



**Report on the CSCAP Study Group on Human Trafficking,
Discovery Suites, Pasig City, The Philippines
1-3 April 2005**

The CSCAP Study Group on Human Trafficking (HT) held its first meeting in Manila from 1-3 April. The meeting was co-chaired by John Buckley (AUS-CSCAP), Carolina Hernandez (CSCAP Philippines) and Suchit Bunbongkarn (CSCAP Thailand). The meeting attracted good participation, with about 35 people from a wide range of backgrounds (academics, military, police and foreign ministry officials) attending most sessions. Unfortunately, some key member committees, such as CSCAP Japan, did not send representatives. The discussions benefited from the participation of several Philippines-based NGOs, as well as the presence of serving and retired law enforcement experts from Australia, India and Southeast Asia.

The meeting opened with two expert presentations: a keynote address by Willem Pretorius, Deputy Director of the Asia Prevention of Human Trafficking (APHT) Project, based in Bangkok, and a presentation by Don Craill, head of the Australian Federal Police's Transnational Sexual Offences Unit. The APHT project started in March 2003 and currently runs in Thailand, Myanmar, Laos and Cambodia. Pretorius provided a helpful overview of the problem in the region, stressing that HT is a complex crime to investigate. He said there are more people on the move than ever before and fewer and fewer avenues for legal migration. This creates a natural market for smugglers and traffickers. Operators were becoming increasingly sophisticated and human trafficking is now thought to be the third largest transnational crime in the world (after drugs and guns).

Craill's presentation focused on the Australian experience. He provided some useful examples of real cases to illustrate just how difficult it can be to legislate against human trafficking and to apprehend the people responsible. He emphasized the need to balance between law enforcement responses, and the need to protect the victims. He said legal responses in Australia were slowly changing to address the complicated nature of the crime. For example, controlling an individual through debt or debt bondage would be criminalized from May 2005. Reforms would also make it a crime to use someone's immigration status as a form of exploitation.

Over the course of the two days' discussions, the Study Group examined a number of country studies and identified several major obstacles to dealing effectively with human trafficking in Asia. Foremost among these was a lack of understanding about trafficking within and between countries. Some governments simply deny the existence of HT. There is also confusion about the difference between 'people smuggling' and HT, something that became clear as the meeting went on. Some participants insisted on distinguishing between the consensual movement of people across borders ('people smuggling') and coerced trafficking. Others argued that at international law the key factor is not consent but exploitation. According to this view, a person can consent to be

moved across borders, but if they are exploited when they get to their destination, then that consent is irrelevant - they have been trafficked. (This of course raises issues about what constitutes “exploitation” and, needless to say, not all regional governments, even signatories to the UN Convention on Transnational Organized Crime, accept the broad definition. Singapore, for example, does not consider the exploitation of domestic workers to constitute human trafficking.)

A related issue is that some countries refuse to recognize trafficking for purposes other than for sexual exploitation. Some participants strongly argued that people trafficked to work in sweatshops should also be included, as they are kept in detention and deprived of their liberty. Participants noted that in Myanmar, people are trafficked to work in palm oil factories. Children are also trafficked from Cambodia to work as child beggars in Bangkok. NGO participants stressed the importance of promoting public awareness to ensure people knew the truth about trafficking. In many regional countries, said one, trafficking has a “good press.” People living in poverty believed it could be a solution to their problems. They needed to be made aware of the real dangers involved.

A second major obstacle to dealing with HT is the lack of effective legal frameworks. Several participants noted that laws often do not include an adequate definition of trafficking. The relevant section of the Indonesian Penal Code, for example, was adopted in 1918 and simply can’t deal with the complications of contemporary criminal operations. In Thailand, the law states that men cannot be victims of trafficking, only women and children. Some participants also noted that laws were too complicated, making it hard for police to work with in practice. Law enforcement representatives noted that it is much easier to prove drug smuggling than trafficking in people. With drugs, all you need to do is match the person to actual possession of drugs. With HT cases, you need the support and cooperation of the victim, often the only person who can provide evidence for use in court.

A third challenge identified by the meeting is the sensitive nature of both migrant labour and the sex industry. Many governments and people do not see foreign workers as deserving of protection because of racism or other forms of prejudice. Some regional governments tolerate the trafficking of “brides” as a solution to demographic imbalances. Several NGO representatives spoke to this issue in detail. They also stressed the problem of public sector complicity in HT. In many regional countries, police, immigration officials or border guards are often paid off to ensure entry.

Unfortunately, HT is also often given a low priority by law enforcement. It was the view of many participants that while there has been lots of talk in the region about dealing with the problem, this has not been matched by action on the ground. Few resources are allocated to human trafficking when compared to drug trafficking. In many cases, the key players or kingpins are very remote and hard to catch. It is much easier to arrest intermediaries and minor players. Some participants also emphasized the problem of bureaucratic divisions with governments. Indonesia has attempted to deal with this by creating a Task Force across the government to encourage cooperation.

Finally, many states have little capacity to cooperate across national borders. There are few MOUs or mutual legal agreements or other forms of official cooperation between governments. This creates bottlenecks in prosecution and means that regionally, the lowest common denominator drags down others. Some participants said the Bali Process had made an important contribution to improving regional cooperation. (New Zealand's active participation was singled out for praise.) Others were more sceptical, saying the process had lost its momentum. There was agreement, however, that high level initiatives like the Bali Process also needed to be complemented with other efforts, including programmes to tackle "root causes" such as poverty and conflict.

The meeting closed with a practical and focused discussion of how CSCAP could best contribute on this issue. The organizers made clear that the Study Group has a very limited life. They want to move quickly to produce an edited volume that would be useful for policy makers. Participants were asked to identify the topics they thought need to be covered in any study and how they could best contribute. After some discussions seven separate topics were chosen for further investigation: a critical overview of legislation in the region; an assessment of regional cooperation, including ASEAN, SAARC and ASEAN+3; capacity building programmes; NGO victim assistance and support activities; public awareness campaigns; some illustrative case studies; and an examination of the convergence between human trafficking and other types of crime. Participants were then assigned various groups to work on. The plan is to produce draft chapters on these topics for discussion at a second meeting to be held in Thailand in August, and from there produce a book and a shorter summary of key recommendations that can be circulated to track one officials. The co-chairs also agreed it was important to reach out to CSCAP Japan and other member committees such as Canada, to ensure their participation in future meetings.

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