there should be a dedicated mechanism for collection and dissemination of such information, knowledge and expertise, and ASEAN is best placed to perform such that role. Thus, GRETA's significant experience may be useful in building the capacity of relevant ASEAN bodies.

¹⁹³ Seo-Young Cho, Axel Dreher, and Eric Neumayer, 'The spread of anti-trafficking policies - evidence from a new index' (CESinfo Working Paper No. 3376, 2011) available at www.human-trafficking-research.org

¹⁹⁴ Ibid.

¹⁹⁵ Jan van Dijk, Fanny Klerx-van Mierlo, 'Quantitative indices for anti-human trafficking policies: based on reports of the U.S. State Department and the Council of Europe' (2014) 61 *Crime, Law and Social Change* 229-250.

¹⁹⁶ Secretariat of the Council of Europe Convention on Action against Trafficking in Human Beings (GRETA and Committee of the Parties), '[Compendium of Good Practices on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings](#)' (2016).

The issues that require particular attention, and where the exchange of knowledge and experiences would be most desirable, have been discussed in the previous subsection on common challenges facing both regions and include:

- Victim identification
- Protection of children
- Corruption
- Special units within the public prosecution service
- Non-punishment of trafficking victims for offences committed in the course, or as a consequence, of being trafficked
- Internet recruitment
- Transparency in supply chains requirements and the role of business in fighting human trafficking
- Freezing of assets and confiscation of proceeds of crime derived from human trafficking offences.

In addition to these examples, areas of collaboration may be determined in future discussions between the two organisations.

5.3. Appropriate models of collaboration

In line with the earlier established models of collaboration with their respective partners by both GRETA and ASEAN bodies engaged in anti-trafficking activities, suitable forms of co-operation between GRETA and its ASEAN counterparts could include:

- Informal meetings for exchange of views and for discussing the possibility of joint activities and exploring avenues for co-operation
- Participation in joint events such as round tables, consultations, seminars and conferences that would serve as a platform for the exchange of knowledge and best practices on a number of important issues
- Joint work on studies and/or policy documents on matters of mutual concern
- Development and participation in specialised capacity-building programmes and training events.

5.4. Potential challenges in collaboration between CoE and ASEAN on anti-trafficking action

A possible challenge that might affect collaboration between CoE and ASEAN is the absence of a single body responsible for anti-trafficking action in ASEAN. Thus, as this study shows, even though SOMTC, supported by the SOMTC Working Group on Trafficking in Persons, is identified in the ASEAN Trafficking Convention as the body responsible for co-ordinating anti-trafficking action, several other bodies are also involved in certain aspects of the fight against human trafficking, including AICHR, ACWC and ACW. The duplication of efforts between existing bodies that are meant to combat human trafficking, as well as inadequate collaboration across different initiatives, must be taken into account since any future collaboration needs to be co-ordinated with these different organs.

Furthermore, trafficking in ASEAN is still seen predominantly as an issue of national security and border protection, and human rights though officially invoked in legal and policy instruments are not the main focus of action. On the other hand, the human rights approach to trafficking dominates the anti-trafficking discourse and actions in Europe. While this difference in approaching the problem may represent an obstacle for collaboration due to potentially diverging priorities of the two regions, it also provides an opportunity for broadening the focus in ASEAN Member States and aligning their anti-trafficking actions with the current international developments in this field.

Despite these challenges, successful collaboration between ASEAN and other partners, including the EU, demonstrates that finding an effective mode of collaboration and dialogue on questions of mutual interest is possible and should be considered.

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ANNEX 1 - ASEAN as a regional organisation

The Association of Southeast Asian Nations (ASEAN) is a regional organisation founded on 8 August 1967 by the Bangkok Declaration, signed by the Foreign Ministers of Indonesia, Malaysia, Singapore, Thailand and the Philippines.¹⁹⁷ It now comprises 10 members: Brunei Darussalam joined the organisation in 1984, Viet Nam in 1995, the Lao PRD and Myanmar in 1997 and Cambodia in 1999. In 2011, Timor-Leste made a formal application to join and ASEAN has set up a High Level Task Force to study the application.

The ASEAN Secretariat has a permanent seat in Jakarta. The Chairmanship of ASEAN rotates annually, based on the alphabetical order of the English names of Member States (Article 31 of the ASEAN Charter). A Member State assuming the Chairmanship chairs all relevant meeting of the institutions established by the Charter. ASEAN member states share the cost of ASEAN meetings on equal basis. This is not negligible, as the number of scheduled ASEAN meetings - at all sectors and levels - is currently about 1200.¹⁹⁸ Another obligation of membership is equally sharing the ASEAN Secretariat's annual operating cost. Thus, the current ten members each contributed US\$2 million for the Secretariat's budget for 2016 that totalled US\$20 million.¹⁹⁹

Although the express purpose of ASEAN, according to the 1967 Bangkok Declaration, was to promote economic, social and cultural co-operation, managing regional security exigencies was claimed to be its primary goal.²⁰⁰ Peaceful dispute settlement mechanisms for military insecurities were of topmost priority. As a further measure to allay Member States' concerns over an outbreak of armed conflict, ASEAN emphasised the principle of non-interference in other Member States' internal affairs, a principle that is now one of the most important norms in the region.²⁰¹ Accordingly, the norms of peaceful conflict management, dispute settlement, decision-making by consensus and non-interference in one another's internal affairs, also dubbed the 'ASEAN Way', were officially codified in the Treaty of Amity and Cooperation (TAC) of 1976.

The new vision of ASEAN 2020 was articulated in 1997 as 'a concert of Southeast Asian nations, outward looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring societies.'²⁰²

Today, ASEAN is the third largest economy in Asia and the sixth largest in the world,²⁰³ covering 630 million people. Still, there are extreme disparities both in terms of economic and social development of the individual countries in South-East Asia. The 10 Member States thus include highly developed economies, middle income countries and also the very least developed countries. This has prompted a movement towards achieving a stronger unity and collaboration in addressing political, security, economic, social and cultural issues by building the ASEAN Community.

¹⁹⁷ 1967 ASEAN Declaration signed on 8 August 1967 in Bangkok, Thailand by the Foreign Ministers.

¹⁹⁸ Moe Thuzar, 'What does it take to join ASEAN?' (2017) 36 ISEAS-Yusof Ishak Institute Perspective (2 June 2017) available at https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2017_36.pdf.

¹⁹⁹ Ibid.

²⁰⁰ Robert Beckman, Leonardo Bernard, Hao Duy Phan, Tan Hsien-Li, Ranyta Yusran, 'Normative and Theoretical Underpinnings of ASEAN Compliance Behaviour' in *Promoting Compliance: The Role of Dispute Settlement and Monitoring Mechanisms in ASEAN Instruments* (CUP 2016) 13.

²⁰¹ Ibid, 14-15.

²⁰² 'ASEAN Vision 2020' (2nd ASEAN Informal Meeting of Heads of State/Government of the Member States of ASEAN Kuala Lumpur, Malaysia, 15 December 1997) available at http://asean.org/?static_post=asean-vision-2020.

²⁰³ ASEAN, 'ASEAN Economic Community at Glance' (2016) available at http://asean.org/?static_post=asean-economic-community-at-a-glance. See also Vinayak HV, Fraser Thompson, and Oliver Tonby, 'Understanding ASEAN: Seven Things you Need to Know' (McKinsey and Company, May 2014).

The idea of the ASEAN Community was first mentioned in the Declaration of ASEAN Concord from 1976 (Bali Concord),²⁰⁴ and further developed into the three specific areas of security, economic and socio-cultural co-operation in the ASEAN Vision 2020 from 1997,²⁰⁵ and the Declaration of ASEAN Concord II (Bali Concord II) from 2003.²⁰⁶ In order to achieve these goals, ASEAN has set out a series of specific targets and work plans for each of the three envisaged communities.²⁰⁷

The adoption of the ASEAN Charter in 2007²⁰⁸ and the formal launch of the ASEAN Community in 2015²⁰⁹ represent the two most important moments in the history of the region as ASEAN envisions a more people-centred community aiming to ensure that benefits of regional integration are inclusive and to promote and protect human rights, especially of the vulnerable groups.²¹⁰

The ASEAN Charter was adopted at the 13th ASEAN Summit in 2007 and entered into force in December 2008. This distinguishes ASEAN from other regional and international organisations because its 'basic' document was created not upon its founding in 1967, but only at the association's 40th anniversary. Hence, during these preceding 40 years, ASEAN functioned without a formal legal structure where business was done on an ad hoc basis.²¹¹ The ASEAN Charter reaffirmed ASEAN's status as an intergovernmental organisation, established its legal personality, codified its purposes and principles, and set up an institutional framework to allow ASEAN to better coordinate its many areas of co-operation.²¹² The Charter incorporated a commitment to the principles of human rights, democracy and the rule of law, as well as regional economic integration, in the form of a formal treaty.²¹³ It established that rights and duties contained in the Charter should prevail over other ASEAN instruments in the event of inconsistency.²¹⁴

Article 14 of the ASEAN Charter expressly called for the establishment of an ASEAN Human Rights Body. Accordingly, the ASEAN Inter-Governmental Commission on Human Rights (AICHR) was established at the 15th ASEAN Summit in 2009. The 10 AICHR Representatives, one from each Member State, come from different background and experience and serve a three-year term of office. AICHR drafted the ASEAN Human Rights Declaration (AHRD), which was adopted unanimously by ASEAN members at its meeting in Phnom Penh in November 2012.²¹⁵ The Declaration does not have a binding character nor does the AICHR have mandate to issue binding decisions or opinions. Its work is mainly based on producing thematic studies, discussing guidelines for engagement with civil society, conducting research, trainings and study trips related to pertinent issues on human rights.²¹⁶

²⁰⁴ 'The Declaration of ASEAN Concord' (ASEAN Heads of State/Government Bali, Indonesia, 24 February 1976).

²⁰⁵ 'ASEAN Vision 2020' (2nd ASEAN Informal Meeting of Heads of State/Government of the Member States of ASEAN, Kuala Lumpur, Malaysia, 15 December 1997).

²⁰⁶ 'The Declaration of ASEAN Concord II' (ASEAN Heads of State/Government Bali, Indonesia, 7 October 2003).

²⁰⁷ 'The Ha Noi Plan of Action' (ASEAN Heads of State/Government, Ha Noi, Vietnam, 15 December 1998); 'The 2004-2010 Vientiane Action Programme' (ASEAN Heads of State/Government, Vientiane, Laos, 29 November 2004); 'Roadmap for an ASEAN Community (2009-2015)' (the 14th ASEAN Summit of Heads of State/Government, Cha-am, Thailand, 1 March 2009); and 'ASEAN 2025: Forging Ahead Together' (the 27th ASEAN Summit of Heads of State/Government, Kuala Lumpur, Malaysia, 30 November 2015).

²⁰⁸ 2007 Charter of the Association of Southeast Asian Nations signed in Singapore on 20 November 2007.

²⁰⁹ Kuala Lumpur Declaration on the Establishment of The ASEAN Community, 27th ASEAN Summit, Kuala Lumpur, Malaysia, 18-22 November 2015.

²¹⁰ Message from H.E. Le Luong Minh, Secretary-General of ASEAN in ACWC, 'Regional Review on Laws, Policies and Practices within ASEAN relating to the Identification, Management and Treatment of Victims, especially Women and Children' (2016).

²¹¹ Jean-Claude Piris and Walter Woon, *Towards a Rules-Based Community: An ASEAN Legal Service* (Integration Through Law, CUP 2015).

²¹² I.B.R. Supancana, 'The Roadmap toward the Creation of ASEAN Security Community in 2015: Legal Perspectives' (2008) 1 J. E. Asia & Int'l L. 323, 330.

²¹³ Art. 2(2)(h)(i) and (n), ASEAN Charter.

²¹⁴ Article 20(1), ASEAN Charter.

²¹⁵ ASEAN, 'ASEAN Human Rights Declaration and the Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration (AHRD)' (February 2013) available at http://www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf.

²¹⁶ AICHR, 'A Brief History of the ASEAN Intergovernmental Commission on Human Rights (AICHR) available at <http://aichr.org/about/>.

In addition to AICHR, three other ASEAN bodies focus on different aspects of human rights in Southeast Asia: the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC),²¹⁷ the ASEAN Committee on Women (ACW),²¹⁸ and the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Right of Migrant Workers (ACMW).

The ASEAN Community was formally established on 22 November 2015 during the 27th Summit in Kuala Lumpur. It is comprised of the three pillars (Communities): The ASEAN Political-Security Community (APSC), ASEAN Economic Community (AEC) and ASEAN Socio-Cultural Community (ASCC).

The objectives of the ASEAN Political-Security Community (APSC) are to ensure that the peoples and Member States of ASEAN live in peace with one another and with the world at large in a just, democratic and harmonious environment. Activities in this community include co-operation on building norms of peace and security, strong relationships with external partners, the promotion of political development in areas such as good governance and human rights, as well as specific sectoral meetings on defence, law, and transnational crime.²¹⁹ Action against human trafficking falls under the auspices of ASEAN Political-Security Community, although ASEAN Social-Cultural Community also plays a role through the work ACWC, ACW and ACMW.

The objective of the ASEAN Economic Community (AEC) is to transform ASEAN into a single market with free movement of goods, services, investment, skilled labour, and freer flow of capital.

The ASEAN Social-Cultural Community (ASCC) aims to contribute to realising an ASEAN Community that is people-oriented and socially responsible with a view to achieving enduring solidarity and unity among the peoples and Member States of ASEAN.

The ASEAN institutional system, set out in the 2007 ASEAN Charter, incorporates key institutions that have existed before, while creating new structures to suit new goals.²²⁰ The table below presents a schematic overview of the ASEAN institutional structure that is comprised of the following organs.

The ASEAN Summit is the supreme policy making body of ASEAN comprised of the heads of government of the 10 member states. The Summit authorises the establishment or dissolution of ASEAN sectoral bodies for specific areas of co-operation. It also functions as final decision-making body in matters referred to it by ASEAN ministerial bodies or the Secretary-General, and plays the role of an appellate body for disputes and cases of non-compliance that cannot be resolved by ASEAN's dispute settlement mechanisms. According to the Charter, the Summit meets twice a year.

ASEAN Ministerial Councils. The Charter established four new Ministerial bodies to support the Summit. First, there is the ASEAN Coordinating Council (ACC) comprised of the ASEAN Foreign Ministers, and charged with preparing the meetings of the ASEAN Summit, co-ordinating the implementation of agreements and decisions of the Summit and oversees overall implementation and co-ordination in the ASEAN Community.

In addition to ACC, the Charter established three Community Councils to ensure co-ordination of the activities under each of the three pillars: the ASEAN Political-Security Community Council, ASEAN Economic Community Council, and ASEAN Socio-Cultural Community Council. Each Member State designates its national representation for each ASEAN Community Council meeting. Each ASEAN Community Council meets at least twice a year. Together, the Councils supervise the sectoral activities of ASEAN - over 700 meetings each year in the various sectoral areas of the ASEAN Community.

²¹⁷ Established in 2010, ACWC works under the ASEAN Ministerial Meeting on Women (AMMW) that is part of the ASEAN Socio-Cultural Committee.

²¹⁸ This Committee works under the ASEAN Ministerial Meeting on Social Welfare and Development (AMMSWD) that is part of the ASEAN Socio-Cultural Committee.

²¹⁹ Centre for International Law, National University of Singapore, 'An Introduction to ASEAN', available at <https://cil.nus.edu.sg/research/asean-law-policy/topics/asean-resources/an-introduction-to-asean/>.

²²⁰ Walter Woon, *The ASEAN Charter: A Commentary* (NUS Press 2016); Centre for International Law, National University of Singapore, 'An Introduction to ASEAN', available at <https://cil.nus.edu.sg/research/asean-law-policy/topics/asean-resources/an-introduction-to-asean/>.

Each of the three Community Councils is comprised of the relevant Sectoral Ministerial Bodies,²²¹ and each Sectoral Ministerial Body may have under its purview the relevant senior officials and subsidiary bodies to undertake its functions.²²² For example, the body with a mandate to co-ordinate anti-trafficking action and to supervise the implementation of the ASEAN Trafficking Convention is Senior Officials Meeting on Transnational Crime (SOMTC), which is convened at least once a year. It implements policies and plans adopted by the ASEAN Ministerial Meeting on Transnational Crime (AMMTC), which falls under the purview of the ASEAN Political-Security Community Council.

ASEAN Secretariat (ASEC) was established in 1976 and provides administrative support for ASEAN's official activities. ASEC is headed by the ASEAN Secretary-General, staffed by nationals from ASEAN member states and is located in Jakarta. The Secretary-General of ASEAN is appointed by the ASEAN Summit for a non-renewable term of office of five years, selected from among nationals of the ASEAN Member States based on alphabetical rotation. ASEC's mission is to initiate, facilitate and coordinate ASEAN stakeholder collaboration in realising the purposes and principles of ASEAN as reflected in the ASEAN Charter. ASEC is also responsible for monitoring implementation of ASEAN commitments and maintaining the organisation's official records. It is noted that despite its modest size,²²³ the ASEAN Secretariat has been given a more pro-active role in the recent period - from its original position of coordinating and assisting the working groups, committees, senior officials and ministerial meetings - to draft position papers, proposals for regional policy/regulation, and may also take on a new role as a regulator/arbitrator in various sectors.²²⁴ The structure of ASEC is given in the Figure 2 below.

The Committee of Permanent Representatives (CPR) is responsible for the day-to-day working level co-ordination of ASEAN activities (Article 12 ASEAN Charter). Each ASEAN Member State appoints a Permanent Representative to ASEAN with the rank of Ambassador based in Jakarta.

ASEAN institutions do not include an assembly representing the people of ASEAN, although various ASEAN institutions maintain contact with civil society organisations in the region and with the ASEAN Inter-Parliamentary Assembly. The latter is not officially a part of ASEAN as to date, only eight Member States' political systems incorporate representative legislative bodies.

Finally, in recognition of the fundamental importance of improving the livelihoods and well-being of the peoples of Southeast Asia, and the need to promote ASEAN awareness as well as people-to-people contact through scholarships, fellowships and other exchanges, the Leaders of ASEAN agreed to establish the ASEAN Foundation on 15 December 1997. The ultimate aim was to help bring about shared prosperity and a sustainable future to all ASEAN countries.²²⁵ Each Member State is required to provide a contribution of US\$1 million to the ASEAN Development Fund, as a onetime 'membership fee'.

The Chairmanship of ASEAN rotates annually, based on the alphabetical order of the English names of Member States. A Member State assuming the Chairmanship shall chair the ASEAN Summit and related summits, the ASEAN Coordinating Council, the three ASEAN Community Councils, relevant ASEAN Sectoral Ministerial Bodies and senior officials, and the Committee of Permanent Representatives (Article 31 ASEAN Charter).

²²¹ For the full list, see: <http://www.asean.org/wp-content/uploads/images/archive/21071.pdf>.

²²² ASEAN, 'ASEAN Sectoral Ministerial Bodies' available at <http://asean.org/asean/asean-structure/asean-sectoral-ministerial-bodies/>.

²²³ The ASEAN Secretariat relies on less than 300 professional staff and is mainly focused on preparing and servicing officials' meetings.

²²⁴ European Commission, 'Action Document for 'Enhanced Regional EU-ASEAN Dialogue Instrument E-READI' (2014) available at https://ec.europa.eu/europeaid/sites/devco/files/annex1-eu-asean-dialogue-instrument-e-readi-20141126_en.pdf.

²²⁵ ASEAN Foundation, 'Who We Are' (2016) available at <http://aseanfoundation.org/who-we-are/about-asean-foundation>.

ASEAN Organization Chart

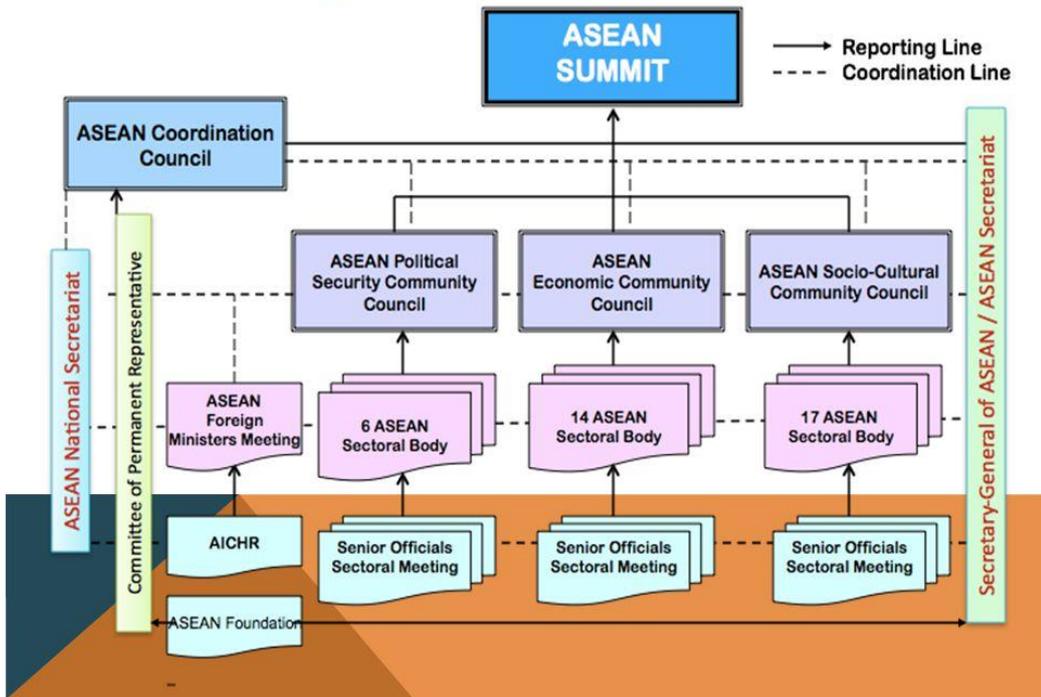


Figure 1: Asia Pacific Women Alliance for Peace and Security, 'ASEAN's Impact on Women, Peace and Security: Organisational Structure of ASEAN' (2015) available at <http://slideplayer.com/slide/5746466/>

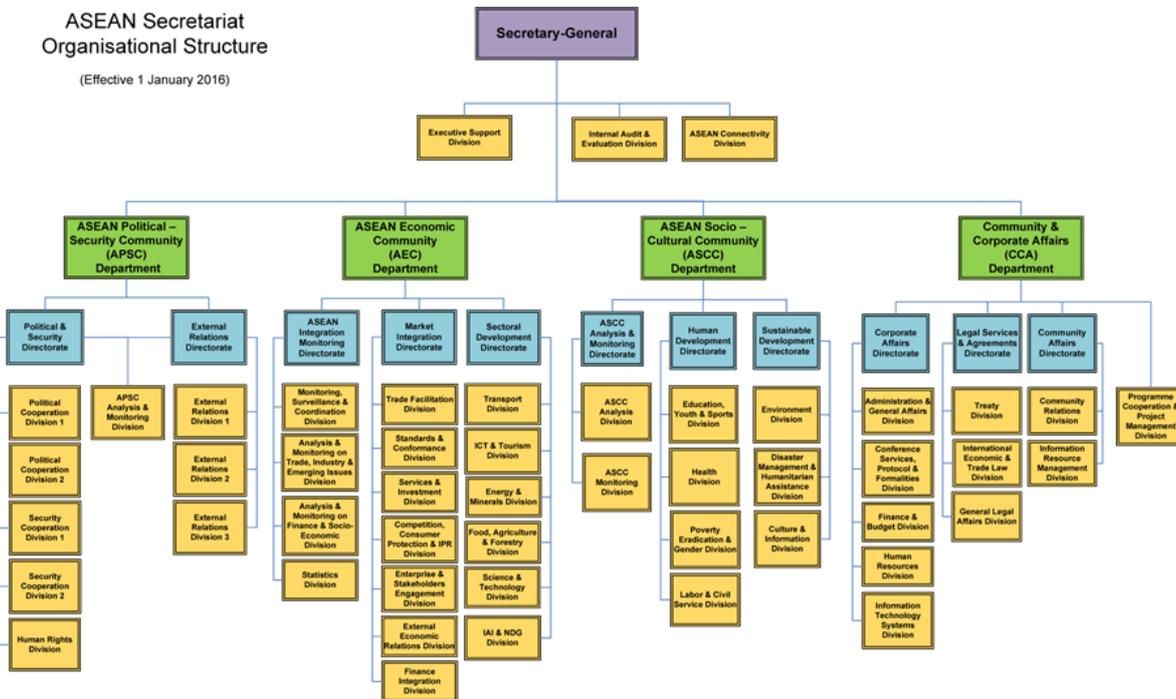


Figure 2: ASEAN, 'Organisational Structure' (2016) available at <http://asean.org/asean/asean-structure/organisational-structure-2/>

ANNEX 2 - Status of ratification of international treaties relevant for action against human trafficking in CoE and ASEAN Member States

Status of Ratification of the International Treaties Relevant for Human Trafficking - CoE Member States

Country	Legend																				
	Y – ratified Signed – signed but not ratified N – neither signed nor ratified																				
	Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) (15 November 2000)	Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (18 December 1979)	Convention on the Rights of the Child (CRC) (20 November 1989)	The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of 25 May 2000	The Optional Protocol to the Convention on the Rights of the Child on the Arms Trade (25 May 2000)	International Covenant on Civil and Political Rights (ICCPR) (16 December 1966)	ILO, Forced Labour Convention, 1930 (C 29) (28 June 1930)	ILO, Forced Labour Convention, 1957 (C 105) (11 June 1957)	ILO, Abolition of Forced Labour Convention, 1957 (C 105) (11 June 1957)	ILO, Worst Forms of Child Labour Convention, 1999 (C 182) (17 June 1999)	ILO, Domestic Workers Convention (C189) and Recommendation R201 (2011) (16 June 2011)	The Convention to Suppress the Slave Trade and Slavery (the Slavery Convention) (25 September 1926)	Institutions and Practices Similar to Slavery (7 September 1956)	UN Convention relating to the Status of Refugees (28 July 1951)	Protocol relating to the Status of Refugees (31 January 1967)	Convention on the Rights of All Migrant Workers and Members of Their Families (18 December 1990)	Convention on the Rights of Persons with Disabilities (15 December 2006)	Optional Protocol to the Convention on the Rights of Persons with Disabilities (15 December 2006)	Convention for Employment (1 July 1949)	Migrant Workers (Supplementary Provisions) Convention, 1975 (C143) (24 June 1975)	
Albania	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	N	Y	Y	Y	Y	N	Y	Y	
Andorra	N	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	N	N	Y	Y	N	Y	Y	N	N
Armenia	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	N	Y	Y	Signed	Y	Signed	Y	Y	
Austria	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	N	Y	Y	Y	N	N
Azerbaijan	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Belarus	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	N	Y	N	Y	N	N
Belgium	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	N
Bosnia and Herzegovina	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Bulgaria	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	Y	Y	Y	N	Y	Signed	N	N	N
Croatia	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	N	Y	Y	Y	N	N
Cyprus	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	N	Y	Y	Y	Y	Y
Czech Republic	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y	Y	N	Y	Signed	N	N	N
Denmark	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	N	Y	Y	Y	N	N
Estonia	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y	Y	N	Y	Y	Y	N	N
Finland	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	N	N
Former Yugoslav Republic of Macedonia	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	Y	Y	Y	N	Y	Y	Y	Y	Y
France	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	N	Y	Y	Y	Y	N
Georgia	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	N	Y	Y	N	Y	Signed	N	N	N
Germany	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	N
Greece	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	N	Y	Y	Y	N	N
Hungary	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	N	Y	Y	Y	N	N
Iceland	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y	Y	N	Y	Signed	N	N	N
Ireland	Y	Y	Y	only signed on 7 Sep 2000	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N	Signed	N	N	N	N
Italy	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y
Latvia	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	Y	Y	Y	N	Y	Y	Y	N	N
Lichtenstein	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	N	Y	Y	N	N	N	N	N	N
Lithuania	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	N	Y	Y	N	Y	Y	Y	N	N
Luxembourg	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	Y	Y	Y	N	Y	Y	Y	N	N
Malta	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	N	Y	Y	Y	N	N
Monaco	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	N	Y	Y	N	Signed	N	N	N	N
Montenegro	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	N	Y	Y	Y	Y	Y
Netherlands	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	N	Y	N	Y	N	N
Norway	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	N	Y	N	Y	Y	Y
Poland	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y	Y	N	Y	N	N	N	N
Portugal	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y
Republic of Moldova	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	N	Y	Y	N	Y	N	Y	N	N
Romania	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	N	Y	Signed	N	N	N
Russian Federation	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	N	Y	N	Y	N	N
San Marino	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	Y	N	Y	N	Y	Y	Y	N	Y
Serbia	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Slovakia	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	Y	Y	Y	N	Y	Y	Y	N	N
Slovenia	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	Y	Y	Y	N	Y	Y	Y	Y	Y
Spain	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	N	Y	Y	Y	Y	Y
Sweden	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	N	Y	Y	Y	N	Y
Switzerland	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	N
Turkey	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Ukraine	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	N	Y	Y	Y	N	N
United Kingdom	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	N	Y	Y	Y	Y	N
Brunei Darussalam	N	Y	Y	Y	Y	Y	N	N	N	Y	N	N	N	N	N	N	Y	N	N	N	N
Cambodia	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	Y	Y	Y	Signed	Y	Signed	N	N	N
Indonesia	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	N	N	N	Y	Y	N	N	N	N
Lao PDR	Y	Y	Y	Y	Y	Y	Y	N	N	Y	N	N	Y	N	N	N	N	Y	N	N	N
Malaysia	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	Y	N	N	N	Y	N	N	N	N
Myanmar	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	N	Y	N	Y	N	N
Philippines	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y	Y	N	Y	N	Y	N	Y
Singapore	Y	Y	Y	N	Y	N	Y	N	Y	Y	N	N	Y	N	N	N	Y	N	N	N	N
Thailand	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	N	N	N	N	Y	N	N	N	N
Viet Nam	Y	Y	Y	Y	Y	Y	Y	N	N	Y	N	Y	Signed on behalf of it on 7 Sept 1956	N	N	N	Y	N	N	N	N

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