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# **International cooperation and the anti- trafficking regime**

Megan C. Brand  
[megan\\_brand@mac.com](mailto:megan_brand@mac.com)

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Refugee Studies Centre  
Oxford Department of International Development  
University of Oxford

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# Contents

1	Introduction	4
	Project outline	4
2	Theory and methodology	6
	International regimes	6
	International cooperation	8
	Public goods and sub-optimal outcomes	8
	Incentivizing cooperation	10
3	1949 Convention	12
	Drafting background and key concepts	12
	Principle 1: Social causes of prostitution	13
	Principle 2: Abolitionism	16
	Principle 3: Protection regardless of motive of offender	17
	Additional considerations in calculus for cooperation	18
	Final observations	19
4	2000 Protocol	20
	Drafting background and key concepts	20
	Principle 1: Comprehensive approach	21
	Principle 2: Transnational, organized crime	24
	Principle 3: Border control	25
	Final observations	27
5	Conclusion	27
	Public goods of the anti-trafficking regime	28
	Private benefits to states	29
	Conclusion	29
	References	31

# 1 Introduction<sup>1</sup>

States have cooperated on combating trafficking in persons for over a century. Over this period, the focus of countering trafficking in persons has broadened, moving from women exclusively,<sup>2</sup> to include all persons,<sup>3</sup> and from prostitution<sup>4</sup> to nearly all forms of exploitation.<sup>5</sup> As both the definition of groups of trafficked persons and their numbers have expanded, reasons for state cooperation to combat trafficking have also changed. This paper seeks to explain what has induced state cooperation in the negotiation processes of the anti-trafficking regime in 1949 and in 2000 by applying economic and neo-liberal institutionalist international relations theories of public goods. The question of what brings about cooperation in international politics, especially on non-defense issues, has been a significant one for several decades. It is important because understanding reasons for cooperation allows incentive structures to be built that will best encourage cooperation on future issues (see Axelrod 2006, Keohane 2005, Martin 1993, Milner 1992, Ostrom 1990, Young 1989). Economic literature explains how overcoming collective action failures can be accomplished through governing mechanisms or through separate individual incentives (see Cornes and Sandler 1999:143-237, Kaul et al. 2003:21-58, Olson 1965). In the case of international politics, where no one government exists that can bring about public good provision through obligatory contribution like taxation, understanding structural and private incentives are even more important for cooperation theory. Betts observes, “[l]iberal institutionalism has particular relevance for the international politics of forced migration because it can help to explain the conditions under which international cooperation takes place in relation to different aspects of forced migration” (Betts 2009:26). Other authors have applied public good theories to cooperation in similar regimes like the refugee regime (Betts 2003, Surkhe 1998). By explaining what benefits states expected to gain in the 1949 and 2000 cases, both publically and privately through participation in negotiations on two anti-trafficking treaties, we can better understand the starting points of cooperation.

## Project outline

Section 2 establishes the main theoretical frameworks for analysis: international regimes and international cooperation. Using Krasner’s widely accepted definition of an international regime, Section 2 briefly outlines how anti-trafficking fits within the definition of a regime (Krasner 1983). The section then explains what incentives exist for cooperation that takes place in

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<sup>1</sup> This paper was originally submitted as a dissertation in partial fulfillment of the requirements for an MSc in Forced Migration at the University of Oxford. The author would like to thank Steele Brand and Alice Edwards for their many discussions about and helpful comments on the paper.

<sup>2</sup> International Agreement for the Suppression of the “White Slave Traffic” 1904, International Convention for the Suppression of White Slave Traffic 1910, International Convention for the Suppression of the Traffic in Women of Full Age 1933. These treaties will be referred to hereafter as the “1904 Agreement,” the “1910 Convention,” and the “1933 Convention.”

<sup>3</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1949, Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children 2000. These treaties will be referred to hereafter as the “1949 Convention” and the “2000 Protocol.”

<sup>4</sup> 1904 Agreement, 1933 Convention, 1949 Convention.

<sup>5</sup> 2000 Protocol.

international politics, especially cooperation not based purely on security alliances, tying back to the role of regimes in establishing such incentives. A specific neo-liberal institutionalist cooperation theory that is insightful for the anti-trafficking regime cooperation is the theory of joint products incentivizing public good provision. This theory draws heavily on economics literature of “warm-glow giving” (Andreoni 1990). According to this perspective, states derive multiple private benefits in addition to the public benefits from cooperation. These private benefits increase incentives for state cooperation that might otherwise be lacking because of concerns about free-riding and cheating.

Cooperation will be measured by willingness of states to participate in the treaty drafting process and ratification. Fearon specifies that international cooperation involves two problems: first, a bargaining problem and then, an enforcement problem (Fearon 1998: 270). In Fearon’s terms, the paper is looking at evidence of states’ intentions toward contributing to public good provision through bargaining rather than measuring actual contribution or treaty implementation, which is enforcement. In this respect, the arguments are more theoretical than empirical. Nonetheless, participation in initial decisions about regime principles is the important first stage in cooperation. Bargaining processes can identify what motivates states to participate and how states justify cooperation or abstention through reference to either public or private benefits.

Sections 3 and 4 document the major arguments in negotiations leading to the 1949 Convention and the 2000 Protocol through analysis of state commentary in the *travaux préparatoires*. Combining the study of international public law, such as treaty negotiations, with international relations theories about state behavior is a useful paradigm for the fields share a similar “optic” (Keohane 1997; Slaughter Burley 1993). In researching the topic, I perused over 100 United Nations documents from the *travaux préparatoires* of these two treaties to understand the major debates in each negotiation context, their resolution, and state reactions.

Section 3 identifies three key principles of the 1949 anti-trafficking regime: the social causes of prostitution, abolitionism, and protection regardless of motive of offender. It then discusses state commentary and amendments to draft articles concerning these principles. It finds that states participated in the drafting process and ratified the 1949 Convention when they perceived they had self-interest in the regime, often in the form of existing domestic legislation that was compatible with the treaty and necessarily agreed with its principles. Because the 1949 Convention could be applied to domestic as well as international trafficking, the incentives for cooperation for the express purpose of providing a public good were less clear than the 2000 Protocol.

Section 4 identifies three key principles of the 2000 Protocol: a comprehensive approach, transnational organized crime, and border control. It finds that while state commentary was not as forthcoming as in 1949 about the specific reasons for accepting or disagreeing with amendments, states nonetheless contributed because of perceived private benefits. Similar to cooperation in 1949, states were hesitant to ratify the 2000 Protocol if domestic policy differed significantly from the principles underlying the regime. Examples suggest that states were willing to cooperate if the principles were less than or equal to existing government commitments on trafficking, but not if they exceeded them. An additional incentive for cooperation stemmed from

the clear public good provision of the 2000 Protocol: transnational crime cannot be combated by a single state. Only collective action can prevent irregular movement of people and money across borders. Complementing the collective benefits was the private security incentive of strengthening domestic border control measures.

Section 5 concludes the paper with insights about cooperation for reasons of both public and private benefits. The desire to bring about public goods in the 1949 and 2000 contexts could not be categorized as either security or altruism. Instead, state motivations for public good provision were complex and not easily bifurcated into only two categories. States derived private benefits primarily from an altruistic sense of affirming existing state norms and policies. This was especially evident in the 1949 negotiations. States also found social reasons to cooperate such as preventing spread of disease. In 2000, the combination of clear public good provision, security benefits to states, and the comprehensive approach to trafficking provided states with even more reasons to cooperate. Perceived benefits including clear public good provision induce cooperation. Because a state's decision to cooperate is motivated by numerous factors, helping states understand the multiple benefits that they may gain by participating in the regime may be one way to advance cooperation in the initial stage of bargaining.

## 2 Theory and methodology

### International regimes

International regimes facilitate cooperation in a number of ways. While the study of international regimes has numerous definitions and is not without its critics, Krasner has provided a longstanding and widely cited definition of regimes:<sup>6</sup>

*Implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations. Principles are beliefs of fact, causation, and rectitude. Norms are standards of behavior defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implanting collective choice (Krasner 1983:2).*

Hasenclever explains that from this definition, “only if principles or norms are altered does a *change of the regime* itself take place; all other changes in regime content are *changes within a regime*” (Hasenclever 1997:13). In analyzing the international anti-trafficking regime, separate consideration of the 1949 and 2000 treaties is necessary given the differences in key principles of each, which implies that the regime changed over this time period.

Even if principles and norms have varied over the last century, the anti-trafficking regime existed albeit in varying forms, experiencing changes within and to it. Although international relations scholarship has already recognized the prohibition on the trafficking in women and children as a

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<sup>6</sup> While a detailed discussion of regimes and their critics is beyond the scope of this paper, a range of opinions on the subject can be found in Alter and Meunier (2009), Barnett and Finnemore (1999), Haggard and Simmons (1987), Hasenclever (1997), Keohane (1982), Woods (2002), and Young (1982).

regime with “powerful global norms”, this section will overview how the “anti-trafficking regime” constitutes a regime based on Krasner’s criteria (Nadelmann 1990:479). First, principles are expressed in numerous legal textual documents. These include the 1904 Agreement, the 1910 Convention, the 1921 Convention for the Suppression of Traffic in Women and Children, the 1933 Convention, the 1949 Convention, and the 2000 Protocol. Additional international documents that express related principles of anti-trafficking include the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), Declaration on the Elimination of Violence against Women (UN Res. 48/104), International Labour Organization Worst Forms of Child Labour Convention, European Union Council Framework Decision on Combating Trafficking in Human Beings, and the UN ECOSOC Recommended Principles and Guidelines on Human Rights and Human Trafficking, as well as government statements about trafficking such as those published in the annual US Department of State Trafficking in Persons Report. While the trafficking definition has expanded from the 1904 “White Slave Traffic” to today’s force, fraud, coercion, and deception, the body of international anti-trafficking documents lays out the overarching principle of preventing and suppressing exploitation.

The anti-trafficking regime meets the second criteria of norms, which are established through a number of sources. The international treaties on trafficking, after describing their guiding principles, lay out the norms for standards of behavior in terms of rights and obligations. For example, states have the obligation to punish traffickers, and/or acts of trafficking, defined in the various legal texts (see 2000 Protocol and 1949 Convention). They also commit to implement domestic policies that conform to the international anti-trafficking principles. State practice also establishes norms. The “victim-centered” approach to trafficking by some states has meant that victims increasingly have the right to seek assistance and protection and to not be prosecuted for illegal acts they committed while being coerced (UNODC 2009). Finally, institutions like the United Nations oversee the implementation of these standards of behavior. Similar to the principles, norms of the regime can and have evolved, but they generally involve establishing punitive measures for traffickers and protection for victims.

Rules, although sometimes non-binding in the international law context, originate from treaties and from state interactions that set precedents, consequently establishing new prescriptions for action. One example in the modern context is the safe repatriation of victims of trafficking to their state of nationality or permanent residence. Article 8 of the 2000 Protocol outlines how repatriation should take place by establishing rules about victim safety, travel documents, and communication between the sending and receiving states. Article 10 of the 2000 Protocol articulates rules for information exchange between law enforcement agencies. The extent to which states follow rules is a more complicated question. Regardless of adherence to rules, the textual legal evidence over decades does define how states should act.

Finally, anti-trafficking constitutes a regime based on its decision-making procedures: the practices that guide how to implement the principles, norms, and rules cited above. Anti-trafficking decision-making procedures originate first from collectively agreed mechanisms like inter-state information sharing, intelligence on trafficking, and government reporting in front of international bodies. States may commit to these procedures through treaty obligations. For

example, parties to CEDAW report on their progress at least every four years (see Article 18, CEDAW). Inter-state decisions made on a bilateral or multilateral basis about victim treatment and extradition practices for traffickers may also form part of the decision-making procedures. Decision-making procedures, however, may be one of the weaker elements of the anti-trafficking regime because the regime “does not have any enforcement mechanisms akin to those available to some of the human rights treaty bodies” and relies instead on information exchange (Edwards 2007:21). Nevertheless, decision-making procedures are in place, even if not highly enforceable. Overall, a historic set of the principles, norms, rules, and decision-making procedures has addressed the issue of trafficking in persons. While differing principles and their implications for cooperation are the subject of later analysis, for now it is sufficient to establish that efforts to combat human trafficking meet all of the criteria for discussing the “anti-trafficking regime.”

Establishing the anti-trafficking regime is important because international regimes facilitate international cooperation. They monitor behavior to avoid moral hazard; link issues, thereby raising costs of deception and irresponsibility; build ties among officials, which increases the likelihood of mutually beneficial agreements; and overall, reduce uncertainty through reliable information (Keohane 2005:97). Discussing the “anti-trafficking regime” acknowledges the regime’s role in establishing incentives for cooperation.

### **International cooperation**

International cooperation can help overcome inefficiencies and sub-optimal outcomes in world politics. Keohane defines cooperation as “when actors adjust their behavior to the actual or anticipated preferences of others, through a process of policy coordination” and occurs when actions of individuals are “not in pre-existent harmony” (2005:51). In other words, cooperation is an important part of avoiding collective action failure on issues of international concern in which states have preexisting disagreement, including areas of forced migration, like trafficking in persons.

#### **Public goods and sub-optimal outcomes**

Several factors can lead to sub-optimal outcomes. First, when property rights are not clearly defined, an inefficient bargaining outcome results (Coase 1960). Prior to the existence of international cooperation, an anarchic international state system has no governing structure that can enforce property rights. Secondly, in the case of market failure, the anarchic state system is unable to solve problems individually because of high costs and imperfect information. Keohane explains that “specific attributes of the system impose transaction costs (including information costs) that create barriers to effective cooperation among actors” (2005:83). Additionally, too many actors can lead to a collective action problem, and actors may base cooperation on expectations of continuing interaction (Milner 1992:473-475).

Collective action problems may manifest themselves in low public good provision. Economic theory differentiates between privately-provided goods and public goods, with public goods differing because of non-excludability and non-rivalry (Kaul et al. 1999:3). Non-excludability occurs when people cannot reasonably be excluded from a good, whether or not they contribute to its existence. Non-rivalry occurs when one person’s use of it does not prohibit another person from using it at the same time. A public good combines both of these properties. The anti-



trafficking regime is a public good insofar as it provides non-rival and non-excludable benefits to all states. Interception and disruption of transnational criminal trafficking networks by one state is non-excludable because ridding the world of the group benefits all states (less cross-border crime, irregular movement of people, and money), not just those that contributed resources to the interception. The interception and disruption is also non-rival because multiple states' enjoyment of it does not prevent other states from also benefiting.<sup>7</sup> Additionally, victim protection and assistance is non-excludable and non-rival. When a state aids a foreign victim of trafficking and bears the cost of services and protection, all other states gain by not having to themselves aid the victim, even if they contributed nothing to the services. At the same time, all states can benefit from the provision of aid by others to the victim.

Betts characterizes public goods in two categories, altruistic public goods and security public goods. Altruistic public goods primarily, according to Betts, fulfill "moral and legal humanitarian obligations" while security public goods attempt to reduce a perceived cost (Betts 2003: 276). The provision of an altruistic public good would seem to relate back more closely to regimes, which by definition derive their existence through shared norms. However, provision of public goods may not necessarily be divided neatly into security and altruism. In fact, the bifurcation of these two categories oversimplifies the complex nature of state decision-making and their consequences in a world in which issue areas overlap and incentive structures are interrelated. Nadelmann describes the complexity of state decision-making in regimes:

*[t]he evolution of global prohibition regimes, particularly those which involve intrasocietal interactions as well as interstate relations, thus entails highly complex processes in which not only economic and security interests but also moral interests play a prominent role, in which actions of states must be understood as the culmination of both external pressures and domestic political struggles, in which national and transnational organizations and movements shape the actions of states as well as the actions and opinions of diverse societies (1990:480).*

It may be the case that a public good itself provides multiple outputs of humanitarian, legal, economic, and security natures so that a division between only two categories does not sufficiently explain the multifaceted nature of an impure public good. For this reason, analysis of cooperation in the anti-trafficking regime will look for complexity in the public good provision, not assigning a purely security and altruistic label.

Given these characteristics of the anti-trafficking regime as a public good, all states can potentially benefit by preventing and suppressing trafficking through punitive measures against traffickers and humanitarian aid for victims. The cross-border nature of trafficking means that efforts to stop it affect more than one state, making anti-trafficking a *global* public good. In essence, all states benefit by the provision of the anti-trafficking measures outlined above, even if the benefits may vary according to region or state or the type of trafficking. However, because an individual state's contribution to anti-trafficking may come at great cost to itself and without a practical way to exclude others from sharing the benefits, it may instead do little.

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<sup>7</sup> Certainly, advantages may be greater in certain regions than others or in certain states than others. Nonetheless, the dispersion of benefits does take away from the non-rivalry and non-excludability aspects which characterize the public good.

The reason public goods provision can be lower than the optimum is that while everyone benefits collectively from their existence, individually, no one actor is better off by providing it. Betts explains:

*the incentive to provide a Pareto optimum level...would only exist if the states were to share marginal costs in the same proportion as they shared marginal benefits. However, while states continue to act independently, they can best serve their self-interest by understating their evaluation of the public good (2003:275).*

In game theory terms, the best overall outcome is for all states to contribute and share the greatest collective benefit (less transnational trafficking, more victim protection). Individually, though, each state is better off cheating, not contributing to the public good provision and instead free-riding on the efforts of others. When each state makes its individual calculation then, it will choose to cheat, with the collective result being that everyone cheats, potentially leading to the worst possible outcome of no public good provision (see Conybeare 1984, Olson 1965). In such a scenario, how can cooperation exist?

#### Incentivizing cooperation

One solution is for government to provide the good (Desai 2003:63). In the international context, though, where no one governing structure defines the property rights, assigns benefits, and taxes to provide the public good, it would seem that no provision would exist. An international legal framework, however, can establish property rights and liability through low-cost information (Keohane 2005:97). Low-cost information helps establish liability by more clearly delineating rights and monitoring other's behavior (Martin 1999:53). When states have this reliable information and can link negotiations about various issues to each other in a regime, two incentives for cooperation occur. First, the state faces negative consequences for renegeing on one agreement if that agreement is tied to state gains in another agreement (Martin 1999:53, Stein 1980). Secondly, states know that all of the other actors face the same outcome, which makes them less likely to cheat too (Keohane 2005). Since each state has something to lose by cheating and something to gain by cooperating and they all know the bargaining position of the other states, cooperation may be more likely to occur. While the certainty that information in a regime provides may cause an initial step in cooperation, additional incentives may be needed.

Private benefits from cooperation are an appealing reason for states to cooperate. When states gain private benefits through contributing to public good provision, the public good actually may be better termed an "impure public good." Impure public goods have multiple outputs including private benefits to the providers whereas pure public goods produce only the collective benefit. Multiple outputs lead to application of joint-product models (Cornes and Sandler 1999:543).

Joint products apply where production of one good produces residual outputs. Olson (1965) finds that large groups have incentives to contribute to a collective benefit when individuals find their own "positive inducements" (Olson 1965:133). Andreoni has modeled impure reasons for giving as "warm-glow," explaining that people's contributions to charity are not always purely altruistic (Andreoni 1990, 1989). Taking this idea further, Betts explains that states also can get a warm-glow, or as he terms, excludable altruistic benefit, from contributing to a public good. The private benefits states receive because of their cooperation are an essential component of their willingness

to cooperate, and hence the provision of the public good (Betts 2003). Betts categorizes the private benefits as excludable prestige benefits that offer political capital and negotiation power, excludable altruistic benefits that relate to norms diffusion, and state-specific security benefits (2003:286). I would further add state-specific economic benefits and state-specific social benefits.

In the anti-trafficking regime, altruistic and prestige benefits generally emerged when states found their existing policies affirmed by the regime and could uphold themselves as exemplary models for the norms. Private security benefits accrued to states particularly in the latter part of the regime by legitimating measures that bolster domestic security mechanisms like border control. The security benefits may be couched in terms of keeping out international traffickers and other people construed as criminals, yet stronger domestic border measures might extend to domestic internal security measures. In other words, cooperation in the regime provides a legal tool to threaten not only transnational groups but also those deemed undesirable domestically by providing a new category of criminals and by consequence, an internationally legitimized extension of state power over domestic threats. Alternatively, state-specific security concerns of the 1949 era involved less the transnational crime element and more health risks like venereal disease, which could be classified as state-specific security or social threats. Health risks are one area in which the private products of the public good are interrelated between social benefits and security benefits; grouping these benefits into one or other category is not helpful. A state could be concerned about the spread of disease for multiple reasons that comprise both internal security like order, ability to control outbreaks, and avoidance of public outrage and social good like a healthier populace, a better reputation for tourism, and greater community between citizens fostered by bonds of trust. State-specific social benefits also accrue when measures adopted by the international community validate state-desired societal values, whatever they may be.

State-specific economic benefits might follow provision of an impure public when contribution to a regime brings resources to the state that are disproportionate to the state's marginal cost of participation. Economic benefits could accrue to states indirectly from some of these causes. For example, healthy citizens are more productive citizens, and disease-free societies are more inviting to tourists. Therefore, resources from the international community that contribute indirectly to a state's productivity offer the private incentive of economic improvement in addition to the explicit public good for which they are allocated. An additional economic interest that a state could have is in gaining funding from the international community to address state-specific concerns of security, social, or economic natures, through the lens of the anti-trafficking treaty. For instance, a large border control issue could be couched in language of trafficking, allowing a state to plead for aid to address the "public good" of the problem when its private interests are actually the root concern. Or, efforts to combat crime domestically through updated technology for police and intelligence services could also be framed as an anti-trafficking initiative. Similarly, a poor health system would not be able to provide appropriate care to trafficked persons as stipulated by the international legal agreements. By agreeing in principle with provision of care, the state could express its desire to help but highlight its lack of resources to do so. If it is successful in its bid for resources to address the health system, the state may receive spillover effects of improved health resources for all its citizens. One way that states indicate these private benefits is through official statements and suggested amendments to the international legal texts of the regime that will be considered in sections 3 and 4.

To conclude, regimes facilitate cooperation by building structures, information, and linkages that coax states into contributions for public good provision. In some cases, like the anti-trafficking regime, multiple private benefits also accrue to states by participation in the regime and are crucial components of the decision to cooperate. This section explored on a theoretical level what these private benefits might be in the anti-trafficking regime. Treaty negotiations indicate which benefits, both public and private, states explicitly recognized when justifying cooperation with or abstention from the anti-trafficking regime.

### 3 1949 Convention

#### **Drafting background and key concepts**

The 1949 Convention came out of a draft convention in 1937 by the League of Nations that was intended to unify all previous international documents on trafficking: the 1904, 1910, 1921 and 1933 treaties (UN Doc. E/1072 1948). More specifically, it was “intended to cover all the penal clauses of the Conventions of 1910, 1921, and 1933,” revealing both consistency in principle with the anti-trafficking regime in previous years and a new decision-making procedure by way of legal instrument outlining agreement on trafficking offenses (UN Doc. E/1072 1948, 17). It would form the basis of contractual obligations between states on the subject (UN Doc. E/CN.5/41/Add.2 1948, 3). Despite these goals, the 1949 Convention has been enforced weakly. For example, “no independent treaty body has been established to monitor the implementation and enforcement of the treaty” (Coomaraswamy 2000:12). Only in the 1970’s was a “mechanism for receiving these reports and other information... established..., when the followup to this Convention was brought within the framework of the human rights program” (Reanda 1991:210).

The League was instructed initially to “only take up that part of the evil which is constituted by traffic in women and children,” but as work progressed expanded the scope “to the problem of prostitution as a whole” (UN Doc. E/CN.5/14 1947, 1). The work on the draft began in 1931 by the Advisory Committee on Social Questions of the League of Nations as a draft convention “for the suppression of activities of souteneurs” (UN Doc. E/CN.5/41 1948, 7).<sup>8</sup> In 1935, the International Bureau for the Unification of Penal Law prepared a draft convention for the suppression of “the exploitation of the prostitution of others” (UN Doc. E/CN.5/41 1948, 8). Four drafts of the convention were written before the language was finalized in the 1949 Convention. The first draft was the original 1937 draft called the “Codification Draft.” Next came the “First Revision” draft in 1947, the “Second Revision” in 1948, the “Comprehensive Draft” in 1949, and the final 1949 Convention.<sup>9</sup>

The 1949 Convention can be traced to important debates about the character of the anti-trafficking regime. The following sections analyze how three key principles of the 1949

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<sup>8</sup> “Souteneurs” translates into English as “pimps.”

<sup>9</sup> For clarity, these drafts will be referred to as the Codification Draft, First Revision, Second Revision, Comprehensive Draft, and 1949 Convention.

Convention were negotiated and agreed upon by states, evaluating evidence of private benefit from each.<sup>10</sup> State cooperation in 1949 depended on private altruistic and prestige benefits of affirming norms already embodied by domestic legislation and policy. Where these norms were absent, states decided against ratifying the 1949 Convention.

The three principles of the 1949 anti-trafficking regime – social causes of prostitution, abolitionism, and protection regardless of motive of offender – do not fit clearly into altruistic or security public good provision that Betts (2003) identified. As the drafting negotiations show, the public good of cooperating in the fight against trafficking had multiple benefits for states. Humanitarian aid to victims seemed altruistic initially but upon closer examination also could provide security to states by upholding a moral order that was perceived as necessary for society at the time. Preventing the spread of venereal disease also crosses the altruistic/security dichotomy. It first appeared as a social, not necessarily altruistic, concern in the background documents to the drafting process. However, providing care for prostitutes that had contracted disease has an element of altruism, that of aiding the afflicted and needy. At the same time, ensuring that an international populace did not contract and spread disease surely could be a security interest to all parties involved.

In terms of private, state benefits from cooperation, a number of examples emerged. Primarily, for a state to obtain an excludable altruistic benefit, it had to agree in principle with the regime. Because excludable prestige benefits often come out of the altruistic benefit, cooperation in the regime for either of these reasons occurred when states agreed with the main principles (Betts 2003). Examples like the Philippines showed how the state's existing policies could bolster it as an example to be followed and in negotiations, a voice to be heard. On the other hand, states that disagreed with or had concerns about principles of the regime, even those like the UK, which stated strongly its position of preventing trafficking but had hesitations about the scope of the drafts, could not be induced to cooperate as the cost to the state would be too high. Because altruistic benefits are linked to norms and principles, and because so much of the negotiation process involved the principles underlying the 1949 anti-trafficking regime, determining state-specific benefits of a security, social, or economic nature in the bargaining rather than enforcement stage of cooperation was more difficult. Had more obligatory rules and decision-making procedures become part of the 1949 Convention, it may have been easier to parse out the state-specific benefits and draw conclusive evidence. Even without these binding rules, commentary by states leaves room for theorizing about the existence of security, social, and economic state-specific benefits as facilitators of international cooperation in the 1949 anti-trafficking regime.

### **Principle 1: Social causes of prostitution**

The Social Commission outlined several working principles as it introduced the Codification Draft. The first principle was that trafficking existed because of social causes for prostitution.

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<sup>10</sup> This section discusses three principles of the 1949 Convention that were selected because of prominence in the *travaux préparatoires* debates and formation of the final convention language. However, this does not exclude the possibility of other principles in the anti-trafficking regime at the time but is merely to analyze several relevant examples.

The Social Commission explained, “[t]raffic in women and children is deemed to be the procurement and transport for gain to a foreign country of women or girls for the sexual gratification of others. The background for the traffic is the whole problem of prostitution” (UN Doc. E/CN.5/14 1947:12) and further noted, “[t]he traffic in women and children, as considered above, is a product of prostitution” (UN Doc. E/CN.5/14 1947:3). The Social Commission declared the causes of prostitution as “individual as well as social” (UN Doc. E/CN.5/14 1947:3). The individual causes it found were, “poor heredity...the influence of other prostitutes; ...premature sexual experience and, though less important than has been commonly assumed, an over-sexed constitution or constitutional depravity” (UN Doc. E/CN.5/14 1947:4). Social causes, on the other hand, derived, according to the Social Commission, from “destruction of family life,...lack of proper education;...want – caused either by inadequate wages or by incapacity to earn a living; inadequate housing and detrimental environment; special risks inherent in certain occupations” (UN Doc. E/CN.5/14 1947, 4). Elaborating on the abolitionist perspective, the Social Commission further described trafficking as caused by:

*the existence of tolerated prostitution and especially tolerated brothels in certain countries... [i]n certain areas in the Far East the men greatly outnumber the women – a situation which is due to the immigration of single men... [l]ack of control over emigrants and immigrants, and – on the whole – lack of effective international preventive and suppressive regulations were, one might say, indirect causes of the traffic* (UN Doc. E/CN.5/14 1947, 13).

Beliefs about the causes of traffic, as outlined by the Social Commission and that served as the beginning point for negotiations on the convention, stemmed from social and individual causes and were inextricably linked to prostitution. According to this view, not surprisingly, to combat trafficking, one had to recognize prostitution as “[a]n urgent social problem which can only be solved successfully through social measures” (UN Doc. E/CN.5/14 1947:4). Social Commission statements on the working documents echoed again and again the social nature of prostitution and its remedy only through improvement in social conditions (see UN Doc. E/CN.5/41 1948:35). Social problems led to prostitution, and prostitution led to trafficking. As a consequence, the root problem of trafficking was social and required a social response. States generally agreed with the social causes of prostitution and put forward ideas about the best way for the international community to prevent and suppress prostitution.

In accordance with the social causes of prostitution, the Social Commission recommended that the most efficacious way to combat trafficking “would be the abolition of tolerated prostitution together with steps to reduce the demand for prostitutes” (UN Doc. E/CN.5/14 1947:13). Recognizing the social motivations behind the 1949 Convention, the UN Special Rapporteur on Violence Against Women explained in 2000, “[c]riminalization takes two forms: prohibition and toleration. Both criminalization approaches view sex work as a social evil that should be subjected to penal measures” (Coomaraswamy 2000:11). The Social Commission suggested attacking the problem of prostitution through early detection of abnormalities, protection against premature sexual experience, improvement of standard of living and safeguarding of family life, protection of mothers without support, protection of the young against moral risks in certain occupations, reduction of demand for prostitution, enlightenment and awareness about dangers of prostitution, protection of isolated young people, social care for women on the verge of prostitution, social treatment and medical care for prostitutes, police cooperation with social



workers, establishment of specialized social services for prostitutes, closure of brothels, and punishment of souteneurs (UN Doc. E/CN.5/14 1947:4-9). By definition, the Social Commission had a vested interest in social aspects of issues it considered, and its existence as an institution depended on continuing support by states. In addressing trafficking, then, the Social Commission would benefit institutionally by persuading states to address social causes of prostitution. Commitment by states to the recommended social remedies could have come through legal commitment to rules, such as those suggested by the Secretariat to the convention drafts.

In comments on the First Revision, the Secretariat suggested that parties to the convention should promote free medical care for venereal disease (Article 14) and establish social services to prevent prostitution and rehabilitate prostitutes (Article 17), both obligations for states to contribute to the public good by taking actions that would arguably decrease the negative and international impacts of spreading venereal disease and incidence of prostitution (UN Doc. E/CN.5/41 1948:14). The Social Commission suggested the social services could include changes in environment, vocational training, social advice, and institutional treatment (UN Doc. E/CN.5/41 1948:36). State reaction to the Secretariat's suggested rules for addressing the social causes of prostitution varied according to the state's existing policies and agreement in principle. New Zealand indicated that it already provided free treatment and detention for venereal disease until cured, showing tacit consent with the article because it would require no change in its own provision (UN Doc. E/CN.5/41 1948:53). The United Kingdom, however, while agreeing in principle that social services should be available to prostitutes, disagreed that persons not convicted should be required to undergo any institutional treatment (UN Doc. E/CN.5/41 1948:54). The Association for Moral and Social Hygiene similarly found the First Revision draft of Article 17 to be outside the scope of the convention (UN Doc. E/CN.5/41 1948:54). Despite the Social Commission's many recommendations for action to prevent the social causes of prostitution, the Convention in Article 16 only encourages states, in non-binding language, to address, "through their public and private educational, health, social, economic and other related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution." By leaving the minimum commitment to social services flexible, states could benefit from the provision of social services by others and limit their own contribution. This minimum commitment suggests that the social causes principle did not do enough in terms of information, issue linkage, and articulating private benefits to achieve cooperation.

Another attempt at cooperation on social causes came from the proposal to establish regional organizations. The United States, in keeping with its idea of broadly addressing trafficking, proposed provisions in the Codification Draft for establishing regional organizations to combat trafficking and social services for "prevention of prostitution and the rehabilitation of prostitutes" (UN Doc. E/CN.5/41/Add.2 1948:3). These regional organizations could, depending on the primary beneficiaries, serve as state-specific security benefits. For example, pooling regional intelligence could disproportionately help the state in the region with the largest trafficking problem. However, it does not appear that the regional organization presented enough of a benefit to any one state or states collectively, as it was never debated thoroughly and was excluded from the 1949 Convention. Thus, the main treaty text addressing social causes of prostitution

remained the non-obligatory language of Article 16. States would benefit collectively from the public good of prevention of international prostitution and spread of venereal disease as outlined by the Social Commission but individually had little incentive to contribute greatly, a classic example of sub-optimal public good provision (Sandler 2003:133).

## **Principle 2: Abolitionism**

One of the great debates about trafficking was between the abolitionists who sought to abolish prostitution completely and the regulationists who desired to control prostitution through regulations like medical certificates and licensing. The Codification Draft was written so that states that tolerated brothels could become parties to the convention through the inclusion of the phrase to punish persons facilitating prostitution only “to the fullest extent compatible with their national laws” (UN Doc. E/CN.5/41 1948:8). Further discussions on the subject rendered this loophole controversial. The United Kingdom, for example, argued that the convention would be purposeless if states could contract out of their primary obligations (UN Doc. E/CN.5/41 1948:9). Instead, it proposed that regulationist states could become parties to the convention if they declared that they agreed with its principles and would put them into effect (UN Doc. E/CN.5/41 1948:9). The Advisory Committee on Social Questions agreed with the United Kingdom’s position but referred the issue of reservations to a sub-committee (UN Doc. E/CN.5/41 1948:10). The debate continued in 1938, when a regulationist country suggested dividing the convention into two parts, the first of which could be ratified immediately by all countries and the second of which would involve the acceptance of abolitionist policy (UN Doc. E/CN.5/41 1948:11). 1948 Secretariat comments on the Codification Draft articulated that in addition to abolishing regulation of prostitution, states should also abolish registration and issuing of licenses to prostitutes (UN Doc. E/CN.5/41 1948:14). By 1948, the United Nations Secretariat suggested changes to the Codification Draft that would take into account “wider recognition of the principle of abolition of regulated prostitution and the general opinion concerning the social aspect” of it (UN Doc. E/CN.5/41 1948:13). Citing a 1924 League of Nations report, the Social Commission linked commercialized vice to international traffic, suggesting that both were increased where prostitution was ignored or received “official recognition by registration” (UN Doc. E/CN.5/41 1948:31).

Excludable altruistic benefits came into play on the principle of abolitionism. Affirmation of existing laws or perspectives on trafficking provided several states incentives to agree with the Convention. For example, the Philippines expressed strong abolitionist sentiments stating, “[t]here can be no middle ground if it is desired to wipe from the face of the earth the trade of human flesh” (UN Doc. E/CN.5/41 1948:51). Prior to advocating punishment of a prostitute and the customer, the Philippines ardently recounted its history of punishing prostitutes and emphasized economic conditions and decadent morality from World War II as rendering special attention to suppressing prostitution (UN Doc. E/CN.5/41 1948:51). It is interesting to note that not only did the Philippines support the convention but did so because its domestic policy was already in line with the general principle of abolitionism. In other words, the Convention affirmed The Philippines’ norms, an excludable altruistic benefit (Betts 2003). The Philippines, by taking part in the drafting process and exemplifying itself as a nation to emulate in suppressing trafficking may have also gained the excludable prestige benefit of standing as an example of good practice. Its strong sentiments about abolition of trafficking gave it the altruistic benefit of having



its own norms enforced by the international community. At the same time, these shared norms gave it ample say on negotiation of the Convention and helped to ensure an abolitionist approach. Not surprisingly, the Philippines signed the 1949 Convention in 1950 (UN 2010a).

States debated competing perspectives for registering prostitutes or abolishing licensing. While abolitionism and regulation are two different principles that could have guided the anti-trafficking regime, the specific actions required by states in each case form the rules of the regime. The debate about these rules like registering prostitutes and medical licensing were directly related to debates over the regime's guiding principles. The Philippines and the Association for Moral and Social Hygiene were opposed to registering prostitutes (UN Doc. E/CN.5/41 1948:53). Chile, on the other hand, could not support the Codification Draft because its government tolerated and regulated brothels (UN Doc. E/CN.5/41 1948:56). Likewise, states like Greece would only support the convention if it were split into two conventions separating the issue of regulation (UN Doc. E/CN.5/41/Add.1 1948:2).

In the end, the principle of abolitionism won, so eliminating any rules from the convention that would have supported regulationist ends. States opted into the regime through ratification of the 1949 Convention largely based on whether their existing legislation permitted regulation and licensing of prostitution. States that did become parties to the 1949 Convention like the Philippines gained the excludable altruistic benefit of having norms recognized as exemplifying international consensus. It appears that in the case of the Philippines, this altruistic benefit spilled over into negotiation power as the Philippines trumpeted its own successes as an abolitionist country and was a strong proponent of what became a key principle of the final 1949 Convention: abolitionism. Even states like Chile that never became party to the 1949 Convention could still benefit by the efforts of others to contribute to the public of decreasing trafficking and spread of disease. But by not having an excludable altruistic benefit to gain from the process, they did not have enough private incentive to induce their cooperation.

### **Principle 3: Protection regardless of motive of offender**

Previous conventions on trafficking had not provided punishment for trafficking of adult women unless the victim was taken abroad. Trafficked males were not included as potential victims. The drafting of “[a]rticle 1 of the 1937 convention sought to fill this gap, but ... stipulated that the offences must be committed for the purpose of gain” (UN Doc. E/1072 1948:17). A debate that ran the course of the convention negotiations was whether or not an element of gain was necessary to constitute an offense. The Codification Draft made prostitution of another an offense only if committed for the purpose of gain (UN Doc. E/CN.5/41 1948:13). The Secretariat suggested though that the purpose of gain should not be necessary to be covered by the convention, especially in light of the convention's purpose to “protect people against being procured or in any way led into prostitution, regardless of the motive of the offender” (UN Doc. E/CN.5/41 1948:13). Further to the question of gain, the Secretariat noted that gain was not mentioned in the 1910 or 1933 Conventions. It commented that if gain was excluded then, the term “exploitation” should also be avoided (UN Doc. E/CN.5/41 1948:22). The Social Commission restated its position, “[t]he aim of the convention should mainly be to protect people against being procured or in any way led into prostitution by others” (UN Doc. E/CN.5/41 1948:22). The International Alliance of women wanted inclusion of “gain” to stress the

punishment of the commercial aspect of the offense (UN Doc. E/CN.5/41 1948:6). However, Denmark objected to “gain” as necessary for the offense (UN Doc. E/1072 1948:18).

Amendments to the Codification Draft were observed as having widened the scope, requiring a change to the title (UN Doc. E/CN.5/41 1948:21). The United Kingdom expressed concern about the wide scope of Article 1 and its impracticable application to criminal offenses in First Revision (UN Doc. E/CN.5/41 1948:49). The Netherlands wished that it be clear that Article 1 applied only to acts that had been “willfully committed” (UN Doc. E/CN.5/41/Add.1948:5). The United States, while wanting a broad approach rather than a more narrow, “piecemeal” one to deal with the entire problem of trafficking in women and children, still had concerns along with Denmark that Article 1 of the First Revision might be too wide and vague (UN Doc. E/CN.5/41/Add.2 1948:2). State and Secretariat commentary that trafficked persons should be protected regardless of the motive of the offender soon altered the draft convention wording. The Second Revision eliminated gain from Article 1 as did the final Convention so that the convention would protect victims “regardless of the purpose the offenders,” and the absence of motive for offender remained through to the 1949 Convention (UN Doc. E/1072 1948, 17, E/CN.5/1072 1948:2).

Article 1 of the 1949 Convention did not contain the word “willful,” and interestingly, the UK, US, and the Netherlands did not accede to the Convention. Like the regulationist states unable to accede to the 1949 Convention because of disagreement in principle with abolition, so the UK, US, and Netherlands could not become parties to it at least in part because of concern with the scope of trafficking as defined in Article 1. The UK especially was involved in the drafting process and made strong statements in support of combating trafficking. Nonetheless, it could not become part of the anti-trafficking regime, at least in the legal sense, because of disagreement with principles expressed in the drafts. The UK case shows the importance of perceived compatibility with all of a regime’s principles in order for states to cooperate. These examples suggest that if states are to cooperate in provision of a public good and expect to get an excludable altruistic and/or prestige benefit, the altruistic benefit must come first and proceed from agreement with the regime’s principles. If the state cannot agree with the principles, the cost of changing its own policy would be too great, and the excludable altruistic benefit and resulting prestige benefit small or non-existent.

### **Additional considerations in calculus for cooperation**

Article 3 of the Codification Draft listed aggravating circumstances as a victim under 21 years old, a victim with “physical or mental deficiency,” or if the offense was committed with “coercion, abuse of authority, power of confidential relationship, false pretence, or the use of narcotic or toxic substances, including excessive use of alcohol” (UN Doc. E/CN.5/41 1948:24). Norway found some offenses in the convention compatible with its legislation but Article 3’s aggravating circumstances in conflict with the Norwegian Penal Code (UN Doc. E/CN.5/41 1948:65). The mention of aggravating circumstances was eventually deleted though because of objections raised by Australia, Czechoslovakia, India, Sweden, and Switzerland. With aggravating circumstances eliminated from the final Convention, Norway ratified it in 1952 (UN 2010a). Interestingly, several of the drafted aggravating circumstances like coercion and abuse of position of power went on to become part of what actually constituted trafficking in persons in the 2000 Protocol.

A very blatant statement of private interest, or rather the lack thereof, in the convention came from Iceland, which declared it had no observations to submit for the convention was “of no practical interest to Iceland” (UN Doc. E/CN.5/41 1948:59). Iceland never did ratify or sign the Protocol, given that it had no perceived private benefits to gain. India, while supportive of the principles of the convention, stated that it would not be able to implement the main provisions because this would require a “drastic amendment of the Indian Penal Code” (UN Doc. E/CN.5/41 1948:63,68). Likewise, Romania approved the draft because its “principles and provisions” were “already embodied in Roumanian legislation;” obviously requiring little effort on its part to alter policy (UN Doc. E/CN.5/41 1948:59). Similarly, Sweden found the principles “conformable to the principles of Swedish law on the subject” (UN Doc. E/CN.5/41 1948:60). Czechoslovakia, the Union of South Africa, Pakistan, and El Salvador also could support the draft because of preexisting agreement between the state’s laws and the convention (UN Doc. E/CN.5/41/Add.1 1948:1-2, UN Doc. E/CN.5/41/Add.2 1948:2). Romania, Pakistan, and South Africa all signed the 1949 Convention in the early 1950s (2010a). These statements suggest that when states have existing legislation that is compatible with the regime, they cooperate. By having their norms bolstered by international legal texts, their voices were more strongly heard in the drafting process, arguably giving them stronger negotiation power and leading to the abolitionist perspective of the convention language. On the other hand, states like Iceland with little perceived self-interest to be gained by participating in the regime opted out of cooperation.

### **Final observations**

It is possible that a state with a disproportionate security, economic, or social concern with provision of a public good might be convinced to cooperate even if it did not wholly support the principles of the regime. However, the state-specific benefits of the 1949 anti-trafficking regime are not entirely clear as most discussion centered on the principles rather than rules. By 1948, nineteen of twenty-six governments “declared themselves to be in favour of the principles laid down in the draft Convention” (UN Doc. E/CN.5/41 1948:55). These principles were that the root cause of trafficking was social and required a social response, abolitionism, and the protection of persons against being led into prostitution, regardless of motive. While agreement shows achievement in bargaining on principles, perhaps more states would have supported the 1949 Convention if the regime had established stronger collective benefits through issue linkage, information sharing, and clear scope of international trafficking.<sup>11</sup> Furthermore, the private benefits of addressing social causes were not always clear. Finally, states cooperated in large part on the basis of compatibility of the principles with domestic legislation, suggesting that the public good was less of a motivator for cooperation than was an excludable altruistic benefit of affirming existing state policy. From these findings, it is apparent that individual benefits are important for collective contributions, a conclusion also drawn by Olson (1965), Sandler (2003), and Andreoni (1990).

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<sup>11</sup> The 1949 Convention allowed that trafficking offenses could be domestic or international by not defining them as one or the other.

## 4 2000 Protocol

### Drafting background and key concepts

While the 1949 Trafficking Convention emerged out of the UN Social Commission, by 2000, a new trafficking protocol was put forward, coming instead out of the Ad Hoc Committee on the Elaboration of a Comprehensive International Convention against Transnational Organized Crime (UN Doc. A/AC.254/1 1998:2-3). General Assembly Resolution 53/111 of 9 December 1998 established the ad hoc committee for addressing trafficking in persons, which was instructed to take into account Economic and Social Council (ECOSOC) resolutions 1998/18, 1998/19, and 1998/20 (UN Doc. A/AC.254/35 2000:2). The final instrument was an optional protocol to the Convention Against Transnational Organized Crime (hereafter “Organized Crime Convention”).<sup>12</sup> States expressed concern about potential overlap with a draft optional protocol to the Convention on the Rights of the Child on the sale of children. This concern was allayed by noting that the Ad Hoc Committee was approaching the issue of trafficking from an international criminal law perspective (UN Doc. A/AC.254/3 1998:3). The first two drafts of the protocol were submitted by the US and by Argentina (UN Doc. A/AC.254/4/Add.3 1998, UN Doc. A/AC.254/8 1999). From these first drafts and continuing into the negotiations and final protocol, the principles of combating trafficking in persons had been greatly expanded from the social causes of prostitution outlined in 1949.

Like the 1949 Convention, the 2000 Protocol has procedures for disputes that might arise. Article 15 articulates that states are first to settle disputes through negotiation. If the dispute cannot be settled, one of the states can request arbitration. If no agreement is still reached, one of the states may refer the matter to the International Court of Justice. States which make reservations to these dispute settlement procedures though are not to be bound by them (UN Doc. A/RES/55/25 2001, 37-38).

Overall, cooperation in 2000 in the anti-trafficking regime provided multiple benefits to states. The expansion of the definition beyond sexual exploitation covered a potentially larger population of exploited people, suggesting a more comprehensive approach. At the same time, the comprehensive protection was qualified by non-binding language and by limiting offenses to those of a transnational, organized criminal nature. The public good from cooperation, protection for victims and intercepting traffickers did not fall neatly into either altruistic or security goods as was evidenced by interrelated debates about prostitution, consent, and organized crime. Additionally, states found private benefits to supporting the anti-trafficking regime. The examples of Colombia and Japan suggested that states would cooperate if the regime’s principles were less than or equal to protection already provided domestically by the state. Where the regime suggested a scope beyond that, then state cooperation was less likely. Finally, all states gained by limiting the scope of offense to transnational ones and strengthening border control measures. The benefit occurred in two ways. First, the international scope meant that states were contributing to and gaining from cooperation in combating problems beyond

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<sup>12</sup> The Organized Crime Convention will also be referred to in this section as the “main convention” and the “parent convention.”

their own borders. Secondly, the limitation allowed states to cooperate in the international context while preventing international scrutiny of domestic trafficking situations.

### **Principle 1: Comprehensive approach**

Early discussions of the 2000 Protocol questioned whether the protocol should address “trafficking in women and children” or “trafficking in persons,” potentially shifting the scope of protection beyond that of the historic conventions addressing women and children to include all vulnerable persons (UN Doc. A/AC.254/11 1999:4). The UN High Commissioner for Human Rights emphasized the need to broaden the definition beyond forced prostitution and forced labor to include bonded labor and servitude (UN Doc. A/AC.254/16 1999:3). Most states also favored “keeping the definitions general” (UN Doc. A/AC.254/19/Add.1 1999:5). UNICEF and IOM also supported a “broad and comprehensive definition of trafficking” (UN Doc. A/AC.254/27 2000:2). Australia and Canada were open “to the expansion of the protocol beyond women and children” provided that emphasis remained on women and children (UN Doc. A/AC.254/5/Add.3 1999:5). The title of the 2000 Protocol represents a compromise between these positions. It uses the inclusive “trafficking in persons” which leaves no gender or age ineligible as a victim yet narrows the focus to that of “especially women and children.” The title’s simultaneous construction of a victim as both broad and narrow left room for states with varying views of who is a trafficked person able to find space for agreement, at least in principle, with the title.

Type of exploitation was also a contentious issue of the negotiations. While the previous international legal agreements on trafficking focused on sexual exploitation, both the American and Argentinean first drafts included expansion of the definition beyond sexual exploitation, and the debate over definitions proceeded on the assumption of an inclusive language beyond sexual exploitation. The American draft definition of “trafficking in persons” remained remarkably similar to the final 2000 Protocol wording: “recruitment, transportation, transfer, harbouring or receipt of persons by threat or use of kidnapping, force, fraud, deception or coercion or... for the purpose of prostitution or other sexual exploitation or forced labour” (UN Doc. A/AC.254/4/Add.3 1998:2). The Argentinean draft used “reduction to slavery, servitude or other similar condition” as part of its meaning of “illicit purpose.” It also included the qualification that child trafficking be perpetrated by a criminal organization. Trafficking in women, however, could be perpetrated by “any individual or corporate entity in an organized manner” (UN Doc. A/AC.254/8 1999:3). The Netherlands proposed to replace “sexual exploitation” with a wider definition of slavery (UN Doc. A/AC.254/19/Add.1 1999:15). The phrase “exploitation of the prostitution of others” is left undefined, leaving interpretation subject to state domestic laws (UN Doc. A/55/383/Add.1 2000:12). Leaving this important aspect of the convention undefined and subject to state interpretation means a potentially disjunctive application of principles in the anti-trafficking regime but allows states to ratify with the knowledge that they can interpret and apply the terms according to their interests.

States further debated the necessity of consent in prostitution to constitute trafficking, reaching a compromise that meant neither side really won (Gallagher 2001:984-986; Doezema 2002). Article 3 of the 2000 Protocol states that victim consent is irrelevant if given under conditions listed as trafficking (UN Doc. A/RES/55/25 2001:32-33). Gallagher instead emphasizes, “states merely

agreed to sacrifice their individual views on prostitution to the greater goal of maintaining the integrity of the distinction between trafficking and migrant smuggling” (2001:986). This distinction serves state security interests by reinforcing the criminal act of smuggling. While the transnational nature of the offense will be discussed later in this paper, it is important to note that the expansive definition of trafficking did not preclude the possibility of security interests. While the inclusive definition may seem at first to provide the legal instrument necessary for protection of a greater population of vulnerable people, how states defined these vulnerable people was not exclusively altruistic. This is an important point in emphasizing that the public good provision of the anti-trafficking regime cannot easily be classified as either altruistic or security. States brought security concerns to bear even in the altruistic expansion of protection for a larger group of vulnerable persons.

In the final definition of trafficking, the interpretive notes for the official records explain more clearly the meaning of “abuse of a position of vulnerability” as “any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved” (UN Doc. A/55/383/Add.1 2000:12). The perambulatory clauses of the Protocol state the principle of using “a comprehensive international approach” which includes “measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking” (UN Doc. A/RES/55/25 2001:31). Articles 2 and 3 outline the purposes of the 2000 Protocol: to prevent and combat trafficking, to protect and assist victims, and to promote cooperation among states on these goals (UN Doc. A/RES/55/25 2001:32). In response to initial drafts, Australia and Canada proposed additional victim protection that became part of the final Protocol, like compassionate and humanitarian factors in determining victim status, victim return, and victim rehabilitation (UN Doc. A/AC.254/5/Add.3 1999:5). Colombia disagreed with the word “compassionate,” preferring instead “support” which it found more consistent with victim assistance and protection (UN Doc. A/AC.254/5/Add.12, 1999:2). Article 7, however, kept the terms “humanitarian and compassionate.” The rejection of Colombia’s suggestion for “support” was not enough disagreement though to render the comprehensive protection principle incompatible to cooperation, for Colombia signed and ratified the 2000 Protocol by August 2004 (UN 2010b). Colombia’s reason for proposing the amendment, that it would be more compatible with victim assistance and protection, goes slightly further than the 2000 Protocol in affirming protection. From this example, it is apparent that a state might cooperate even if the legal text does not go as far in supporting a principle as state policy would. In that sense, cooperation through international agreements serves as a minimum standard for public good provision. As long as states can agree with the minimum provision or language used by the text, they may cooperate. If their domestic policy goes beyond the minimum, the state can claim altruistic benefits by being a good example of the principle. The state also has nothing to lose by cooperation in terms of cost if its policies already align with those required for cooperation.

In contrast, if a state does not agree with the minimum standards for implementing principles, it may have little incentive to cooperate. As in the 1949 Convention discussions, the issue of profit came up in the 2000 Protocol discussions. In the negotiations in 1999, Japan proposed profit as a condition of being trafficked (UN Doc. A/AC.254/19/Add.1 1999:4). Similar to the 1949 Convention, profit did not make it into the final 2000 Protocol as necessary for being trafficked, being more consistent with the comprehensive approach to protecting all regardless of motive or



gain of the offender. To date, Japan has signed but not ratified the 2000 Protocol, perhaps in part because of hesitations about the scope of trafficking given its comments on the importance of “gain” to the definition (UN 2010b). Japan is an example of a state that wanted to limit the minimum standards by providing a narrower definition. While the distinction of “gain” may not seem overridingly important, the fact that the legal text would require a more inclusive policy than Japan had, meant that it had little altruistic benefit by cooperating and could have contributed to its hesitations in signing but not ratifying the 2000 Protocol.

In 2000, the US was one of two countries to circulate a draft for the Protocol. As mentioned previously, the definition in the first draft served as a starting point for negotiations and was largely recognizable in the final language of the 2000 Protocol. By writing and sending this draft, the US positioned itself as a leader in norm production about how the international community viewed trafficking in persons and would respond to it. The US was then able to use its leadership position to influence states, gaining a prestige benefit. For example, without the international attention drawn to trafficking through the Protocol, it is doubtful that the US engagement with trafficking would have been as noticed. By placing itself as a leader through norms against trafficking and as a funder of anti-trafficking efforts, the US had great power in determining how the norms and principles of the anti-trafficking regime were perceived. Not only did this position give the US negotiating power in trafficking, but it also enabled it to link funding of anti-trafficking efforts to other state interests of a security and economic nature. For example, the US ranks state efforts to combat trafficking. The worst ranked countries in these reports can become subject to sanctions by the US, a concrete linkage between issues that shows the continuing prestige benefits that have resulted from initiating the comprehensive approach to trafficking (Memorandum of Justification 2010).

Not surprisingly, the UN High Commissioner for Human Rights wanted the provisions for assistance and protection of victims to be strengthened, an obligation for state parties to provide victims with information and possibly compensation, and the option of temporary residence (UN Doc. A/AC.254/16 1999:4-5). UNICEF and IOM similarly stated that state parties to the Protocol should be obliged to provide information and potential compensation to victims and ensure they are not immediately expelled against their will (UN Doc. A/AC.254/27 2000:3). States were hesitant to agree with binding measures for implementing these suggested rules. Given the direct cost they would entail, such as a legal obligation with international scrutiny for enforcement, states successfully amended the drafts to produce a number of rules but left them qualified by non-binding language.

Articles 5-12 articulate a long set of rules intended to oblige states to act in areas of criminalization, assistance and protection to victims, status of victims, repatriation of victims, prevention of trafficking, information exchange, border control, and travel and identity documents (UN Doc. A/RES/55/25 2001:33-37). While these obligations set forth areas for action, some of them are qualified by phrases like “to the extent possible under domestic law,” “in appropriate cases,” “shall consider,” “shall endeavour,” and “within available means” (UN Doc. A/RES/55/25 2001:33-36). In theory, the vast number of rules systematically addresses all aspects of trafficking from prevention to victim protection to criminalization, and inter-state cooperation on information exchange and border control. The vast qualifications, though, give states the

leeway to sign on and agree to the rules but only take action on them if they deem them “appropriate” or within their means. Finally, the 2000 Protocol contains no specific provision for international cooperation or technical cooperation comparable to articles 10, 14, and 21 of the Convention Against Transnational Organized Crime although the Protocol does have implementation measures in Article 14 and information exchange in Article 8 (UN Doc. A/AC.254/21 1999:2). Thus, while the comprehensive approach seems helpful, the bargaining process set up only weak enforcement mechanisms so as to render the actual public good provision suspect.

### **Principle 2: Transnational, organized crime**

Despite the inclusive and comprehensive definition of trafficking, Article 4 limits its scope to those offenses which “are transnational in nature and involve an organized criminal group” (UN Doc. A/RES/55/25 2001:33). This qualification seems consistent with the main convention’s purpose of preventing transnational organized crime, but it does temper the comprehensive approach to victim protection by limiting the scope of covered offenses. The act of trafficking itself is criminalized with no relief for those in existing exploitation (Hathaway 2008).

Argentina’s first draft defined “international trafficking in children” as being carried out by a criminal organization but left “international trafficking in women” without the organized criminal intent, allowing that trafficking could be perpetrated by an individual (UN Doc. A/AC.254/8 1999:3). The first American draft did not involve organized crime, but did contain an article entitled “[o]bligation to criminalize” (UN Doc. A/AC.254/4/Add.3 1998:2-3). Similar to the 1949 drafting process, states were concerned with the treaty’s consistency with domestic legislation. Syria, for example, proposed that under the obligation to criminalize section, the words “subject to their fundamental legal principles” be inserted, explicitly recognizing the primacy of domestic contexts and giving states a loophole if they later found criminalization as articulated by the Protocol incompatible (UN Doc. A/AC.254/5/Add.28 2000:7). The final Protocol did contain a similar qualification in Article 5, “subject to the basic concepts of its legal system.” Azerbaijan suggested that “where such conduct is intentional” be inserted in the criminalization article so that there would be “greater consistency between the draft Protocol and the Convention” (UN Doc. A/AC.254/5/Add.36 2000:2). The final Protocol language accepted this idea in Article 5, phrased “when committed intentionally,” making clear the requirement of criminal intent. The criminal intent required to be punished for trafficking contrasts with the complete victimhood of a trafficked person outlined in Article 3. The strict dichotomy between victim and offender, innocent and guilty, made in the 2000 Protocol leaves little room for more nuanced situations of consent followed by or intertwined with coercion, and paved the way for further distinction between smuggled and trafficked persons that is evidenced in the border control principle (Bhabha and Zard 2006). Nonetheless, from the first drafts to the final Protocol, states included criminalization of organized trafficking as a key element of the treaty.

The additional qualification for trafficking under the Protocol is the requirement that it be transnational. In other words, situations of exploitation that meet all of the criteria of Article 3 cannot constitute a punishable offense unless the trafficked person is also moved across a border. While the Argentinean draft articulated that international trafficking involved transportation into another state, the American draft was not as specific about the transnational nature in defining



trafficking, although it did in the perambulatory clauses recognize “the significant and increasing activities of transnational criminal organizations and others that profit from international trafficking in persons” (UN Doc. A/AC.254/4/Add.3 1998, UN Doc. A/AC.254/8 1999). From the beginning of negotiations, the international nature of trafficking was taken for granted, and the final treaty language further emphasized the transnational nature of the offense.

The transnational element has been a subject of criticism for a number of reasons. One author describes lack of cooperation on trafficking due to contradictions of the 2000 Protocol, finding the “focus on transnational organised crime has resulted in the dominance of security over human rights, including with regard to considerations on the protection and assistance of victims and prevention in countries of origin” (Radeva, Trossero, and Pluim 2009:428). Even the UN High Commissioner for Human Rights recognized that the trafficking protocol and migrant smuggling protocols were “not human rights treaties but more in the nature of transnational cooperation agreements with a particular focus on organized crime” (UN Doc. A.AC.254/16 1999:1). Oversight of the 2000 Protocol also emphasized the focus on transnational, criminal nature of the offenses by having the UN Conference of the Parties to the United Nations Convention against Transnational Organized Crime oversee implementation through its Secretariat by requests for state reporting (UN Doc. CTOC/COP/2005/8 2005:7-8).

The transnational nature of the offenses in the 2000 Protocol provide the public good of state cooperation across borders to intercept illegal movement of people and money. This public good was easily situated within the security context of transnational crime by virtue of the relationship with the Organized Crime Convention, contrasted with the 1949 Convention’s emergence out of the Social Commission. The transnational element inherently means that states must cooperate to intercept the networks for they are not limited by borders. This cross-border movement gives rise to further justification by states to bolster border control and criminal measures, which follow as a third principle. In some cases, this allows states to justify internal security measures that provide state-specific security benefits both by keeping unwanted people out and even the tools for surveillance of domestic population. On the other hand, a major reason for states to limit trafficking to transnational offenses was preventing international scrutiny of touchy, domestic trafficking situations. A country with pervasive domestic trafficking like bonded labor could benefit from the international actions to prevent cross-border movement but escape punitive measures or condemning statements by not living up to standards in the domestic context. The transnational element required for trafficking in the 2000 Protocol benefits states in numerous ways. Despite the seemingly altruistic comprehensive approach, the Protocol may have been “secured at the cost of accepting provisions that require the transnational criminalization of (nonabusive) smuggling and the generic intensification of border controls” (Hathaway 2008:12-13). In fact, increased border measures to prevent trafficking became another central component of the 2000 Protocol.

### **Principle 3: Border control**

A third principle of the anti-trafficking regime in 2000 that follows naturally from the emphasis on transnational organized crime is the importance of border control. Keeping out international criminal elements gives rise to legitimation of stronger state measures at the border. Article 11 of the 2000 Protocol entitled “[b]order measures” outlines measures states should take to strengthen

border controls to detect trafficking, including an obligation to ascertain valid travel documents aboard commercial or “any means of transport” before entering a state and recommends “strengthening cooperation among border control agencies.” Articles 12 and 13 follow by stipulating measures for security and validity of travel documents. It took little time or argument for states to insert a border control article into the drafting process. The first combined draft presented by the US and Argentina already included a new article on border controls that only grew stronger through the drafting process by additional paragraphs legitimating strengthening border measures and detecting persons without documentation (UN Doc. A/AC.254/4/Add.3/Rev.1 1999:7).

As the organized criminal intent draws a clear line between innocence and guilt, so the border control emphasis allows states a dichotomous perspective of smuggled versus trafficked (Bhabha and Zard 2006:6-8, McSherry and Kneebone 2008). The contrast of the innocent victim of trafficking with the guilty smuggled person in the Protocol against the Smuggling of Migrants by Land, Sea and Air (hereafter “Smuggling Protocol”) allows states to attribute whole responsibility to smuggling when in fact the two are not always distinct phenomena. A person may agree to be smuggled but find herself in coercive situations to which she did not consent, resulting in a smuggling-trafficking nexus (Haque). Furthermore, whether a person is considered trafficked or smuggled affects what rights are to be granted under international law (Edwards 2007:19). The similarity between provisions about border control and security of travel documents in the 2000 Protocol and the Smuggling Protocol may enable states to choose the classification that is most advantageous for it. Gallagher believes the smuggled-trafficked dichotomy actually gives states “a clear incentive” to identify persons as smuggled rather than trafficked to avoid victim protection obligations outlined in the comprehensive approach (Gallagher 2001:995). While affirming protection in Article 3, states simultaneously undermine the Smuggling Protocol’s force with this dichotomy. Emphasis on border control could be conceptualized as a state security benefit insofar as it ensures that the core values are not threatened (Acharya and Dewitt 1997).

States were clear, however, that a distinction should be made between smuggled and trafficked persons and constantly affirmed the need to tie the protocols back to the parent convention in a consistent manner. While one delegation suggested that the protocols against illegal transport of migrants and illicit trafficking in women and children should be discussed at the same time, a number of other states overruled this, emphasizing “that the two instruments addressed substantively different matters” (UN Doc. A/AC.254/3 1998:3). Australia and Canada stated, “We recognize an important distinction between the subject matter covered by an optional protocol on trafficking in human beings and that covered by an optional protocol on the smuggling of migrants” (UN Doc. A/AC.254/5/Add.3 1999:5). At the same time, the Protocol’s consistency with the parent convention, linking transnational organized crime with state security measures like border control, was crucial, for as Poland argued, “the instruments should never be treated as separate treaties” because they “form an integral part of the Convention” (UN Doc. A/AC.254/5/Add.3 1999:10). The border control and transnational organized crime principles of the 2000 Protocol link to state and international security in a way that could seem inconsistent with the first principle of a comprehensive approach. In actuality, the three principles give states a degree of leverage in affirming their altruistic motivations for cooperation through victim protection while never wandering too far away from legitimation of state authority to take action

against perceived security threats emanating from transnational organized criminal groups.

### **Final observations**

Overall, the comprehensive approach developed seemingly altruistic protection for an expanded category of trafficked persons. The US and Argentina, which put forward the initial protocol drafts had the advantage of acting first and thus shaping the norms of the regime. Extensive state cooperation with the 2000 Protocol, at least in the stage of bargaining, may have been attributed in part to the non-obligatory language of rules for their contributions like victim protection. In other words, states could take part in negotiations without a huge obligation imposed through binding language of contributions. Finally, the security context of the 2000 Protocol, linking transnational organized crime with border control and the smuggling/trafficking dichotomy gave states public and private security benefits. The public security good is apparent in that states cannot combat transnational crime alone so cooperation is intended to bring about a clear collective benefit. Private security benefits came in legitimation for strengthened domestic border control measures. The combination of altruistic and security benefits to states by participating in bargaining on the 2000 Protocol induced many states to cooperate.

## **5 Conclusion**

This paper set out to examine why states participated in the negotiations and ratifications of treaties in the anti-trafficking regime. While the anti-trafficking regime in 1949 centered on combating trafficking as equivalent of combating prostitution as a social evil, the anti-trafficking regime by 2000 was divided about how to treat prostitution and expanded trafficking to include other forms of exploitation not previously constituting any important role in the regime. Not only did the focus on prostitution reveal an altered principle, the entire concept of trafficking as hitherto agreed had evolved, and with it, the principles underlying the regime. Did this shift in principles have any implications for cooperation in the regime? This is a more complex question, but several conclusions can be drawn.

First, state ratification of both the 1949 Convention and the 2000 Protocol depended in large part on consistency with existing domestic laws and policies on trafficking. Where any principle deviated significantly from a state's policy or domestic legal context, the state usually chose to not ratify the treaty. At the same time, agreeing on a definition, like who is a trafficked person, is in itself a large accomplishment. In the negotiations leading to the 2000 Protocol, states amended the definition of trafficking a number of times, making it much more inclusive than any previous definitions of human trafficking in international treaties.

The second conclusion about cooperation in the anti-trafficking regime is that the 2000 Protocol had many more signatories than the 1949 Convention (UN 2010a, 2010b). This wider acceptance may be due to a number of factors: proliferation of international treaties that address human rights issues, a wider definition of trafficking that could be interpreted by states more loosely, and

the transnational nature of the offense and border control principle linking back to public good provision.

Having established that the principles and rules governing anti-trafficking efforts do constitute a regime, the paper analyzed incentives for cooperation and contribution by states within the regime. The paper questioned the idea that state provision of counter-trafficking efforts was a pure public good, instead finding that states also derived private benefits from participation. The impure public good nature of cooperation made the joint product model relevant for analyzing the multiple benefits, both public and private, that accrued to states for cooperating. By understanding the interactions and incentives of the multiple benefits, we can better analyze and predict how and why cooperation occurs in international regimes.

### **Public goods of the anti-trafficking regime**

From the comments by states to the treaty negotiations, the anti-trafficking regime as articulated in 1949 sought to provide several public goods. It first sought the elimination of the spread of prostitution by establishing a norm that exploitation of the prostitution of another was a punishable and extraditable offense. It continued the norm against exploitation that had been promulgated in the 1904, 1921, and 1933 international agreements on trafficking. Slightly shifting from the previously defined trafficking in women and children, the 1949 Convention made suppressing “trafficking in persons” the public good, but was still limited to prostitution. A benefit of this public good that was referenced numerous times in the negotiations was limiting the spread of venereal disease and discouraging a social evil. While the social causes pointed to altruism, the concern about spread of venereal disease suggested an order and security dimension to the public good, thereby preventing the public good provision from falling into a purely altruistic or security framework.

By 2000, the focus in definition had shifted from exploitation through prostitution to more inclusive categories of exploitation. The inclusion of newly recognized forms of trafficking is arguably an expansion of the altruistic motivation of alleviating the suffering of a larger percentage of all exploited persons. However, the 2000 Protocol was itself a supplementary protocol to the Organized Crime Convention and therefore inextricably linked to the transnational criminal law context of the Convention. Intercepting traffickers across borders in this criminal law context seemed more closely tied with a security public good involving police and intelligence cooperation and strengthened border cooperation.

It may be that the expansive definition of trafficking to include forms of exploitation previously defined in separate agreements provided a moral impetus for cooperation while the criminal law and security context provided the rationale for states to sign on to the agreement. As Gallagher (2001) articulated, the compromise position over prostitution was met in part because states agreed on the security goals behind the 2000 Protocol. This linking of consent, prostitution, and criminal law context makes it difficult to argue that the public good provision of the 2000 anti-trafficking regime was either altruistic or security, instead suggesting a complex intertwining of multiple issues and perspectives to reach an agreement. Given the changes in the nature of the public good, the private state interests for cooperation reveal interestingly different reasons for contributing to the public good provision.

## **Private benefits to states**

The private benefits to states differed in the two anti-trafficking regimes. In 1949, states that cooperated with the regime generally agreed with the main principles of the social causes of prostitution, abolitionism, and protection regardless of motive of offender. Agreement with these principles led to excludable altruistic and/or prestige benefits that induced cooperation. It was found that the altruistic benefit came first, followed in some cases by prestige benefits in the negotiation process. States overwhelmingly stated that agreement with the regime depended on compatibility with existing domestic legislation. When compatible, states could glean an altruistic benefit of bolstering their own norms through international treaties.

Self-interest of states in negotiations leading to the 1949 Convention was based largely on the distinction between the abolitionist and regulationist perspectives on prostitution. An extension of this self-interest was whether or not states already had promulgated laws consistent with the principles and definitions of the draft convention, whether there were no preexisting laws in the area of prostitution in which case a state could not fully support the convention until determining its domestic position, and whether the state regulated prostitution and as such, believed its laws indicated a principled and practical difference from the convention (see discussion of Codification Draft in UN Doc. E/CN.5/41 1948:56-64). These observations lead to the idea that if states ratify conventions based primarily on their compatibility with existing state legislation, real cooperation has not occurred, for cooperation actually has to start from a point of disagreement and move toward a position of compromise (see Keohane 2005:51).

In 2000, states were interested in the compatibility of the Protocol with the Organized Crime Convention. As in 1949, altruistic, social, and prestige benefits could be derived, and in this case, from the comprehensive protection of benefits. State-specific security benefits appear more prominent in the change of the anti-trafficking regime close to 2000 rather than in the 1940s and derived from two principles: the transnational nature of the offense and the importance of border control tied to the trafficking/smuggling distinction. The transnational movement of people and money in trafficking requires that states cooperate together to intercept and prevent illicit movement, wherein enters the public good aspect of anti-trafficking work, as distinct from the 1949 Convention that did not specify that trafficking had to be transnational. Additionally, the emphasis on border control, with the distinction between trafficking and smuggling, enabled states to not only contribute to the public good of limiting irregular movement of people and money but also to bolster their own domestic border security policies.

## **Conclusion**

In conclusion, states cooperating in the anti-trafficking regime found private benefits that helped bring about their participation. The private benefits came in the categories outlined by Betts (2003), excludable altruistic benefits (norms), excludable prestige benefits (negotiation power), and state-specific security benefits (transnational crime) and additional categories I identified like state-specific social benefits (disease-free, moral society) and economic benefits. However, while these private benefits can be classified apart from each other, the concern with doing so is that it misrepresents the interrelated nature of state benefits. Betts outlines how excludable altruistic benefits could lead to excludable prestige benefits, and this proved true in the case of the

Philippines and abolitionism, and the US and a comprehensive approach to trafficking (Betts 2003). At the same time, benefits to states are complex and can comprise multiple areas of interest. Therefore, while joint products explain why international cooperation occurs to bring about impure public goods like victim protection and offender punishment, analyses that parse the private benefits into separate categories need to be wary that they do not oversimplify or overlook the interrelated benefits that induce states to cooperate.

Cooperation in 1949 and in 2000 on combating trafficking in persons occurred for a number of reasons. While in both cases, states desired to overcome collective action failure by contributing to public good provision in combating irregular movement of people and protecting victims, a number of conclusions about motivation for cooperation can be drawn. In both instances, states appealed to their existing domestic legislation to defend their support or opposition to the draft treaties. While states like France that participated in the drafting process in 1949 put forward alternate principles to that of abolition, when the final treaty instead embraced abolitionism, they ended their cooperation without ratification. The 1949 Convention does not define trafficking as occurring in only cross-border or transnational movements whereas the 2000 Protocol articulates that trafficking must be transnational in nature and tied to organized crime. This seemingly simple difference gives rise to a very different view of the public good. Since it is possible to interpret the 1949 Convention as applying to domestic trafficking situations as well as international ones, the public good to be provided by the treaty is unclear. In other words, by ratifying the treaty and contributing resources to combat trafficking, there is no guarantee for a state that it is contributing to the public good. The state's resources may actually be helping another state domestically rather than the public as a whole. By cooperating in 1949, not only did states agree to contribute resources at a cost to themselves, but they had no guarantee of contributing to a public good from which they would derive some benefit.

By contrast, the transnational requirement for trafficking in the 2000 Protocol made it clear that cooperation was directly for a public good of preventing and punishing international trafficking, a good that no one state could provide on its own. Further incentivizing cooperation on the 2000 Protocol was the more direct link to security issues through addressing threats to states like organized crime and bolstering state legitimacy over border control, despite the comprehensive approach. This link to security issues reinforces traditional international relations scholarship of the importance of self-interest to states in cooperation and a focus on security as inducing cooperation (see Jervis 1978, Oye 1985). At the same time, the comprehensive principle of 2000 simultaneously upholds the altruistic "warm glow" given that may further benefit states through issue linkage as a prestige benefit (Andreoni 1990, Betts 2003). It appears, then, that while both treaties required state agreement with key principles as a condition of cooperation, the 2000 Protocol provided a better combination of clear public good provision intentions, security benefits, and altruism that led to greater cooperation in negotiation and ratification.

If cooperation on an issue is desired, states must first be in agreement with certain key principles. Perhaps an area of negotiation that can be improved upon to bring about further cooperation is helping states understand the private benefits they might receive from cooperation. At the same time, while neo-liberal institutionalist theories and economics explain why states might contribute to collectively be better off, the prominence of security issues in the 2000 Protocol



prevents writing off traditional international relations theories' heavy emphasis on security in explaining cooperation in the anti-trafficking regime. Cooperation continues to be a complex process of finding a delicate balance between private state interests and benefits for the collective good.

## References

- ACHARYA, A. and DEWITT, D (1997)** "Fiscal Burden-Sharing", in Hathaway, J. C. (ed.) *Reconceiving international refugee law*, London: Martinus Nijhoff Publishers.
- ALTER, K. J. and MEUNIER, S. (2009)** "The Politics of International Regime Complexity", *Perspectives on Politics* 7(1):13-24.
- ANDREONI, J. (1989)** "Giving with Impure Altruism: Applications to Charity and Ricardian Equivalence", *Journal of Political Economy* 97(6):1447-1458.
- ANDREONI, J. (1990)** "Impure Altruism and Donations to Public Goods: A Theory of Warm-Glow Giving", *The Economic Journal* 100(401): 464-77.
- AXELROD, R. (2006)** *The Evolution of Cooperation*, USA: Basic Books.
- BARNETT, M. and FINNEMORE, M. (1999)** "The Politics, Power and Pathologies of International Organizations", *International Organization* 53(4):699-732.
- BETTS, A. (2003)** "Public Goods Theory and the Provision of Refugee Protection: The Role of the Joint-Product Model in Burden-Sharing Theory", *Journal of Refugee Studies* 16(3):274-296.
- BETTS, A. (2009)** *Forced Migration and Global Politics*, Oxford: Wiley-Blackwell.
- BHABHA, J. and ZARD, M. (2006)** "Smuggled or trafficked?" *Forced Migration Review* 25:6-8.
- COASE, R. (1960)** "The Problem of Social Cost", *The Journal of Law and Economics* 3:1-23.
- CONYBEARE, J. (1984)** "Public Goods, Prisoners' Dilemmas, and the International Political Economy", *International Studies Quarterly* 28(1):5-22.
- COOMARASWAMY, R. (2000)** UN Doc. E/CN.4/2000/68 "Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women."
- CORNES, R. and SANDLER, T. (1999)** *The Theory of Externalities, Public Goods, and Club Goods*, Cambridge: Cambridge University Press.

- DESAI, M.** (2003) “Public Goods: A Historical Perspective”, in Kaul, I. et al. (eds.) *Providing Global Public Goods*, Oxford: Oxford University Press.
- DOEZEMA, J.** (2002) “Who Gets to Choose? Coercion, Consent, and the UN Trafficking Protocol”, *Gender and Development* 10(1):20-27.
- EDWARDS, A.** (2007) “Traffic in Human Beings: At the Intersection of Criminal Justice, Human Rights, Asylum/Migration and Labor”, *Denver Journal of International Law and Policy* 36(1):9-54.
- European Union Council Framework Decision on Combating Trafficking in Human Beings** (2002), Official Journal of the European Communities.
- FEARON, J. D.** (1998) “Bargaining, Enforcement, and International Cooperation”, *International Organization* 52(2):269-306.
- GALLAGHER, A.** (2001) “Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis”, *Human Rights Quarterly* 23(4):975-1004.
- HAGGARD, S.** and **SIMMONS, B.** (1987) “Theories of International Regimes”, *International Organization* 41:491-517.
- HAQUE, S.** “Ambiguities and Confusions in the Migration-Trafficking Nexus: A Development Challenge”, International Organization for Migration, available at <http://www.iom.org.bd/publications/2.pdf>, accessed 3 June 2010.
- HASENCLEVER, A., MAYER, P.** and **RITTENBERGER, V.** (1997) *Theories of International Regimes*, Cambridge: Cambridge University Press.
- HATHAWAY, J. C.** (2008) “The Human Rights Quagmire of ‘Human Trafficking’”, *Virginia Journal of International Law* 49(1):1-51.
- International Agreement for the Suppression of the “White Slave Traffic”** (1904).
- International Convention for the Suppression of White Slave Traffic** (1910).
- International Convention for the Suppression of the Traffic in Women of Full Age** (1933).
- International Labour Organization Worst Forms of Child Labour Convention** (1999).
- JERVIS, R.** (1978) “Cooperation under the Security Dilemma”, *World Politics* 30(2):167-214.
- KAUL, I., et al.** (2003) “How to Improve the Provision of Global Public Goods” in Kaul, I. et al. (eds.) *Providing Global Public Goods*, Oxford: Oxford University Press.



**KAUL, I., GRUNBERG, I., and STERN, M. A.** (1999) “Defining Global Public Goods” in Kaul, I., Grunberg, I., and Stern, M. A., (eds.) *Global Public Goods: International Cooperation in the 21<sup>st</sup> Century*, Oxford: Oxford University Press.

**KEOHANE, R. O.** (1982) “The Demand for International Regimes”, *International Organization* 36(2):325-355.

**KEOHANE, R. O.** (1997) “International Relations and International Law: Two Optics”, *Harvard International Law Journal* 38(2):487-502.

**KEOHANE, R. O.** (2005) *After Hegemony: Cooperation and Discord in the World Economy*, Princeton, Princeton University Press.

**KRASNER, S. D.** (1983) *International Regimes*, Ithaca: Cornell University Press.

**MARTIN, L.** (1993) “The Rational State Choice of Multilateralism,” in Ruggie, J., (ed.) *Multilateralism Matters: The Theory and Praxis of an Institutional Form*, New York: Columbia University Press.

**MARTIN, L.** (1999) “The Political Economy of International Cooperation” in Kaul, I., Grunberg, I., and Stern, M. A., (eds.) *Global Public Goods: International Cooperation in the 21<sup>st</sup> Century*, Oxford: Oxford University Press.

**McSHERRY, B. and KNEEBONE, S.** (2008) “Trafficking in Women and Forced Migration: Moving Victims Across the Border of Crime into the Domain of Human Rights”, *The International Journal of Human Rights* 12(1):67-87.

**MILNER, H.** (1992) “Review: International Theories of Cooperation among Nations: Strengths and Weaknesses”, *World Politics* 44(3):466-496.

**NADELMANN, E. A.** (1990) “Global Prohibition Regimes: The Evolution of Norms in International Society”, *International Organization* 44(4):479-526.

**OLSON, M.** (1965) *The Logic of Collective Action: Public Goods and the Theory of Groups*, Cambridge: Harvard University Press.

**OSTROM, E.** (1990) *Governing the Commons: The Evolution of Institutions for Collective Action*, Cambridge: Cambridge University Press.

**OYE, K.** (1985) “Explaining Cooperation under Anarchy”, *World Politics* 38(1):1-24.

**RADEVA, M., TROSSERO, E. and PLUIM, M.** (2009) “Improving International Counter-Trafficking Cooperation: Transnational Referral Mechanisms” in Friesendorf, C. (ed.) *Strategies*

*Against Trafficking: The Role of the Security Sector*, Vienna: National Defence Academy and Austrian Ministry of Defence and Sports.

**REANDA, L.** (1991) "Prostitution as a Human Rights Question: Problems and Prospects of United Nations Action", *Human Rights Quarterly* 13(2):202-228.

**SANDLER, T.** (2003) "Assessing the Optimal Provision of Public Goods: In Search of the Holy Grail", in Kaul, I. et al. (eds.), *Providing Global Public Goods*, Oxford: Oxford University Press.

**SLAUGHTER BURLEY, A.** (1993) "International Law and International Relations: A Dual Agenda", *The American Journal of International Law* 87(2):205-239.

**STEIN, A.** (1980) "The Politics of Linkage", *World Politics* 33(1):62-81.

**SUHRKE, A.** (1998) "Burden-sharing during Refugee Emergencies: The Logic of Collective Versus National Action", *Journal of Refugee Studies* 11(4):396-415.

UN (1949). Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

UN (1979). Convention on the Elimination of All Forms of Discrimination Against Women.

UN (1989). Convention on the Rights of the Child.

UN (1993). Declaration on the Elimination of Violence against Women.

UN (2000a) Protocol against the Smuggling of Migrants by Land, Sea and Air (2000).

UN (2000b) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000).

UN (2010a) "Ratification Status," Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, available at <http://treaties.un.org/doc/publication/mtdsg/volume%20i/chapter%20vii/vii-11-a.en.pdf>, accessed 3 June 2010.

UN (2010b). "Status of Ratification," Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, available at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en), accessed 3 June 2010.

**UN Doc. A/AC.254/1** (1998), Annotated Provisional Agenda and Proposed Organization of Work.

**UN Doc. A/AC.254/3** (1998), Report of the Informal Preparatory Meeting of the Open-ended Intergovernmental Ad Hoc Committee on the Elaboration of a Comprehensive International Convention against Organized Transnational Crime.

**UN Doc. A/AC.254/3** (1998) Report of the Informal Preparatory Meeting of the Open-Ended Intergovernmental Ad Hoc Committee on the Elaboration of a Comprehensive International Convention Against Organized Transnational Crime.

**UN Doc. A/AC.254/4/Add.3** (1998) Draft Protocol to Combat International Trafficking in Women and Children Supplementary to the United Nations Convention on Transnational Organized Crime, submitted by the United States of America.

**UN Doc. A/AC.254/5/Add.3** (1999), Proposals and contributions received from Governments.

**UN Doc. A/AC.254/5/Add.12** (1999), Proposals and contributions received from Governments on the draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime.

**UN Doc. A/AC.254/5/Add.28** (2000), Proposals and contributions.

**UN Doc. A/AC.254/5/Add.36** (2000), Proposals and contributions received from Governments.

**UN Doc. A/AC.254/8** (1999) Consideration of the Additional International Legal Instruments against Trafficking in Women and Children, submitted by Argentina.

**UN Doc. A/AC.254/11** (1999), Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on its Second Session.

**UN Doc. A/AC.254/16** (1999), Informal Note by the High Commissioner for Human Rights.

**UN Doc. A/AC.254/19/Add.1** (1999), Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on its Fifth Session: Addendum.

**UN Doc. A/AC.254/21** (1999), Common provisions of the draft Convention against Transnational Organized Crime and the draft Protocols thereto.

**UN Doc. A/AC.254/27** (2000), UNCHR Notes on the Migrants and Persons Protocols.

**UN Doc. A/AC.254/35** (2000), Annotated Provisional Agenda and Proposed Organization of Work for the Eleventh Session of the Ad Hoc Committee.

**UN Doc. A/RES/55/25** (2001), United Nations Convention against Transnational, Organized Crime.

**UN Doc. A/55/383/Add.1** (2000), Interpretative notes for the official records (*travaux préparatoires*) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto.

**UN Doc. CTOC/COP/2005/8** (2005) Report of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime on its second session.

**UN Doc. E/1072** (1948), Draft Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others: Note by the Secretary-General.

**UN Doc. E/CN.5/41** (1948), Social Commission Third Session.

**UN Doc. E/CN.5/41/Add.2** (1948), Social Commission Third Session: Observations Submitted by Governments with Respect to the 1937 Draft Convention Suppressing the Exploitation of the Prostitution of Others.

**UN Doc. E/CN.5/41/Add.1** (1948), Social Commission Third Session: Observations Submitted by Governments with Respect to the 1937 Draft Convention Suppressing the Exploitation of the Prostitution of Others.

**UN Doc. E/CN.5/14** (1947), Social Commission First Session: Note on Prostitution, Traffic in Women and Children and Obscene Publications.

**UNHCHR** (2002). Recommended Principles and Guidelines on Human Rights and Human Trafficking: Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council.

**UNODC** (2009) “Anti-Human Trafficking Manual for Criminal Justice Practitioners Module 11: Victims’ Needs in Criminal Justice Proceedings in Trafficking in Persons Cases”, available at [http://www.unodc.org/documents/human-trafficking/09-80667\\_module11\\_Ebook.pdf](http://www.unodc.org/documents/human-trafficking/09-80667_module11_Ebook.pdf), accessed 3 June 2010.

**US Department of State** (2010). “Memorandum of Justification Consistent with the Trafficking Victims Protection Act of 2000, Regarding Determinations With Respect to ‘Tier 3’ Countries,” Office to Monitor and Combat Trafficking in Persons, 13 September, available at <http://www.state.gov/g/tip/rls/other/2010/147147.htm>, accessed 22 November 2010.

**US Department of State**, Trafficking in Persons Annual Reports, available at [www.state.gov/g/tip](http://www.state.gov/g/tip), last accessed 3 June 2010.

**WOODS, N.** (2002) “Global Governance and the Role of Institutions”, in Held, D. and McGrew, G. (eds.) *Governing Globalization*, Oxford: Polity Press.

**YOUNG, O. R.** (1982) “Regime Dynamics: The Rise and Fall of International Regimes”, *International Organization* 36(2):277-298.

**YOUNG, O. R.** (1989), *International Cooperation: Building Regimes for Natural Resources and the Environment*, Ithaca: Cornell University Press.