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INDONESIA & THAILAND: “MALTREATMENT”/“FORCED LABOR”/“TIP” IN FISHERIES IN INDONESIA/THAILAND¹

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Abstract

This article focuses on “trafficking in persons” (TIP) in fisheries in Indonesia and Thailand which refers to key international instruments on TIP and continues by discussing recent cases of TIP in fisheries in Indonesia that were reported in the first half of year 2015. It also explores respective Indonesian and Thai domestic legislation in relation to measures to combat trafficking in the region. Bilateral and multilateral treaties such as the Treaty between the Government of the Kingdom of Thailand and the Government of the Republic of Indonesia Relating to Extradition and the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters are also addressed as cooperation tools which should be used by Indonesia and Thailand in prosecuting traffickers. To attain success in prosecuting law breakers and to be fair to all concerned, the author discourages those who are preoccupied with TIP from prejudging all unlawful acts as incidents of TIP since many of them might not fall under the criteria of TIP. Additionally, the article addresses the U.S. Victims of Trafficking and Violence Protection Act of 2000, which classifies countries under one of the tiers stipulated therein. The author indirectly suggests that, via the Act, the U.S. puts pressure upon other countries to suppress TIP intensively and properly protect victims of TIP. Therefore, the author urges Indonesia and Thailand to take special care in handling incidents of TIP in fisheries.

Keywords: trafficking in persons, fisheries, Indonesia, Thailand

Abstrak

Artikel ini berfokus pada “perdagangan manusia” (“trafficking in persons” atau TIP) dalam sektor industri perikanan laut di Indonesia dan Thailand. Artikel ini merujuk pada perangkat internasional mengenai TIP dengan membahas beberapa kasus terkini terkait TIP dalam sector perikanan laut di Indonesia yang dilaporkan terjadi pada semester pertama tahun 2015. Artikel ini juga mendalami peraturan domestik Indonesia dan Thailand dalam memerangi perdagangan manusia di kawasan dan juga perjanjian bilateral dan multilateral, di antaranya Perjanjian antara Pemerintah Kerajaan Thailand dan Pemerintah Republik Indonesia tentang Ekstradisi yang merupakan instrument yang dapat digunakan untuk melakukan penuntutan kepada para pelaku perdagangan manusia. Demi kesuksesan penuntutan para pelaku dan demi keadilan bagi pihak-pihak yang terkait, penulis tidak menyarankan dilakukannya praduga bersalah atas tindakan-tindakan melanggar hukum sebagai kasus perdagangan manusia karena tidak semua tindak pelanggaran hukum masuk dalam kriteria perdagangan manusia. Di samping itu, artikel ini juga merujuk pada U.S. Victims of Trafficking and Violence Protection Act tahun 2000, yang menggolongkan negara-negara dalam beberapa tingkat. Penulis secara tidak langsung menyarankan agar melalui peraturan tersebut, Amerika Serikat dapat memberikan dorongan bagi negara lain untuk menekan perdagangan manusia dan memberikan perlindungan yang layak bagi para korban perdagangan manusia. Dengan demikian, penulis mendorong Indonesia dan Thailand untuk secara serius menangani kasus-kasus perdagangan manusia dalam sektor industri perikanan laut.

Kata Kunci: perdagangan manusia, perikanan, Indonesia, Thailand

I. Introduction

Unfair/unlawful exploitation of another human being, such as slavery, practices similar to slavery, or forced labor, has been happening from time immemorial, with varying degrees of cruelty and magnitude. Fortunately, efforts to reduce or eradicate such behavior have been made at least since 25 September 1926 when the League of Nations adopted the Slavery Convention, which entered into force on 9 March 1927.² Not long after that, another key international convention, namely the ILO Forced Labour Convention, 1930 (No. 29) was adopted and entered into force on 1 May 1932.³ Table 1 below provides information on the membership of Indonesia and Thailand in ILO Convention No. 29, as well as in other fundamental ILO conventions and protocols.

Table 1: ILO (Fundamental) Conventions and Protocols

Name of Convention/Protocol	Indonesia	Thailand
C029 - Forced Labour Convention, 1930 (No. 29)	✓ ⁴	✓ ⁵
P029 - Protocol of 2014 to the Forced Labour Convention, 1930	-	-
C105 - Abolition of Forced Labour Convention, 1957 (No. 105)	✓ ⁶	✓ ⁷
C138 - Minimum Age Convention, 1973 (No. 138)	✓ ⁸	✓ ⁹
C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)	✓ ¹⁰	✓ ¹¹

At any rate, over the last few decades we have often heard the term “trafficking in persons (TIP)” or “human trafficking”. This holds true despite the fact that, often

¹ The author acknowledges, with thanks, the kind assistance and suggestions given by Mr. Charles K. Storey, Ms. Christina Asha Arnold, and Ms. Srichan Chancheewa.

Note should be taken that the original version of this article was submitted to *Ilrev* in September 2015. Because of this, readers are advised to obtain developments taking place after August 2015.

² United Nations. Office of the High Commissioner for Human Rights, “Slavery Convention: Signed at Geneva on 25 September 1926 Entry into Force: 9 March 1927, in Accordance with Article 12,” <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SlaveryConvention.aspx>, accessed 8 September 2015.

³ International Labour Organization, “Ratifications of C029 - Forced Labour Convention, 1930 (No. 29) Date of Entry into Force: 01 May 1932,” http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312174, accessed 8 September 2015.

⁴ *Ibid*

⁵ *Ibid*

⁶ International Labour Organization, “Ratifications of C105 - Abolition of Forced Labour Convention, 1957 (No. 105) Date of Entry into Force: 17 Jan 1959,” http://www.ilo.org/dyn/normlex/en/f?p=100:11300:0::NO:11300:P11300_INSTRUMENT_ID:312250, accessed 8 September 2015.

⁷ *Ibid*

⁸ International Labour Organization, “Ratifications of C138 - Minimum Age Convention, 1973 (No. 138) Date of Entry into Force: 19 Jun 1976,” http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:1300:P11300_INSTRUMENT_ID:312283, accessed 8 September 2015.

⁹ *Ibid*

¹⁰ International Labour Organization “Ratifications of C182 - Worst Forms of Child Labour Convention, 1999 (No. 182) Date of Entry into Force: 19 Nov 2000,” http://www.ilo.org/dyn/normlex/en/f?p=100:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327, accessed 8 September 2015.

¹¹ International Labour Organization, “Ratifications of C182 - Worst Forms of Child Labour Convention, 1999 (No. 182) Date of Entry into Force: 19 Nov 2000,” http://www.ilo.org/dyn/normlex/en/f?p=NO:11300:0::NO::P11300_INSTRUMENT_ID:312327, accessed 19 April 2016.

the term is used loosely and people have different perceptions of its meaning. Thus, before continuing further, to standardize our understanding of what "TIP" means, we may begin with the definition used in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which has been followed by countries around the globe. The Protocol was adopted on 15 November 2000,¹² and entered into force on 25 December 2003.¹³ Herein referred to as the Anti-TIP Protocol,¹⁴ it has 167 parties - including Indonesia and Thailand.¹⁵ Please see Table 2, below, for information on ASEAN members and the Protocol.

Article 3 (use of terms) of the Anti-TIP Protocol reads:

For the purposes of this Protocol:

- (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, **by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;**
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) "Child" shall mean any person under eighteen years of age. 16

Incidents of TIP may occur internally (within a country) or across national borders. TIP is a serious crime that needs to be reduced and, if possible, eradicated. This eradication goal has brought additional agreements and cooperation between or among countries to address related problems. Such agreements have, in turn, caused their member countries to promulgate their own respective national laws to comply therewith. Among the agreements is the Anti-TIP Protocol. Former UN Secretary-

¹² See United Nations. Office On Drugs And Crime, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, (New York: United Nations, 2004), <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>, accessed 26 September 2015.

¹³ See United Nations Treaty Collection, "Chapter Xviii Penal Matters 12.a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime New York, 15 November 2000," https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=XVIII-12-a&chapter=18&lang=en, accessed 7 September 2015.

¹⁴ Some refer to this Protocol as "Palermo TIP Protocol".

¹⁵ See United Nations Treaty Collection, "Chapter Xviii Penal Matters 12.a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime New York, 15 November 2000," https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=XVIII-12-a&chapter=18&lang=en, accessed 21 September 2015.

¹⁶ See United Nations, Office On Drugs And Crime, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, (New York: United Nations, 2004), <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>, accessed 26 September 2015.

General Kofi A. Annan strongly urged UN members to join it. He wrote:

*I believe **the trafficking of persons, particularly women and children, for forced and exploitative labour, including for sexual exploitation, is one of the most egregious violations of human rights that the United Nations now confronts. It is widespread and growing. It is rooted in social and economic conditions in the countries from which the victims come, facilitated by practices that discriminate against women and driven by cruel indifference to human suffering on the part of those who exploit the services that the victims are forced to provide. The fate of these most vulnerable people in our world is an affront to human dignity and a challenge to every State, every people and every community. I therefore urge the Member States to ratify not only the United Nations Convention against Transnational Organized Crime, but also the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which can make a real difference in the struggle to eliminate this reprehensible trade in human beings.***¹⁷

Table 2: Multilateral Mechanisms: UNTOC and its Protocols

Country	United Nations Convention against Transnational Organized Crime - UNTOC ¹⁹	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime ²⁰	Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime ²¹
Brunei	25/3/2008	-	-
Cambodia	12/12/2005	2/7/2007	12/12/2005
Indonesia	20/4/2009	28/9/2009 ²²	28/9/2009 ²³
Lao PDR	26/9/2003	26/9/2003 ²⁴	26/9/2003 ²⁵
Malaysia	24/9/2004	26/2/2009 ²⁶	-
Myanmar	30/3/2004	30/3/2004 ²⁷	30/3/2004 ²⁸
Philippines	28/5/2002	28/5/2002	28/5/2002
Singapore	28/8/2008	-	-
Thailand	17/10/2013	17/10/2013 ²⁹	-
Vietnam	8/6/2012	8/6/2012 ³⁰	-

¹⁷ Some refer to this Protocol as "Palermo TIP Protocol".

¹⁸ United Nations, Office On Drugs And Crime, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto. Chap. Foreword* (New York: United Nations, 2004).

¹⁹ United Nations Treaty Collection, "Chapter Xviii Penal Matters 12. United Nations Convention against Transnational Organized Crime New York, 15 November 2000," https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en, accessed 6 September 2015.

²⁰ United Nations Treaty Collection, "Chapter Xviii Penal Matters 12.a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime New York, 15 November 2000," https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en, accessed 6 September 2015.

²¹ United Nations Treaty Collection, "Chapter Xviii Penal Matters 12.b Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime New York, 15 November 2000," https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-b&chapter=18&lang=en, accessed 6 September 2015.

At almost the same time (in 2000), the U.S. enacted Public Law 106-386, 106th Congress – the Victims of Trafficking and Violence Protection Act of 2000 (TVPA 2000). One of its divisions, namely Division A – is on Trafficking Victims Protection 2000.³¹ Pursuant to this law, the U.S. Department of State issues annual reports on trafficking in persons. The first one was published in 2001; the most recent report was issued in late July 2015.³² Pursuant to the TVPA, the State Department places each country in its annual TIP Reports into one of the following tiers.³³

Table 3: Tiers according to U.S. TVPA

Tier 1	Countries whose governments fully comply with the Trafficking Victims Protection Act's (TVPA) minimum standards.
Tier 2	Countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards.
Tier 2 Watch List – Tier 2.5	Countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards AND: a) The absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; b) There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or c) The determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.
Tier 3 ³⁴	Countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.

²² With reservation.

²³ With reservation.

²⁴ With reservation.

²⁵ With reservation.

²⁶ With reservation.

²⁷ With reservation.

²⁸ With reservation.

²⁹ With reservation.

³⁰ With reservation

³¹ [file:///E:/10492.pdf%20US%20TIP%20LAW.pdf](http://www.state.gov/documents/organization/10492.pdf) and "Victims of Trafficking and Violence Protection Act of 2000," *Public Law* 106, no. 386 (28 October 2000), accessed 8 September 2015, <http://www.state.gov/documents/organization/10492.pdf>; See also U.S. Department of State, "U.S. Laws on Trafficking in Persons," <http://www.state.gov/j/tip/laws>, accessed 8 September 2015.

³² U.S. Department of State, "2015 Trafficking in Persons Report," <http://www.state.gov/j/tip/rls/tiprpt>, accessed 8 September 2015.

³³ See, e.g., U.S. Department of State, "Tier Placements: Office to Monitor and Combat Trafficking in Persons Trafficking in Persons Report 2015 Report," <http://www.state.gov/j/tip/rls/tiprpt/2015/243366.htm>, accessed 8 September 2015.

³⁴ "Funding Restrictions for Tier 3 Countries: Pursuant to the TVPA, governments of countries on Tier 3 may be subject to certain restrictions on bilateral assistance, whereby the U.S. government may withhold or withdraw non-humanitarian, non-trade-related foreign assistance. In addition, certain countries on Tier 3 may not receive funding for government employees' participation in educational and cultural exchange programs. Consistent with the TVPA, governments subject to restrictions would also face U.S. opposition to the provision of assistance (except for humanitarian, trade-related, and certain development-related assistance) by international financial institutions, such as the International Monetary Fund and the World Bank.

Funding restrictions will take effect upon the beginning of the U.S. government's next Fiscal Year—October 1, 2015—however, all or part of the TVPA's restrictions can be waived if the President determines that the provision of such assistance to the government would promote the purposes of the TVPA or is oth-

Table 4: Comparison between Indonesian 2007 Anti-TIP Law and the Thai 2008 Anti-TIP Law

Indonesia	Thailand
<i>Indonesian Law on the Eradication of the Criminal Act of Trafficking in Persons of 2007</i>	<i>The Anti-Trafficking in Persons Act B.E. 2551</i>
Article 1. In this Law, the following terms shall have the meaning as assigned:	Section 4. In this act:
1. Trafficking in Persons shall mean the recruitment, transportation, harboring, sending, transfer, or receipt of a person by means of threat or use of force, abduction, incarceration, fraud, deception, the abuse of power or a position of vulnerability, debt bondage or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, whether committed within the country or cross-border, <i>for the purpose of exploitation or which causes the exploitation of a person.</i>	"Exploitation" means seeking benefits from the prostitution, production or distribution of pornographic materials, other forms of sexual exploitation, slavery, causing another person to be a beggar, <i>forced labour or service</i> , coerced removal of organs for the purpose of trade, or any other similar practices resulting in forced extortion, regardless of such person's consent.
2. The Criminal Act of Trafficking in Persons shall mean any crime or series of crimes, which meet the qualifications set out in this Law.	" <i>Forced labour or service</i> " means compelling the other person to work or provide service by putting such person in fear of injury to life, body, liberty, reputation or property, of such person or another person, by means of intimidation, use of force, or any other means causing such person to be in a state of being unable to resist.
...	...
7. <i>Exploitation shall mean an act committed with or without the consent of the victim which includes ... forced labor or service, slavery or practices similar to slavery ... or the use of another persons' labor or ability for one's own material or immaterial profit.</i>	Section 6. Whoever, <i>for the purpose of exploitation</i> , does any of the following acts:
...	(1) procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving any person, by means of the threat or use of force, abduction, fraud, deception, abuse of power, or of the giving money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control ... is guilty of trafficking in persons.
11. Force shall mean any unlawful act, with or without the use of an instrument, against the physical and psychological aspect of a person that threatens the life or body, or causes the deprivation of such person's freedom. (Italics added.)	... (Italics added)
Article 2. (1) Anyone who recruits, transports, harbors, sends, transfers, or receives a person through the threat of force, use of force, abduction, incarceration, fraud, deception, abuse of authority or position of vulnerability, debt bondage or the giving of payment or benefit despite the giving of consent by another individual having charge over the person, <i>for the purpose of exploiting the person within the territory of the Republic of Indonesia shall be punishable by a prison sentence of a minimum period of 3 (three) years and a maximum of 15 (fifteen) years and a fine amounting to a minimum of Rp120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp600,000,000.00 (six hundred million rupiah).</i> (Italics added)	Section 52. Whoever commits an offence of trafficking in persons shall be liable to the punishment of an imprisonment from four years to ten years and a fine from eighty thousand Baht to two hundred thousand Baht. If the offence under paragraph one is committed against a child whose age exceeds fifteen years but not yet reaching eighteen years, the offender shall be liable to the punishment of an imprisonment from six years to twelve years and a fine from one hundred twenty thousand Baht to two hundred forty thousand Baht.
(2) If the act as described in paragraph (1) results in a person being exploited, the offender is subject to the same punishment as provided under paragraph (1).	If the offence under paragraph one is committed against a child not over fifteen years of age, the offender shall be liable to the punishment of an imprisonment from eight years to fifteen years and a fine from one hundred sixty thousand Baht to three hundred thousand Baht.
Article 3. <i>Anyone who brings another person into the territory of the Republic of Indonesia with the intention to exploit such person within the said territory or in another country shall be punishable by a prison sentence of a minimum period of 3 (three) years and a maximum of 15 (fifteen) years and a fine amounting to a minimum of Rp 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp600,000,000.00 (six hundred million rupiah).</i> (Italics added) ³⁷	

erwise in the United States' national interest. The TVPA also authorizes the President to waive funding restrictions if necessary to avoid significant adverse effects on vulnerable populations, including women and children." See U.S. Department of State, "Methodology: Office to Monitor and Combat Trafficking in Persons Trafficking in Persons Report 2015 Report," <http://www.state.gov/j/tip/rls/tiprpt/2015/243361.htm>, accessed 23 September 2015.

II. National Legislation of Indonesia and Thailand

As Indonesia and Thailand are members of the Anti-TIP Protocol, they have honored their obligations by adopting related laws. In 2007, Indonesia promulgated the Law of the Republic of Indonesia Number 21 Year 2007 on the Eradication of the Criminal Act of Trafficking in Persons (hereinafter referred as the Indonesian 2007 Anti-TIP Law)³⁵. In 2008, Thailand passed the Prevention and Suppression of Trafficking in Persons Act, B.E. 2551 (hereinafter referred as the Thai 2008 Anti-TIP Law), which has recently been amended³⁶.

As demonstrated below, the definition of “TIP” under the Indonesian 2007 Anti-TIP Law and the Thai 2008 Anti-TIP Law are similar.

With regard to Thailand, before the adoption of the Thai 2008 Anti-TIP Law, there was – and, there still is – legislation that can be used to prosecute and punish a person unlawfully encroaches on another person’s rights. Among the laws is the Penal Code (especially, Chapter 1 of Title XI). Sections 310, 312, 312*ter*, which form part of this Chapter 1, read:

Section 310.

Whoever restrains or detains another person, or deprives, by any other means, another person of the liberty of person shall be liable to the punishment of imprisonment not exceeding three years and fine not exceeding six thousand baht, or both.

*If the commission of the offence according to the first paragraph causes death or grievous bodily harm to the person restrained, detained, or deprived of the liberty of person, the offender shall be liable to the punishment as provided in Section 290, Section 297 or Section 298.*³⁸

Section 312.

*Whoever, in order to enslave any person or cause any person to be in a position similar to a slave, bring into or sends out of the Royal Kingdom, removes, buys, sells, disposes, accepts or retracts any person, shall be liable to the punishment of imprisonment not exceeding seven years and fine not exceeding fourteen thousand baht.*³⁹ *(Italics added)*

Section 312bis.

If the commission of the offence according to Section 310bis or Section 312 is committed to the child not exceeding fifteen years of age, the offender shall be punished with imprisonment of three to ten years and fined not exceeding twenty thousand Baht.

If the commission of the offence according to the first paragraph or Section 310bis or Section 312 causes:

(1) Bodily harm or mental harm to the victim, the offender shall be punished

³⁵ Indonesia, Undang-Undang tentang Pemberantasan Tindak Pidana Perdagangan Orang [Law regarding the Eradication of the Criminal Act of Trafficking in Persons], UU No. 21 Tahun 2007, LN No. 58 Tahun 2007 [Law No. 21 Year 2007, SG No. 58 Year 2007].

³⁶ It should be noted that, before the passage of this 2008 Act, there were Thai laws in place that could be used to prosecute perpetrators and to assist victims of human trafficking. Among them were the Penal Code (especially, Chapter 1 of Title XI), the Measures in Prevention and Suppression of Trafficking in Women and Children Act, B.E. 2540 (1997), and, the Labor Protection Act, B.E. 2541 (1998). The Civil and Commercial Code – especially the parts on wrongful acts or torts – still can be used by trafficking victims to claim compensation from the perpetrators.

³⁷ Indonesia, loc.cit.

³⁸ LuangDulyasataya-Pathedh, trans., *The Penal Code of Thailand and Its Amendment*. (Pranakorn: Aksornarn, 1967), p. 120.

³⁹ *Ibid.*

with imprisonment of five to fifteen years and fined not exceeding thirty thousand Baht;

(2) Grievous bodily harm to the victim, the offender shall be punished with imprisonment for life or imprisonment of seven to twenty years;

(3) Death to the victim, the offender shall be punished with death, imprisonment for life or imprisonment of fifteen to twenty years.⁴⁰

S. 312ter.

Whoever, for gaining illegal benefit, receives, sells, procures, lures, or traffics a person over fifteen years but not over eighteen years of age, even with the consent of that person, shall be punished with imprisonment not exceeding five years, or a fine not exceeding ten thousand baht, or both. (Italics added.)

If the commission of the offence in the first paragraph is committed against a person not yet over fifteen years of age, the offender shall be punished with imprisonment not exceeding seven years, or a fine not exceeding fourteen thousand baht, or both.⁴¹

In 2013, the Thai Supreme Court, relying upon, among others, sub-sections (1) and (2) of paragraph two of Section 312*bis*, along with Section 312, of the *Penal Code* jailed a woman for a period of 7 (seven) years for her having enslaved a girl under the age of 15 years, or causing her to be in a position similar to a slave. See the Supreme Court Decision No. 15189/2556.

If the prosecution finds it difficult to prove, beyond a reasonable doubt, “in order to enslave any person or cause any person to be in a position similar to a slave” in Section 312 or “exploitation” under the 2008 Anti-TIP Law, he or she may have to consider whether the use of Section 310 is possible.

A. Victims of Trafficking in Persons (VOT) & Victims of Other Type(s) of Crime

Under Thai law, one of the key differences between being a “VOT” and a “victim of another crime” is that the extent of assistance provided by the government to the trafficking victim can be greater. For example, under Sections 37 and 41 of the Thai 2008 Anti-TIP Law, it stipulates:

Section 37. For the purpose of taking proceedings against the offender under this Act, or providing medical treatment, rehabilitation to the trafficked person, or claiming for compensation of the trafficked person, the competent official may assist the trafficked person to get a relief to sojourn in the Kingdom and be temporarily allowed to pursue an occupation in accordance with the law. In so doing, the humanitarian reason shall be taken into account.

Section 41. Unless the Minister of Justice grants a permission in writing, the inquiry official is barred from taking criminal proceeding against any trafficked person on the offence of entering, leaving, or residing in the Kingdom without permission under the law on immigration, giving a false information to the official, forging or using a forged travel document under the Penal Code, offence under the law on prevention and suppression of prostitution, particularly on contacting, persuading, introducing and soliciting a person for the purpose of prostitution and assembling together in the place of prostitution for the purpose of prostitution, or offence of being an alien working without permission under the law on working of the alien.⁴²

⁴⁰ “Thailand Penal Code (Thai Laws Specifying Crimes and Punishment),” <http://www.samuihorsale.com/law-texts/thailand-penal-code.html>, accessed 11 September 2015.

⁴¹ Wanchai Roujanavong, trans., “The Penal Code Amendment Act (No. 14) B.E. 2540,” <http://www.baliprocess.net/files/legislation/q-z/thailandpenalcode.pdf>, accessed 12 September 2015.

⁴² Pravit Roykaew, trans., “The Anti-Trafficking in Persons Act B.E 2551 (2008),” [http://www.baliprocess.net/files/Thailand/1.%20trafficking in persons act b.e%202551%20\(eng\).pdf](http://www.baliprocess.net/files/Thailand/1.%20trafficking%20in%20persons%20act%20b.e%202551%20(eng).pdf), accessed 2323

The above special exceptions, along with the intent to stigmatize exploiters, may lead those wishing to assist victims to try to rely upon the Thai 2008 Anti-TIP Law.

If the provisions similar to those appearing in Sections 37 and 41 of the Thai 2008 Anti-TIP Law form part of Indonesian legislation, then non-Indonesians falling victim to human trafficking in Indonesia would be better assisted and cared for.

B. Prosecuting Law Breakers in Thailand

The Thai Penal Code also contains provisions on determination of an act considered to occur in Thailand and is subject to Thai law. Sections 4 and 5 of the Penal Code stipulate, in part, that

Section 4. Whoever commits an offence within the Royal Kingdom shall be punished according to the law.

*The commission of an offence in any **Thai vessel** ... shall be deemed as being committed within the Royal Kingdom, **regardless of the place where such Thai vessel ... may be.***

Section 5. Whenever any offence, even any part of it, is committed within the Royal Kingdom ... it shall be deemed that such offence is committed within the Royal Kingdom.⁴³

Clearly, an offence committed outside Thailand can be tried and adjudicated in Thailand, as seen from Section 8 of the Thai Penal Code⁴⁴ and Section 22 (2) of the Thai Criminal Procedure Code.

Section 8. Whoever commits an offence outside the Royal Kingdom shall be punished in the Royal Kingdom, provided that:

...

(b) the offender is an alien, and ... a Thai person is the injured person, and the injured person has made a request for punishment;

Provided further that the offence committed is any of the following offences, namely,

(7) Offences against Liberty as provided in ... Section 310, Sections 312 to 315 ...⁴⁵

Section 22 ...

(2) Where the offence has been committed outside Thailand, it shall be tried and adjudicated by the Criminal Court. If the inquiry has been conducted in a locality situated within the territorial jurisdiction of any Court, the case may also be tried and adjudicated by such Court."⁴⁶

III. ASEAN MLAT & Bilateral Extradition Treaty between Indonesia and Thailand

Before further discussion, it should be noted that there are two international instruments that should be useful to Indonesia and Thailand in prosecuting people who break the law (including traffickers). They are: the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters (MLAT) and the Treaty between the Government of the Kingdom of Thailand and the Government of the Republic of Indonesia Relating to Extradition. Table 5 below provides information on ASEAN MLAT members.

September 2015.

⁴³ LuangDulyasataya-Pativedh, trans., *op.cit.*, p. 5.

⁴⁴ See also Sections 6 and 7 of the Thai Penal Code.

⁴⁵ LuangDulyasataya-Pativedh, trans., *op.cit.*, pp. 6-7.

⁴⁶ Suchart Jiwachart and Lertchai Jiwachart, trans., *The Criminal Procedure Code of Thailand*." (Bangkok: Nitibannakarn, 2001), p. 15.

Table 5: Treaty on Mutual Legal Assistance in Criminal Matters - MLAT

Country	Effective ⁴⁷
Brunei	15/2/2006
Cambodia	8/4/2010
Indonesia ⁴⁸	9/9/2008
Lao PDR	25/6/2007
Malaysia	1/6/2005
Myanmar	22/1/2009
Philippines	12/12/2008
Singapore	28/4/2005
Thailand ⁴⁹	31/1/2013
Vietnam	25/10/2005

IV. Indonesia, Thailand and the U.S. TIP Reports of 2011 - 2015⁴⁹

The existence and use of the Indonesian 2007 Anti-TIP Law and the Thai 2008 Anti-TIP Law do not shield Indonesia and Thailand from criticism from the United States (via its State Department Office to Monitor and Combat Trafficking in Persons) for their handling of TIP related problems. This can be inferred from reviewing the U.S. TIP Reports from the past five years. This should hold true despite the fact that some of their readers question the credibility of tier-placement determination. In the last five years, Indonesia and Thailand have not been able to climb up to Tier 1 (Please see Table 6 below). In fact, based on the table below, Indonesia appears to have been more successful in handling TIP related problems than Thailand has been. In the 2014 and 2015 reports, Thailand was placed on Tier 3.

Table 6: Indonesia and Thailand

Year	Country	Tier Placements			
		1	2	Tier 2 Watch List (2.5)	3
2015 ⁵⁰	Indonesia		✓		
	Thailand				✓
2014 ⁵¹	Indonesia		✓		
	Thailand				✓*
2013 ⁵²	Indonesia		✓		
	Thailand			✓	
2012 ⁵³	Indonesia		✓		
	Thailand			✓	
2011 ⁵⁴	Indonesia		✓		
	Thailand			✓	

(* Auto downgrade from Tier 2 Watch List)

⁴⁷ For information on effective dates, please see Association of Southeast Asian Nations, "Asean legal September 2015.

⁴⁸ For information on effective dates, please see "Ratification of the Mutual Legal Assistance in Criminal Matters Treaty among Like-Minded Asean Countries," <http://agreement.asean.org/media/download/20131230232345.pdf>, accessed 19 September 2015.

⁴⁹ For information on effective dates, please see "Ratification of the Treaty on Mutual Legal Assistance in Criminal Matters among Like-Minded Asean Member Countries by the Government of the Kingdom of Thailand," <http://agreement.asean.org/media/download/20140415163050.pdf>, accessed 19 September 2015.

V. The News on 'Maltreatment' / 'Forced Labor' / 'TIP' in Fisheries & the 2015 TIP Report

It was reported in March 2015 that

*... an Associated Press investigation uncovered **slavery-like practices in Indonesia's fisheries**, where hundreds of migrant workers, mostly from Myanmar – were kept in cages, forced to work and often beaten and tortured. The fish and seafood they catch is then transported to Thailand and via Thai companies is supplied to U.S. businesses ... After the surfacing of the report, the Indonesia (sic) government rescued hundreds of workers and in April launched an investigation into fishing company (sic) ... The company admitted **the maltreatment of workers**, but denied accusations that the workers were not paid and were held in cages. **The police found that over 1,400 crewmembers were forced to work.***⁵⁵

In the very same month, reportedly, the Thai government brought back to Thailand 21 Thai fishery workers who were allegedly abused by human traffickers on Ambon Island of Indonesia. According to the news, they were “lured to work on fishing boats and fallen prey to human traffickers on Ambon Island.”⁵⁶ Some more Thai workers were also found on the Island of Bejina.⁵⁷ About five months afterward, the State Department released its annual TIP Report - the 2015 U.S. TIP Report.⁵⁸ Among other things, this Report refers to the above-mentioned incidents. As far as Indonesia is concerned, the Report reads, in part, that “[t]he government reported an increase in foreign and Indonesian fishermen subjected to forced labor on Indonesian and foreign-flagged fishing vessels — many operating out of Thailand’s fishing industry in Indonesian waters.”⁵⁹ With regard to Thailand, the Report critically states that:

Thailand is a source, destination, and transit country for men ... subjected to forced labor ... There are reports that some of those labor trafficking victims are exploited in commercial fishing, fishing-related industries ... Thai ... and Indonesian men are subjected to forced labor on Thai fishing boats; some men remain at sea for several

⁵⁰ U.S. Department of State, “Tier Placements: Office to Monitor and Combat Trafficking in Persons Trafficking in Persons Report 2015,” <http://www.state.gov/j/tip/rls/tiprpt/2015/243366.htm>, accessed 6 September 2015.

⁵¹ U.S. Department of State, “Tier Placements: Office to Monitor and Combat Trafficking in Persons Trafficking in Persons Report 2014,” <http://www.state.gov/j/tip/rls/tiprpt/2014/226649.htm>, accessed 6 September 2015.

⁵² U.S. Department of State, “Tier Placements: Trafficking in Persons Report 2013,” <http://www.state.gov/j/tip/rls/tiprpt/2013/210548.htm>, accessed 6 September 2015.

⁵³ U.S. Department of State, “Tier Placements: Trafficking in Persons Report 2012,” <http://www.state.gov/j/tip/rls/tiprpt/2012/192363.htm>, accessed 6 September 2015.

⁵⁴ U.S. Department of State, “Tier Placements: Trafficking in Persons Report 2011,” <http://www.state.gov/j/tip/rls/tiprpt/2011/164228.htm>, accessed 6 September 2015.

⁵⁵ Business & Human Rights Resource Centre, “Indonesia: Burmese Workers in Slave-Like Conditions to Catch Seafood Supplying US Businesses,” <http://business-humanrights.org/en/indonesia-burmese-workers-in-slave-like-conditions-to-catch-seafood-supplying-us-businesses>, accessed 8 September 2015.

⁵⁶ National News Bureau of Thailand, “Thai Fishermen Trapped on Ambon Island Return Home 28 Mar 2015,” http://thainews.prd.go.th/website_en/news/news_detail/WNSOC5803280010009, accessed 8 September 2015.

⁵⁷ *Ibid.*

⁵⁸ U.S. Department of State, “Trafficking in Persons Report 2015,” <http://www.state.gov/j/tip/rls/tiprpt/2015>, accessed 8 September 2015.

⁵⁹ U.S. Department of State, “Indonesia: Office to Monitor and Combat Trafficking in Persons 2015 Trafficking in Persons Report,” <http://www.state.gov/j/tip/rls/tiprpt/countries/2015/243456.htm>, accessed 7 September 2015.

years, are paid very little or irregularly, work as much as 18 to 20 hours per day for seven days a week, or are threatened and physically beaten. Some victims of trafficking in the fishing sector were unable to return home due to isolated workplaces, unpaid wages, and the lack of legitimate identity documents or safe means to travel back to their home country ... The Government of Thailand does not fully comply with the minimum standards for the elimination of trafficking, and is not making significant efforts to do so. ... The government decreased the numbers of investigations, prosecutions, convictions, and victims identified in 2014. The government increased prevention efforts — including the establishment of a new prime minister-level anti-trafficking committee and passage of ministerial regulations that increased the minimum age of workers ... on fishing vessels and required mandatory employment contracts, a minimum wage, rest hours, and holidays. ... The government passed a new Fisheries Act to replace a 1946 law, which requires better registration and monitoring of vessels and inspection of workers' documents and working conditions. ... The government also did not proactively identify many trafficking victims among fishing workers ... The government investigated ship owners, captains, and brokers for labor trafficking in the commercial fishing industry in four cases related to Ambon Island, each with multiple perpetrators, and identified 32 Thai fishermen who were forced to work on Thai fishing vessels in Indonesia. In the first case, four arrests were made and the case remained pending in court; other cases were in the investigation phase. ...⁶⁰

As can be seen above, some people called the incidents “maltreatment”, while some referred to them as “forced labor” and others referred to them as “TIP”. Thus, it may not be fair to jump to a conclusion that all workers were trafficking victims. Some or all of the workers, who were saved from the islands, might be victims of crime; however, the type/kind of crime may be or may not be TIP. Chances are that some people who are preoccupied with TIP may jump to the conclusion that the workers were VOTs, even if facts do not support this conclusion. In this scenario, if applicable law on anti-TIP is applied to each incident strictly, or, if any wording of the law which may be ambiguous permits different interpretations, they (the alleged victims, as well as the advocates on behalf of the victims) could be unsuccessful in pursuit of a claim. Thus, the prosecution should be careful in taking action.

By now, if they apply the above-quoted definition of TIP, those who know the details of each incident should be able to tell whether TIP has taken place.

VI. Victim Identification

Each worker's experience could have been different from the others. Hence, it is necessary to obtain information from each worker through interviews. This information should then enable law enforcement officers to screen and initially identify whether the interviewee has been a VOT or not. If not, whether he has been a victim of another crime. The information should also help determine whether the person committing the act has broken any other law(s).

Thailand has had a victim identification system in place for many years, despite the fact that it is not required explicitly by Thai law(s). Unfortunately, what Thailand has done does not seem to satisfy the State Department, as clearly evident in Thailand's

⁶⁰ U.S. Department of State, “Thailand: Office to Monitor and Combat Trafficking in Persons 2015 Trafficking in Persons Report,” <http://www.state.gov/j/tip/rls/tiprpt/countries/2015/243547.htm>, accessed 8 September 2015.

ranking (on Tier 3) in the 2015 U.S. TIP Report. It states, among other things, that

*some migrant workers who are trafficking victims are deported without proper screening due to inconsistencies in the victim identification process. ... RECOMMENDATIONS FOR THAILAND ... **improve the consistency for victim identification, screening, and interview procedures, and prioritize the rights and safety of potential victims ...***⁶¹

There is a victim identification system in Indonesia.⁶² However, the U.S. (via its State Department) is not satisfied with the way victim identification has been conducted there. The 2015 U.S. TIP Report reads, in part, that

*[t]he government did not make progress in ... victim identification efforts. Officials did not consistently employ proactive procedures to identify victims among vulnerable groups and refer them to protective services. ... The government had standard operating procedures for the proactive identification of victims, though it did not consistently employ these among vulnerable groups, such as returning migrant workers who reported problems during their overseas employment. **The government continued to rely largely on international organizations and NGOs for the identification of victims. ...***⁶³

VII. Discussion, Using Hypothetical Situations

For some time alleged TIP in fisheries has attracted attention from people around the globe, and the phenomenon should receive close attention from law enforcement officers. Out of fairness to Indonesia and Thailand, let us hope or assume that these two countries (Indonesia as a receiving country and Thailand as a sending country)⁶⁴ properly handled the incidents – both those reported by the media and discovered by others. At a minimum, in our discussion, authorities in these two countries are or will be expected to have undertaken the following steps:

- 1) initial victim identification in order to know if each of the workers was trafficking victim - and if not, whether he was victim of other kind(s) of crime;
- 2) obtaining related facts to be used in taking legal action against each of law breakers (perpetrators), and to help determine whether some of the incidents were deemed to have occurred in Thailand - if so, the offense can be tried and adjudicated in the Thai court;
- 3) collecting evidence on the “crime” scene, as well as recording the names and identities of prospective witnesses, to be used in prosecuting the perpetrators.

At any rate, it is highly possible that the next U.S. TIP Report will assess both

⁶¹ U.S. Department of State, “Thailand: Office to Monitor and Combat Trafficking in Persons 2015 Trafficking in Persons Report,” <http://www.state.gov/j/tip/rls/tiprpt/countries/2015/243547.htm>, accessed 13 September 2015.

⁶² See, for example, IOM, Guidelines for Law Enforcement and the Protection of Victims of Trafficking in Handling Trafficking in Persons Cases, Revision Edition completed with utilization of Law No. 21 Year 2007 on Eradication of Trafficking in Persons as well as the other applicable laws to prosecute trafficking cases, (2009), especially, Chapter 4. See International Organization for Migration Mission in Indonesia, “Guidelines for Law Enforcement and the Protection of Victims of Trafficking in Handling Trafficking in Persons Cases,” http://www.ungift.org/doc/knowledgehub/resource-centre/IOM_Guidelines_for_law_enforcement_and_the_protection_of_victims.pdf, accessed 15 September 2015.

⁶³ See U.S. Department of State, “Indonesia: Office to Monitor and Combat Trafficking in Persons 2015 Trafficking in Persons Report,” <http://www.state.gov/j/tip/rls/tiprpt/countries/2015/243456.htm>, accessed 13 September 2015.

⁶⁴ Due to certain limitations, this paper does not cover discussion on Thailand as a transit country.

Indonesia's and Thailand's performance and to let its readership know the results of the assessments. Initial victim identification seems to attract the attention of the State Department the most.

TIP should receive attention from scholars as well; as impartial parties, they may be able to offer interesting ideas and suggestions. Limited information on what really has happened necessitates the use of the following hypothetical situations. In contrast, the legislation (both national laws and international instruments used in the discussion) is real.

It should be noted that, as this author is a Thai national with limited knowledge of Indonesian laws, she cannot, and does not pretend to be an expert in Indonesian law. Hence, Thai laws will be her focus and references to Indonesian laws will be made only when and where necessary.

It should be mentioned here that, in late last year (2014), relying upon Section 22 of the Thai Labour Protection Act, B.E., 2541 (1988)⁶⁵, the Thai Government issued a ministerial regulation to regulate hours of rest for workers on fishing vessels.⁶⁶ According to Clause 5 of the 2014 Ministerial Regulation, the required minimum hours of rest shall not be less than: (1) ten hours in any 24-hour period; and, (2) 77 hours in any seven-day period.⁶⁷

In addition, as this Ministerial Regulation repealed the *Ministerial Regulation No. 10*, the minimum daily wage is now Baht 300.

The 1988 Labor Protection Act also provides that:

Section 22. ... sea fishing ... may be prescribed in the Ministerial Regulations for the protection of labour differently from the protection under this Act.

Section 23. An Employer shall notify a normal working time to an employee ... which shall not exceed the working time for each type of work as prescribed in the Ministerial Regulations shall not exceed eight hours per day. ...

Section 144. Any Employer who violates or fails to comply with ... Section 22 ... shall be penalized with imprisonment of not more than six months, or a fine not exceeding one hundred thousand baht, or both.

...

*Section 145. An Employer who fails to comply with Section 23 shall be penalized with a fine not exceeding five thousand baht.*⁶⁸

⁶⁵ Ministry of Labour, Department of Labour Protection and Welfare, Legal Affairs Division, "Labour Protection Act B.E. 2541 (1998)," <http://www.mol.go.th/sites/default/files/images/jpg/01.pdf>, accessed 26 September 2015.

⁶⁶ For the Thai version of this Ministerial Regulation, see <http://app-thca.krisdika.go.th/Naturesig/CheckSig?whichLaw=law2&folderName=%a477&lawPath=%a477-2b-2557-a0002>, accessed 23 September 2015.

⁶⁷ The provision of this Clause 5 is similar to the provision of Article 14.1 (b) of the C188 - Work in Fishing Convention, 2007 (No. 188). For the details of the Convention, see International Labour Organization, "C188 - Work in Fishing Convention, 2007 (No. 188) Convention Concerning Work in the Fishing Sector Adoption: Geneva, 96th Ilc Session (14 Jun 2007) - Status: Up-to-Date Instrument (Technical Convention)," http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C188, accessed 23 September 2015.

⁶⁸ Minister of Labour, Department of Labour Protection and Welfare, "The Labour Protection Act B.E. 2541," www.labour.go.th/en/attachments/article/18/Labour_Protection_Act_BE_2541.pdf, accessed 23 September 2015.

A. Hypothetical Situation 1

It was reported that, in April 2015, four Thai males (A, B, C, and D) were discovered to have worked in fisheries on Indonesian islands. The Thai government was notified of this fact and quickly sent a team of officials (law enforcement officers and social workers) to assist the men. The government team interviewed each of the men, and obtained the following pieces of information.

(A)

In January, (A) was contacted to work on a Thai vessel with the promise that he would be paid Thai Baht 2,100 per week (7 days; 8 hours/day). He was told that the vessel would fish in Thai waters only. He agreed to work, and boarded the vessel in the second week of the same month. After having worked for a few weeks, (A) realized that, according to the plan of the owner of the vessel, the vessel went to fish in the Indonesian waters. (A) could not do much beyond recognizing that he had been deceived. After the end of the first month of working, (A) asked for his wages. He was told that they would be paid when the vessel went back to Thailand.

After the first month, with limited food to eat almost every day, (A) was exhausted. This caused him to be able work less than eight hours per day. He was required to work eight hours as initially agreed. Whenever he refused to work, he would be beaten by Lee (a Thai national), who controlled the management of the vessel. As Lee received some of the profits made from the fishing, it caused him to try to save costs, and strictly control workers on the vessel.

After having suffered from the bad treatment for many weeks, (A) decided to jump from the vessel. Fortunately, he was taken to one of the Indonesian islands.

(B)

In January 2015, (B) was contacted to work on a sea fishing vessel. The terms and conditions of work complied with Thai law. The vessel went to fish in the Indonesian waters. After few months of work, (B) felt exhausted and often refused to work as agreed. His refusal to work caused him to be beaten and forced to work. (B) jumped from the vessel. He was taken to one of the islands in Indonesia.

(C)

In January 2015, (C) was contacted to work on a sea fishing vessel. The terms and conditions of work complied with Thai law. The vessel went to fish in the Indonesian waters. After a few months of work, (C) felt bored. Because of this, he jumped from the vessel. He was taken to one of the islands in Indonesia. On the Indonesian island, (C) was forced to work in return for a small amount of money – much lower than the lawful wage rate.

(D)

In January 2015, (D) was contacted to work on a sea fishing vessel. Under the agreement between him and his employer, he would work 98 hours per week in return for the wage of Baht 2,380 per week (= about, Baht 2,100 per 91 hours + Baht 280 for 8 extra hours). The vessel went to fish in Indonesian waters. After few months of work, (D) felt exhausted and could not bear the fatigue; he left the vessel, and was taken to one of the Indonesian islands.

B. Issues for discussion

Taking into account the 2007 Indonesian Anti-TIP Law, the 2008 Thai Anti-TIP Law, and the Thai Labor Protection Act, B.E. 2531 (1988), along with above-mentioned Clause 5 of the 2014 Ministerial Regulation, we must discover whether (A), (B), (C), and (D) are victims of TIP. If not, were other offenses committed?

Assuming that a TIP-related case, (if any) can be tried and adjudicated in Indonesia and in Thailand; and assuming that other conditions imposed by Thai laws are met; and that evidence is ready and adequate to prove beyond a reasonable doubt that TIP has taken place; and that the trafficker(s) can be brought before a court in Thailand that has a jurisdiction to try and adjudicate the case, then which of the following choices should be better: (a) prosecute Lee in Indonesia (using the Indonesian 2007 Anti-TIP Law) or (b) prosecute Lee in Thailand (using the Thai 2008 Anti-TIP Law)?

C. Hypothetical Situation 2 & Questions

Assuming that facts received from the men under this **Hypothetical Situation 2** and those under **Hypothetical Situation 1** are the same, and only the (following) pieces of information are different, what would be the responses or answers? What if, to please the Thai public, as soon as the team reached the island, the team flew the four men back to Thailand without delay, hoping to interview each of the men after arrival? Note that in deference to comity with Thailand, Indonesian authorities did not interfere with the Thai assistance process, nor did the Indonesian authorities interview any of the four Thai men to find out what had happened to each of them.

VIII. Conclusion

There are some similarities between Indonesia and Thailand. Each country is a source, transit and receiving country, with varying degrees of severity. They are both members of the Palermo Anti-TIP Protocol and ASEAN MLAT. They are also related via the bilateral treaty on extradition. The ASEAN MLAT and the Extradition Treaty should enable Indonesia and Thailand to prosecute TIP cases efficiently.

As can be seen above, an alien offender could be prosecuted and punished in Thailand. This does not mean that the prosecution will be successful. Another key factor contributing to the success of the case is evidence (including witnesses). If concerned officers failed to obtain adequate evidence to prove beyond reasonable doubts, the accused/offender could go free. This should hold true despite the fact that Thailand should be able to rely upon the Indonesia-Thailand Extradition Treaty and the ASEAN MLAT⁶⁹.

As far as the U.S. TIP Report Tiers are concerned, during the last five years (2011 – 2015), Indonesia has performed better than Thailand has. This remains true despite the fact that Indonesia could not move itself up to Tier 1; Thailand could not move itself up to Tier 2. If Indonesia did not manage the reported TIP incidents properly, the mismanagement could pull Indonesia down to 2.5 Tier or lower. If Thailand did not manage the incidents properly, it would perhaps retain Tier 3 position,

⁶⁹ For more information vis-à-vis Indonesia, please see "Ratification of the Mutual Legal Assistance in Criminal Matters Treaty among Like-Minded Asean Countries," <http://agreement.asean.org/media/download/20131230232345.pdf> and "Ratification of the Treaty on Mutual Legal Assistance in Criminal Matters among Like-Minded Asean Member Countries by the Government of the Kingdom of Thailand," <http://agreement.asean.org/media/download/20140415163050.pdf> respectively.

or might be able to climb up only to 2.5 Tier. Because of their interconnectedness, Indonesia and Thailand may have to be more careful in handling the matters related to foreign workers working in the fisheries within their territories. In addition, it is advisable that law enforcement officers of the two countries discuss and consult where to prosecute perpetrators, taking into account the likelihood of success of the case and the punishment to be imposed upon the alleged perpetrators.

Last, but not least, the following suggestions for improvement on TIP prevention can be implemented relatively easily. Despite the fact that the U.S. TIP Reports often displease many readers, the comments and recommendations contained therein should not be completely ignored. The comments/recommendations can help concerned countries in adopting or improving measures to, among other things, assist and protect VOTs properly. And, with regard to identification on victims of trafficking, Indonesia and Thailand may consider asking the U.S. State Department to: (1) describe cogently the VOT identification system the State Department accepts to be good or desirable; and (2) demonstrate clearly how the system works and be implemented properly. Asking the State Department to do so should not be a matter of losing face as a nation if we take into account that VOTs are the ultimate beneficiaries. The information and experiences should help Indonesia and Thailand better review, as well as improve, their existing systems and practices if necessary. Furthermore, Indonesia may have to consider carefully whether its public agencies rely inordinately on international organizations and non-government organizations to identify trafficking victims. If so, the Indonesian government should take steps to rectify the situation as soon as possible.

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