

Framing for a New Transnational Legal Order

The Case of Human Trafficking

Paulette Lloyd and Beth A. Simmons

Novel threats demand novel combinations of expertise and novel operational capabilities.

Vlassis 2000: 476

How does transnational legal order emerge, develop, and solidify? This chapter focuses on how and why actors come to define an issue as one requiring transnational legal intervention of a specific kind. Specifically, we focus on how and why states have increasingly constructed and acceded to international legal norms relating to human trafficking. Empirically, human trafficking has been on the international and transnational agenda for nearly a century. However, relatively recently – and fairly swiftly in the 2000s – governments have committed themselves to criminalizing human trafficking in international, as well as regional and domestic, law. Our chapter tries to explain this process of norm convergence. We hypothesize that swift convergence on norms against human trafficking and on a particular legal solution – *criminalization* – is the result of a specific set of conditions related to globalization and the collapse of the former Soviet Union in the 1990s. We argue that a broad coalition of states had much to gain by choosing a prosecutorial model over one that makes human rights or victim protection its top priority. We explore the framing of human trafficking through computerized textual analysis of United Nations resolutions – the central forum for debates over the nature of human trafficking and what to do about it. We look for evidence of how the framing of human trafficking has shifted over time, and of how the normative pressure as reflected in these documents has waxed and waned. We will argue that a binding legal instrument became

The authors wish to acknowledge and thank Brandon Stewart for his excellent assistance with the textual analysis and visual display of the language found in UN documents for this chapter.

Paulette Lloyd is an AAAS fellow and Foreign Affairs Officer at the U.S. Department of State. The views expressed in this chapter are her own and do not necessarily reflect those of the Department of State or the U.S. Government.

possible because of the normative convergence solidified by linking human trafficking to transnational crime more generally.

I. HUMAN TRAFFICKING LAW AS A TLO

A. What is Human Trafficking?

Human trafficking has been defined in international law as the recruiting and transporting of people deceptively or coercively for the purposes of exploiting them. According to the Human Trafficking Protocol (2000), Article 3(a):

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.¹

As this definition makes clear, human trafficking involves two critical elements: *coercion*, or *deception* and *exploitation*. Trafficking in human beings is therefore distinct from human smuggling, which can lead to a situation that the smuggled person both intends and desires to maintain. When people think of human trafficking, they often think of the recruitment and transfer of women and girls for the sex trade. In fact, human trafficking comprises both sex trafficking and labor trafficking, which is also known as forced labor or involuntary servitude. Debt bondage or bonded labor is also considered a form of trafficking under the Palermo Protocol. But abuses of contracts and hazardous conditions of employment for laborers do not necessarily constitute human trafficking.

It is easy to see why no one can produce comprehensive and accurate numbers for the extent of human trafficking worldwide. Trafficking persons within, but especially across, international borders often involves activities that are illegal, even if a country has not made trafficking in persons per se a criminal offense. Traffickers often use illegal means to recruit persons to work, including illegal entry into a country and recruitment into illegal jobs, such as prostitution. Add to these conditions

¹ For the text, see <http://www2.ohchr.org/english/law/protocoltraff.htm>. Note that individuals may be trafficking victims regardless of whether they once consented, participated in a crime as a direct result of being trafficked, were transported into the exploitative situation, or were simply born into a state of servitude. Despite a term that seems to connote movement, at the heart of the phenomenon of trafficking in persons are the many forms of enslavement, not the activities involved in international transportation.

the problem that trafficking by definition involves coercion or deception, which is sometimes hard to prove, as well as the well-known phenomenon of underreporting by victims who are reluctant to seek assistance or go to the local authorities, and it is clear why no one knows how much human trafficking takes place globally. A recent International Labor Organization (ILO) Report estimates the number of trafficking victims to be 20.9 million globally for labor and sexual exploitation.² An earlier report by the United Nations Office of Drugs and Crime (UNODC) noted that children – persons under eighteen years of age – made up about 20 percent of trafficked victims worldwide (and much more in West Africa).³

B. A Multilevel TLO

The exploitation of human beings for economic gain is as old as slavery itself. But whereas slavery was widely outlawed in both domestic and international law throughout the nineteenth and twentieth centuries, the development of a legal response to human trafficking has only been much more recent. As this section will describe, a transnational legal order (TLO) – with layers at the international, national, and local levels and recently involving initiatives by the private sector – only began to emerge in the 1990s. Although human trafficking is not by definition transnational (e.g., internal trafficking does not involve a crossing of borders), a legal order has developed to respond to cross-border activities with spillovers in multiple jurisdictions. As such, it has developed alongside several related TLOs, especially those concerning transnational crime in general, human smuggling (which need not involve either coercion or exploitation), and human rights (especially those of workers, women, and children).

As we will see, in many cases, anti-trafficking norms and ideas about appropriate responses originated outside of nation-states themselves. Most did so in legally recognizable forms, especially in the European Union (in the form of resolutions, recommendations, decisions and directives) and in the United Nations (in the form of resolutions of the General Assembly and ultimately in a multilateral protocol to a major international convention on transnational crime). The trend has been toward requiring parties to these agreements to criminalize human trafficking in domestic law, to cooperate with other jurisdictions to prosecute traffickers, and (to a much lesser extent) to protect and restore victims. As will become clear in this chapter, the TLO responding to human trafficking has spread remarkably quickly and broadly

² See http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—declaration/documents/publication/wcms_181953.pdf.

³ UNODC, UN Global Report on Trafficking in Persons, February 2009. <http://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html>.

over the past two decades. In this section, we describe its reach. In the subsequent sections, we try to explain its content and spread.

1. International Dimensions of the Human Trafficking TLO

Human trafficking has been a concern for most of the past century, even though it has not always been known by those words. The history of international efforts to address human trafficking spans more than a century. Nineteenth-century campaigns focused on what was generally referred to at the time as the “white slave trade,” by which was meant the international trade in women and girls, especially for prostitution. By 1902, thirteen European countries had negotiated and ratified an International Agreement for the Suppression of White Slave Trade.⁴ In 1921, the League of Nations sponsored a conference on trafficking, which led later that year to the 1921 Convention for the Suppression of the Traffic in Women and Children.⁵ World war brought these efforts to a standstill, and it was not until 1949 that the United Nations General Assembly passed a resolution that formed the basis of the 1950 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.⁶ This treaty was the first to call for the criminalization of the act of exploiting others for prostitution, but it did not extend to trafficking in human beings for other purposes. It is significant that the deliberations for this treaty occurred in the Third Committee of the UNGA, the same committee that gave birth to the modern human rights regime. The 1950 Convention – similar to post-World War II human rights treaties – had a weak monitoring mechanism, with overview given to a working group. This approach to human trafficking changed after the end of the Cold War, when the rapid opening of borders led to unmitigated flows of people and goods – both licit and illicit. This activity threatened social order in developed and developing states alike. Evidence that a new TLO on human trafficking was taking place was that it was the developed states who initially appealed for action from the international community.

This appeal led to a series of debates and resolutions over the course of the 1990s, as numerous states called for a new approach to transnational crime, including the escalating problem of human trafficking. Although it is difficult to portray the complexity of the development of the TLO against human trafficking at the global level, Figure 12.1 demonstrates an undeniable “thickening” of the legal and soft-law

⁴ 18 May 1904, 35 Stat. 426, 1 LNTS 83.

⁵ Geneva, September 30, 1921, entry into force on June 15, 1922. http://www.paclii.org/pits/en/treaty_database/1921/2.html.

⁶ Approved by General Assembly Resolution 317(IV) of December 2, 1949, entry into force on July 25, 1951. <http://www.un-documents.net/cstpepo.htm>.

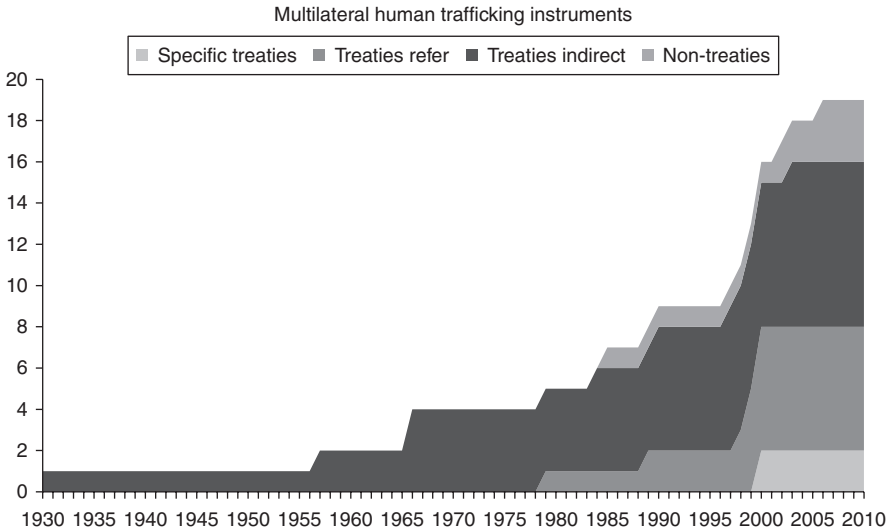


FIGURE 12.1. Cumulative number of multilateral legal instruments in force relating to human trafficking, 1930–2010.

Source: <http://www.artipproject.org/artip-tip-cjs/laws-policies-international.html#refer>.

Specific Treaties means treaties that are specifically about human trafficking. These include: the UN Convention against Transnational Organized Crime (2000) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000).

Treaties Refer means treaties that refer explicitly to trafficking in persons but include other issues, as well. These include: the Convention on the Rights of the Child (1989); the Convention on the Elimination of Discrimination Against Women (1979); the Rome Statute of International Criminal Court (1998); ILO Convention No. 182, Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999); ILO Convention No. 189 Concerning Decent Work for Domestic Workers (1999); and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000).

Treaties Indirect means treaties that relate indirectly to human trafficking. These include: ILO Convention No. 29 Concerning Forced or Compulsory Labour (1930); ILO Convention No. 105 Concerning the Abolition of Forced or Compulsory Labor (1957); the International Covenant on Civil and Political Rights (1966); the International Covenant on Economic, Social and Cultural Rights (1966); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997); and the United Nations Convention against Corruption (2003).

Non-Treaties means instruments that are related to human trafficking but are not legally binding treaties. They include: the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985); the UNHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002); and the UNICEF Guidelines on the Protection of Child Victims of Trafficking (2006).

norms in this area. It plots the adoption of both treaty and non-treaty instruments (including declarations and recommendations). It shows that, in addition to specific agreements that focus exclusively on countering human trafficking, there has been a marked increase in the number of international agreements that refer to human trafficking *explicitly but not exclusively* (e.g., the Rome Statute of the International Criminal Court of 1998), as well as those that relate *indirectly* to human trafficking situations (such as the International Convention on the Protection of the Rights of All Migrant Workers of 1990).

This effort culminated in an international framework for law enforcement, for the judicial and technical cooperation embodied in the 2000 UN Convention against Transnational Organized Crime (UNTOC), and for the Protocols on Trafficking in Persons and Smuggling of Migrants.⁷ Without doubt, this document is the centerpiece of the TLO against human trafficking at the global level. Ratification of the UNTOC (“Crime Convention”) obligates states parties for the first time to criminalize a range of transnational activities, including participation in a transnational organized crime group (Article 5), money laundering (Article 6), and various forms of corruption (Article 8). The protocol addresses human trafficking specifically and exclusively, defining it in Article 3a as relating to exploitation and not limiting it to prostitution. The protocol also calls on states parties to criminalize trafficking in persons in Article 5.⁸ Figure 12.2 shows that ratification of this agreement has been swift and widespread. Although not as many states have ratified the human trafficking Protocol as have ratified the Crime Convention, slightly more have done so than have ratified the related anti-smuggling protocol.

The global instruments do not, however, have systematic provisions for monitoring or reporting on compliance. The Conference of the Parties (COP) to the UN Convention against Transnational Organized Crime has been in discussions on the best approach to a review mechanism on implementation of the Convention and its Protocols. At the behest of states parties, UNODC conducted a Pilot Review Program in early 2012 to test methods for implementation review. This program was strictly voluntary and limited in scope and time, with fewer than thirty countries participating. At the October 2012 meeting of the COP, states parties were not able to reach an agreement on a final review mechanism; however, several states parties have expressed renewed interest in resuming negotiations prior to the 2014 COP.⁹

⁷ For text, see <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%2cConvention/TOCebook-e.pdf>.

⁸ For text, see <http://www2.ohchr.org/english/law/protocoltraffic.htm>.

⁹ For information on the UNODC pilot review program, see <http://www.unodc.org/unodc/en/treaties/CAC/pilot-review.html>.

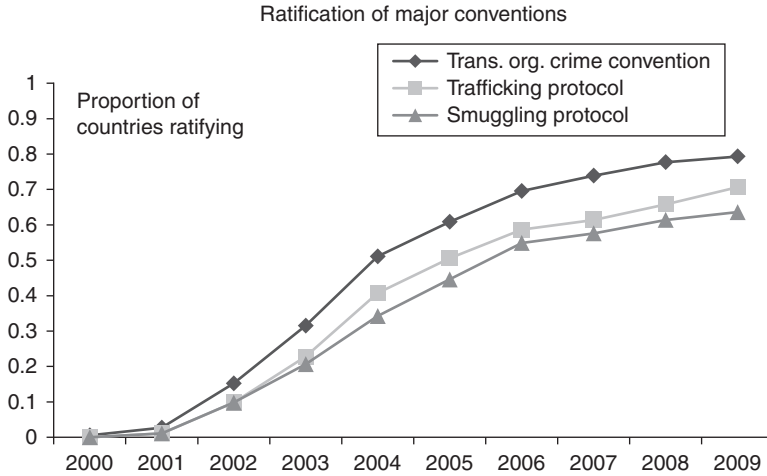


FIGURE 12.2. The ratification of the Transnational Organized Crime Convention, the Human Trafficking Protocol, and the Human Smuggling Protocol (2000–2009).

2. Regional Dimensions of the Human Trafficking TLO

Anti-trafficking law has progressively strengthened not only at the global level but also regionally. The Americas adopted a treaty aimed at controlling trafficking in children in 1994, which called for international cooperation and the return of children trafficked but did not call on states parties to criminalize such trafficking itself.¹⁰ A 2004 agreement between six countries in the greater Mekong Subregion has been hailed as the “world’s first regional agreement on human trafficking,”¹¹ although it took the form of a memorandum of understanding rather than a legally binding agreement. In March 2011, thirty-two nations in the Asia-Pacific region agreed to take a regional approach to human trafficking with what was arguably one of the first agreements of its kind in the world.¹² The West and Central African region has a much thinner regional TLO, but it has developed an initial plan of action and a common platform for action for addressing trafficking in persons.¹³

¹⁰ Inter-American Convention on International Traffic in Minors, OEA/Ser.K/XXI.5, CIDIP-V/doc.36/94 rev. 5, 79 O.A.S.T.S., 33 I.L.M. 721, March 18, 1994. <http://www1.umn.edu/humanrts/instreet/minor-traffic1994.html>.

¹¹ The six countries include: China, Cambodia, Thailand, the Lao PDR, Vietnam, and Myanmar. See UNICEF, Press Centre, News Note, http://www.unicef.org/media/media_23970.html.

¹² Asia-Pacific Countries First to Sign Agreement to Combat Human Trafficking, *Asia News*, March 30, 2011, <http://www.voanews.com/english/news/asia/Asia-Pacific-Countries-First-to-Sign-Agreement-to-Combat-Human-Trafficking-118959019.html>.

¹³ Economic Community of West African States (ECOWAS) Initial Plan of Action against Trafficking Persons 2002–2003; Common Platform for Action of the Sub-Regional Consultation on the

Leading the way in terms of region-wide norm legalization has been the European Union. The 1985 Schengen Agreement lifted barriers to travel between the Benelux countries, Germany, and France, and the Convention implementing the agreement, although never mentioning human trafficking explicitly, did seek to punish illegal immigration networks that operate in breach of national laws “for financial gain.”¹⁴ At the Essen summit meeting in December 1994, which ended the German Presidency of the European Union, it was agreed that there should be cooperation with the countries of Central and Eastern Europe (CEEC) to fight “all forms of organised crime.”¹⁵ EUROPOL was founded in 1995, and combating human trafficking was one of the five crime categories explicitly mentioned in its objectives.¹⁶ Article 5(3) of the 2000 Charter of Fundamental Rights of the European Union prohibits human trafficking, although it does not define the prohibited activities in any detail.¹⁷ On July 19, 2002, the EU Council adopted a framework decision on combating trafficking in human beings (OJ L 203/1) whose Article 1 defines in detail the offences concerning trafficking in human beings for the purposes of labor exploitation or sexual exploitation and requires members to put laws into place to criminalize and punish offenders.¹⁸ The European constitution proposed in 2004 would have banned human trafficking,¹⁹ required member states to work toward a common policy to thwart it,²⁰ and permitted the Commission to establish minimum criminal standards against trafficking and other transnational crimes.²¹

Development of Strategies to Fight Child Trafficking for Exploitative Labour Purposes in West and Central Africa, February 22–24, 2000. Both are listed by the United Nations Inter-Agency project on Human Trafficking. http://www.no-trafficking.org/resources_laws_regional.html.

- ¹⁴ Convention Implementing the Schengen Agreement of June 14, 1985, chapter VI, Article 27(1). <http://consilium.europa.eu/uedocs/cmsUpload/SCH.ACQUIS-EN.pdf>.
- ¹⁵ European Council Meeting, December 9–10, 1994, Essen, Presidency Conclusions, Section VII. http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/00300-1.EN4.htm.
- ¹⁶ Annex, Convention Based on Article K.3 of the Treaty on European Union, on the Establishment of a European Police Office (Europol Convention), Article 2, paragraph 2. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1995:316:0001:0032:EN:PDF>.
- ¹⁷ Charter of Fundamental Rights of the European Union, Official Journal of the European Communities, 2000/C 364/01. http://www.europarl.europa.eu/charter/pdf/text_en.pdf.
- ¹⁸ Council Framework Decision of July 19, 2002, on Combating Trafficking in Human Beings, Official Journal of the European Communities, L 203/1, 2002/629/JHA, Articles 1–3. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:203:0001:0004:EN:PDF>.
- ¹⁹ Article II-65(3): “Trafficking in human beings is prohibited.”
- ²⁰ Article III-267(1): “The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.”
- ²¹ Article III-271(1): “European framework laws may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat

The Council of Europe has also been extremely active in promulgating anti-trafficking law. Thirty-four members of the Council of Europe have ratified the Council of Europe Convention on Action against Trafficking in Human Beings,²² which applies “to all forms of trafficking in human beings, whether national or transnational, whether or not connected with organised crime.”²³ This agreement provides for member monitoring by a panel of experts known as the Group of Experts on Action against Trafficking in Human Beings (GRETA). This panel publishes reports on the implementation of the Convention by all states parties, and according to the GRETA website, “those Parties which do not fully respect the measures contained in the Convention will be required to step up their action.”²⁴

Although there is no one authoritative collection of all international legal agreements addressing human trafficking, a recent comprehensive legal analysis of the area mentions regional legal developments of interest (Gallagher 2010). Clearly, the density of regional law and law-like agreements has increased significantly, especially in Europe, and especially in the 2000s (see Figure 12.3).

3. National Dimensions of the Human Trafficking TLO

National law is critical to the transnational control of human trafficking, because for the most part, the international legal instruments depend on national level criminalization and enforcement, as well as national (and even provincial and municipal) policies to ensure the provision of basic services and protections of victims. As Figure 12.4 shows, many countries in the world have (fairly recently) moved to criminalize human trafficking in their domestic statutes. Africa is the region in which countries are least likely to have done so, however.

Some countries have banned human trafficking in their basic constitutional law.²⁵ Ethiopia was one of the first countries in the world to ban human trafficking in its

them on a common basis. These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organized crime.”

²² As of February 10, 2012. See <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=1&DF=&CL=ENG>.

²³ Council of Europe Convention on Action against Trafficking in Human Beings, CETS No. 197, chapter I, Article 2. <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=197&CM=1&CL=ENG>.

²⁴ For a description of the GRETA, see http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Monitoring/GRETA_En.asp#TopOfPage.

²⁵ The following list was generated by searching the Comparative Constitution database for the following phrases: “human traffick-,” “trafficking in persons,” “trafficking in human beings,” “human smuggling,” “trafficking victim,” “victims of trafficking,” “modern day slave,” “modern-day slave,” “sex

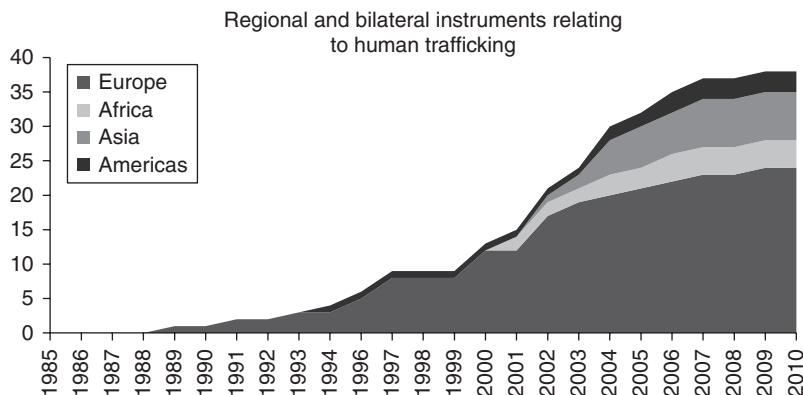


FIGURE 12.3. Cumulative number of regional and bilateral legal instruments in force relating to human trafficking, 1985–2010.

Source: Listed in Gallagher, Anne T. 2010. *The International Law of Human Trafficking*. Cambridge and New York: Cambridge University Press.

Europe: European Parliament Res. on the Exploitation of Prostitution and Trade in Human Beings (1989); European Council, Recommendation No. R (91) 11 on Sexual Exploitation, Pornography, and Prostitution of and Trafficking in Children and Young Adults (1991); European Parliament Res. on Trade in Women, Res. B3-1264 and 1309/93, OJ C 268 (1993); Council of the European Parliament, Commission Communication to the Council and the European Parliament on Trafficking in Women for the Purpose of Sexual Exploitation, COM 1996 567 (1996); European Parliament Res. on Trafficking in Human Beings, Res. A4-0326/95, OJ C 032 (1996); CoE, Final Declaration and Action Plan, CM (97) 169 (1997); CoE, Joint Action Concerning Action to Combat Trafficking in Human Beings and Sexual Exploitation of Children, 97/154/JHA, OJ L 063 (1997); EU Ministerial Conference, Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation (1997); CoE, Committee of Ministers, Recommendation No. R of the Committee of Ministers to Member States on Action against Trafficking in Human Beings for the Purpose of Sexual Exploitation (2000); EU Charter of Fundamental Rights of the EU, OJ C 364/1 (2000); OSCE Ministerial Council, Decision on Enhancing the OSCE's Efforts to Combat Trafficking in Human Beings, OSCE Doc. MC(8).DEC/1 (2000); OSCE, Supplementary Human Dimension Meeting on Human Trafficking: Final Report (2000); CoE, Parliamentary Assembly, Recommendation 1545 (2002) on a Campaign against Trafficking in Women (2002); European Arrest Warrant and the Surrender Procedures between Member States, 2002/584/JHA (2002); EU, Brussels Declaration on Preventing and Combating Trafficking in Human Beings, EU Doc. 14981/02, November 29 (2002); EU, Council Framework Decision of July, 19, 2002 on Combating Trafficking in Human Beings, 2002/629/JHA, OJ L 203/1, August 1 (2002); OSCE Ministerial Council, Declaration on Trafficking in Human Beings, OSCE Doc. MC(10).Jour/2, Annex II (2002); CoE, Parliamentary Assembly, Recommendation

(continued)

FIGURE 12.3. Caption (*cont.*)

1610 (2003) on Migration Connected with Trafficking in Women and Prostitution (2003); OSCE Permanent Council, OSCE Action Plan to Combat Trafficking in Human Beings, OSCE Doc. PC.DEC/557, July 24 (2003); EU Council Directive on the Residence Permit [for Victims of Human Trafficking], 2004/81/EC (2004); EU, EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings, OJC 2005/C311/01, December 9 (2005); Agreement between the Government of Greece and the Government of Albania on the Protection and Assistance of Children Victims of Trafficking (2006); EU, Commission Decision of October 17 Setting up the Group of Experts on Trafficking in Human Beings, 2007/675/EC (2007); CoE, Group of Experts on Action against Trafficking in Human Beings (GRETA), Rules of Procedures for Evaluation Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties, THB-GRETA 2009/3 (2009).

Africa: ECOWAS, Declaration A/DC12/12/01 on the Fight Against Trafficking in Persons (2001); ECOWAS, Initial Plan of Action against Trafficking in Persons (2002–2003), adopted by the Twenty-Fifth Ordinary Session of Authority of Heads of State and Government, December 20–21 (2001); Accord de Cooperation entre le Gouvernement de la Republique du Senegal et le Gouvernement de la Republique de Mali en Matiere du Lutte contre la Traite et le Traffic Transfrontaliers des Enfants (2004); European Union and African States, Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children, adopted by the Ministerial Conference on Migration and Development November 22–23 (2006).

Americas: Inter-American Convention on International Traffic in Minors, OAS Doc. OEA/Ser.K/XXI.5, 79 OASTS (1994); Memorandum of Understanding for the Protection of Women and Children Who Are Victims of Human Trafficking and Smuggling on the Border between Mexico and Guatemala (2004); OAS, Conclusions and Recommendations of the Meeting of National Authorities on Trafficking in Persons, Docs. OEA/Ser.K/XXXIX and RTP/doc.16/06 rev.1 March 17 (2006).

Asia: South Asian Association for Regional Cooperation, Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002); Memorandum of Understanding between the Royal Government of the Kingdom of Cambodia and the Royal Government of the Kingdom of Thailand on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking (2003); Convention on Mutual Legal Assistance between Like-Minded ASEAN Countries (2004); ASEAN, Declaration against Trafficking in Persons Particularly Women and Children (2004); Cambodia, China, Lao PDR, Myanmar, Thailand, Vietnam, Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-region, October 29 (2004); Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Lao People's Republic on Cooperation to Combat Trafficking in Persons, Especially Women and Children (2005); ASEAN, Criminal Justice Responses to Trafficking in Persons – ASEAN Practitioner Guidelines (2007).

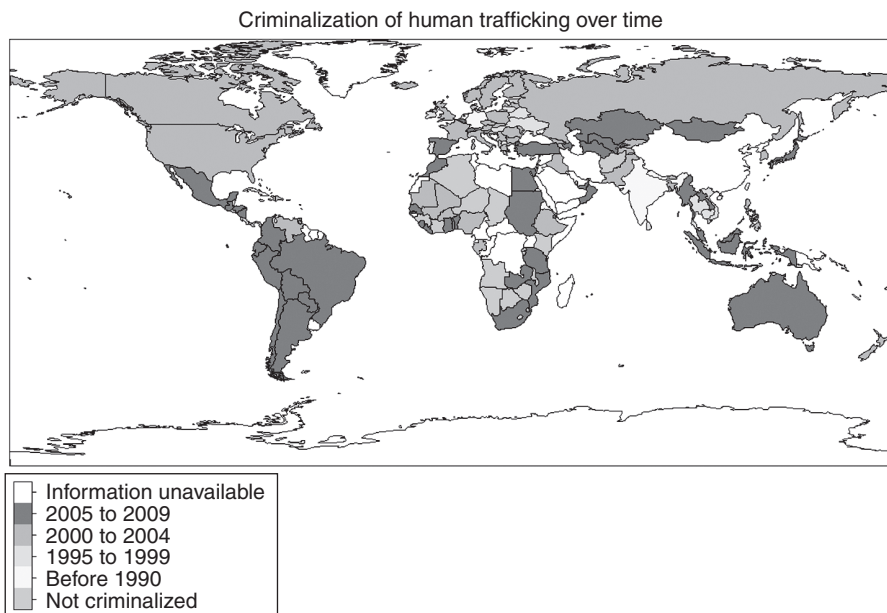


FIGURE 12.4. World map of the criminalization of human trafficking in domestic law. *Source:* UN Global Report on Trafficking in Persons, 2009 and 2012, indicating which countries have criminalized some forms of human trafficking. See <https://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html>.

1994 constitution,²⁶ and Ecuador did so in 1998.²⁷ Hungary’s constitution of 2011, for example, provides that “[n]o person shall be subjected to torture, any inhuman or degrading treatment or punishment, or be enslaved. Human trafficking shall be

trafficking,” “trafficking in children,” “trafficking in the sex trade,” “trafficking in men,” “sexual trafficking,” “trafficking of women,” “trafficking in humans,” and “modern slave.” <http://www.comparativeconstitutionsproject.org/>.

²⁶ Ethiopia’s Constitution of 1994, Article 18(2): “No one shall be held in slavery or servitude. Trafficking in human beings for whatever purpose is prohibited.” Despite this ban, Ethiopia has not ratified the 2000 Human Trafficking Protocol, although it ratified the UNCTOC in 2007 and the 1949 convention in 1981. Ethiopia fully criminalized human trafficking in 2004, but it still has enforcement problems. At the UN Third Committee, Ethiopia endorsed resolution 55/67, 2000.

²⁷ Ecuador’s Constitution of 1998, chapter 2, Article 23(4): “Liberty. All persons are born free. Slavery and all forms of servitude and trafficking in human beings are prohibited.” Ecuador was a fairly late ratifier of the 1949 convention (in 1979) and ratified the 2000 protocol in 2002. Note, however, that Ecuador is considered to have only partially criminalized human trafficking in 2005. Ecuador has also been a very active UN player: It sponsored 49/166 (1994); 52/98 (1997); 53/116 (1998); 55/67 (2000); 57/176 (2002); 61/144 (co-sponsored Revised draft, 2006); 61/180 (endorsed, 2006); and 63/194 (co-sponsored Revised draft, 2008).

prohibited.”²⁸ The Kyrgyz Republic’s Constitution of 2010 “prohibits ... [without] any limitations slavery and human trafficking.”²⁹ Other countries whose constitutions prohibit human trafficking include Nepal (2007),³⁰ Yugoslavia/Serbia (2006),³¹ Kosovo (2008),³² Myanmar/Burma (2008),³³ and Bolivia (2009).³⁴ Trafficking in persons is one of the “especially violent or organized crimes” for which Portugal’s constitution allows authorities to “enter a person’s home at night without his consent.”³⁵ Several countries have amended their constitutions in recent years to address human trafficking, including Turkmenistan (in 2006).³⁶ Iraq’s 2005 constitution is the only one that bans explicitly and exclusively the sex trade and trafficking in women and children.³⁷

Academic researchers have begun to collect data that reflects both legal change and the degree of “effort” that states apply to stop human trafficking. Cho et al. have created an extremely useful set of indicators that measure three aspects of national policy in a comprehensive and comparative framework: policies to *prevent* human trafficking, policies to *protect* persons who have been victimized, and policies to *prosecute* perpetrators.³⁸ “Prevention,” “protection,” and “prosecution” are key terms

²⁸ Hungary’s Constitution of 2011, Article III(1). At the United Nations, Hungary endorsed 53/116 (1998); 55/67 (2000); and co-sponsored 57/176 (2002); 61/144 (2006); and 63/156 (co-sponsored revised draft, 2008).

²⁹ Article 20(4)(3). See also Article 23(1): “Slavery and human trafficking are prohibited in the Kyrgyz Republic.” At the United Nations, the Kyrgyz Republic endorsed 50/167 (1995); 61/180 (2006); and sponsored 61/144 (2006); and 63/156 (2008).

³⁰ With Amendments through 2008, Part III(29)(3): “No person shall be subjected to human trafficking, slavery, or bonded labour.” However, Nepal has not ratified either UNCTOC or the Human Trafficking Protocol of 2000 and has only partially criminalized human trafficking. At the United Nations, Nepal endorsed resolution 50/167 (1995).

³¹ Article 26: “All forms of human trafficking are prohibited.” Serbia was also an early ratifier of the 2000 Protocol, and co-sponsored a revised draft of resolution 61/144 (2006) at the United Nations.

³² Chapter II, Article 28(3): “Trafficking in persons is forbidden.”

³³ Chapter VIII(358): “The Union prohibits the enslaving and trafficking in persons.” At the United Nations, Burma sponsored resolutions 49/166 (1994); 55/67 (2000); and 57/176 (2002).

³⁴ Bolivia’s Constitution of 2009, chapter II, Article 15(V): “No person shall be submitted to servitude or slavery. The trade and trafficking of persons is prohibited.” Bolivia also endorsed 61/444 (2006) in the UN Third Committee.

³⁵ Constitution of 1976 with Amendments through 2005, Article 34(3). Portugal sponsored 49/166 (1994); 52/98 (1997); 53/116 (1998); 55/67 (2000); 57/176 (2002); 61/144 (2006); and 63/156 (2008).

³⁶ 2006 Amendment to Turkmenistan’s Constitution of 1992: “[T]rafficking in human beings...” [The constitution.pdf looks more like a print screen than a word document, and the search term is actually a “search by topic” option on the side of page, like a table of contents. I could not find it in the constitution itself.] At the United Nations, Turkmenistan endorsed resolution 52/98 (1997) and sponsored 53/116 (1998).

³⁷ Iraq’s Constitution of 2005, chapter II, Article 37, Third: “Forced labor, slavery, slave trade, trafficking in women or children, and sex trade shall be prohibited.” Iraq was also an early ratifier of the 1949 convention emphasizing women and children. At the United Nations, Iraq endorsed resolution 63/156 (2008).

³⁸ For a description of their index and access to the data, see <http://www.seo-young-cho.net/seo-young-cho-2.html>.

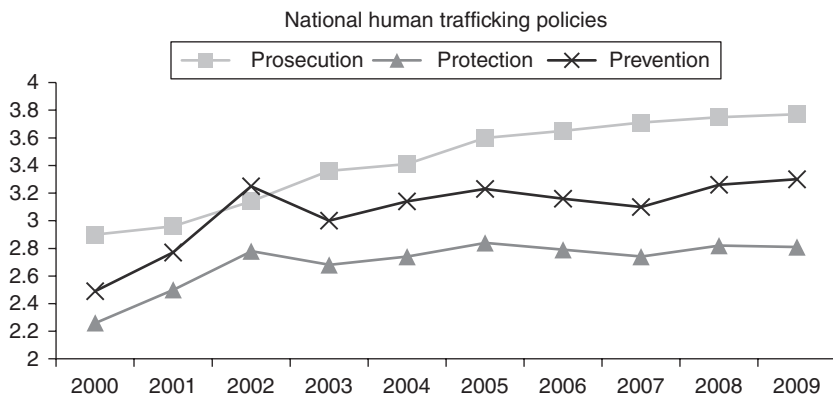


FIGURE 12.5. Average national policy with respect to prevention, protection, and prosecution, 2000–2009.

Source: Cho, Seo-Young, Axel Dreher, and Eric Neumayer. 2014. “Determinants of Anti-Trafficking Policies: Evidence from a New Index.” *The Scandinavian Journal of Economics* 116:(2): 429–454.

explicitly employed by the U.S. Department of State Trafficking in Persons Report, the Council of Europe GRETA Report, the UN Special Rapporteur on Trafficking, and the UNODC Pilot Program Report, and they therefore fairly represent the key norms of the broader anti-trafficking TLO. Cho et al. rate each of these areas on a scale of 1 (worst) to 5 (best) for 177 countries between 2000 and 2009. Figure 12.5 charts the average progress on these measures. Of significance for the thesis of this chapter, the data suggest that states have been much more eager to implement policies to criminalize and prosecute traffickers than they have been to protect the victims.

4. The Subnational Dimension of the Human Trafficking TLO

Human trafficking is not just a transnational or an international legal phenomenon; it is also a phenomenon involving local practice if a TLO is to be institutionalized all the way down. Provincial and municipal governments often have to struggle with the impact of illegal labor markets, criminal violence, and the provision of service (if any) to trafficking victims. Law enforcement almost inevitably involves provincial and city police. Increasingly, jurisdictions have implemented laws against human trafficking and to protect victims at the sub-national level. Forty-eight U.S. states and the District of Columbia criminalize sex trafficking, and fifty states and the District of Columbia criminalize labor trafficking.³⁹ In Canada, the provinces take

³⁹ This is according to Polaris Project’s 2013 Annual State Ratings. See <http://www.polarisproject.org/what-we-do/policy-advocacy>.

an especially active role in programs to protect victims and to provide them with emergency assistance.⁴⁰ Canadian provinces such as Manitoba have tried to address human trafficking by passing laws to protect workers from “unscrupulous” recruiters.⁴¹ Australian provinces enact their own varied laws with respect to prostitution, and several have implemented legislation that at least peripherally relate to human trafficking.⁴² Although it is only possible here to mention a few examples, there is growing evidence that the TLO against human trafficking has trickled down to the local level.

5. Private Dimensions of the TLO against Human Trafficking

Finally, private profit-making corporations have begun to take modest actions to support the norms of the anti-trafficking TLO. Over the years, public pressure has resulted in the development of a range of anti-trafficking campaigns by hotels, restaurants, and common carriers. Upon the NGO initiative of End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes (ECPAT International), the first World Congress against Commercial Sexual Exploitation of Children was held in Stockholm in August 1996. In partnership with the travel and tourism industries, they created a Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism. The Code requires signatories to establish ethical policies regarding the commercial sexual exploitation of children, to train personnel, and to provide annual reports.⁴³ In 2008, ECPAT described the

⁴⁰ See Nicole A. Barrett, [n.d.], *An Exploration of Promising Practices in Response to Human Trafficking in Canada*, International Centre for Criminal Law Reform and Criminal Justice Policy, <http://www.gnb.ca/0012/womens-issues/PDF/HumanTraffickingReport-e.pdf>.

⁴¹ In 2008, Manitoba passed the Worker Recruitment and Protection Act, <http://www.gov.mb.ca/labour/standards/wrpa.html>. In 2011, Nova Scotia's Labor Standards Code was amended to add provisions to protect workers recruited for employment: http://nslegislature.ca/legc/bills/61st_3rd/3rd_read/bo53.htm.

⁴² For example, New South Wales: Crimes Amendment (Sexual Servitude) Act, 2001; see <http://webapps01.un.org/vawdatabase/searchDetail.action?measureId=51090&baseHREF=country&baseHREFId=157>.

⁴³ Private-sector organizations (tour operators, hotels, travel agents, airlines, etc.) commit themselves to the following:

1. To establish a corporate ethical policy against commercial exploitation of children;
2. To train the personnel in the country of origin and travel destinations;
3. To introduce clauses in contracts with suppliers, stating a common repudiation of sexual exploitation of children;
4. To provide information to travelers through catalogues, brochures, in-flight films, ticket slips, websites, etc.;
5. To provide information of local “key persons” at destinations;
6. To report annually to the Code of Conduct Steering Committee.

code as “influential” and “the most generally recognized,” with more than 1,300 signatories from 66 countries, including the Carlson Companies, Delta Airlines, the American Society of Travel Agents, Amazon Tours, and many more international service providers. The code enjoys strong support from UNWTO and UNICEF. More than nine other voluntary codes and resolutions have been developed by the private travel and hospitality sector, from the International Federation of Tour Operators to the International Air Transport Association.⁴⁴

Beyond the travel sector, other businesses have moved to express their opposition to human trafficking. Seven “Athens Ethical Principles” were established by the business community in January 2006,⁴⁵ largely at the instigation of David Arkless, the president of corporate and government affairs for ManpowerGroup. He claims that some 12,500 companies have signed on to the Athens principles,⁴⁶ which simply involves going to a website and filling out a one-page sheet – a low-

⁴⁴ These include: The Code of Conduct against the sexual exploitation of children of the International Federation of Tour Operators (IFTO); the Resolution against the sexual exploitation of children of the International Hotel and Restaurants Association (IH&RA); the Final Resolution condemning commercial sexual exploitation of children of the International Air Transport Association (IATA); the Resolution against sex tourism of the International Federation of Women’s Travel Organizations (IFWTO); The Resolution to combat commercial sexual exploitation of children of the Federation of International Youth Travel Organizations (FIYTO); the Declaration against commercial sexual exploitation of children of the Group of National Tour Operators’ Associations within the European Union (ECTAA); the Declaration against the sexual exploitation of children of the Confederation of the National Associations of Hotels, Restaurants, Cafés and Similar Establishments of the European Union and the European Economic Area (HOTREC); the Resolution on prostitution tourism and standard agreement of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Association (IUF/UITA/IUL). See http://www.unicef.org/lac/code_of_conduct.pdf.

⁴⁵ 1. Explicitly demonstrate the position of zero tolerance towards trafficking in human beings, especially women and children for sexual exploitation;
 2. Contribute to prevention of trafficking in human beings including awareness-raising campaigns and education;
 3. Develop a corporate strategy for anti-trafficking policy which will permeate all our activities;
 4. Ensure that our personnel fully comply with our anti-trafficking policy;
 5. Encourage business partners, including suppliers, to apply ethical principles against human trafficking;
 6. In an effort to increase enforcement it is necessary to call on governments to initiate a process of revision of laws and regulations that are directly or indirectly related to enhancing anti-trafficking policies;
 7. Report and share information on best practices.

⁴⁶ See David Arkless, *The Role of Corporates in Abolishing Human Trafficking*, February 8, 2012, <http://blogs.independent.co.uk/2012/02/08/the-role-of-corporates-in-abolishing-human-trafficking/>. In 2011, Arkless reportedly claimed that 14,000 companies had signed the Athens principles. See <http://www.womenetics.com/Security-Stability/global-corporation-finds-its-heart>.

cost signal that they are concerned about the issue of human trafficking. Businesses can turn to the Luxor Protocol for “best practices” with respect to implementing the principles.⁴⁷

II. FORMATION OF THE TLO

The review in the previous section demonstrates that the norms against human trafficking are extensive and deep. They are operative to some extent internationally, regionally, and within nation-states, and they have been taken up at least rhetorically by private actors. Although it is not possible to explain the details of the creation and development of every nook and cranny of the TLO, it is useful to focus on explaining how it emerged in the 1990s. In this section, we focus on the years leading up to the adoption of the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also sometimes referred to as the Palermo Protocol, or the Human Trafficking Protocol), which supplements the UN Convention against Transnational Organized Crime (the UNCTOC).

Our thesis is that this agreement was the result of major geopolitical and economic shifts that put transnational crime more generally toward the top of the post-Cold War international agenda. We will also show that framing human trafficking in the context of transnational crime, rather than in the context of international human rights, encouraged state actors to strengthen the regime and to internalize its norms in national law. Human trafficking is widely recognized as an egregious rights abuse, but states were willing to take action primarily on the basis of its purported links to transnational crime – one of the issues perceived to be most urgent in the 1990s.

A. Context: Human Rights and Globalization in the Last Quarter of the Twentieth Century

The last quarter of the twentieth century was a remarkable time for the spread of liberal ideas, both political and economic (see Simmons et al. 2008). Politically, democracy’s third wave was in full swing. Human rights seemed to be spreading worldwide, pushed along by a growing matrix of international treaties and norms to protect individuals primarily from their own governments but also from a broad array of degrading conditions that governments were increasingly seen as responsible for addressing (Simmons 2009: esp. ch. 2). Many spoke and wrote of a “rights revolution” that seems to have changed fundamental governing principles over the

⁴⁷ For the Luxor Protocol, see http://www.endhumantraffickingnow.com/luxor_protocol.php.

course of the late twentieth century. Agreements to protect the rights of the “most vulnerable” – women (CEDAW in 1979), children (CRC in 1989) and migrant workers (RMW in 1990) – were especially fresh to the international scene.

Economically, the world’s markets for goods, services, and capital were increasingly integrated. Globalization for goods increased transportation links between countries; it made communication easier; and it tempted people to look for opportunities abroad in even greater numbers. The easy movement of economic goods across borders also opened up the possibilities for criminal rings to exploit the recent reductions in transactions costs. Transnational trade in illicit drugs, weapons, and stolen and pirated goods was facilitated by globalization, as well, and with the growth of these illicit markets came the demand for laundered money. In short, it was becoming clear to many that the liberalization of the economy was a boon for *unwanted* as well as valued goods. As Asif Efrat (2010) has noted, the decades of market liberalization were accompanied very shortly by the counter-trend of the regulation – even the banning – of trade in newly illicit goods across borders. Globalization of trade and communications was increasingly exploited by criminals (Vlassis 2000).

When the most seismic geopolitical event of the second half of the twentieth century occurred, the world’s governments were saturated with rights “burdens” and faced problems attendant to globalization, from economic restructuring to a host of cultural homogenization and, in some cases, to a renewed “war on drugs.” When the Berlin Wall fell in 1989 and the Soviet Union collapsed a year later, many of these problems were exacerbated. On Europe’s doorstep, large populations were facing economic disruption and were newly free to move. Crime rings flourished in the uncertain legal climate and the economic turmoil. According to a report by the Congressional Research Service, “[t]he former Soviet Union and Eastern Europe are believed to be the largest new source of trafficking for prostitution and the sex industry in Europe and North America” (Miko 2003: 2).

Around the world, regimes that had once benefitted from the sponsorship of one or the other superpowers imploded in civil war. The end of the Cold War meant a new set of challenges: Instead of the clash of the Superpowers, states were facing challenges to their sovereignty from surging criminal markets. For many states, transnational crime posed a threat to national and international security; its perceived consequences included the corruption of state institutions, the undermining of rule of law, the threatening of the integrity of financial and commercial sectors of society, the undermining of legal and social norms and conventions, the violation of national borders, and the transgression of national sovereignty (Vlassis 2000).

This was the context of the human trafficking debate in the 1990s (Hughes 2000; Salt 2000). Although it was most definitely a human rights scourge, for states at this

time, it represented a real governance risk. We can appreciate the framing of the human trafficking issue by looking at the timing of its rise to prominence on the global agenda. Figure 12.6 illustrates the waves of attention, as measured by the number of United Nations resolutions on transnational crime adopted each year over the course of the past several decades. Human trafficking was one of the earliest crime sectors to get any attention at the United Nations. Drug trafficking was the primary agenda item in the 1980s, and resolutions on terrorism received a big boost post-9/11. Resolutions addressing corruption, weapons smuggling, and transnationally organized crime in general round out the crime focus of the past two decades. Human trafficking discussions at the United Nations were situated *in the midst* of these discussions. By comparison, they came nearer to the *saturation point* in the development of human rights norms.

The post-Cold War period increased the possibilities for consensus formation with respect to transnational crime, as well. Rather than falling into contending bloc politics, developing countries around the world were freer to make common cause and to confront a threat to one of the things they had in common: their sovereignty. Some were on the verge of democratizing, and organized transnational crime potentially threatened a nascent effort to establish the rule of law (Vlassis 2000: 478). It is no wonder that developing countries were full partners in many of the early initiatives of the 1990s to confront and control transnational criminal activities (Ibid.: 477–478).

B. The Emergence of a New TLO for Human Trafficking: Inside the Anti-Crime Wave of the 1990s

That a new TLO was reshaping the response to human trafficking became clear in the early 1990s. By 1994, at least 644 extradition treaties were in place among states,⁴⁸ an indicator of the experience and perhaps even the learning that had already taken place with respect to cooperation against transnational criminal activity. The UNGA had adopted a host of cooperative agreements, including the Model Treaties on Extradition,⁴⁹ on Mutual Assistance in Criminal Matters,⁵⁰ on Transfer of Proceedings in Criminal Matters,⁵¹ and on Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released.⁵² A Ministerial meeting in 1991

⁴⁸ Bilateral extradition treaties are not easy to track down, as many countries do not habitually deposit them with the United Nations. We are in the process of collecting bilateral extradition treaties in force and suspect this number is a gross underrepresentation of the actual number of such treaties.

⁴⁹ A/45/116 (1990).

⁵⁰ A/45/117 (1990).

⁵¹ A/45/118 (1990).

⁵² A/45/119 (1990).

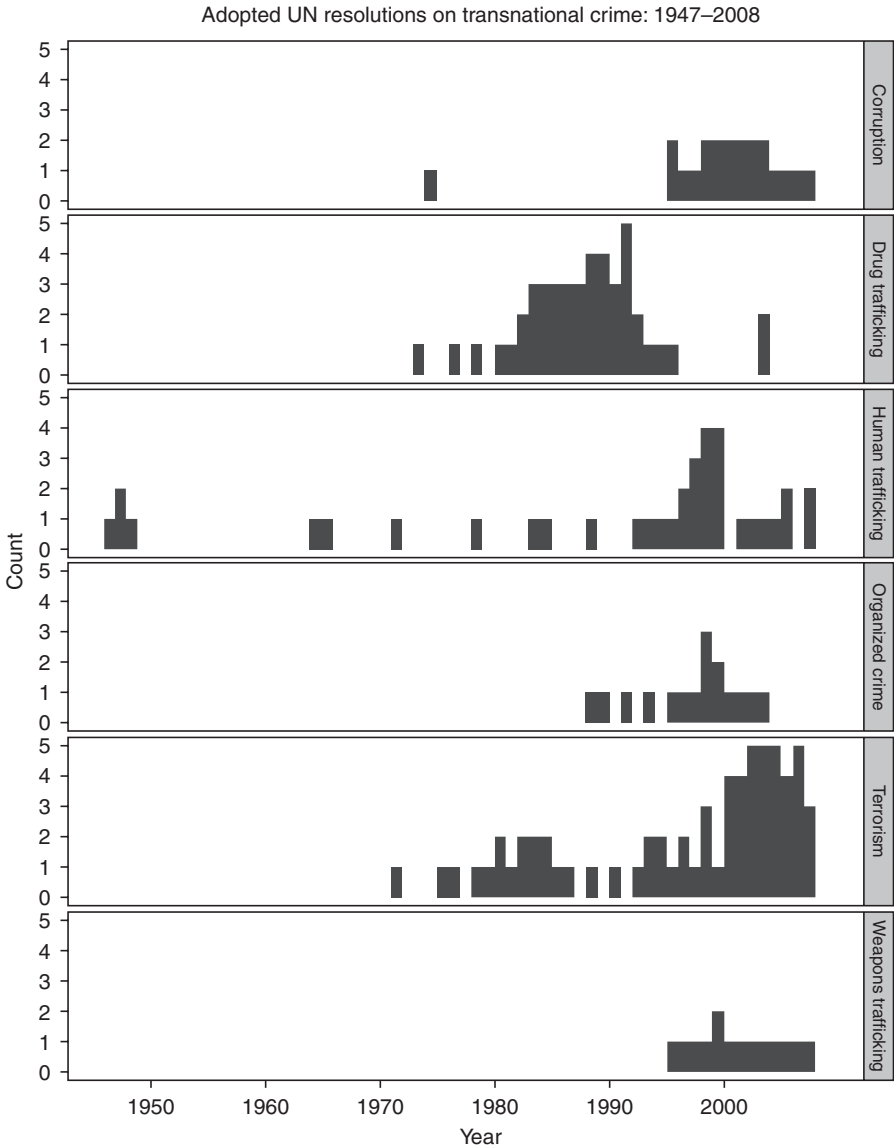


FIGURE 12.6. Human trafficking and the anti-transnational crime agenda at the United Nations.

Source: Lloyd, Paulette, Beth Simmons, and Brandon Stewart. 2012. Combating Transnational Crime: The Role of Learning and Norm Diffusion in the Current Rule of Law Wave. In *The Dynamics of the Rule of Law*, eds. Andre Nolkaemper, Michael Zurn and Randy Peerenboom. Cambridge: Cambridge University Press, 2012. 153–180.

led to the UNGA's adoption of a Statement of Principles and Programme of Action, the focus of which was to provide assistance to member states – something that many developing countries craved. At the institutional level, the General Assembly replaced the Committee on Crime Prevention and Control, the governing body of the Programme, with the Commission on Crime Prevention and Criminal Justice, a functional commission of ECOSOC. The Commission recommended a focus on national and transnational crime and a need for international cooperation.

The anti-transnational crime frenzy was gaining a good deal of momentum by 1994. In November of that year, the World Ministerial Conference on Organized Transnational Crime was held in Naples. With more than 2,000 participants and delegations from 142 states (86 of them at the Ministerial level, with others represented by their heads of state or government), this conference was “one of the most significant events in the history of the United Nations Crime Prevention and Criminal Justice Programme” and “also one of the best attended events ever” (Vlassis 2000: 481). The Conference unanimously adopted the Naples Political Declaration and Global Action Plan against Organized Transnational Crime, which was introduced by a diverse coalition of countries, including Costa Rica, the Dominican Republic, Guinea-Bissau, Myanmar, Panama, the Philippines, and the Russian Federation,⁵³ and it was approved by the General Assembly one month later.⁵⁴

The Naples Plan stressed the need for urgent global action and asked countries to begin harmonizing their legislation and for donor countries and financial institutions to assist developing countries and those with economies in transition. Western European countries, Australia, New Zealand, the United States, and Canada were initially resistant to the idea of a convention, because they were worried about demands for assistance being stymied by an “instrument without ‘teeth’” (Vlassis 2000: 481–482). They also thought the existing regional and bilateral arrangements were sufficient; Europe, as we have seen, was already developing a web of agreements to address the growing problem of transnational crime. The majority of developing countries, on the other hand, were in favor of a new international approach, because they were experiencing the influx of transnational criminal networks and lacked the capacity to address it. They also favored discussions within the global forum of the United Nations, because it is the one forum that gives them rough parity (Vlassis 2000: 482).

The move toward a new international instrument gained momentum when, in September 1996, the President of Poland submitted a draft framework of a convention against organized crime.⁵⁵ The United Nations responded by establishing an

⁵³ 49/159 (1994); Third Committee draft: A/C.3/49/L.71 (1994).

⁵⁴ A/49/748 and A/49/159 (1994).

⁵⁵ A/C.3/51/7.

intergovernmental group of experts to further develop the draft framework. The group met in February 1998 in Warsaw,⁵⁶ and it began the work of the preliminary draft of an international convention against organized transnational crime. At this point, there was consensus on the need and desire for such a convention but not on the content. Developing countries continued to stress “capacity building” to address transnational crime, whereas some developed countries began to see the need for a separate protocol to tackle the issue of human trafficking.

III. FOCUS ON HUMAN TRAFFICKING: FORUMS AND FRAMES

So how and why did human trafficking become a crucial protocol to the Convention on Transnational Organized Crime? We want to stress that the mechanisms for shaping this resolution into a treaty (with additional protocols) were quite inclusive. Signaling the growing concern with transnational organized crime, in 1998, the UNGA created an Ad Hoc Committee on the Elaboration of the Convention against Transnational Organized Crime, which was open to all countries, to develop a comprehensive convention against organized crime.⁵⁷ This committee operated out of Vienna from the UN Office on Drugs and Crime (UNODC).⁵⁸ Eleven sessions over a two year period were dedicated to incorporating the international community into the effort to reach consensus on how to confront transnational crime. Representatives from a wide range of countries representing all regional groups, in addition to representatives from UN organizations and representatives of the Missions of Permanent Observers, IGOs, NGOs, and institutes of the UN Crime Prevention and Criminal Justice Program network, participated in these sessions. The Ad Hoc Committee elected the Italian representative, who served in his personal expert capacity, as Chair.⁵⁹ The Convention addressed a range of transnational crimes, including corruption, organized crime, terrorism, and money laundering. Separate protocols were created to address trafficking in persons, the smuggling of migrants, and weapons trafficking. It was clearly a significant effort to include a wide swath of the global community in the creation of policy solutions to address common problems.⁶⁰

⁵⁶ A/52/85 (1997).

⁵⁷ See A/53/111 (1998), which established an Ad Hoc Committee to elaborate new anti-transnational crime instrument.

⁵⁸ We thank Dimitri Vlassis and Delphine Schantz, UNODC, for their insights on the development of the UNCTOC.

⁵⁹ See UNGA resolution 55/383 for a summary report on each session and key statements by state leaders.

⁶⁰ What makes this event remarkable is that a significant majority of developing countries pushed for a new convention to address transnational organized crime, whereas the group of Western states originally resisted it. This was due in part to the greater parity that the UN forum offered, compared to the

It was the United States, Italy,⁶¹ Austria,⁶² and to a certain extent Argentina,⁶³ who took the lead on efforts to create the human trafficking Protocol to the Crime Convention. By the end of 1998, American officials had led the completion of a first draft of the protocol, and representatives of the major industrialized countries signed a resolution in Vienna in 1998 committing themselves to work collaboratively on the trafficking protocol. In March 1999, this proposal was introduced at one of the first sessions of the broadly inclusive Ad Hoc Committee, and it formed the basis for the proposal that would be introduced at the United Nations Third Committee in 2000. The draft protocol was proposed to the Third Committee by a coalition of states, including twenty-two from Western Europe, seven from Eastern Europe and the former Soviet Union, eleven from the Americas, nine from Asia, seven from Africa, and one from the Middle East. Reflecting their respective priorities, drafts left the Argentines' hands with references to women and children,⁶⁴ whereas American pens tended to broaden coverage to "persons."

A series of controversies marked the early discussion of the protocol. One emerged between destination countries and those with significant amounts of legal outmigration. The latter were concerned largely about provisions that persons found to be trafficked would be returned to their country of origin. Sending countries, such as Pakistan, China, and India, did not want this to be part of the formal agreement. (These states, as well as Japan, Egypt, Thailand, and Ukraine, abstained from signing the protocol, very possibly over this issue.) Another controversy emerged among the destination countries at the forefront of the drafting process. Conservative constituencies influenced the United States to take a harder line against prostitution

lack of resources and influence smaller states have in forming bilateral criminal agreements (Vlassis 2000; Gallagher 2010).

⁶¹ Italy was developing new policies to address an influx of Albanian migrants being transported by organized crime groups, spurred by a humanitarian crisis, when a ship carrying illegal migrants sunk off its coast. It created an initiative regarding trafficking of migrants by sea but joined forces with Austria to create a proposal to deal with trafficking by sea attached to Austria's proposed convention.

⁶² Austria was experiencing an increase in migrant smuggling incidents facilitated by criminal gangs from various regions of the world and, as a result, drafted a convention against the illegal trafficking and transporting of migrants.

⁶³ Argentina had pushed for a new convention focused on trafficking in minors at the UNODC because work in Geneva on additional protocols to the Convention on the Rights of the Child (CRC) was too slow (Vlassis 2000: 18).

⁶⁴ As noted in n. 76, the Argentines were reportedly frustrated by the slow pace in Geneva of addressing child trafficking with an additional protocol to the Convention on the Rights of the Child. In Geneva, trafficking was approached "purely from a human rights perspective," slowing the process of law development further. Dimitri Vlassis, who was Secretary to the Ad Hoc Committee for Elaboration of the Transnational Organized Crime convention, and hence very close to the negotiations, noted that Argentina decided to approach the issue from a criminal justice perspective and proposed to draft a new convention against trafficking in minors, linking it to activities of organized criminal groups (Vlassis 2000: 492).

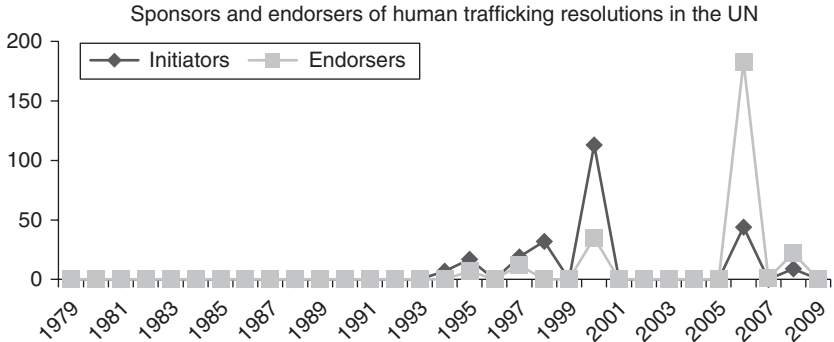


FIGURE 12.7. Evidence of growing consensus on human trafficking at the United Nations: Resolution sponsors and endorsers.
Source: United Nations resolutions in the Third Committee of the UNGA (Authors' database).

than several other leading industrialized countries did, which annoyed a number of Western countries, including Canada and the Netherlands. Nevertheless, the Ad Hoc Committee finalized the text of the Convention at its 10th session in July 2000, completing its work in two years – lightning speed on the UN clock.

But before concluding that a handful of wealthy industrialized countries were the sole supporters of resolutions and treaties to control human trafficking, it is instructive to examine exactly what took place over the course of the past decade and a half at the United Nations. Between 1994 and 2008, at least ten resolutions on human trafficking were introduced, debated, and revised in the Third Committee (the Social, Humanitarian, and Cultural Committee), including the series of resolutions in 2000 referred to in Section I that became the human trafficking Protocol. In this forum, developing countries took an especially active role, both as the initial sponsors of resolutions, as well as the relatively small cluster of countries to subsequently join in sponsoring resolutions well before consensus was reached on its passage, although no formal votes were taken. Analysis of who sponsored and endorsed various resolutions suggests that destination countries and countries experiencing significant internal trafficking were especially likely to sponsor anti-trafficking resolutions (Lloyd et al. 2012).

Moreover, there is good evidence of a broadening consensus regarding human trafficking over the course of these decades. One piece of evidence is that the number of sponsors for the resolution that evolved into the human trafficking Protocol gained increasing numbers of sponsors and endorsers as it made its way toward formal acceptance. Figure 12.7 demonstrates that, for the most part, each successive resolution in the Third Committee of the UNGA has gleaned more sponsors and endorsers, which, in the absence of voting information, may be taken as a growing consensus for each succeeding resolution.

TABLE 12.1. *Consensus formation on human trafficking: Increasing variance of GDP/capita among sponsors and endorsers of UN resolutions*

	Initiators stand Dev GDP/Capita	Endorsers stand Dev GDP/Capita	Initiators fractionalization by Region	Endorsers fractionalization by region
1994	1,333	N/A	.167	N/A
1995	4,061	7,341	.044	.118
1997	4,082	12,520	.012	.517
1998	10,649	N/A	.128	N/A
2000	8,197	8,434	.124	.128
2006	N/A	N/A	.078	.105
2008	N/A	N/A	.220	.172

Source: GDP/capita from World Development Indicators; region based on the nine-region designation of the World Bank; information on sponsors and endorsers from authors' database.

Another way to evaluate consensus for these resolutions is to ask whether they represent an increasingly broad cross-section of states internationally. To investigate this, we have calculated the standard deviation of gross national product per capita to see whether the variance among the sponsors and endorsers *increases* over time. Table 12.1 suggests that it does, although the numbers are inconclusive. The dispersion of income per capita tends to increase over time, and it seems to increase when comparing the initiators (of an original resolution) to endorsers (who support a revised resolution). Although fractionalization (the probability that any randomly drawn two initiators or endorsers will be from the same region) was expected to decrease, it in fact shows no particular pattern. Overall, then, it is hard to tell much about consensus formation by looking at the identity of the sponsors and endorsers of UNGA resolutions on human trafficking alone.

Nonetheless, a look at the resolutions and the language they use indicates a “hardening” of the norms surrounding human trafficking. One way to demonstrate this is to look at the use of what we might call “pressure words” in UN human trafficking resolutions over time. Here we analyze a corpus that contains twenty-two adopted resolutions from 1994 to 2009. This analysis is much broader than that contained in Table 12.1; it includes all resolutions contained therein plus resolutions that evolved in the sub-committees on the Advancement of Women and on Crime Prevention and Criminal Justice. We begin with an analysis of preamble paragraph opening words. Figure 12.8 shows which words we see italicized most frequently in these resolutions. We can see that the most dominant terms are “encourages” and “invites.”

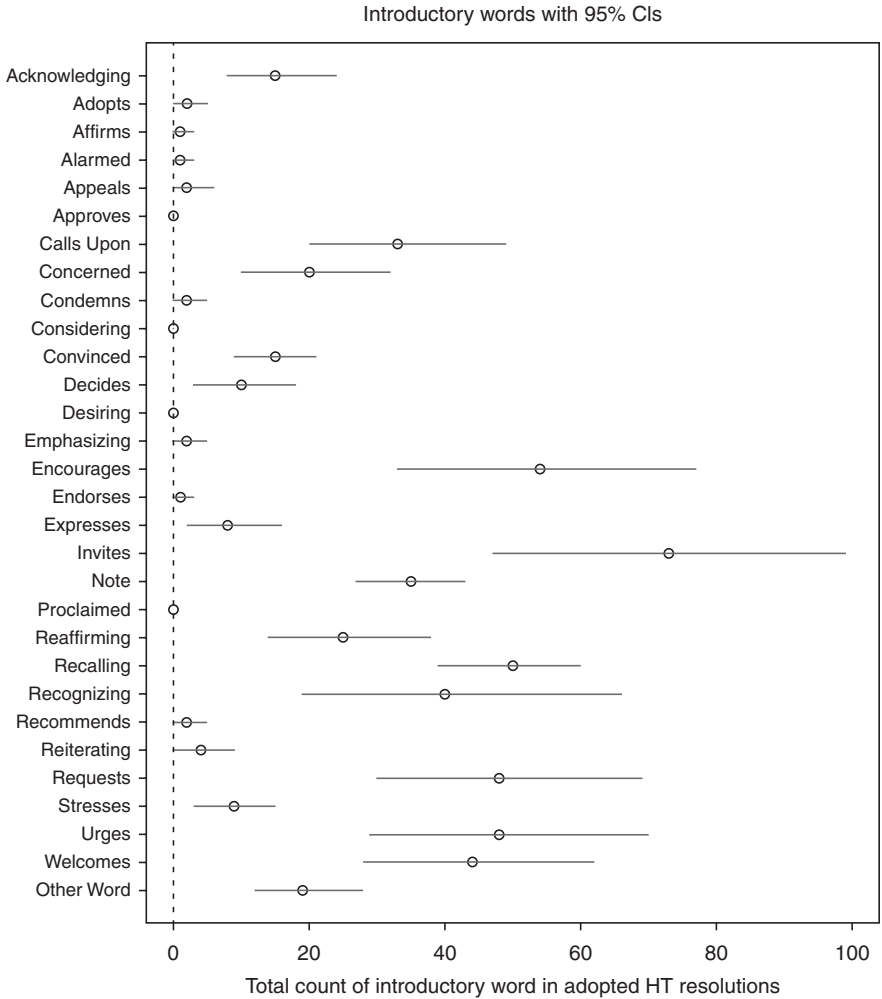


FIGURE 12.8. Frequency of introductory words in Preambles of adopted UN resolutions that deal with human trafficking.
 Source: Authors' database.

By separating words by category – roughly corresponding to those that denote “pressure,” “desire,” and “fact” – we can see that all three categories increase in frequency in the resolutions over time, but the prevalence of pressure words seems to increase at the steepest rate (Figure 12.9).

Interestingly, there is some evidence that the words that convey the *most* urgency tend to increase most significantly in this corpus of UN resolutions over time, as illustrated in Figure 12.10. This suggests that norms about human trafficking may

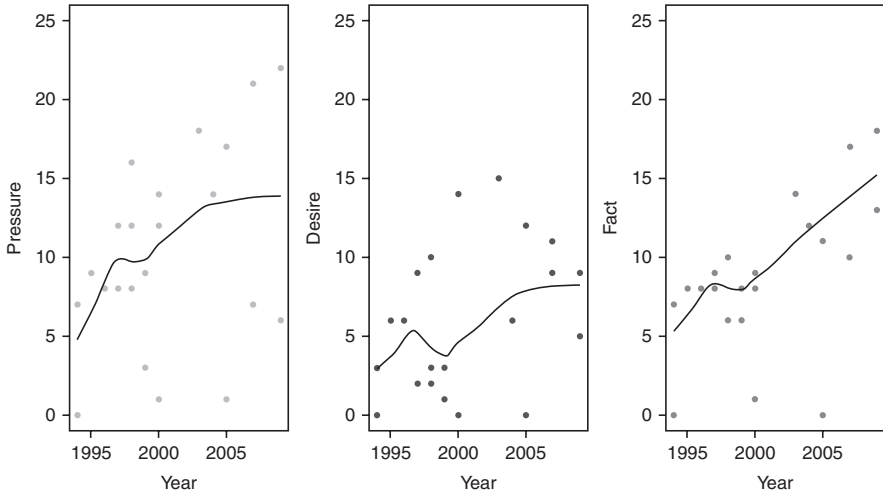


FIGURE 12.9. Increase in “pressure words” compared to words that express “desire” and “fact” in Preambles to UN human trafficking resolutions.

Source: Authors’ database.

Note: “Pressure” words include: adopts, alarmed, appeals, calls upon, concerned, condemns, decides, emphasizing, encourages, endorses, recommends, requests, and urges. “Desire” words include: approves, desiring, invites, stresses, and welcomes. “Fact” words include: affirms, acknowledging, considering, convinced, expresses, note, proclaimed, reaffirming, recalling, recognizing, and reiterating.

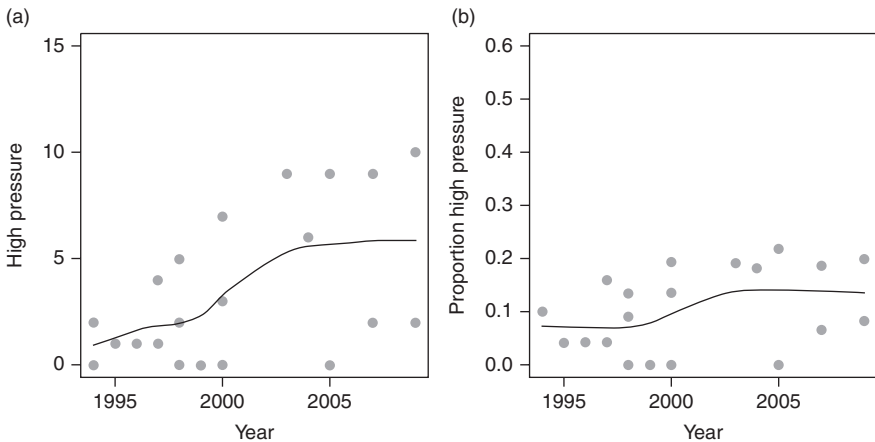


FIGURE 12.10. Evidence of consensus: Increase in “high pressure” words in Preambles of UN human trafficking resolutions over time.

Source: Authors’ database.

Note: High pressure words include: alarmed, concerned, condemns, emphasizing, and urges.

be solidifying over the period under observation, at least as reflected in the language used in the preambles of UN resolutions. Of course, the strongest evidence of normative convergence is the fact that countries converged on a text for the 2000 human trafficking Protocol as swiftly as they did between 1998 and 2000. The next section asks: To what can we attribute this apparent solidarity? We argue that there was a fundamental shift in the way human trafficking was viewed. Discourse at the international, national, and local levels revealed a concern with transnational crime, and this resulted in crime being the dominant frame with which the problem of human trafficking was viewed.

IV. FRAMING HUMAN TRAFFICKING: CRIME, VICTIM PROTECTION, AND HUMAN RIGHTS

Framing effects are said to occur when “[in] describing an issue or event, a speaker’s emphasis on a subset of potentially relevant considerations causes individuals to focus on these considerations when constructing their opinions” (Druckman 2001). Political psychologists have long recognized that individuals’ attitudes are quite susceptible to the framing of issues (Tversky & Kahneman 1981). Frames and framing have become a classic concept in sociological processes, as well. Social movement theorists frequently draw on David Snow’s definition of framing as “the conscious strategic efforts by groups of people to fashion shared understandings of the world and of themselves that legitimate and motivate collective action” (McAdam et al. 1996: 6).

Human trafficking is susceptible to framing effects because, despite the apparent “consensus” we have tried to document in Section III, it is actually a reasonably contentious problem. There was nothing inevitable about the broad acceptance of the criminalization approach to human trafficking. One source of tension was the concern that efforts to stop trafficking were disguised protectionist measures against migration in general. Some governments, such as Moldova’s, encourage migration to secure remittance-based tax revenues, whereas countries such as Indonesia and the Philippines have explicit policies of increasing human “exports” to support their balance of payments and inward remittance flows. Because it is difficult at times to distinguish voluntary smuggling from involuntary and exploitative trafficking (Zhang 2007), some developing countries became worried that the effort to criminalize the latter reflects a broader motive to control migration more generally. Kara’s research in South Asia, for example, revealed attitudes among the Nepalese that anti-trafficking awareness campaigns were “nothing more than anti-immigration propaganda” (Kara 2009). A second source of tension is cultural: Reducing trafficking is a much lower priority in countries where cultural attitudes toward women and children and workers’ rights in general are a lower priority and where various forms of bonded labor are widely accepted (Dewey 2008; Parrot &

TABLE 12.2. *Language in human trafficking resolutions compared to other transnational crime sectors (Textual analysis of 198 UN resolutions: “Most informative words” framing each crime sector)*

Human trafficking	Corruption	Drug trafficking	Organized crime	Terrorism	Weapons trafficking
right-	corrupt-	drug-	crime-	terror-	nuclear-
women-	public-	narcot-	organ-	terrorist-	weapon-
traffick-	request-	illicit-	transnat-	human-	disarma-
person-	origin-	abus-	request-	manifest-	arm-
child-	asset-	control-	crimin-	ideolog-	gener-
develop-	transfer-	substanc-	offenc-	suppress-	decemb-
victim-	offenc-	psychotrop-	prevent-	fascist-	intern-
crime-	briber-	programm-	convent-	charter-	prolifer-
children-	transact-	traffick-	firearm-	hostag-	convent-
protect-	fund-	action-	domest-	freedom-	secur-

Source: Database of electronically available adopted UN resolutions.

Cummings 2008). A third tension was alluded to in Section I: Attitudes toward human trafficking have become entangled with beliefs about the nature of prostitution. Divisions have erupted among those who see prostitution as “sex work” and those who view any form of prostitution, whether it is legal or not, as inherently exploitative. Given these fissures, it might have taken years or even decades to arrive at a consensus on human trafficking. Instead, the international consensus formed on human trafficking was one of the most rapid, and it impacted the global response to this issue.

A. Possible Frames for Understanding Human Trafficking

Without a doubt, human trafficking can be understood through a variety of lenses and discourses. In comparison to other crime sectors, it is clear that human trafficking evokes concerns for vulnerable persons, as well as a desire to put people away for exploiting them. We analyzed scores of resolutions passed by the UNGA over the past few decades and found that human trafficking had a more varied vocabulary than did resolutions relating to other kinds of illicit transnational activities. Table 12.2 displays the results of a search for the ten most distinctive words (both common *and* distinguishing) across this set of UN resolutions. There is little doubt that human trafficking resolutions include much more victim- and rights-oriented language than do other crime sectors. Words like “right,” “victim,” “protect,” and “person” distinguish the human trafficking corpus of resolutions, despite the fact

that guns and terrorists violate rights and create victims, as well. We explore the major frames for human trafficking in the following sections.

1. The Victim Protection Frame

Several frames are possible contenders for interpreting the problem of human trafficking, and a range of frames have gained some degree of salience historically (see Locher 2007). One of the earliest frames to surface was the highly gendered victim protection frame. Advanced by some religious groups, some women's advocacy groups, and some states, this frame sees human trafficking as a matter of protecting vulnerable individuals from various kinds of exploitation, typically sexual exploitation. This frame was the dominant frame until about the mid-1990s. It motivated nineteenth-century campaigns that were focused on what was generally referred to at the time as the "white slave trade," code language for the international trade in women and girls, especially for prostitution.

A series of early international resolutions and agreements (in 1902, 1921, and 1949) have been based on this frame. The power of this frame weakened and the consensus behind this approach crumbled when divisions erupted over the acceptability of "sex work," as reflected in divisions between conservative and more liberal NGOs (Kempadoo & Doezema 1998; Scarpa 2008) and even among liberal states such as Netherlands, where prostitution is legal, and Sweden, where it has been criminalized (Di Nicola 2009).

2. The Human Rights Frame

A second frame that has gained salience in the past two decades is the human rights frame. Somewhat broader than a focus on vulnerable women and children, this frame draws attention to the range of human rights violations that human trafficking typically involves, from violations of freedom of movement to inhumane treatment to (in the extreme) the right to life itself. This frame emphasizes the coercive aspects of human trafficking and even the slave-like conditions in which a good many trafficked individuals are held. In common with the victim protection frame, the focus is on the plight of the individual. Also in common with that frame, there are some tensions between those who view engaging in prostitution as a right versus those who view it as a rights abuse. This frame empowers individuals and obligates states. Not only does it suggest that state officials have an obligation to prevent bondage, but in so doing, they have an affirmative obligation fully to respect the rights of individuals, as well. This emphasis has sometimes been seen as reflective of a Western bias and is therefore resisted by developing states as a potential excuse for intervening into their domestic affairs.

Not surprisingly, the human rights frame has been proffered primarily by non-state actors, including Amnesty International, the Office of the High Commissioner

for Human Rights, and international agencies, including UNICEF and the International Organization for Migration (IOM) (Gallagher 2010). These groups have urged states to see the problem of trafficking from a rights perspective, calling on them, for example, (with limited success) to assure the protection of the right of trafficked persons to remain in the destination country rather than forcibly returning them to their country of origin (Gallagher 2010). An example of the rights focus of non-governmental organizations is the Miami Declaration of Principles on Human Trafficking (of 2005), which was drafted by intergovernmental, governmental, non-governmental, and academic experts at an interdisciplinary symposium in February 2005. The declaration begins, “[t]rafficking in persons is a human rights violation that constitutes a contemporary form of slavery,” and it lists a host of other rights – from the right to life to the right to freely choose employment.⁶⁵ It is perhaps not surprising that their input to the United Nations on the issue of human trafficking reveals a strong orientation toward the protection of human rights (see Figure 12.11). These groups were somewhat disappointed with the prosecutorial focus of the 2000 human trafficking Protocol, and they continue to try to raise the visibility of human rights in the human trafficking TLO.

3. The Transnational Crime Frame

A third frame for human trafficking is the transnational organized crime frame. This frame situates human trafficking firmly within the broader problem of criminal networks that transcend national borders. In contrast to the two frames in the previous two sections, this frame strongly implies international cooperation, because it often focuses on a phenomenon that crosses state boundaries. This frame also links trafficking with networks that engage in activities that have already been designated as criminal. Finally, this frame views trafficking as corrosive of state authority and even sees it as a potential national security threat.

Why is the transnational crime frame so attractive to states? First and foremost, by linking human trafficking to broader transnational crime networks, it “securitizes” the issue, which raises its salience and urgency.⁶⁶ Security interests include a capacity to arrest and deflect unwanted persons and activities by maintaining control over who may legitimately enter and operate within a state’s jurisdiction. Developing the capacity to do this effectively empowers the state, sometimes with material aid from the international community. By contrast, laws designed primarily to protect human rights or victims create state obligations vis-à-vis individuals. For all of these

⁶⁵ The Miami Declaration of Principles on Human Trafficking, February 10, 2005, section I.1 and I.2. 1 Intercultural Human Rights L. Rev. 11 (2006). <http://www1.umn.edu/humanrts/instree/miami-declaration2006.html>.

⁶⁶ See, for example, Buzan et al. 1998.

NGOs providing information to the 2006 UNODC Report
(unweighted by amount of input)

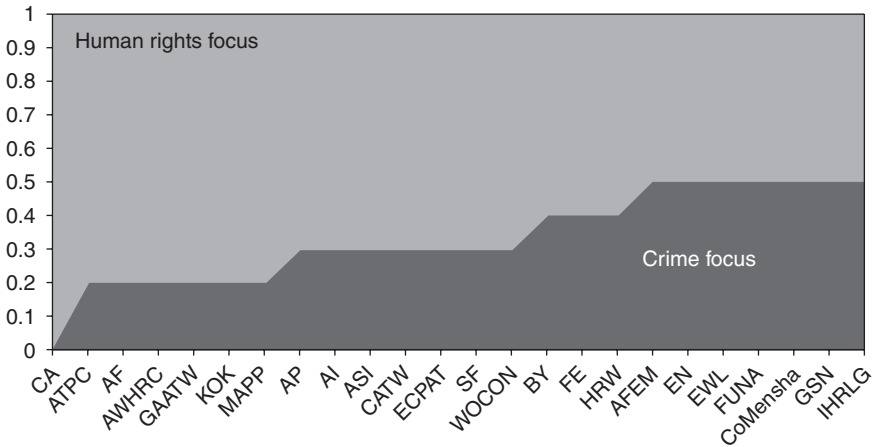


FIGURE 12.11. Informing human trafficking TLO: The relative emphasis of NGOs involved in information generation.

Note: These NGOs contributed information to the 2006 UNODC Report.

Coding for relative emphasis reflects the rough division of emphasis based on available information from various online sources, especially the website of each organization.

Key: CA = Casa Alianza; ATPC = Anti Trafficking Programme-Change; AF = Asia Foundation; AWHRC = Asian Women’s Human Rights Council; GAATW = Global Alliance against Traffic in Women; KOK = KOK-NGO Network against Trafficking in Women; MAPP = Movement for the Abolition of Pornography and Prostitution; AP = The Advocacy Project; AI = Amnesty International; ASI = Anti-Slavery International; CATW = Coalition against Trafficking in Women; ECPAT = End Child Prostitution, Child Pornography and the Trafficking on Children for Sexual Purposes; SF = Solomon Foundation; WOCON = Women’s Consortium of Nigeria, Women, and Law & Development in Africa; BY = Ban-Ying; FE = Fundacion Esperanza; HRW = Human Rights Watch; AFEM = Association des Femmes de l’Europe Meridionale; EN = Equality Now; EWL = European Women’s Lobby; FUNA = Finnish UN Association, NGO; CoMensha = Foundation against the Trafficking of Women – Coordination Centre Human Trafficking; GSN = Global Survival Network; IHRLG = International Human Rights Law Group.

Note that other groups also provided information to the UNODC, but we were unable to code their relative emphasis: Article One; Asian Student Association; Combating the Trafficking in Children; The Foundation of Women’s Forum/Stiftelsen Kvinnoforum-FWF; Indian Health Association; International Helsinki Federation for Human Rights; Kavla; La Strada; Molo Songololo; Rapid Response; Stop-Trafficking; Support Development in China.

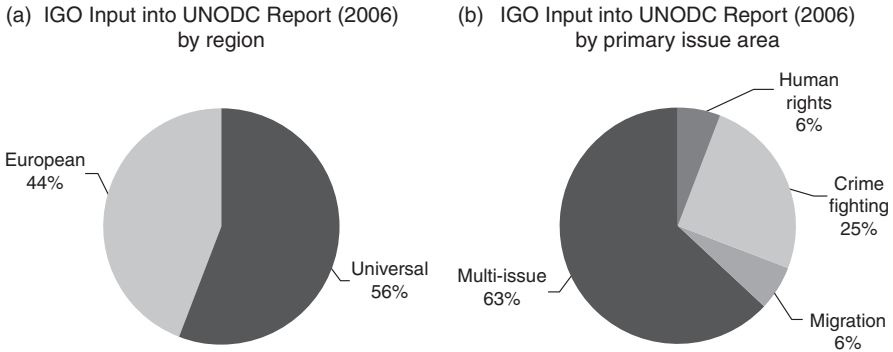


FIGURE 12.12. Informing the human trafficking TLO: The relative emphasis of IGOs involved in information generation

Note: Input to the UNODC Report was received from the following IGOs:

Multi-issue: Commission of the European Communities; Council of Europe; Economic and Social Council; Organization for Security and Co-Operation in Europe-OSCE; United Nations-UN; United Nations-ECOSOC; United Nations-UNWIRE; European Parliament; European Sudanese Public Affairs Council-ESPAC; International Labour Organization-ILO; Southeast European Cooperative Initiative-SECI.

Primarily Crime: European Law Enforcement Organisation-EUROPOL; United Nations Office for Drugs and Crime-UNODC; International Criminal Police Organization-INTERPOL; United Nations Interregional Crime and Justice Research Institute-UNICRI.

Primarily Human Rights: United Nations Children's Fund-UNICEF.

Primarily Immigration: International Organization for Migration-IOM.

reasons, criminalization is a much more attractive frame to states than were the most discussed alternatives – protecting human rights and assisting victims.

States and their cooperative organizations are much more likely than are non-governmental organizations to emphasize the prosecutorial approach to human trafficking. If we compare the primary concerns of the intergovernmental organizations that provide information to the UNODC to those of the NGOs, we see a fairly distinct preference for emphasizing transnational crime. Figure 12.12 contains two pie charts describing the issue orientation of the intergovernmental organizations that contributed information to the 2006 UNODC report. That field is dominated by “multi-issue” organizations, but it is fairly clear that more IGOs have a criminal law enforcement bent than does the field of non-governmental organizations that contribute to the same report.⁶⁷

⁶⁷ Interestingly, the report is overwhelmingly informed by IGOs that are either universal or European; not a single non-Western IGO contributed information to the UNODC's recent report. Despite this, representatives of developing countries have expressed a preference for the UNODC as the central organization for international human trafficking policy. The focus on crime is “practical” rather than

B. *Frames and International Consensus in Human Trafficking*

Our final point to make about the human trafficking TLO is that consensus in the 2000s is largely due to the rhetorical influence of the transnational crime frame. It is important to stress a point that may have been lost in recounting the details of the negotiations leading to the human trafficking Protocol: States mindfully created a physical and bureaucratic space that privileged the transnational crime frame in the late 1990s. That space was the UNODC itself, which was originally designed to address international *drug* trafficking. The UNODC was established in 1997 as Office for Drug Control and Crime Prevention by combining UN International Drug Control Program and Crime Prevention and Criminal Justice Division in the UN Office at Vienna; it was renamed UNODC in 2002.⁶⁸ The UNODC webpage now proudly announces that the “UNODC is growing in stature as States increasingly seek multilateral partnerships to combat problems without borders” from the narcotic drug trade to terrorism to corruption.⁶⁹ Discussing human trafficking in Vienna had real consequences for the approach taken. It helped focus attention on the links between human traffickers and transnational organized crime more generally.

Stated starkly and most simply, we maintain (as a hypothesis) that consensus formation in the human trafficking TLO depended crucially on the prominence of the transnational crime frame. Modest evidence for this assertion is available in the context of the international discussions held at the United Nations in the 1990s. We can literally witness the move away from the “rights frame” and the embrace of the “transnational crime frame” over the course of the 1990s by examining the language used in the successive resolutions that evolved into the binding human trafficking Protocol of 2000. In 1994, the UNGA had passed a resolution on Traffic in Women and Girls,⁷⁰ which focused on a specific aspect of the broader criminal trafficking problem – that relating to sexual exploitation. This early resolution clearly framed human trafficking as a human rights issue. The brief three-page resolution uses the phrase “human rights” nine times. Variations on the word “sex” appear four times,

“value-centered” – a sentiment reflecting the feeling of interference in the domestic affairs of states that has occurred with the international human rights regime (Information obtained from conversations at international forums).

⁶⁸ A/51/950 (1997); see *Renewing the United Nations: A Programme for Reform*: 49. This ninety-five-page resolution lists organizational structure and other details. Note that creation of the UNODC was just one part of a large-scale organizational reform in response to geopolitical changes following the end of the Cold War.

⁶⁹ For information, see <http://www.unodc.org/unodc/en/about-unodc/index.html?ref=menutop>.

⁷⁰ Resolution Adopted by the General Assembly, A/RES/49/166, 1994. This resolution was part of a series of resolutions addressing the Advancement of Women (see the report of the Third Committee, A/49/607, for related measures), <http://www.un.org/documents>.

TABLE 12.3. *Evidence of evolution in the framing of human trafficking: Comparison of the original 1994 resolution with the final 2000 treaty*

	Original 1994 resolution	Final 2000 treaty
“human rights”	9	4
“sex”	4	1
“prostitut-”	2	1
“crim-”	5	11

and “prostitution” appears twice. Variations on the word stem “crim-” appear only five times. Comparing this initial resolution with the final text of the 2000 Human Trafficking Protocol, references to “human rights” are slashed to a mere four, sex and prostitution are each mentioned only once, and variations on the word stem “crim-” soar to eleven (see Table 12.3). What initially was introduced as part of the United Nation’s traditional post-war concern with human rights became part of the post-Cold War international anti-transnational crime effort of the late 1990s. The transformation was apparently largely accomplished through the drafting work of the United States, Italy, and Austria throughout 1998 and 1999,⁷¹ but the draft protocol was sponsored by a broad coalition of states that included states from every region of the world. It was accepted with only minor revisions by apparently unanimous consensus (no recorded vote) by the UNGA.

More broadly, returning to our twenty-two adopted UNGA resolutions, we can look for evidence of the waxing and waning of the three frames outlined in Section IV.A. We created a list of words that represent the “crime” frame and a list of words that emphasize the protection of “victims.” When we plot these over time, we can see that the ratio of victim words to crime words dip right around 2000, whereas the ratio of human rights words to crime words also falls but to a lesser extent (Figure 12.13). This pattern in language is consistent with the claim that in order to get consensus on a major multilateral treaty to address human trafficking, it may have been necessary to reduce attention to victims and their rights and to emphasize the frame that states found most empowering: that of crime fighting, law enforcement, and prosecution.⁷²

⁷¹ Vlassis 2000; Chuang 2006; DeStefano 2007: 2.

⁷² Chamysh, Lloyd and Simmons find that for resolutions involving trafficking in women that references to crime increased support for the resolution, while references to rights reduced support. See Chamysh, Volha, Paulette Lloyd, and Beth A Simmons. forthcoming. “Frames and Consensus Formation in International Relations: The Case of Trafficking in Persons.” *European Journal of International Relations* (forthcoming).

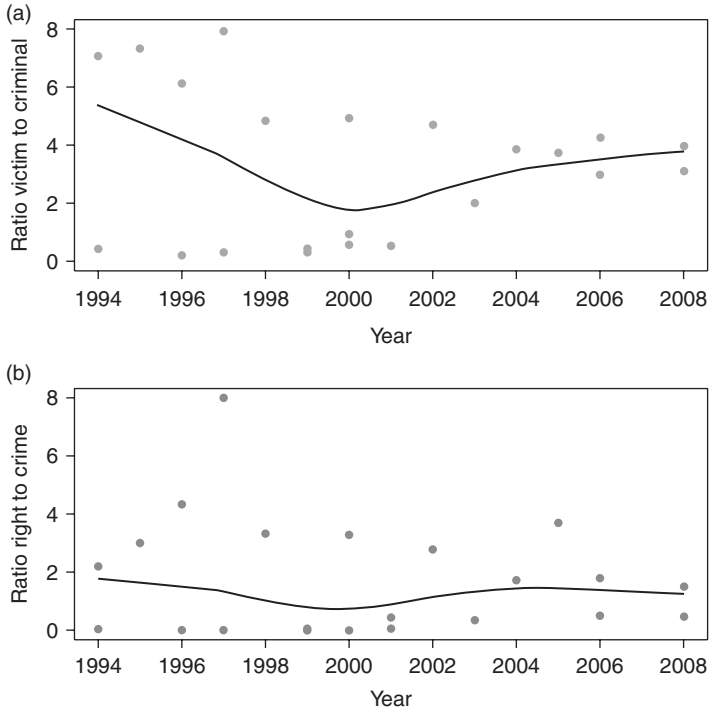


FIGURE 12.13. The relationship between the crime frame and the victim and human rights frames in human trafficking resolutions over time.

V. CONCLUSIONS

The TLO that has developed over the past few decades to counter human trafficking has thickened and spread significantly. Norms have become legalized internationally, at the regional level, and within states. Corporations have found it to be good business to send a signal that they oppose human trafficking, as well. We have argued that the timing of the institutionalization of this regime is no accident: It came about as the result of both trending globalization and the major temblor that ended the Cold War and gave millions the opportunity – and incentive – to look for better opportunities abroad. Some fell prey to transnational crime rings and ended up in forced labor contracts or in the brothels of Europe. Transitioning states sought international cooperation to secure their tenuous grasp on the rule of law; meanwhile, failed or failing states left to their own devices in the wake of the Cold War faced a choice between becoming a base or transit route for transnational crime – or fighting back.

This is the context in which human trafficking came to the international agenda. Although NGOs made an excellent case for the rights abuses that such trafficking

involved, we hypothesize that this is not what led states to strengthen the TLO. States were saturated with rights “burdens” and faced a wide range of challenges, from adjusting their economies under the pressure of globalization to facing new security threats security to securing their own sovereignty. Under the circumstances, strengthening state capacities to resist crime was a far more attractive project than was undertaking to protect the rights of what were often foreigners illegally transgressing borders. The transnational crime frame appears to have supported the “fragile consensus” (Chuang 2006) that formed to criminalize human trafficking in the late 1990s. It did this partially by “securitizing” the issue of human trafficking, thereby providing the capacity to arrest and deflect unwanted persons and activities. The fluidity of transnational crime networks provided strategic incentives for states to harmonize policies with their neighbors in order to avoid becoming an attractive destination for criminal activity. That this motivated states is evidenced by the rapid increase in the creation of strong laws in domestic penal codes. The number of states that criminalized sex and labor trafficking in domestic laws increased from 10 percent in 2000 to about 73 percent in 2013. Clearly, states have accepted that human trafficking is a crime that is best addressed through law, involving international treaties, implementation in national law, the enrollment of national and local enforcement agencies, and transnational coordination among criminal enforcement officials.

Just as clearly, there remains a tension between a human rights and crime approach to human trafficking. Probably the best example is the United States, which has positioned itself to be a global leader in addressing the problem of human trafficking. In his speech to the Clinton Global Initiative in 2012, President Obama argued that human trafficking “ought to concern every person, because it is a debasement of our common humanity ... It ought to concern every nation, because it endangers public health and fuels violence and organized crime. I’m talking about the injustice, the outrage, of human trafficking, which must be called by its true name – modern slavery.”⁷³ The TIP report itself cites anti-slavery norms and laws, as well as the Universal Declaration of Human Rights, Conventions against forced labor, and the International Covenant on Civil and Political Rights. The “3P” paradigm of prosecution, protection, and prevention – reflected in both the 2000 Palermo Convention and the 2000 U.S. Trafficking Victims Protection Act (TVPA) – represents efforts to balance the criminal and human rights components of human trafficking. Nevertheless, the consensus behind the TLO for human trafficking depends heavily on a frame that will develop state capacities, not create new obligations to individuals.

⁷³ See <http://www.whitehouse.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative>.

Overall, the human trafficking TLO involves the complementarity of actions at different levels of social organization, including a combination of UN treaties, regional treaties, transnational monitoring initiatives, national monitoring and enforcement, and local enforcement. U.S. monitoring and enforcement under the TVPA has played a critical role. It is through this combination of actions that legal norms regarding human trafficking can become more than those of an international regime and move toward those of an institutionalized TLO affecting national law and local legal practice.

References

- Buzan, Barry, Ole Wæver, and Jaap de Wilde. 1998. *Security: A New Framework for Analysis*. Boulder: Lynne Rienner.
- Charnysh, Volha, Paulette Lloyd, and Beth A Simmons. Frames and Consensus Formation in International Relations: The Case of Trafficking in Persons. *European Journal of International Relations* (forthcoming).
- Cho, Seo-Young, Axel Dreher, and Eric Neumayer. 2014. Determinants of Anti-Trafficking Policies: Evidence from a New Index. *The Scandinavian Journal of Economics* 116:(2):429–454.
- Chuang, Janie A. 2006. The United States as Global Sheriff: Unilateral Sanctions and Human Trafficking. *Michigan Journal of International Law* 27:437–494.
- DeStefano, Anthony. 2007. *The War on Human Trafficking: U.S. Policy Assessed*. Rutgers: Rutgers University Press.
- Dewey, Susan. 2008. *Hollow Bodies: Institutional Responses to Sex Trafficking in Armenia, Bosnia, and India*. Sterling, VA: Kumarian Press.
- Di Nicola, Andrea. 2009. *Prostitution and Human Trafficking: Focus on Clients*. New York: Springer.
- Druckman, James N. 2001. On the Limits of Framing Effects: Who Can Frame? *The Journal of Politics* 63(4):1041–1066.
- Efrat, Asif. 2010. Toward Internationally Regulated Goods: Controlling the Trade in Small Arms and Light Weapons. *International Organization* 64(1):97–131.
- Gallagher, Anne T. 2010. *The International Law of Human Trafficking*. Cambridge: Cambridge University Press.
- Hughes, Donna M. 2000. The “Natasha” Trade – The Transnational Shadow Market of Trafficking in Women. *Journal of International Affairs* 53(2):625–652.
- Kara, Siddharth. 2009. *Sex Trafficking: Inside the Business of Modern Slavery*. New York: Columbia University Press.
- Kempadoo, Kamala, and Jo Doezema, eds. 1998. *Global Sex Workers: Rights, Resistance, and Redefinition*. New York: Routledge.
- Lloyd, Paulette, Beth Simmons, and Brandon Stewart. 2012. Combating Transnational Crime: The Role of Learning and Norm Diffusion in the Current Rule of Law Wave. In *The Dynamics of the Rule of Law*, eds. Andre Nolkaemper, Michael Zurn, and Randy Peerenboom. 153–180. Cambridge: Cambridge University Press.
- Locher, Birgit. 2007. *Trafficking in Women in the European Union: Norms, Advocacy-Networks and Policy-Change*. Wiesbaden: VS Verlag für Sozialwissenschaften.

- McAdam, Doug, John D. McCarthy, and Mayer N. Zald. 1996. *Comparative Perspectives on Social Movements: Political Opportunities, Mobilizing Structures, and Cultural Framings*. Cambridge: Cambridge University Press.
- Miko, Francis T. 2003. *Trafficking in Women and Children: The U.S. and International Response*. CRS Report for Congress.
- Parrot, Andrea, and Nina Cummings. 2008. *Sexual Enslavement of Girls and Women Worldwide, Practical and Applied Psychology*. Westport: Praeger.
- Salt, J. 2000. Trafficking and Human Smuggling: A European Perspective. *International Migration* 38(supp. 1):31–56.
- Scarpa, Silvia. 2008. *Trafficking in Human Beings: Modern Slavery*. Oxford: Oxford University Press.
- Simmons, Beth A. 2009. *Mobilizing for Human Rights: International Law in Domestic Politics*. New York: Cambridge University Press.
- Simmons, Beth A., Frank Dobbin, and Geoffrey Garrett. 2008. *The Global Diffusion of Markets and Democracy*. Cambridge: Cambridge University Press.
- Tversky, Amos, and Daniel Kahneman. 1981. The Framing of Decisions and the Psychology of Choice. *Science, New Series* 211(4481):453–458.
- Vlassis, Dimitri. 2000. *The Global Situation of Transnational Organized Crime, the Decision of the International Community to Develop an International Convention and the Negotiation Process*. Annual Report for 2000 and Resource Material Series No. 59.
- Zhang, Sheldon X. 2007. *Smuggling and Trafficking in Human Beings: All Roads Lead to America*. Westport: Praeger/Greenwood.