

Migrations - Movement of People in the ASEAN Region: Nomenclature and Concepts

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Contents

- [ASEAN region and migration](#)
- [Refugees, trafficking, and](#)
- [Implications](#)
- [Conclusion](#)

An unprecedented migration crisis unfolded in Southeast Asia earlier this year. Several Rohingya asylum seekers were stuck on boats in the Andaman Sea. Echoing Australia's hardline asylum policy, Thailand initially refused the boats access to their shores. This standoff, which was solved by finally allowing the asylum seekers temporary entry, dovetailed another migration crisis that, by then, had been evolving for some time: the discovery of mass graves and alleged trafficking of Rohingya into slave camps at the Thai-Malaysian border. [1]

These shocking human rights abuses have been much commented upon. Less attention has been given to the proliferation of labels and vocabulary used during this twofold migration crisis as well as others. Should the Rohingya crisis be understood as a humanitarian refugee crisis? Or does it exemplify the underbelly of transnational organised crime, given the heavy involvement of nefarious migrant recruitment practices? If so, should it be framed in terms of people smuggling or human trafficking? Or - given the discovery of labour camps - would it be more apt to refer to it as "modern slavery"? Politicians, the media, and activists seem to have no difficulty using this vocabulary interchangeably. Yet, the ease with which this evolving vocabulary seamlessly blends together warrants some consideration of its policy implications. Reflecting on the nomenclature of migration management within the Association of Southeast Asian Nations (ASEAN), I suggest that the proliferation of language must be understood as a contest between competing policy demands. Although there are obvious differences between these concepts, they are, at the same time, surprisingly similar: at the end of the day, migration management is a politics of return.

ASEAN region and migration

Migration in the ASEAN region is diverse and large in scale. Decades of political turmoil have resulted in several waves of refugee movements from Laos and Vietnam (during the Vietnam War), and more recently from Myanmar. The region has also become an important transit point for asylum seekers from the Middle East attempting to seek refuge in Australia. At the same time, much migration is related to the ASEAN economy: The development of several countries is underpinned by labour migration. For example, according to the International Organisation for Migration, Thailand has more than one million migrant workers registered under various migrant worker programmes. [2] Given that large parts of Thailand's economy is informal, the number is likely to be much higher, as many labour migrants are not registered.

The ASEAN region offers many interesting points for analysis for several reasons. It is politically diverse and ranges from nominal communist one-party states (Laos and Vietnam) to democratic states (such as Indonesia), albeit with authoritarian pasts. A historical legacy of considerable hostility among ASEAN governments contributes to a political environment in which many factors are stacked against migrants. Whether labourers, refugees, or visitors, migrants are at times treated with suspicion. As in Europe, politicians at times issue strong anti-immigration rhetoric. Yet ASEAN is a very vibrant region characterised by uneven socio-economic development, both within and between ASEAN countries, with considerable co-dependency between sending (Laos, Myanmar, Cambodia, Indonesia) and receiving countries (Thailand, Malaysia, Singapore) of migrant labour. Furthermore, with the exception of Singapore (and perhaps Malaysia), there is a significant UN and NGO presence, both in terms of advocacy and the implementation of programmes relating to migration management, which places emphasis on human rights and development concerns. Hence, a myriad of policy initiatives relating to migration management takes place alongside competing demands for strengthened border control, a pragmatic need for the regulation of migration, and a need to - at least appearing to - address humanitarian and human rights concerns for migrants.

An important point to note about the ASEAN region is that, although some countries such as Thailand and Malaysia serve as either transit or destination points for asylum seekers, few ASEAN governments have acceded or ratified the refugee convention. [3] This does not mean that there are no policy responses relating to refugees, but rather that international organisations such as UN agencies and the International Organisation for Migration take on important roles within this policy space. In contrast to the reluctance in embracing the refugee convention, several ASEAN member states - particularly in the Mekong region - have been surprisingly responsive in terms of engaging "human trafficking" and "people smuggling". ASEAN countries are active participants in the Bali process on people smuggling, and many were early signatories to the UN human trafficking protocol. These legal commitments are echoed in a range of national plans of action and other programmes to combat trafficking. This apparent eagerness to engage smuggling and trafficking (as opposed to refugees) becomes clear when considering some of the policy implications of these different concepts.

Refugees, trafficking, and smuggling

The aforementioned trafficking protocol and a separate protocol on people smuggling co-exist under the auspices of the transnational organised crime convention. The main conceptual difference between these terms is most clearly explained in light of the actions of traffickers and people smugglers. Whereas a people smuggler assists in moving migrants across an international border, a trafficker deploys deception or force in order to recruit a person into exploitative labour. Whereas the former squarely places the focus on the movement of migrants, the latter combines this with a post hoc concern relating to labour exploitation: It is ultimately the outcome of this recruitment (exploitation) that qualifies something as "trafficking". Whereas trafficking is deemed non-consensual, people smuggling implies that migrants are willing travellers. These conceptual distinctions are, of course, much more fuzzy in practice. Although the fight against human trafficking may appear to be concerned with eradicating labour exploitation, its focus on recruitment often results in a strong focus on law enforcement and border control, which renders it similar to people-smuggling approaches.

In this context, it is important to note other policy responses to migration that have received far less attention in the media. Since the early 2000s, many ASEAN member states have developed mechanisms for legalising labour migration. There are now numerous bilateral memorandums of understanding between member states that facilitate this. ASEAN recently initiated a regional

framework that allows for the free movement of labour within this region. These policies resemble labour policies in the European Union, but with one important difference: Regulation of labour migration in the ASEAN region has had significant input from UN agencies and NGOs. Although legal migration regimes in ASEAN are, in many respects, less developed than in Europe, in a certain (conceptual) respect, these policies of ASEAN have exceeded the standards of those in Europe. One policy trope that is evident in several ASEAN countries is “safe migration”, in addition to the implementation of systems that allow legal labour migration, governments, UN agencies, and NGOs to collaborate on issues regarding awareness-raising provisions, resource centres, and migrant hotlines in order to safeguard migrants’ welfare. Hence, “safe migration” extends efforts to legalise labour migration by attempting to empower migrants’ decision-making and social capital (i.e. safe social networks).

“Modern slavery” is another phrase that has emerged. Although the phrase has taken on significance in many other parts of the world (such as the recent modern slavery bill in the United Kingdom), ASEAN countries appear to not (yet) have engaged in this concept.

Implications

So, what are some of the implications of these overlapping, yet discrete labels?

One of the main policy responses we have seen in Southeast Asia (and elsewhere) is the attempt to prevent migration through strengthened law enforcement and border control. Whereas politicians frequently claim that this will put people smugglers out of business, it is worth noting that this can have detrimental effects on trafficked victims and migrants. As argued in a growing body of research, increased border control enables a market for dubious migration “brokerage” to take place: By making it more difficult for migrants to cross borders, you make migrants more dependent on third parties, which in turn creates enormous vulnerabilities for migrants, which can result in trafficking and abuse. As such, the human trafficking concept is a double-edged sword.

Although it appears to be a concept that speaks to the ways in which we can reduce the exploitation of migrants, it could easily help in advancing anti-immigration agendas. For example, the “deportation” of “illegal migrants” may well be popular among the general public, but it can come across as cold-hearted. Re-labelling it “repatriation of trafficked victims” makes it sound like a humanitarian deed. Conversely, claiming someone is a “smuggled migrant” annuls any moral or legal responsibility to provide any services (or compensation) for abused migrants. Hence, people smuggling and human trafficking are dialectically strategic and useful concepts that can advance different policy considerations. The fact that the terms “people smuggling” and “trafficking” are frequently used interchangeably underscores this point. It also places abused migrants in an impossible situation: As it is the state that determines whether someone is a trafficked victim or an illegal migrant, migrants need to seek simultaneous protection from and against the state. This may, perhaps, be one of the reasons why we see some organisations gravitating to the label “modern slavery”, as it elevates the exploitation of labour – and not migration control – as the prime concern. Yet, whether it is called “modern slavery” or “trafficking”, both concepts present labour migrants in terms of being perpetrators and victims. Research to date suggests this invites individuated responses that ultimately have difficulty in addressing structural reasons as to why there are abusive labour practices in labour sectors in the first place.

It is important to also consider the policy responses that result from this nomenclature from the vantage point of a migrant. If you are identified as a refugee, then you may be entitled to stay on and settle in your country of destination, with the subsequent possibility of obtaining citizenship. As

mentioned, given that few ASEAN countries are party to the refugee convention, this is not a political reality for any migrants within the region. This scenario only applies to asylum seekers who are successful with their asylum application to the United Nations High Commissioner for Refugees while transiting in one of the ASEAN countries. The numbers are comparatively miniscule.

A migrant who is identified as having been “smuggled” offers a straightforward case in policy terms (deportation), yet it is a detrimental reality for migrants, most of whom have left their home communities in an attempt to improve their lives through migration. Migrants who are deemed victims of trafficking face a different scenario. At first glance, it may seem like a far more humanitarian response, as trafficked victims may be entitled to health care, legal support, compensation, and the like. However, trafficked victims are often required to cooperate with law enforcement authorities as witnesses in court cases. This can sometimes prolong their stays and keep them in legal limbo for a considerable time. As a growing body of research shows, many trafficked victims end up in shelters, which do not often serve the best interests of victims. This situation is now so precarious that there are cases in which officially identified victims of trafficking are requesting to be relabelled as “illegal migrants” in order to avoid prolonged stays in shelters. Hence, migrants too can be strategic about this vocabulary.

Legal and safe migration initiatives are, in many respects, different from the responses to both people smuggling and trafficking. For example, whereas the latter tend to privilege law enforcement initiatives, the former typically redirect the implementation of policy to labour and social welfare ministries. Yet, similarly to both smuggling and trafficking, safe and legal migration are premised on the circular regulation of migration. In other words, regardless of all these different labels, the end-outcome for migrants is return.

Conclusion

The reason for the proliferation of labels can be understood as an outcome of migration being a contested policy domain in which multiple actors attempt to carve out a space. Migration policy can be nasty. Hence there is always a need to find the political language that makes it more palatable. At the same time, organisations that work to improve migrants’ welfare and rights need to consider how different labels provide momentum to their cause. In a region where there is considerable historical hostility among neighbours, it is almost impossible to mobilise support (and sympathy) when labour migrants are called just that: migrants. This is why we have human trafficking and modern slavery as terms – they appeal to emotions; they enable moral gratification. These labels may seem to invite different approaches, but if one places the focus specifically on mobility, the policy outcome is actually rather similar (though achieved in different ways); migration policy is ultimately about the return of migrants. [4] As such, the proliferation of language, which may appear to be progressive (who can disagree with combating “trafficking” or “modern slavery”?), risks obfuscating – as opposed to clarifying – a substantive emancipatory political agenda for migrant workers.

A sad fact about the recent Rohingya crisis is precisely this: Although it is commendable that alleged slave camps are now being investigated – with the conviction of several complicit officials being likely – and that there is continued dialogue about the regional responses to asylum seekers, the propensity to bandy about phrases such as “evil people smugglers”, “slave-camps”, and “the scourge of trafficking” may, in the long run, contribute more heat than light when it comes to migration management in the region. For most migrants in the ASEAN region – whether they are trafficked, smuggled, enslaved, or safeguarded – their choice is usually one between precarious stays and being returned.

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More on Prum Vannak's story and his drawings:

<https://www.boell.de/en/2015/03/11/three-years-high-seas>

P.S.

* From the Heinrich Böll Stiftung Southeast Asia website. 15. Nov. 2015:

<http://www.th.boell.org/en/2015/11/15/movement-people-asean-region-nomenclature-and-concepts>

Footnotes

[1] Some allege that a key reason for why the boats were abandoned at sea was a direct consequence of the fact that the Thai military government had to take action against the alleged trade of Rohingya into labour camps in southern Thailand.

[2] http://publications.iom.int/system/files/pdf/tmr_2011.pdf

[3] Exceptions are Cambodia and the Philippines.

[4] For an elaborated analysis of "return" as a mode of migration governance, see Biao Xiang, et al., *Return: Nationalizing Transnational Mobility in Asia* (Durham, NC: Duke University Press, 2013).