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Nicholas M. Klynn
Portland State University

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Supranationalism in the Fight Against Transnational Threats: A Comparative Study of

ASEAN and EU Policy Responses to Human Trafficking

by

Nicholas M. Klynn

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Thesis Committee:
David Kinsella
Birol Yesilada
Craig Carr

Portland State University
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Abstract

Transnational security threats are among the most pressing and complicated problems facing both governmental and non-governmental actors in today's world. Human trafficking is one example of contemporary transnational security threat that is relatively less studied compared to other transnational security threats. Because transnational security threats such as human trafficking exist above and outside the boundaries of state control, it may be supposed that a greater degree of supranationalism in the policy responses to them would yield better results in combatting these modern-day ills. Anti-trafficking efforts from the Association of Southeast Asian Nations and the European Union are examined to assess the impact of degree of supranationalism present in the respective policy responses to determine if any advantage is gained from aligning supranational policies to transnational problems. This question is not answered conclusively due to a lack of supranationalism present in key areas of EU governance responsible for law enforcement efforts.

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Abbreviations

ACTC   ASEAN Center for Combating Transnational Crime

AFSJ   Area of Freedom, Security, and Justice

AMM   ASEAN Ministerial Meeting

AMMTC   ASEAN Ministerial Meeting on Transnational Crime

ARTIP   Asia Regional Trafficking in Persons Project

ASC   ASEAN Standing Committee

ASEAN   Association of Southeast Asian Nations

ASEANAPOL   ASEAN Chiefs of National Police

CSIS   Center for Strategic and International Studies

EFTA   European Free Trade Area

EMU   Economic and Monetary Union

EU   European Union

GMS   Greater Mekong Sub-region (Burma, Cambodia, China, Laos, Thailand, Vietnam)

ILO   International Labor Organization

IOM   International Organization for Migration

JHA   Justice and Home Affairs

MEP   Member of European Parliament

OSCE   Organization for Security and Cooperation in Europe

TEU   Treaty of European Union

TIPR   US Department of State's annual Trafficking in Persons Report

TVPA	Trafficking Victims Protection Act
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations International Children's Fund
UNODC	United Nations Office on Drugs and Crime

Chapter One: Introduction

Human trafficking is modern day slavery. Human trafficking is a term that is applied to a broad family of crimes in which individuals are deprived of their most basic freedoms so that they may be exploited in various ways for the profit of others. Just like other forms of slavery throughout the ages, human trafficking causes unspeakable suffering for those who fall victim to it. Sadly, the number of individuals who do fall victim to it is enormous. No reliable numbers exist for the incidence of trafficking, but various organizations put the number as high as 25 million victims around the world. The human cost of this new form of slavery requires little explanation, and it is not the focus of this paper. In this paper I will discuss human trafficking as a policy problem that has to be addressed through governmental means- specifically on a regional level because of the transnational nature of the problem.

This paper frequently mentions human trafficking in relation to the generic category of transnational crime that also includes broad subjects like drug trafficking, weapons trafficking, cyber crime, money laundering, and terrorism.   Moving up one morel level of categorization, we can place transnational crime in the broad category of non-traditional security threat. This macro-category includes such diverse and complicated subjects as pollution, water supply, and migration. The complexity of these non-traditional security threats makes them inherently inter-disciplinary, requiring study by various combinations of the physical and social sciences. One field of scholarship cannot offer complete solutions to these problems on its own, but each can offer its own

insights that may help develop a comprehensive understanding of each of these various problems.

This paper is being written under the belief that these inter-disciplinary security threats, such as transnational crime, have a political dimension that should be examined from the perspective of political science. To narrow the subject of the paper, a certain variety of transnational crime—human trafficking—will be specifically examined. Little attention has been given to addressing human trafficking with the methods of political science.

This paper examines the basic research question of whether or not a regional governmental organization such as the EU, which is characterized by a high degree of supranationalism, will have more success in combating a transnational problem such as human trafficking, than will a purely intergovernmental regional organization such as ASEAN, which lacks any significant supranationalism in its governance. The initial idea informing this research question was the expectation that symmetry between supranationalism in regional governance and the transnational character of a problem would translate into a sort of supranationalism dividend. Presumably, this dividend would manifest as greater success in fighting the transnational problem. From this initial research question and its corresponding assumptions, I derived the basic hypothesis that the more supranational a region's governance is, the more effectively it should be able to combat the trafficking threat.

To examine this hypothesis, I conducted two comparative case studies between the Association of Southeast Asian Nations and the European Union. The two regions are

natural choices for comparison because they represent the most intergovernmental and supranational regional organizations in the world today. This key difference provides a sort of real world laboratory in which we can isolate the key variable of supranationalism in governance, in order to see if more of it means more success fighting transnational problems.

Obviously, Europe and Southeast Asia are different not just in the way their respective regional organizations have evolved. The two regions differ in significant ways in most areas of comparison such as politics, wealth, and degree of common identity. Despite these differences, their respective human trafficking problems are similar enough that they can be compared in a way that still allows us to isolate the key variable of degree of supranationalism in governance. The in depth examinations of both regions' human trafficking problems in chapters three and four will firmly establish this.

Chapter two of this paper will contain sections offering the reader a survey of human trafficking as modern slavery and transnational crime, as well as the professional literature on it. These first sections of the chapter will be followed by a discussion of Mitranian functionalism as it relates to this study, and finally with sections on research design and a discussion of the independent variables associated with the hypothesis.

Chapter three is the ASEAN case study which offers a brief explanation of human trafficking as it exists specifically to SE Asia, before going in depth in relating functionalism to ASEAN and its steadily developing efforts to rally its member states against human trafficking. The chapter will finish with a discussion of the limits of intergovernmentalism in fighting transnational threats like human trafficking and the

related question of whether or not supranationalism seems to have much of a future in SE Asia.

Chapter four is the EU case study, which begins similarly to the ASEAN one with a history of human trafficking in Europe, as well as the EU's still-evolving response to it. The chapter will go on to discuss the specifics of the EU's anti-trafficking policy response, as well as specific political obstacles that this response has encountered. The chapter will conclude with an analysis of EU anti-trafficking policy through the lens of advocacy network theory, in addition to functionalism.

In the conclusion, I will restate and review the key points of the study and offer final thoughts on its validity, usefulness and directions for future research on the question of supranationalism in regional governance and how it relates to fighting transnational security threats.

Chapter Two: Background and Research Design

As stated above, human trafficking is a problem that can fruitfully be examined through many different disciplinary lenses. For the most part, the phenomenon has escaped the attention of political science, leaving the academic literature on the topic relatively sparse compared to other problems of this gravity. The vast majority of research and analysis on the topic of human trafficking is produced by policy practitioners from both governmental and non-governmental organizations. The best work on human trafficking is generally put out by organizations like the US Department of State, various United Nations bodies, as well as small and large NGOs. An academic literature review will necessarily look somewhat like a background survey of the problem.

Defining and Documenting the Phenomenon

Multiple definitions of human trafficking exist, even among the multiple governmental and non-governmental organizations that combat it. What all of these definitions have in common is that they recognize human trafficking as modern day slavery. Trafficking is a process of enslavement by means of deception, coercion, or outright violence. Actual movement of the victims is incidental and does not define the crime, although it does frequently characterize its common practice.

The United States Department of State, the lead organization in the US's

interagency efforts against human trafficking, defines human trafficking[1] as follows:

> Trafficking in persons is modern-day slavery, involving victims who are forced, defrauded or coerced into labor or sexual exploitation. Annually, about 600,000 to 800,000 people -- mostly women and children -- are trafficked across national borders which does not count millions trafficked within their own countries. People are snared into trafficking by many means. In some cases, physical force is used. In other cases, false promises are made regarding job opportunities or marriages in foreign countries to entrap victims.[2]

The US Department of Justice defines human trafficking as follows:

> Trafficking in persons — also known as "human trafficking" — is a form of modern-day slavery. Traffickers often prey on individuals who are poor, frequently unemployed or underemployed, and who may lack access to social safety nets, predominantly women and children in certain countries. Victims are often lured with false promises of good jobs and better lives, and then forced to work under brutal and inhuman conditions. It is a high priority of the Department of Justice to pursue and prosecute human traffickers. Human trafficking frequently involves the trafficking of women and children for sexual exploitation, a brutal crime the Department is committed to aggressively investigating and prosecuting. Trafficking also often involves exploitation of agricultural and sweatshop workers, as well as individuals working as domestic servants.[3]

The United Nations Office on Drugs and Crime defines human trafficking similarly, but with one significant difference. The UNODC definition follows the "fraud, force, and deception" criteria but also states "Human trafficking is a crime against humanity."[4]

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1. The terms "human trafficking" and "trafficking in persons" are used interchangeably, with the latter being preferred by most US government sources; the former term will generally be used in this paper.

2. US Department of State, Bureau of Public Affairs, "Facts About Human Trafficking," 2004, http://www.state.gov/r/pa/ei/rls/33109.htm (accessed April 5, 2008)

3. US Department of Justice, "What We Do," under "Fight Human Trafficking Web Page," http://www.usdoj.gov/whatwedo/whatwedo_ctip.html (accessed April 5, 2008)

4. United Nations Office on Drugs and Crime, "UNODC and Human Trafficking," http://www.unodc.org/unodc/en/human-trafficking/index.html (accessed April 1, 2008)

Amnesty International's definition of human trafficking echoes those above: "Trafficking is modern day slave trading. It involves transporting people away from the communities they live in by the threat or use of violence, deception or coercion so they can be exploited as forced or enslaved workers. When children are trafficked, no violence, deception or coercion needs to be involved: simply transporting them into exploitative conditions constitutes trafficking."[5]

What all of these definitions have in common is the recognition of several key factors about human trafficking. First, all definitions acknowledge the role that force, coercion, and fraud play in trafficking. This single factor is critical to distinguishing human trafficking from the crime of human smuggling, in which individuals willfully and knowingly enter into commercial transactions to be transported illegally across borders.[6] In the crime of trafficking, the actual physical transportation of the victim is irrelevant. Force, coercion and fraud determine the presence of the crime.

Second, both US government definitions explicitly identify human trafficking as slavery. This equation of human trafficking to slavery is central to the opposition toward trafficking that is an increasingly established norm within the international community. The UNODC definition is notable for identifying human trafficking specifically as a crime against humanity. With this language comes a distinct set of set of legal implications. Crimes against humanity are crimes against all- *erga omnes*-[7] and therefore

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5. Amnesty International, *Trafficking in Persons: Amnesty International Fact Sheet* (New York)

6. US Department of State, *Distinctions Between Human Smuggling and Human Trafficking*, (Washington, DC, 2006)

prosecutable by all. This is significant in light of pending US legislation,[8] but less so for

ASEAN and EU policy.

Throughout the last decade awareness of human trafficking has grown enormously

throughout the world among journalists, activists, various international organizations, and

to a lesser degree academics. This increase in awareness has occurred most notably

within the policy community, to include the governmental entities and international

organizations that seek to combat the crime. Arguably the most influential publication in

the field is the US Department of State's annual Trafficking in Persons Report, first

published in 2001, as mandated by the then recently passed Trafficking Victims

Protection Act. The Report has grown considerably since its inception, from about 100

pages in 2000, to over 300 pages in 2009. The growth of the Report reflects not only a

steadily deepened understanding of a once unknown phenomenon but also the improved

access to resources available to US government anti-trafficking entities, of which the

State Department is the lead agency.

The development of understanding of human trafficking in policy circles has been

encouraged by the TIP Report, but this knowledge increase is an international effort.

Although the United Nations Office on Drugs and Crime under its previous director

Antonio Maria Costa received frequent criticism from governmental and non-

governmental quarters about its alleged infectiveness in directly fighting transnational

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7. *Beck's Law Dictionary*, http://people.virginia.edu/~rjb3v/latin.html (accessed May 1, 2008).
Beck's offers the following definition of *erga omnes*: "toward all," or as "wrongful acts that harm everyone
and not simply one injured party."

8. *Trafficking in Persons Accountability Act of 2007*, S. 1703, 110th Cong., 2d sess., 2007,
introduced by Sen. Richard Durbin. Passed senate on 1 October 2008, referred to House Judiciary
Committee on 2 October 2008. Bill seeks aggressive extraterritorial jurisdiction, but not universal
jurisdiction.

crime, it none the less is responsible for two major publications (among many others) which have added meaningfully to our understanding of human trafficking as a multi-disciplinary phenomenon which straddles the worlds of criminology, policy, economics, and sociology. These two papers, published in 2006 and 2009, both provide a reliable global overview of a complicated issue.[9] As with the Department of State's reports, the UNODC's two major efforts also show a maturation of understanding and methodology.

Though not anti-trafficking or anti-crime organizations per se, two other prominent international organizations, the International Labor Organization and the International Organization for Migration also conduct serious data collection and research on matters related to human trafficking, notably on forced labor and high-risk migration. The ILO's in depth studies and statistical databases on labor conditions, pay and other indicators deal with labor abuse, especially of children, that can overlap with actual trafficking or slavery conditions. The IOM's excellent research into migration patterns of job seekers, both lawful and irregular, provides an excellent basis for understanding the political economy of human trafficking.

As with other non-traditional, transnational security threats, such as ecological problems, human trafficking has attracted the attention of numerous non-governmental organizations of various sizes and capabilities. Both Amnesty International and Human Rights Watch track the issue, providing information papers, short fact sheets, and in depth studies on the subject. These products are reliable, usually current, and represent a

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[9] United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons* (Geneva: Policy Analysis and Research Branch, UNODC, 2006)

United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons* (Geneva: Policy Analysis and Research Branch, UNODC, 2009)

good starting point for individuals beginning to study the phenomenon. Subject matter experts from these two prominent organizations also regularly testify before Congressional committees to keep relevant lawmakers informed on the subject.

Other, smaller NGOs are also very active against human trafficking, and constitute some of the more meaningful direct action in support of victims of the crime and against the traffickers themselves. Polaris Project, a large US-based anti-trafficking NGO, works worldwide to identify victims, facilitate their rescue, and to provide rehabilitation and re-integration assistance to them. Polaris is also active as a lobbying group, providing advice to policy makers at the national, state, and local levels in the US. Like many NGOs that work against trafficking in the US and Europe, Polaris has received substantial funding from the US government over the years, specifically from the Departments of Justice and Health and Human Services. Despite cultivating a high level of expertise on the subject of human trafficking, the group does not publish formal papers or conduct academic-style studies. This is true for many other trafficking-focused NGOs.

There are literally too many NGOs working against human trafficking to name. Whether partnered with other NGOs or local, state, or national governments, working domestically or internationally, secular or faith-based, government funded or not, they are a crucial component of the modern anti-trafficking policy landscape. Their presence and dedication makes human trafficking a bit similar to other non-traditional security threats such as various kinds of environmental degradation that also attract a diversified non-governmental and activist response. Despite their good work, few of these organizations are staffed to conduct a lot of serious research on trafficking, though the intelligence that

they gather due to their proximity to the crime does aid surveillance of the crime and a real time ability to track its evolution.

A growing number of scholarly or semi-scholarly books exist on the subject of human trafficking. Among the best of these are *Disposable People: New Slavery in the Global Economy* and *Understanding Global Slavery: A Reader*, both by contemporary slavery researcher Kevin Bales. Both books serve as essential reading for those seeking to understand human trafficking not as a novel form of transnational crime that just emerged in the last two decades, but as the contemporary continuation of a very old practice with tangible economic motivations.

The academic approach that Bales takes, while not uniformly present in all books on trafficking is also present in several texts that analyze trafficking from a criminological perspective. Helpful texts from this field for those new to the subject of trafficking are *Transnational Threats: Smuggling in Arms, Drugs and Human Life*, edited by Kimberly Thachuk, *Smuggling and Trafficking in Human Beings: All Roads Lead to America* by Sheldon Zhuang and *The War on Human Trafficking: US Policy Assessed* by Anthony de Stefano. *Human Trafficking, Human Misery* by Alexis Aronowitz is also a useful general introduction to the subject. More advanced students of the subject may benefit from the chapters in *Human Trafficking*, edited by Maggie Lee.

Although human trafficking likely harms men in similar overall numbers as women, it has still attained a commonly held reputation as a highly gendered crime. This gender bias in the crime is sharply apparent in instances of trafficking for purposes of sexual exploitation. Many works that deal with this inherently salacious topic tend to

sensationalize the phenomenon. Others spend much effort trying to convince the reader

of the horror of the crime, something that hardly requires a lot of convincing. These

books are largely geared for lay consumption, or perhaps for the activist community. A

good introduction to the gender-related issues that surround human trafficking is *Sex

Trafficking: the Global Market in Women and Children,* by Farr. Two of the best

introductions to sex trafficking as a gendered crime are recent Hollywood films. Both

Human Trafficking (2005) and *Trade* (2007) offer vivid and hard to watch portrayals of

all aspects of human trafficking for sexual exploitation. Although both films tend toward

melodrama, they still offer a near documentary level of adherence to the facts.

Although many fine works of research do exist on the broad subject of human

trafficking, very little work has been done on the subject from a political science

perspective. This is likely because the subject is so clearly a crime, an economic issue, a

women's issue, etc., that it is easily ignored as a political issue. One specific topic within

the political perspective that seems particularly under-examined is human trafficking as a

transnational phenomenon and its relationship with supranational governance and

transnational policy.

Background on Human Trafficking

Social factors contribute to the presence and acceptance of human trafficking,

particularly the trafficking of women and girls for purposes of forced marriage and

prostitution. [10] In many source and destination countries women remain socially and

politically disenfranchised, as well as abused in the home.[11] Inability to own property

leaves women financially insecure and susceptible to trafficking. In highly patriarchal

societies, women are not seen as equals and may be more readily commoditized in the

minds of men. The sociological factors that are conducive to human trafficking,[12]

particularly of women and girls are complicated and lie outside the scope of this paper.[13]

They have been mentioned in passing only to give the reader a more full appreciation of

the numerous and deep challenges that anti-trafficking efforts face globally, and to

suggest the multiple dimensions that a comprehensive anti-trafficking effort requires.

   Human trafficking is a largely transnational crime characterized by source, transit,

and destination countries. When human trafficking is mentioned, it often conjures

images of shadowy organized crime syndicates with global reach. While this is true

sometimes, and the role of large transnational crime syndicates in trafficking is proven,

trafficking should not always be assumed to occur on an intercontinental scale. As the

UN Office on Drugs and Crime's (UNODC) 2009 Global Report on Human trafficking

states that in most *reported* cases, victims were moved across international borders. This

10. United Nations Interagency Program on Human Trafficking in the Greater Mekong Sub-region, *Human Trafficking Background Information*, under "Resources," http://www.no-trafficking.org/resources_background_what.html (accessed April 13, 2008).

11. Amnesty Interntional, Maureen Greenwood-Basken, Advocacy Director for Eastern and Central Europe, Amnesty International, in testimony before House Committee on International Relations, Subcommittee on Africa, Global Human Rights and International Operations, 4 May 2006, http://www.amnestyusa.org/document.php?lang=e&id=ENGUSA20060504001

12. All China Women's Federation, "Project to Preventing Trafficking in Women and Children," http://www.womenofchina.cn/Projects_Campaigns/Projects/traficking/ (accessed February 13, 2006). Offers a good summary of this confluence of political, economic, and social factors on its anti-trafficking page, though the example is specific to China, the patterns it describes are widespread throughout the developing world.

13. See Kathryn Farr, Sex Trafficking, 2005, in particular chapters 5 and 6 for a good introductory discussion of the role that economics and misogyny play in fueling human trafficking and the sex trade.

is consistent with the conventional perception of trafficking as a transnational crime, but it does not capture every case. The Report also states "cross-border flows are not necessarily long distance flows. Much of the cross-border trafficking activity was between countries of the same general region, particularly between neighboring countries."[14]

The international and transcontinental nature of trafficking is further minimized when cases of debt bondage and forced labor are taken into consideration.[15] Debt bondage may be the most numerically dominant and under-reported type of modern slavery. Recent ILO estimates have consistently estimated that between 10-25 million people are held in slavery-like conditions by debt bondage.[16] This kind of slavery is most frequently intrastate. Although trafficking for forced labor is likely numerically larger than trafficking for sexual exploitation, it is thought to be even more under-reported and less understood than trafficking for sexual exploitation. From the UNODC's 2006 trafficking report:

> For several years, trafficking for sexual exploitation has dominated discussions concerning the purpose of human trafficking. Trafficking in persons for forced labour has not been viewed as a significant issue in many countries, and the identification of trafficking victims who are exploited through forced labour has been even less successful than in the case of sexual exploitation.[17]

Often, the economics supporting demand for trafficked labor are so powerful that

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14. UNODC, 2009, 11

15. Debt bondage and forced labor are very similar types of slavery. Debt bondage is a type of forced labor that relies on debt, imagined or actual as a justification for holding a person in slavery-like conditions. All debt bondage is forced labor, but not all forced labor is debt bondage.

17. UNODC, 2006, 65

they will obscure major forms of trafficking, like forced labor, as policy questions. Rather than interdicting the flow of cheap labor to otherwise legal economic sectors, governments will focus on the more salacious, black-market only activities that center around sexual exploitation, generally of women and girls. Considering the forced labor component of modern human trafficking is an important opening to examine human trafficking through the lens of political economy.

An Organization for Security and Cooperation in Europe (OSCE) working paper from 2009 discusses the direct linkage between migration and macro economic forces:

> People are on the move in part because of political and economic factors associated with globalization. Driving forces—often labeled "push" and "pull" factors—include relative wage and income disparities between countries, socio-economic dislocation in transition countries, upheaval caused by regime change and war, the existence of migration networks, and the lower costs of transport and communication. Driven by macro-trends as large as globalization itself: Two other phenomena in agriculture – the rise of labour contractors or intermediaries and the casualization of labour – are closely associated with globalization and increased migration.[18]

The push and pull factors driving migration in the age of globalization are also push and pull factors for human trafficking, which is closely related to irregular migration. The most recent *Trafficking in Persons Report* from the US Department of State expands on the link between market forces and human trafficking: "The last year was marked also by the onset of a global financial crisis, which has raised the specter of increased human trafficking around the world. As a result of the crisis, two concurrent trends—a shrinking global demand for labor and a growing supply of workers willing to take ever greater

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18. Organization for Security and Cooperation in Europe, Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, *A Summary of Challenges on Addressing Labour Exploitation in the OSCE Region*, Background Paper for the Alliance Against Trafficking in Persons Conference: Technical Seminar on Trafficking for Labour Exploitation (Vienna: OSCE, 2009)

risks for economic opportunities—seem a recipe for increased forced labor cases of migrant workers and women in prostitution."[19] Even without the current global recession, the two factors identified above are constant in the modern global economy. Demographics weighted toward young populations in third world countries, combined with dislocating events like the decline of traditional economic activity and climate change, create large populations that are highly prone to undertake migration—by whatever means— to secure economic livelihoods.

Economic pressures and dislocated vulnerable populations alone do not explain why millions of people find themselves enslaved every year. As the 2009 TIP Report goes on to say, "the movement to end human trafficking includes significant efforts to address these factors that 'push' victims into being trafficked, but it also recognizes a 'pull' factor as part of the cause. A voracious demand fuels the dark trade in human beings. Unscrupulous employers create demand for forced labor when they seek to increase profits at the expense of vulnerable workers through force, fraud, or coercion."[20] Understanding trafficking as a political economic issue informs part of the necessary policy response. The economic drivers of migration referenced above are clear representations of the three wealth related variables discussed in chapter two.

Last but not least in understanding human trafficking as a political phenomenon is to consider its security implications. Not only is trafficking a threat to human security, (that is, the well being of individuals) but it is also a threat to the border and internal

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19. US Department of State, Office to Monitor and Combat Trafficking in Persons, *2009 Trafficking in Persons Report* (Washington, DC, June 2009), 9

20 Ibid., 31

security of states. As a security issue, human trafficking can be considered alongside other transnational threats as diverse as weapons trafficking, terrorism, cyber crime, and money laundering, among others. Transnational crimes, by definition "cut across national borders…and are frequently beyond the control of national governments. They emerge from, and are amplified by, three major trends in the global system."[21] These trends, characterized by Thachuk, are "globalization of economic activity" and its accompanying disparities in wealth and economic opportunity, the growing imbalance of governance between the wealthy capitalist nations (mostly democratic) of North America, Europe, and East Asia. Second, is the arc of unstable nations running from North Africa through Southwest Asia and Central Asia and into parts of SE Asia. Third, "overlapping substantially with the other two, is a widespread increase in ethnic and religious hatred that fuels terrorism, civil strife, and international conflict."[22]

In states affected by human trafficking, individual citizens are deprived of basic civil rights, border controls and domestic security are undermined, and the criminal elements responsible for the trafficking are able to grow stronger from the easy revenue that comes from trafficking. As the 2009 UNODC report indicates, a slight majority of groups involved in trafficking also seem to be involved in other forms of crime, domestic and transnational. Because of this overlap, the enormous profits generated by trafficking fuel other kinds of crime, both within and across borders. Trafficking directly subverts national governments by undermining their ability to protect their citizens and control

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21. Kimberly Thachuck, ed., *Transnational Threats: Smuggling and Trafficking in Arms, Drugs, and Life* (Connecticut: Praeger Security International, 2009), 6

22. Ibid., 6-7

their territorial sovereignty. In a Westphalian sense, trafficking (and all other

transnational crime) undermines basic statehood.

One of the conditions that is partially responsible for the dramatic rise in human

trafficking over the last two decades is that it is so profitable and so low risk for

criminals. A lack of laws against human trafficking as a specific offense in many

countries meant that trafficking cases were rarely identified by law enforcement, the

traffickers rarely prosecuted, and when they were, they usually faced lesser charges such

as prostitution or pandering.   Authorities were unable to combat a phenomenon that did

not officially exist. Just a decade ago, this policy vacuum existed in every country in the

world. As trafficking began to become more visible throughout the late 1990s,

momentum grew, notably in the US and within the UN General Assembly, to formalize

and criminalize the offense.

Following a decade of build-up during the 1990s,[23] on January 8, 2001 the

General Assembly passed Resolution 55/25 that formally adopted the UN Convention

Against Transnational Organized Crime.[24] Concurrent with the adoption of the

Organized Crime Convention was the adoption of its supplementary *Protocol to Prevent,*

Suppress, and Punish Trafficking in Persons, Especially Women and Children.[25] The

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23. Nick Klynn, "Establishing the Legal Basis to Combat Human Trafficking: The Key Role of the UN's Protocol to Prevent, Suppress, and Punish Trafficking in Persons," (graduate research paper, Portland State University, 2008) 3-10. Paper offers a history of the UN's gradual build-up to the so-called Palermo Protocol.

24. United Nations General Assembly, Fifty-Fifth Session, *Resolution 55/25: United Nations Convention Against Transnational Organized Crime*, (New York: January 2001), http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf (accessed April 2, 2008)

25. United Nations, *Protocol to Prevent, Suppress, Punish the Trafficking of Persons, Especially Women and Children* (New York: December 2000),

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adoption of the Protocol was a turning point in the fight against human trafficking internationally, as was the near concurrent adoption of the *Trafficking Victims Protection Act for the United States*.[26] The Protocol provided the first globally recognized definition of human trafficking, the purpose of which is to "to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting trafficking in persons cases."[27]

The UNODC's above cited summary is succinct and useful, but the Protocol's own language warrants examination. Much like its US counterpart, the TVPA, the Protocol recognizes that it is filling a legal void, "there is no universal instrument that addresses all aspects of trafficking in persons."[28] The effect of that sort of legal gap is to allow trafficking crimes to go unpunished, or under-punished by being prosecuted under less harsh peonage, smuggling, or labor violation laws.

Failure to distinguish human trafficking as a separate crime also left its victims without protection or recourse. In most cases, the severely traumatized victim of trafficking would be arrested and treated as a perpetrator or willing participant in a crime, rather than as a victim of one. What both the TVPA and the Protocol share in common is

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http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf (accessed April 2, 2008). Also known as the "Palermo Protocol" or the simply the "the Protocol.

26. *Victims of Trafficking and Violence Protection Act of 2000*, Public Law 106-386, 106th Cong. (October 28, 2000), http://www.state.gov/documents/organization/10492.pdf (accessed March 30, 2008)

27. United Nations Office on Drugs and Crime, "The United Nations Convention against Transnational Organized Crime and its Protocols," http://www.unodc.org/unodc/en/treaties/CTOC/index.html (accessed March 30, 2008)

28. *Protocol to Suppress*, 1

a victim-centered approach wherein the person trafficked has rights as a victim.

Failing to distinguish and define human trafficking also meant that the phenomenon could not really be discussed or understood as a function of complex and interacting social, economic, political, and cultural forces.[29] As such, no effort to prevent it by ameliorating the push or pull factors could be taken.

Additionally, without a proper legal definition or legal understanding of the crime, law enforcement efforts to combat it would be uneven, at best. The Protocol's Article 3 definition will be cited in its entirety:

> 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…[30]

Article 5 mandates the formal criminalization of human trafficking with the following language, "each State Party shall adopt such legislative and measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally."[31] With the passage of the Protocol, trafficking evolved from the void of non-definition to a defined crime that the signatory countries

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29. US Department of State, Office to Monitor and Combat Trafficking in Persons, *2008 Trafficking in Persons Report* (Washington, DC, June 2008), 28-32. Section contains a brief discussion of supply and demand in trafficking.

30. *Protocol to Suppress*, 2

31. Ibid., 3

were treaty-bound to combat. Human trafficking went, in other words, from *nullum crimen sine lege* to the subject of binding treaty law.

The above discussion supports this paper's efforts to examine trafficking as a political problem with political solutions. The UN Protocol was the watershed moment when a nebulously defined and poorly understood phenomenon became a recognized policy issue within the international community and within international treaty law. As a subject of treaty law, human trafficking was then able to transition to the domestic political agendas of more and more countries. By "naming the evil," so to speak, and formalizing human trafficking as its own specific offense, national governments were able to begin to fill the policy vacuum that had enabled the trafficking phenomenon to grow unabated throughout the preceding decade. Concurrent with trafficking's transformation to a normal area of national policy making was its emergence as an issue of international concern.

As with all clandestine and criminal phenomena, human trafficking is difficult to study because of the lack of reliable and uniform data on the topic.[32] Part of the difficulty in quantifying human trafficking can be attributed to the clandestine nature of the crime itself. However this is only part of the picture. Our difficulty in tracking and quantifying human trafficking is itself an excellent illustration of the policy vacuum that all too often enabled the growth of the phenomenon in the first place: lack of effective policy and ignorance of the phenomenon are mutually instantiating. The following excerpt from the

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32. From the UNODC's 2006 report, "Due to its clandestine nature, accurate statistics on the magnitude of the human trafficking problem at any level are elusive and unreliable," is a representative statement.

UNODC's 2006 report frames this relationship:

> Many countries lack anti-trafficking in persons legislation. Even when legislation is in place, laws may only define human trafficking as applying to certain exploitative practices, such as sexual exploitation, and not other forms of exploitative behavior. Moreover, in many countries, the definition of human trafficking applies only to the exploitation of women and children overlooking the exploitation of adult male victims. Further, if comprehensive laws do exist, they are not always enforced and victims may not be recognized as victims of crime but may be seen as smuggled migrants. Victims may be hesitant to provide information or cooperate with authorities often out of fear of harm to themselves or their families by either criminal networks or the legal authorities. Many countries lack a centralized agency or coordinated statistics system so that the collection of trafficking data, if done at all, is done on an ad hoc basis.[33]

Functionalist Theory

Functionalism is a relatively old piece of integration theory, introduced by David Mitrany in the1940s. This sixty-plus year lifespan is a simple testament to the robustness and flexibility of the theory. Although integration theory has developed enormously since Mitrany wrote *The Functional Approach to World Politics* in 1948, I found functionalism to be a useful and appropriate theory for use in this paper.

Functionalism can be reduced to three very basic theoretical statements. First, in anticipation of the wildly complicated and borderless non-traditional security threats that the world faces today, Mitrany assumed that the modern era would be increasingly marked by a growing number of problems that cannot be solved by individual states. Moreover, these multiplying and complex problems would be of such obscure and technical natures that only specialists could adequately address them. Politicians, as

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33. *UNODC 2006*, 44

generalists, would need to delegate problem-solving authority to apolitical technical specialists.

Second, assuming that the multiplying problems of the modern era would often be of a borderless nature, these technical specialists would have to interact with each other to jointly tackle a complicated problem that straddles the borders of their respective states. Such cooperation, on issues devoid of ideological or nationalistic content would strengthen the impulse for states to cooperate and bolster the international regimes that Mitrany saw the nascence of in the post-war period.

Third, because Mitrany expected this international technical cooperation to be successful, he predicted a sort of positive feedback cycle in which states would pursue more and more international technical cooperation based on the success of the growing body of previous efforts. This is the essence of "ramification," the term that he famously applied to the process of changing attitudes in favor of cooperation.

Even the above brief explanation of Mitrany's ideas makes their relevance to human trafficking clear. Human trafficking is, as we have firmly established, the quintessential borderless crime. Political and jurisdictional boundaries of all kind are irrelevant to this blob of a crime. This is not to say that states cannot take meaningful individual action. National level efforts to care for victims and jail their abusers are of intrinsic value that no one would argue against. As valuable as these state-level actions are, they have nonetheless proven insufficient, as the unabated growth of the crime has grimly proven.

Human trafficking is exactly the kind of problem that Mitrany describes as being

the target of functionalist cooperation. It is devoid of ideological or nationalistic content. Democrats and Republicans, Socialists and Christian Democrats, democratic Indonesia and autocratic Vietnam, see human trafficking as an unconditional wrong, their judgment unaffected by otherwise divergent political values and practices. Human trafficking exists in every country in the world and harms people from every possible ethnic background and walk of life. The harm that the crime causes transcends concerns of national interest or identity.

It seems that the technical specialists who execute the functionalist cooperation on a given subject should exist outside of politics, in so far as they ideally are immune to ideology or cruder political concerns. This is an idealized state of things, and cannot be taken at face value. If the bureaucrats tasked with solving complicated problems do their best to remain aloof from the rough and tumble of political life, their bosses will not. Moreover, no bureaucracy exists in a vacuum. Even the most noble civil servants, technical specialists ready to tackle the world's problems, will always find themselves at the mercy of broader issues and debates in the politics of their respective, and neighboring, countries. This is glaringly apparent in our case study of the EU in chapter four. In the case, it is very obvious how sharp political differences concerning supranational policing severely constrained the development of the functionalist cadre (Europol, in this case) that would specifically try to combat human trafficking through law enforcement and intelligence activities. As the case study will demonstrate, functionalism is alive and well in the European approach to human trafficking, albeit in an unconventional way and in a form that reflects the way brute politics constrain noble

aspirations toward functionalist cooperation.

Functionalism's relationship with SE Asian regionalism is less well known than its relationship with European regionalism. When the Bangkok Declaration establishing ASEAN was signed by the original five members in 1967, colonialism was a very near memory for most.[34] Unsurprisingly, sovereignty, non-interference and decision-making by consensus rather than by mandate, emerged as the guiding principles of ASEAN's member states in their interactions with each other. These principles were initially enshrined in The ASEAN Declaration (The Bangkok Declaration), signed August 8, 1967. In the Declaration's preamble, it is stated that the States "are determined to ensure their stability and security from external interference in any form or manifestation in order to preserve their national identities."[35] This is repeated in the 1976 Treaty of Amity and Cooperation in SE Asia. Article 2 of the Treaty states that "mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations" is a "fundamental principle." Article 10 of the Treaty reiterates this, stating that States Party "shall not in any manner or form participate in any activity which shall constitute a threat to the political and economic stability, sovereignty, or territorial integrity of another [state]."[36] Over the decades, these principles have become deeply held regional norms, referred to as the so-called "ASEAN way." These fundamental assumptions about sovereignty and non-interference are the basis for all of ASEAN's political activity.

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34. Indonesia, Malaysia, Philippines, Singapore, Thailand

35. ASEAN, *The ASEAN Declaration*, (Bangkok, 1967)

36. "Treaty of Amity and Cooperation in Southeast Asia."

In the forty years that ASEAN has been extant, none of its member states, despite some rather acrimonious and violent shared histories, have come to blows with each other while they were part of ASEAN.[37] As former ASEAN Secretary General, Rodolfo Severino said, "By not forcing its incredibly diverse and mutually suspicious members into legally binding standards, ASEAN has done the remarkable job of moving its members from animosity to the close cooperative relationship that they enjoy today, a relationship in which violent conflict is all but unthinkable."[38] If the ASEAN way has been conducive to peace, then it has also been conducive to inaction. A common illustration of this nowadays is ASEAN's increasingly embarrassing inability to discipline Burma's despotic regime. Less pointedly, it can be hard to get things done, to push through a needed policy, when nodding consensus is the order of the day. Because of this, ASEAN battles a "talk shop" image. The question that arises from ASEAN's consensus decision making is how to accomplish joint policy action, on a regional scale, without compromising the sovereignty or national integrity of its member states, which to this day remain wary of binding rules-based integration. An answer is found in the functional approach.

The functional approach is very well suited to the limitations and character of ASEAN's political culture. Essentially, the functional approach refers to a need-

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37. ASEAN, "The Founding of ASEAN," under "About Asean," http://www.aseansec.org/7069.htm (accessed August 19, 2008). The essay on the page recounts the following: "It was while Thailand was brokering reconciliation among Indonesia, the Philippines and Malaysia over certain disputes that it dawned on the four countries that the moment for regional cooperation had come or the future of the region would remain uncertain."

38. Rodolfo Severino, "The ASEAN Way and the Rule of Law," (speech, University of Malaya, Kuala Lumpur, September 3, 2001).

centered, non-constitutional, and flexible means of solving policy problems that affect

more than one otherwise independent political entity. Within the functional approach,

sovereignty is retained, "except in so far as it was pooled for a specific joint functional

undertaking."[39] The functional approach is non-constitutional not in the sense that its

products violate the constitutions of the involved states; rather it is non-constitutional in

the sense that it is does not require alteration to legal statutes or votes in legislatures.

Legalisms are not at work in the functional approach- need is. As Mitrany notes, "by its

very nature the constitutional approach emphasizes the individual index of power; the

functional approach emphasizes the common index of need." He follows by saying,

"there are many such needs which cut across national boundaries."[40]

 Mitrany was not speaking of SE Asia, but his words are very applicable to the

region in contemporary times. SE Asia today faces a host of problems, the non-

traditional security threats mentioned above, that cut across the national boundaries of the

region. ASEAN identifies many of them, including poverty, migration issues, pollution

and various forms of transnational crime, including terrorism, and of course, human

trafficking.[41] This is consistent with Mitrany's basic idea that states facing shared

transnational problems should engage in transnational problem solving.

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 39. David Mitrany, "The Functional Approach to World Organization," International Affairs (Royal Institute of International Affairs) 24, no.3 (July 1948), 355, http://www.jstor.org/stable/3018b652 (accessed July 27, 2009).

 40. Ibid., 356

 41. ASEAN, "Transnational Issues," ASEAN Secretariat Website, http://www.aseansec.org/4964.htm (accessed July 20, 2009). The ASEAN Secretariat's website has a comprehensive archive of documents detailing ASEAN's positions on a host of topics that it places under

Functionalism's suitability to the ASEAN way does not stop with its limited

pooling of sovereignty or transnational and need based nature. Five aspects of

functionalism are most applicable to ASEAN. What Mitrany designates as "political

approaches" are mutually exclusive. On the other hand, "functional schemes are at best

complementary each helping the others, and at worst independent of each other."[42]

Successive efforts build upon each other, generating a growing body of best practices and

enhanced professional capacities amongst practitioners.

Related to this cumulative effect, is the flexibility inherent in the functional

approach. This flexibility exists in two main forms. First, the success of one effort is not

necessarily predicated on the success of other concurrent or preceding efforts, "one may

live and prosper even if other fails or are abandoned."[43] Especially attractive for

countries in a consensus based regional organization, is the fact that a state "could take

part in some schemes and perhaps not in others, whereas in any political arrangement

such divided choice would obviously not be tolerable."[44] This case-by-case selection has

an obvious downside in that some schemes will be under-supported. However, just as

likely to be the case is that participation for other schemes will be greater than if a state

had to commit to a broader, and potentially more controversial, policy scheme.

Finally, policy schemes that follow the functional approach are less susceptible to

so-called "mission creep" or to politically motivated power grabs. This is because the

the "transnational issues" heading. Topics listed are environment, "transboundary haze", crime and terrorism, legal matters, immigration, and drugs.

42. Mitrany, 357

43. Mitrany, 1948, 357

44. Ibid., 358

"nature of each function tells itself the scope and powers needed for its effective performance. All these elements are capable of concrete measurement, and unlike rigid political they are therefore capable of concrete adjustment."[45] A state may commit to a functional scheme with some confidence that their effort will address the specified challenge only, without digressing. If participation does become unsatisfactory for this, or another reason, then withdrawal is as easy as recalling one's representative to the effort.

ASEAN's foundational documents provide a basis for, or even indicate a conscious inclination toward, the functional approach. The Bangkok Declaration cites "mutual interests and common problems," in its preamble and goes on to discuss joint efforts in economic and social development, as well as various kinds of technical and scientific assistance as central aims of the organization.[46] This functionalist language is expanded in the Treaty of Amity, Article 6 of which states that Parties will "continue to explore all avenues for close and beneficial cooperation with other States."[47]

"The advent of regionalism reflects the disintegration of the concert of power as guarantor of security."[48] Although conventional security was a motivating factor in the formation of ASEAN,[49] Southeast Asia, and the security challenges that it faces have

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45. Ibid., 358

46. ASEAN, The ASEAN Declaration, (Bangkok, 1967). Second section, paragraphs 1, 3, 4, and 5 contain the most functionalist oriented language.

47. ASEAN, Treaty of Amity, 1976

48. Haas, 1956, 239

changed a lot in the half-century that ASEAN has been around. The security concerns

that ASEAN seems most focused on now are not the results of state aggression, but of

global forces, ever increasing in complexity and breadth of challenge. Ecological crises,

transnational crime, and poverty threaten ASEAN's member states more persistently and

acutely than any foreign armies currently do. And it is to these challenges that ASEAN

directs its efforts at regional, functional cooperation. Former ASEAN Secretary General,

Rudolfo Severino wrote:

> In Asean's eyes, the concept of security goes beyond such potential [traditional]
> conflicts and tensions. It involves problems that transcend national boundaries
> and, under today's conditions, are more plausible threats to the region. These have
> to do with the dangers to the regional environment, piracy, robbery and other
> crimes at sea, drug trafficking, trafficking in human beings, communicable
> diseases, natural disasters and terrorism. The networks that Asean has built among
> authorities—and, in some cases, civic groups—dealing with these questions have
> provided mechanisms for cooperation.[50]

A noticeable degree of conformity is present between the language and ideas of

Mitrany and the general values and characteristics of ASEAN. What remains to be

determined is whether ASEAN's actual anti-trafficking policies exhibit a similar degree

of conformity with the functional approach. This will be examined in detail in chapter

three.

Neofunctionalism, the extension of functionalism that was developed by notable

scholars like Ernst Haas, Robert Keohane, and Joseph Nye, among others, is a natural

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49. ASEAN, The ASEAN Declaration, (Bangkok, 1967). Second aim of the Association is to "promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries of the region and adherence to the principles of the United Nations Charter."

50. Rudolfo Severino, "Asean in need of stronger cohesion," Singapore Straits Times, December 9 2006.

candidate model for both cases. Since much of neofunctionalist thought developed with

European integration in mind, I will not go into its applicability to the EU case study.

Haas's postulate that elite expectations for material gain, or other pragmatic

considerations, will determine the level of support that they show for integration is

applicable to ASEAN. Elite expectations for wealth or material gains could be viewed as

an important source of current efforts to form a free trade area in SE Asia, as well as

other aspects of the Vision 2020 plan, discussed in chapter three. This argument of

Haas's could be touched upon during the portion of chapter three where the linkage is

made between unaddressed non-traditional security threats and potential impediment to

Vision 2020. Moreover, Haas believed that the integration gains made under this

pragmatic self-interest could be rolled back if they were not based on deeper political

values.[51] Indeed, it seems that integration cannot develop past the threshold of

supranationalism in ASEAN, where the most deeply held political values continue to be

sovereignty and non-interference. ASEAN elites may not have the ideational

commitment needed to cede sovereignty for supranational cooperation. This problem is

explored at the end of chapter three.

    Other well-known neofunctionalist concepts like spillover and its subsequent

variations could also likely be applied numerous cases within the recent policy histories

of the EU and ASEAN. The decision not to pursue neofunctionalism as an analytical

model within this paper is not a denial of its utility and applicability.

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51. James E. Dougherty and Robert L. Pfaltzgraff, *Contending Theories of International Relations: a Comprehensive Survey, 5th ed.*, (New York: Longman, 2001) 512-15.

Hypothesis and Research Design

By conducting a comparison of the respective anti-trafficking efforts of the Association of Southeast Asian Nations and the European Union, this paper originally sought to explore the question of whether or not a loosely integrated, intergovernmental organization such as ASEAN has the capacity to create and implement policies that meaningfully combat human trafficking, or whether the deeply integrated, partially supranational character of the EU is better suited, if not necessary, to fight human trafficking. Put differently, what was initially being asked was if a supranational set of policies is required to adequately combat a truly transnational policy problem, in this case a specific sort of transnational crime.

The paper's hypothesis is that because human trafficking, as an example of a non-traditional security threat, is transnational by nature, then the more supranational a region's governance is, the more effectively it should be able to combat the trafficking threat. The benefit of symmetry between supranationalism in governance and policy on one hand, and of the transnational nature of the problem on the other hand, was intuitively thought to be ideal for addressing the problem.

The EU and ASEAN were chosen as comparative cases because although they are both regional organizations, they are very different. European regionalism is twenty years older and comprised of relatively wealthy and democratic nations that share a greater degree of common cultural inheritance. ASEAN is a younger organization, comprised of less mature nation states with very different levels of economic

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development, widely different systems of government, and diverse ethno-linguistic backgrounds. The EU is a partially supranational organization with strict formal rules governing integration, whereas ASEAN remains an intergovernmental organization governed by informal and consensus-based decision-making. The EU is the most supranational example of a regional organization that actually exists and that can be used as a real world example, whereas ASEAN represents a very intergovernmental and informal organization that nonetheless possesses a definite sense of regional community and identity. In terms of degree of supranationalism present, the two regional organizations are the most opposite examples of legitimate regional organizations that exist in the real world. Because of this key difference, the key independent variable of degree of supranationalism in governance is able to be isolated fairly well. Although the regional organizations are different, their respective trafficking problems are not so different that they cannot be compared.

Because I hypothesized that a higher degree of supranational governance would be more effective at remedying transnational threats, the key independent variable that is expected to influence the incidence of trafficking in each region is the degree of supranationalism embodied by each regional organization. Other independent variables influence the incidence of trafficking as well. Variables that will be accounted for are: wealth of the component states of each region; wealth disparity between neighboring states in the regions; and the related question of government type in the countries.

Through the two regional case studies it became apparent that the countries within the EU and ASEAN are similarly afflicted by human trafficking. Contrary to commonly

held assumptions about the unique severity of SE Asia's trafficking problem, both regions have widespread trafficking problems that are driven by many of the same factors. Human trafficking is a nebulous and highly localized crime that sometimes manifests in unique ways in different parts of the world. Recognizing this, it is still clear that certain basic conditions enable the crime in nearly identical ways across all regions of the globe, thus facilitating the comparison in this paper.

Given the general similarities in the two regions' trafficking problems the EU's policy response to trafficking should be more sophisticated and effective on account of the EU's greater wealth, general political maturity, and of course, level of supranational integration. The EU's greater wealth and political maturity, coupled with the expected dividends from the assumed supranationalism-transnationalism symmetry should translate to human trafficking in Europe being more effectively curtailed than in SE Asia.

Nothing about European trafficking explains why the EU has not had more success in fighting it. That is, because European human trafficking is not inherently more complicated or severe than in SE Asia, how come the wealthier and more supranational EU has not had more success in fighting the problem? The explanation that I identify for why Europe has not had success more commensurate with its wealth, supranationalism, and overall capacity is the asymmetry between the law enforcement response and the threat itself. The criminals who perpetrate the crime operate transnationally with no regard for borders or jurisdictions. Europe's police do not.

An analogy that is helpful to explain this imbalance between policy and problem is to picture the state of anti-mafia prosecutions in the United States without a federal law

enforcement and prosecutorial capability. Imagine the jurisdictional and coordination problems if the state governments of New York, New Jersey and Pennsylvania, along with county and city police organizations, were responsible for coordinating operations against mafia groups. A similar lack of cross-border capability exists in Europe. Despite the efforts of Helmut Kohl to raise the issue in the early 1990s, there is no "European FBI." Such a supranational capability proved too controversial, as we will see in chapter four. There is incongruence between the region's overall level of supranational integration and its policy in the particular area of transnational crime. This explains why, most of the other variables being equal or inconclusive, we don't see a better response from the more integrated and wealthy region. The EU may have plenty of supranationalism in its governance, just not in a key area concerning human trafficking (or other transnational crime).

As mentioned above, this paper's hypothesis was that because human trafficking, as an example of a non-traditional security threat, is transnational by nature, then the more supranational a region's governance is, the more readily it should be able to combat the non-traditional security threat, in this case, human trafficking. Multiple independent variables are involved in this hypothesis, the most significant of which is the degree of supranationalism present in the governance of the two regions. An important feature of the case studies is characterizing the place that the regional organizations and their anti-trafficking policies occupy on the intergovernmentalism–supranationalism spectrum, as well as discussing how well each region's anti-trafficking response conforms to the expectations of functionalism. Other independent variables that have to be taken into

account are the wealth of the regions' component states, intraregional disparities in wealth, interregional wealth disparities, differences in political systems and the presence of civil society in the regions. This section will explain these five independent variables and how they affect the hypothesis and the dependent variable of incidence of trafficking in a region.

The first issue in this discussion is the concept of supranationalism itself. Supranationalism in the regional bloc is regarded as they key independent variable because it was expected, above all other factors, to influence the transnational nature, and therefore the expected efficacy of the respective policy responses from the EU and ASEAN.

A casual comparison between the EU and ASEAN will quickly raise the simple observation that the EU, while not purely supranational by any means, contains many more significant supranational characteristics than ASEAN. Most notable of these is the economic and monetary union adopted by the EU in the Treaty on European Union in 1991 and implemented in 2000. The economic and monetary union of some of the world's largest and most advanced economies by itself would make the Eurozone the most supranational of all regional blocs in the world. The partial but significant supranational character of European integration is further reinforced by the centrality of the supranational European Commission in the actual administration of the EU and by the central (albeit limited) role of the European Parliament in legislating and in budgetary concerns.

European supranationalism is not a fact across the board. Certain policy areas are conspicuously resistant to supranational authority, notably immigration policies, policing, and defense matters. These areas, among others, remain under the purview of the EU's intergovernmental body, the European Council, or individual Member States. However incomplete Europe's supranational integration may be, it nonetheless is the world's most supranationally integrated region and by far the most tightly integrated regional government in the world. Because of this, it was chosen as one of the cases here, and as the most perfect example of real world supranationalism that could be incorporated into a case study.

At the other end of the supranationalism-intergovernmentalism spectrum lays the Association of Southeast Asian Nations. Unlike the EU, ASEAN does not have any of the supranational institutions of governance that characterize Europe, although eventual monetary union is a recurrent theme among ASEAN political elites. When regional governance is achieved in ASEAN it is done so through purely intergovernmental means. ASEAN's regional governance might be better described as coordinated and cooperative rather than unitary and integrated. Developing greater supranationalism in SE Asia has been a recurrent question in ASEAN at least since the region's collective trauma during the financial crisis of the late 1990s. While the benefits of tighter integration are widely discussed and recognized by many ASEAN political elites, it is opposed by just as many and remains a distant goal.

Despite its purely intergovernmental nature, ASEAN as a regional governance body is real, and a sense of shared purpose does exist, centered on core ASEAN values

like respect for sovereignty, regional development, and peaceful resolution of conflict. These "ASEAN values" are more than mere talking points; they appear to be deeply held values that have developed into uniformly held regional political norms over the last forty years. This genuine sense of SE Asian political identity is also evidenced by the manner in which ASEAN is used as a diplomatic identity to deal with the rest of the world. Loose and intergovernmental as it is, ASEAN is a genuine regional governmental organization, and one whose strong intergovernmental character makes it a useful counterpoint to the EU.

Although the ASEAN and EU case studies allow us to gain a definite sense of what the balance is between intergovernmentalism and supranationalism in the two regions' respective anti-trafficking policies, quantifying this balance is difficult at best. Accepting the imprecision of my conclusions on this point, a surprising finding became clear. The EU, despite being a much more tightly integrated regional government, with substantial supranational characteristics, had not produced a more supranational governmental policy response to trafficking—at least not directly—than loosely integrated ASEAN. That is, the European Commission itself is not organizing and directly managing a pan-regional effort to stop human trafficking, as might be expected by a functionalist approach. Europol is not a "European FBI." The economic, governmental, and intellectual resources of Europe, per se, are not centrally leveraged on a transnational, continental scale against a transnational security threat. The EU is squandering its supranationalism in this specific respect. The only way that the supranational European Commission is able to act supranationally in regard to human

trafficking, and implement a transnational response, is by proxy through the recruitment of civil society actors. This will be detailed in chapter four.

Though imperfect and insufficient, the EU's use of civil society to execute a transnational policy response is more supranational than anything yet seen from ASEAN; after all, the impetus, money, and coordination come from the Commission. A limit still exists to what can be accomplished by non-governmental means in addressing non-traditional security threats. To fight trafficking or other transnational crime in a transnational, rather than nationally centered way, a supranational law enforcement and intelligence body must exist that can operate across state borders with the powers to arrest criminals and collect information on them.

Second to the degree of supranationalism as an expected influence on the ability of the two organizations to respond to the human trafficking threat, is wealth. The question of wealth has three aspects. Absolute wealth, as might be measured by aggregate GDP, GDP per capita, or GNI is the most basic measure. By any measure, the states and individual citizens of the EU have more money than their counterparts in SE Asia. Only Singapore and Brunei rival European states in economic indicators. Absolute wealth is important to this paper for two reasons. First, in both the case of SE Asia today and Europe in the early 1990s (and to a lesser degree still today), poverty is a factor in making people vulnerable to irregular migration and/or trafficking. Second, a state's wealth can reasonably be expected to limit its policy options to respond to a given problem. This is seen clearly in the EU case. Despite having severe limitations placed on the degree to which it could act supranationally against trafficking, the Commission

was able to do something—fund the Daphne policy series—because it had tens of millions of Euros to direct toward the effort. Money was effectively used to create supranational governance where actual supranational governmental action was not possible.

Absolute wealth is an inconclusive variable. Human trafficking exists in every single country in the world, from the poorest of the poor in South Asia and sub-Saharan Africa to the wealthiest European, NE Asian, and North American countries. Moreover, in some cases populations—especially young women—find themselves more vulnerable to trafficking after experiencing increases in community or family wealth. This perverse outcome occurs because of rising expectations for material affluence that are leveraged by traffickers. More important than the absolute wealth of a community or individual are the disparities between neighboring communities and states.

Europe, whether in the immediate post-Soviet years or now, and SE Asia, both give very clear illustrations of the role that wealth disparities between neighbors have in driving irregular migration and in making individuals more vulnerable to trafficking. Whether from Poland to Paris in 1992, or from Burma to Thailand today, a relatively wealthy neighbor—*regardless of how poor or rich in absolute terms*—makes an attractive destination. The wealth imbalance is enough to trigger migration, and migration coupled with immigration restrictions, as strongly suggested by the IOM research discussed in chapter two, puts people at risk to be victimized by criminals who exploit migration. Thus, *intraregional* wealth disparity is a very significant independent variable that influences the dependent variable in the paper (overall degree of severity of

trafficking in a given region). Both SE Asia and Europe—although existing at different

levels of development—exhibit intraregional wealth imbalances that influence their

respective trafficking problems in nearly identical ways.

Interregional wealth is the third aspect of wealth that has to be accounted for.

Interregional wealth is very similar to intraregional wealth, but extrapolated upwards.

That is, Europe is a destination for victims from Central Asia the same way Thailand is a

destination for victims from Burma. Interregional wealth affects the dependent variable

because richer regions tend to be destinations for transcontinental trafficking patterns, but

it does not affect the degree of supranationalism in a region's governance, nor does this

variable make SE Asian or European trafficking markedly different from one another.

The last two variables of degree of democratization and presence of civil society

are more challenging to frame. Government type, that is the presence of liberal or

illiberal governments in the two regions, does not clearly affect the dependent variable.

What this means for this paper is that the comparability of the two case subjects (ASEAN

and the EU) is supported even though their member states have such different

government types. Human trafficking affects every country in the world. Some of the

world's biggest democracies and most liberal states with strong regard for individual

rights are also among the largest destination countries for slaves, as are some of the most

politically backwards and autocratic. Even liberal republics like the US and some

parliamentary democracies in Europe have internal trafficking patterns that victimize

their own citizens. In SE Asia this fact is more obvious. Citizens from a democracy like

the Philippines and an autocracy like Burma both find themselves trafficked and

enslaved, whether abroad or in their own borders. An unstable monarchy like Thailand can be a source and destination for trafficking flows, as can a more stable one party dictatorship like Vietnam. In Europe, liberal Netherlands' own struggle with human trafficking was a major signal event that helped raise awareness about the problem within Europe while the illiberal states of the former Soviet Union supplied victims for the slave demand in its western democratic neighbors.

Understanding government type as a driver of human trafficking, as a factor affecting our dependent variable, involves many qualitative factors. Relevant questions might be does the government's illiberal abuses make people want to migrate by any means necessary or does the government's poor ability to provide public order make its territory a safe haven for criminal organizations that conduct trafficking operations. These are legitimate research questions that fall within the purview of political science, but are complicated enough that they warrant separate field research of their own.

As with some of our wealth variables, government type can be assumed to affect a government's ability to respond to any given problem, though this cuts both ways and does not clearly favor democracies or autocracies. An autocratic government might be assumed to be able to deal more effectively with criminals because it could arrest suspects without due process and execute them at its discretion, options not available to liberal democracies, especially in Europe where the death penalty is outlawed. Conversely, a democratic state might have more disciplined and less corrupt police, prosecutors, and judges thus allowing for more elaborate and widespread anti-racketeering cases to be developed against criminal organizations. In the case of Europe

versus SE Asia no advantage or disadvantage attributable to national government type is discernible for either region in its fight to address trafficking as a transnational crime on a regional basis.

An open question that I cannot answer is whether or not national government type influences the degree of a region's supranational integration. The more supranational EU is made up of parliamentary democracies, but I cannot address the causality of this. Is the EU more supranational because its member states are democracies? This paper treats government type of the region's component states as an inconclusive factor in terms of the key independent variable. Moreover, the differences in government type between the EU and ASEAN member states do not influence the nature of the two regions' trafficking problems. Government type's utility to this paper is just to reinforce that the two regions are comparable.

Chapter Three: ASEAN

Background on Trafficking in SE Asia

Trafficking can be difficult to differentiate from other kinds of irregular migration within the region, such as illegal but voluntary cases of human smuggling. In some cases, the traditional nature of regional, or national culture can make trafficking difficult to discern from traditional practices such as buying brides. Such traditional practices also stimulate the market for trafficked women. UNICEF estimates that "at least 22,000 women have been trafficked to China to be wives, sex workers or housemaids since 1991," most of them from neighboring ASEAN countries.[52] Corruption among local officials who ignore to the practice, and the lack of surveillance capacity in regional law enforcement further hinder the tracking and elimination of the practice.

Additionally, the large volume of cross-border exchanges, most of which are legitimate, provide a natural camouflage for trafficking activities throughout SE Asia. Another UNICEF statistic illustrates this well by reporting that "In 2001, a total of 2.7 million crossings were recorded, and the cross-border trade [with Vietnam] came to 850 million yuan (about US$102 million)" along one 33 kilometer stretch of border in Guangxi.[53] Though Guangxi province is not in ASEAN, the statistic is included to help the reader grasp the volume of people movements in the region.

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52. UNICEF, "China, Vietnam join hands to fight cross-border trafficking of women," under "Real Lives," http://www.unicef.org/infobycountry/china_2530.html (accessed February 10, 2008).

53. Ibid., UNICEF

Immigration policies in destination countries also complicate matters by allowing trafficked persons, in particular women, an overt way into the country where they are then exploited. Japan's entertainment visas are an example of this, [54] and are "widely known to be a legal channel that is abused for trafficking women for sexual exploitation."[55] The majority of recipients of said visas are Filipina women who wind up in the sex-industry in Japan.[56]

As in other parts of the world, a combination of poverty, wealth disparities, social mores, and porous borders creates the basic conditions that generate trafficking. An October 2004 memorandum of understanding (MOU) signed by the component countries of the Greater Mekong Sub-Region makes this explicit. The MOU recognizes "that poverty, lack of access to education, and inequalities, including lack of equal opportunity make persons vulnerable to trafficking." [57] Social causes are further recognized, "acknowledging that trafficking is further intensified by discriminatory practices, attitudes, practices and policies based on gender, age, nationality, ethnicity and social grouping".[58]

The linkage between poverty and social marginalization is increasingly recognized as an important contributing factor to human trafficking. Specifically of note

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54. Japan is a major destination country for trafficked women from SE Asia, in particular Thailand and the Philippines

55. June Lee, "Human Trafficking in East Asia: Current Trends, Data Collection, and Knowledge Gaps," International Migration 43, no. 1-2 (2005): 9

56. Ibid., 10

57. GMS Countries, "Memorandum of Understanding on Cooperation Against Trafficking in Persons in the Greater Mekong Sub-Region," Yangon, October 29, 2004.

58. Ibid., MOU

is the recognition of the role that ethnicity and social class play in making trafficked

people, particularly women, vulnerable. Women from rural areas and women who are

members of ethnic minorities, or hill tribes,[59] are thought to be more vulnerable to

trafficking (as well as HIV and non-traditional drug use) due to the remoteness of their

environment and their lack of access to information on the matter.[60]

Poverty is clearly a factor in the supply side of human trafficking, but absolute

poverty is not the key variable. Rather, it is the great disparity in wealth between the

origin countries and destination countries that is the prime causal factor on the demand

and supply sides. It is no coincidence that the wealthiest countries in East Asia are also

the ones with the most developed demand for trafficked women: Hong Kong, South

Korea, and Japan. China's rapid economic growth has also generated an increase in

human trafficking for both labor and sexual exploitation.[61]

Consistent with the commonly held image of the region, sex trafficking is the

predominant form of trafficking in the region. UNODC's 2009 *Global Report on

Trafficking in Persons* summarizes this situation. First, "victims were predominately

trafficked for the purpose of sexual exploitation throughout the region."[62]

Correspondingly, "based on profiles of victims identified by State authorities, or who

were assisted by other institutions, women and girls were the primary victims of

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59. Major "hill tribe," or minority, populations exist in northern Thailand, northern and eastern Burma, parts of Laos, and the interior of Vietnam.

60. UNESCO Bangkok, "Mission," under "Trafficking and HIV/AIDS Project," http://www.unescobkk.org/index.php?id=672 (accessed February 3, 2008).

61. "More Forced Into Labor, Prostitution," China Daily, July 27, 2007, English edition.

62. UNODC, 2009, 54

trafficking in the region."[63] Finally, in its 2009 report the UNODC assessed trafficking

flows in East Asia to be particularly complex and also for the distribution of East Asian

trafficking victims to be very widespread.[64]

Although much of Asia's human trafficking is intraregional, the 2006 UNODC

report confirms that intercontinental trafficking does still exist as a substantial problem,

specifically saying that "most remarkably, victims from East Asia were detected in more

than twenty countries in regions throughout the world." This suggests that— in the

Report's words—"trafficking of East Asians is a bit of a phenomenon in itself and worthy

of further detailed study."[65]

Citing aggregated data collected from countries which responded to the

UNODC's research questionnaire, the Report states that East Asian countries are affected

by complex trafficking flows," and that many East Asian countries were countries of

origin for trafficking in persons within and outside the region." The Mekong region

countries "were destinations for cross border trafficking within the Mekong sub-region,

and at the same time origin countries for trans-regional trafficking."[66] The key variable

that applies some order to this complicated set of trafficking patterns is that wealth

disparities—whether between neighbors or continents—determine the direction of

movement.

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63. UNODC, 2009, 55

64. UNODC, 2009, 61

65. UNODC, 2006, 11

66. Ibid., 66

The Political Economy of SE Asian Human Trafficking

Social and gender issues aside, this paper, as stated previously, treats human trafficking as a political science question by examining it from a policy standpoint. Key to understanding the growth of human trafficking and the challenges facing policy makers and practitioners in fighting it is the way that political, economic, and demographic macro-trends have contributed to the phenomenon. It is a convergence of economics, demographics, and policy (labor policy, border policy, international policy harmonization, etc.) that really create the conditions that allow human trafficking to occur.

A 2008 study from the International Organization for Migration contains excellent recent research into the political economy of human trafficking. The report states:

> One of the more remarkable dimensions of the economic and social transformations that have engulfed East and South-East Asia during the past three decades has been the growth of cross-border movements of workers. *The unbalanced growth of the economies of the region widened the gaps in relative incomes and standards of living, which in turn magnified the 'pull' and 'push' factors that shape migration movements* [emphasis added].[67]

Conventional wisdom holds that young, underemployed persons faced with the lure of economic opportunity abroad are prime candidates for being trafficked. This basic assumption is also confirmed by the IOM, "The 'usual suspects' driving migration – productivity and income differences, rapidly growing cohorts of young workers in populations, ageing populations in others, declining costs of transport and

67. International Organization for Migration, Regional Thematic Working Group on International Migration Including Human Trafficking, "Situation Report on International Migration in East and South-East Asia," Bangkok, 2008, 139.

communication– are present in East and South-East Asia and have undoubtedly contributed to the recent trends."[68] Labor migration, the vehicle upon which much human trafficking occurs, is very much a function of demographics and economics. Labor migration may be an immutable condition of market economics, but the conditions under which these migrants move about are very much a function of how policy makers in the source, transit, and destination countries view the situation and adjust to it.

Policy makers attempting to address labor migration, and the irregular migration that accompanies it, are faced with a very difficult set of options. As the IOM report points out, "migration flows tend to respond quickly to labour market demand and supply rather than to government policies, which take time to formulate and implement. The policies are often not comprehensive or coherent, and may only partially meet the needs and/or development objectives of the country in question."[69] Coupled with this is the often counter-productive nature of restrictive migration policies which themselves are thought to lead to irregular migration as would-be migrants seek gray or black market alternatives because of government-led efforts to restrict their economic options. The analogy would be of putting a band-aid on a severed artery: "Experience suggests that tight border controls have a limited impact unless other factors driving migration are addressed simultaneously."[70]

Two policy considerations come directly from this. First, the "other factors"

68. Ibid., 140

69. Ibid., 127

70. Ibid., 127

driving the movements are not singular, but actually a relationship between two or more

countries (that is, the surplus and shortage of cheap labor in the respective states).

Second, the convergence of economics, demographics, and politics requires a holistic

approach. Addressing migration by decree alone does not stem the movement, it shunts it

into illegal channels wherein people are more vulnerable to being trafficked and

enslaved. Migration, and its associated phenomenon of trafficking both require a policy

response that is international and holistic. "International migration is an area in which

governments can greatly benefit from international cooperation in formulating

comprehensive and effective migration management policies that achieve desired results.

However, the achievement of such results remains hampered, in many cases, by the lack

of policy coherence at the national level."[71]

The IOM's 2008 research very clearly supports the conclusions that this paper

draws concerning the three wealth-related variables discussed in chapter one. Poverty at

the source—absolute poverty— begins a chain of migration. The direction of this

migration is determined largely, if not entirely by relative wealth disparities. These

disparities exist not just between neighboring states or sub-regions as is the case in SE

Asia, but also between regions and continents. In this simplified summary of the

economic roots of migration chains, all three of the wealth variables mentioned in chapter

one are clearly present. All three contribute to the presence of the dependent variable—

the incidence of trafficking in the given region—in SE Asia. None of these variables are

limited by borders or state authority, yet they contribute to an acute non-traditional

71. Ibid., 134

security threat that states must none the less find a way to address.

Onto Policy

The ASEAN response to trafficking is summarized in a 2006 report titled "ASEAN Responses to Human Trafficking".[72] The report lists eleven broad strategies that the Member Countries have developed to overcome the trafficking related challenges that they face. These strategies broadly conform to the so-called "3 Ps": prevention, prosecution, and protection. Some strategies are general, applicable to anti-trafficking efforts anywhere in the world. For instance, developing accurate information on trafficking, developing national action plans, and establishing legal frameworks to prosecute traffickers. Some strategies are specifically listed because they address deficiencies in existing Member Country approaches, for instance efforts focusing on protection of victims and witness support. A strategy such as "establishing safer migration routes and work practices" is aimed at remedying one of the biggest vulnerability factors that leads to trafficking in SE Asia, as detailed in the background section above. These strategies are the product of a process of policy development that is over a decade old. They represent the intergovernmental and functionalist nature of ASEAN's still evolving response to human trafficking within its region.

ASEAN is comprised of ten states, all of varying political, economic, and socio-cultural character. For this reason, ASEAN depends on the consensus-based decision making discussed earlier. It should not be surprising to us that decision making and

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72. ASEAN, ASEAN Responses to Human Trafficking, (Jakarta, 2006).

policy development within ASEAN are not streamlined or rapid processes. Policy making in ASEAN is characterized by ministerial meetings, formal and informal summits, communiqués, and declarations.

At its most basic, ASEAN's anti-trafficking response is represented by three core documents: ASEAN Vision 2020, produced in 1997; the ASEAN Declaration on Transnational Crime, also produced in 1997; and the ASEAN Declaration against Trafficking in Persons, Particularly Women and Children, produced in 2004. In addition to these three key documents the Treaty on Mutual Legal Assistance should also be considered. Other document types, the various communiqués and declarations, while not key documents in the sense of expressing firm obligations, are still worthy of consideration because they are supplemental information sources that allow us to map the course of ASEAN's anti-trafficking policy.

Policy History: A Question of Cooperation

Human trafficking got its first significant mention in official ASEAN documents in the late 1990s. The ASEAN Declaration on Transnational Crime, signed on December 20, 1997, in Manila states that the Parties are "concerned about the pernicious effects of transnational crime, such as terrorism, illicit drug trafficking, arms smuggling, money laundering, traffic in persons and piracy."[73] At this early point, trafficking was bundled in the broader category of transnational crime. Human trafficking would remain connected with other transnational crime for years to come, before eventually evolving into a stand-alone issue of concern.

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73. ASEAN, The ASEAN Declaration on Transnational Crime (Manila, 20 December 1997).

Media reports and press conference statements from SE Asian leaders throughout the mid and late 1990s demonstrate that awareness of transnational security challenges, including crime, was steadily developing, and that as this awareness of transnational crime grew, so too did talk about a regional response to it. By the mid-1990s, bilateral operations were already being conducted to counter transnational crime. Additionally, presaging the language of the ASEAN 2020 document, this crime was already explicitly viewed as an obstacle to the stability and prosperity that the ASEAN states sought.[74] Speaking at the ASEAN Conference on Transnational Crime in 1997, then President of the Philippines, Fidel Ramos, "stated that transnational crimes and terrorism have 'assaulted' regional security and continue to threaten Southeast Asia's economic gains and stability." Ramos continued to say that efforts by SE Asian states to confront transnational crime had not been "consolidated" and that action at the "political level" was required to create the necessary "common front" against transnational criminal elements.[75] The Declaration Against Transnational Crime was the result of this meeting.

Three months later at the first annual ASEAN Ministerial Meeting on Transnational Crime, Ramos expanded on his message of transnational crime's political-economic consequences and its correspondingly necessary political solution. In his speech opening the conference, Ramos said that "We cannot allow [transnational crime's]

74. "Philippine and Malaysian police forge joint security agreement," Deutsche Presse-Agentur, June 4,1996. A statement from Philippine National Police Director Recaredo Sarmiento in 1996 provides an indication that at the practitioner level this was understood: "We believe that regional prosperity in ASEAN is difficult - if not impossible - without regional freedom from organised fraud, terrorism and crime."

75. "Manila calls for common ASEAN effort against transnational crime," Deutsche Presse-Agentur, 20 December 1997.

growing influence to distract us from the more productive pursuit of economic

development and social progress; not while economies in the region already stagger

under pressure of the financial storm buffeting East Asia," adding that the phenomenon

was too large for SE Asia's small states to tackle independently.[76] Ramos specifically

recommended increased intelligence exchange between countries, a concept that would

be formally adopted in later ASEAN anti-trafficking policy. This cooperative, regionalist

sentiment was echoed by Philippine Defense Minister Orlando Mercado at the 1999

meeting of the ASEAN Defense Technology Exchange, when he said, "Given the reality

that all our nations face the same problems and risks, it makes reasonable strategic sense

for us to try, as much as possible, to exhaust all avenues for cooperation in order to

address them more effectively. We all need each other to survive."[77]

The principles expressed by the Filipino leaders about growing regional

interdependence were still solidifying into regional consensus by June 1999 when the

ASEAN states convened the second AMMTC in Yangon. Singapore Home Affairs

Minister Wong Kan Seng addressed the conference, saying that crime across borders had

become more sophisticated, and that greater consultation and cooperation among ASEAN

member countries was needed to defeat the problem. Wong said that "sustained and

concerted effort at bilateral and regional levels" was required. Of note was the continued

linkage between defeating transnational crime and pursuing greater regional prosperity

when Wong said that the second AMMTC "brings us a step closer to a safer region for

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76. Fel Margay, "Ramos seeks stronger global efforts vs transnational crime," Manila Standard, 24 March, 1998.

77. "Anti-crime," Business World, May 12, 1999.

our people to live in, better conditions for growth and boosting investors' confidence in the region."[78]

The dominant political mood surrounding the 32nd AMM in July 1999, the first ministerial meeting to follow the 1998 Asian economic crisis, seemed to broadly agree that reconsolidation and deepened cooperation, even integration, were the only ways forward. Remarks from various foreign ministers at the conference reinforce this sense. Thai Foreign Minister Surin Pitsuwan stated that for "ASEAN to be viable as an Organisation, we must coordinate more closely our policies, especially on important political, economic and social issues of concern."[79] The meeting's joint communiqué spoke of "consolidation and rebuilding which would undoubtedly reinforce our foundations," and said that the ministers had "unanimously reaffirmed the relevance and value of ASEAN to all our countries and renewed our determination to strengthen ASEAN."[80]

Amidst this talk of a revitalized ASEAN following the economic crisis was the question of whether or not ASEAN needed to formalize certain of its activities. In the Secretary-General's report following the 32nd AMM, Severino suggested that "ASEAN should explore the possibility of undertaking more legally binding agreements to promote cooperation in various fields, such as economic dispute settlement, the environment, and

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78. "Greater ASEAN ties needed to fight crime," The Straits Times (Singapore), 24 June, 1999.

79. Dr. Surin Pitsuwan, "Statement by His Excellency Dr. Surin Pitsuwan Minister of Foreign Affairs of the Kingdom of Thailand" (speech, 32nd ASEAN Ministerial Meeting, Singapore, July 23, 1999).

80. ASEAN, "Joint Communique, 32nd ASEAN Ministerial Meeting," Singapore, July 22-24, 1999.

transnational crime."[81] Finally, Severino added that there "is no alternative to regional cooperation and integration. Globalization compels ASEAN member countries to establish common positions on global issues and to take advantage of its collective weight."[82]

The bruising that the SE Asian countries took in the financial crisis of 1998 seems to have jolted many of their leaders into a greater awareness of the challenges that globalization presented. The "Asian contagion" was a hard lesson in the new inter-connectedness that now dominated international relations. A reading of the statements and documents associated with the 1999 AMM leave no doubt that economic recovery and the question of further economic integration were the most important topics. However, we should bear in mind the linkage that has previously been demonstrated between ASEAN's long-term economic goals and the various "transboundary issues," including transnational crime and human trafficking.

Concern for transnational crime seems to have grown jointly out of concern for terrorism, initially, and the social and cultural effects of various transnational problems, not just criminal ones. ASEAN tackled the issue of transnational terrorism specifically, at a meeting in Baguio City, Philippines and adopted the subsequent Baguio Communiqué in February 1996, "which endeavored to enhance international cooperation

81. Rudolfo Severino, "Report of the Secretary General" (report, 32nd ASEAN Ministerial Meeting, Singapore, July 22-24, 1999).

82. Ibid.

against all forms of terrorism through such modalities as intelligence sharing, coordinated

policies and law enforcement training."[83]

Another source of the transnational crime policy emerging at the Manila meeting

can be identified as the "decision of the 29th ASEAN Ministerial Meeting in Jakarta in

July 1996 on the need to focus attention on such issues as narcotics, economic crimes

including money laundering, environment and illegal migration which transcend borders

and affect the lives of people in the region."[84] Transnational crime—this time coupled

explicitly with functional cooperation—was mentioned in the 30th AMM Joint

Communiqué in 1997, which stated "The Foreign Ministers expressed satisfaction with

the progress made in implementing the Framework for Elevating Functional Cooperation

to a Higher Plane[85] with the development of a number of flagship projects in science and

technology, environment, culture and information, social development, and drugs and

narcotics control."[86]

Transnational crime also featured somewhat at the ASEAN Heads of State

Informal Summit, also in 1997.[87] Addressing transnational issues, whether economic,

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83. Manila Declaration, 1997

84. ASEAN, Joint Communiqué of The 29th ASEAN Ministerial Meeting, (Jakarta, July 1996), para. 44. Paragraph 44 goes on to state: "[Foreign Ministers] shared the view that the management of such transnational Issues is urgently called for so that they would not affect the long-term viability ASEAN and its individual member nations.

85. ASEAN, Joint Communiqué, 1996, para, 36. Paragraph 36 states: "pursuant to the decision of the Fifth ASEAN Summit to elevate functional cooperation to a higher plane."

86. ASEAN, Joint Communiqué of the 30th ASEAN Ministerial Meeting, (Subang Jaya, Malaysia, July 24-25 1997). Paragraph 45 states: "encourage the development of an integrated approach of the functional and economic cooperation mechanism within ASEAN."

ecological, or criminal, was gaining policy momentum by the late 1990s. Looking in the

context of this ministerial-level discussion about transnational crime, the adoption of the

Manila Declaration "reflected ASEAN's resolve in dealing with transnational crime and

its intention to work together with the international community in combating

transnational crime,"[88] and was a logical way for ASEAN to have "established the basic

framework for regional cooperation in fighting transnational crime."[89]

Several reasons can be deduced for this developing interest in fighting

transnational crime. First, and most obviously, the specific issues that fall under

ASEAN's category of "transnational" are serious and legitimate areas of policy concern.

It is not necessary to over-rationalize a decision to address pollution, terrorism, or crime.

Second, these issues do exceed the means of any one ASEAN member state to effectively

combat on its. Third, the groundwork for Vision 2020 was already being laid at this

point, and ASEAN state leaders were likely feeling pressure to address issues that could

adversely "affect the long term viability of ASEAN and its individual member nations."[90]

The ASEAN Declaration on Transnational Crime mandated the "once every two

years ASEAN Ministerial Meeting on Transnational Crime in order to coordinate

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87. ASEAN, Press Statement of the 2nd ASEAN Informal Meeting of Heads of State/Government, (Kuala Lumpur, December 15, 1997). Transnational crime is mentioned, but not prominently, as the statement was mostly occupied with Mekong Basin development initiatives; the actual mention was: "The HSOG resolved to take firm and stern measures to combat trans- national crimes such as drug trafficking, trafficking in women and children as well as other trans-national crimes."

88. ASEAN, Asian Regional Ministerial Meeting on Transnational Crime, Manila Declaration on the Prevention and Control of Transnational Crime, (Manila, March 23-25,1998)

89. ASEAN Plan of Action, 1997

90. ASEAN, Manila Declaration, 1998

activities of relevant ASEAN bodies."[91] The first of these AMMTC meetings was held

the following year; in line with the intent of the March 1998 Manila meeting, "for the

purpose of promoting regional and international cooperation to combat transnational

crime."[92] This declaration is significant to my analysis for two reasons. First, we can see

in the language of the 1998 Manila Declaration that ASEAN's leadership is beginning to

view transnational crime as a broad security issue, as much as a social one. The States

"recognize that organized crime undermines civil society, distorts legitimate markets and

destabilizes states."[93] The language equating transnational crime to a national security

and a political-economic threat will be reinforced in later policy statements. Second, in

the 1998 Manila Declaration a distinctly functionalist tone begins to emerge in relation to

the proposed steps. This can be seen in a few places in particular in the Declaration.

Some kind of cooperative, if not integrative, effort is implied by language like: "regional

action"; "international cooperation"; "harmonizing, as appropriate, existing laws";

"responding to the complexity and sophistication of various forms of transnational crime,

so as to bridge the gaps in legal systems"; and "developing new regional programs".[94]

The functionalist nature of the emerging anti-transnational crime effort is more

explicit in other passages. Article 8 of the Declaration states that, "combating the above

mentioned [transnational] forms of crime requires concerted action at all levels. As these

crimes transcend national boundaries, international cooperation is essential,

91. ASEAN, Declaration, 1997

92. ASEAN, Manila Declaration, 1998, para 2

93. ASEAN, Manila Declaration, 1998, para 1

94. Ibid., Manilla Declaration

complemented by collaborative ties at the regional and sub-regional levels."[95] Two tasks

follow from this statement. First, the ASEAN States must create infrastructure that will

allow regional cooperation. Second, they must increase information exchange on matters

relating to organized crime and benefit from best practices used in neighboring states.

The fight against transnational crime is explicitly linked, as a subordinate or

supporting area of action to Vision 2020, in the ASEAN Plan of Action to Combat

Transnational Crime. Vision 2020 was adopted at the 1997 Second Informal Summit.

Vision 2020 "envisioned the evolution of agreed rules of behavior and cooperative

measures to deal with problems that can be met only on a regional scale, including drug

trafficking, trafficking in women and children and other transnational crimes."[96] In as

much as Vision 2020 became the center of ASEAN policy considerations, then

transnational crime, and by extension trafficking, became elevated to first order

considerations on the understanding that this set of problems would undermine the

conditions necessary for the economic and political integration called for by Vision 2020.

ASEAN's leadership was increasingly aware of the long-term economic gain that

integration would offer, but they understood that this economic integration would not

exist in a vacuum. Then ASEAN Secretary General, Rodolfo Severino expressed the

thinking underlying ASEAN's policy making at the time, during an interview at the 1999

Ministerial Meeting. Severino said, "You cannot separate politics from economics. If

you are integrated economically, then you have to engage with one another more closely

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95. ASEAN, Manila Declaration,1998, para 8

96. ASEAN, "ASEAN Vision 2020," (Kuala Lumpur, December 15, 1997).

in political terms." In the same interview, Severino went on to say: "everything is open for discussion at the July meeting, including controversial issues such as…transnational crimes, [and] human rights…."[97]

A few specific features of the Plan of Action to Combat Transnational Crime warrant a closer look. Six sets of activity are named under section C, Programme of Action/Priorities.[98] Among these activities are: information exchange, involving shared database development and networking; legal matters, involving harmonization of national policies and bi and multilateral cooperation; law enforcement matters, involving professional exchange programs for police and prosecutors; training, involving best practices exchanges; institutional capacity building, notably the establishment of the ASEAN Center for Combating Transnational Crime; and extra regional cooperation with states and international organizations.

Misalignment and Harmonization

Harmonization is a central topic in ASEAN policy circles. The question of harmonization is especially critical in regard to legal matters because of the aid that legal misalignment between neighbors provides for criminal elements. Harmonization emerged more frequently as a topic beginning in 1999. At a speech organized by the Singapore Institute of International Affairs, Rudolfo Severino said, "I am gratified to

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97. Cathy Rose Garcia, "Crisis-hit ASEAN eyes deeper regional integration," Business World, June 25, 1999.

98. ASEAN, The ASEAN Plan of Action to Combat Transnational Crime, Section C Programme of Action, (1998).

have a part in your examination of the concepts of sovereignty and intervention. The tension between these two concepts is emerging as an important issue of our time."[99]

Then Chairman of the ASEAN Standing Committee, Dr Surin Pitsuwan discussed the underlying rationale for harmonization at the conclusion of the 6th ASC meeting in July 2000. Discussing ASEAN's traditional transboundary issues of haze, cyber crime, terrorism, drugs, and human trafficking, Pitsuwan said "All these problems, because of the nature in which they are being transformed, cannot be regarded as domestic or exclusively internal like before."[100] The point of Pitsuwan's remarks came when he raised the issue of non-interference as it relates to harmonization, saying "[ASEAN's cardinal principle] is going to remain [non-interference], but some issues will have to be redefined whether they are exclusively internal or they have the potential of spilling over to neighbouring countries."[101] ASEAN faces a constant tension between an instinct toward regionalism, cooperation, and even integration on one hand, and between the sacrosanct ASEAN principles of non-interference and absolute respect for sovereignty on the other.

Different ASEAN states have variously pushed for improved harmonization of anti-trafficking laws. During the 2002 Senior Officials Meeting Malaysian Deputy Home Affairs Minister Chor Chee Heung said, "What may be a crime in one country may have yet to be criminalised in another. This causes prosecution to be difficult," adding, "When a criminal act takes place in different jurisdictions, successful prosecution relies upon

99. Rudolfo Severino, "Sovereignty, Intervention, and the ASEAN Way," (speech, Singapore Institute of International Affairs, Singapore, July 3, 2000).

100. Kararuzalman Salleh ,"Issues affecting Asean no longer internal," New Straits Times (Malaysia) July 23, 2000.

101. New Straits Times, 2000

effective regional and international cooperation."[102]

Thai newspaper The Nation reports from 2004 that, "Thailand yesterday proposed models for harmonizing legal differences and intelligence sharing among members of [ASEAN] with the aim of enhancing regional cooperation to combat transnational crimes, including terrorism." Then ASEAN Deputy Secretary General Wilfrido Villacorta was quoted as saying "'at this moment, such harmonization has not been achieved and we have a long way to go.'" [103] The article continued to say, "some ASEAN countries still lacked necessary laws to combat transnational crime."[104] Villacorta added, "'There is no legal framework at this stage that covers legal assistance or extradition in all ASEAN countries. It is, therefore, necessary to explore the possibility of developing such a structure.'"[105] The above quotation illustrates an important problem that ASEAN faces in developing cooperative policy schemes. There is a large gap between the political and legal maturity of its members. Another article wrote a few days earlier, "there were currently legal differences among the way Asean members combat transnational crime. For example, some nations have extradition and anti-terrorism laws while others do not."[106]

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102. Reme Ahmad, "Asean officials meeting in KL consider uniform laws to fight crimes such as drug trafficking, arms smuggling and sea piracy," The Straits Times (Singapore), May 17, 2002.

103. Rungrawee C. Pinyorat, "Asean in bid to close legal havens," The Nation (Bangkok), January 8, 2004.

104. Ibid.

105. Ibid.

106. Piyanart Srivalo, "Bangkok hosting regional crime talks," The Nation, January 5, 2004.

The AMMTC process of recurrent pledges and meetings, marked by non-binding communiqués and agreements, all seems to highlight the much-derided ASEAN ineffectiveness. There is truth in this; but it is a necessary weakness of ASEAN due to its consensus-based *modus operandi*. However, it would be an error to dismiss ASEAN's efforts against transnational crime. Emphasis on the "promotion and strengthening of linkages," "sub-regional and regional treaties on cooperation in judicial matters", " information exchange" and bolstered research and analysis capabilities, as well as numerous conferences, meetings, and professional workshops is well aligned to the problems that have been identified as present in ASEAN's anti-crime, and specifically anti-trafficking responses.[107]

In November 2004, the ASEAN heads of state met in Vientiane and adopted the "ASEAN Declaration Against Trafficking in Persons Particularly Women and Children." This is not a revolutionary document that charted a brave new course in ASEAN anti-trafficking policy, rather it is a reaffirmation of, and a head of state level document that summarizes, the multiple ministerial level declarations and agreements that had preceded it for the previous seven years since the adoption of the ASEAN Declaration, the Manila Declaration and the Plan of Action.

A couple of key pieces of language from the 2004 Declaration need to be addressed. First, is the acknowledgment "that social, economic, and other factors that cause people to migrate also make them vulnerable to trafficking in persons."[108] This is

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107. Joint Communiqués of the Second, Third, and Fourth ASEAN Ministerial Meeting on Transnational Crime

important because it addresses the economic disparities that prompt high-risk migration. Most significant though, is the clause stating that the member states will take action against trafficking "to the extent permitted by their respective domestic laws and policies," in a "concerted" manner. This is an explicit affirmation of the intergovernmental, state-to-state, basis for ASEAN's anti-trafficking cooperation.

What should be clear from this policy history is the intergovernmental nature of ASEAN's anti-trafficking efforts. Transnational institutions are conspicuously absent. Rather, ASEAN's efforts are focused on synchronizing respective national level institutions and increasing their communication with each other. Making national level institutions the focal point, prioritizing the individual state's responsibility and capacity to respond while simultaneously depending on interstate cooperation, is far more in keeping with ASEAN's underlying values of unconditional respect for member sovereignty.

The discussion of harmonization also involves our fourth variable, the question of government type. Government matters in this respect because it is individual national governments that must pass laws and adopt policies that are synchronized with their neighbors. Government type does not seem to be a critical factor here, as the lack of harmonization and the lack of sufficient legal statutes to adequately criminalize trafficking was a problem across the region. Just as the type of government that a state is endowed with does not clearly impact the dependent variable—extent of trafficking—it

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108. ASEAN, Declaration Against Trafficking in Persons Particularly Women and Children, (Vientiane: November 2004), 78.

also appears that government type doesn't influence the nature of the state's response in a discernable way.

Misalignment should also not be thought of as just existing between the laws and policies of the states. In addition to this intergovernmental misalignment, there is also a lack of symmetry between the transnational nature of human trafficking and the intergovernmental approach that ASEAN is currently limited to in its efforts to address it.

ASEAN's Anti-Trafficking Efforts: Hitting the Wall?

ASEAN's anti-trafficking efforts display many characterisitcs of Mitranian functional cooperation. Having said this, a high degree of integration is not present in ASEAN's anti-transnational crime and trafficking policies. Rather, as mentoned above, ASEAN's policies are based in augmenting the capacities of individual governemnts to act against traffficking in concert wiith others. ASEAN's anti-trafficking regime is not one that is functionalist and integrated but functionalist and intergovernmental. Also as mentioned above, this is not surprising, given the confederated nature of ASEAN's organization and the deeply enshrined respect for individual national sovereignty.

The next question that should be examined, that this paper cannot conclusively address, is whether the functionalist intergovernmental approach is sufficient, or if ASEAN must procede with more formal integration in order to really address trafficking. Currently ASEAN relfects an integrative instinct, but institutions and regimes which subsume some corner of national sovereignty to tackle a problem are conspicuously absent. The tension between a desire for the fruits of regional integration and policy

coherence and a deep attachment to non-interference is an underlying fact of political life in ASEAN.

"Asean has set regional norms for the peaceful relations among states—respect for sovereignty and territorial integrity, the peaceful settlement of disputes, non-interference in the internal affairs of nations, decisions by consensus, equality of status, and so on."[109] Severino's statement from 2006 raises a nagging point about ASEAN's essential character. Is this a diplomatic alliance that is designed to open multi-lateral diplomatic channels to ensure peace and security, or is it a regional organization with the ability to tackle transnational policy concerns? ASEAN has arguably been very successful at the former, but performed questionably at the latter. Again, citing Severino, "The record of cooperation in dealing with transnational problems has been spotty. The effectiveness of the cooperative mechanisms in place has been uneven. Regional cooperation has been held back by competing national interests, in some instances by mutual suspicion, and by an apparent lack of faith in the efficacy of regional action."[110] ASEAN's members trust each other enough not to go to war against each other, but not to merge sovereignty to address transnational threats.

Goodwill and open communication abound at the ministerial meetings, but identifiable practices stemming from these meetings and their agreements are conspicuously hard to find. SE Asia's complex trafficking flows involve overlapping combinations of multiple borders and victim nationalities, yet the preponderance of anti-trafficking initiatives are domestic/national or bilateral. This represents a misalignment

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109. Severino, 2006

110. Severino, 2006

between policy and problem. Naturally, we must consider if this is a symptom of institutional limitations within ASEAN and the intergovernmentalism that prevails between its members.

"The decision to adopt the 'Asean Way', which prioritises agreement by consensus and the adoption of the lowest common denominator, means that its claim to become an increasingly rules- based organisation will remain just that."[111] What impact will ASEAN's continued reliance on consensus instead of rules have on its ability to deal with human trafficking, and the other non-traditional security threats that it has identified? What specific areas of anti-trafficking policy will be off-limits to ASEAN states without a rules-based security pillar under which to bundle anti-trafficking policies?

Barry Desker, dean of the Rajaratnam School of International Studies at Singapore's Nanyang University, stated in a 2008 article, that following the underwhelming 2007 Charter ASEAN remains a diplomatic community, good at preventing war and building confidence among members. Desker raises the question of how ASEAN can tackle transnational threats that themselves are increasingly integrated across borders, through levels of society, and over multiple policy disciplines, without itself being more integrated. Does a threshold exist beyond which intergovernmental coordination cannot generate a sufficiently concerted response to disrupt a tightly and complexly integrated threat?

Thus far, some progress has been made within the intergovernmental functional approach of ASEAN, and its component states. This progress, as indicated previously, is

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111. Barry Desker, "Where the Asean charter comes up short," Straits Times (Singapore), July 18, 2008.

less concrete at the level of the ASEAN itself, and more concrete at the bilateral and sub-regional level. The lack of really robust and hard policy from ASEAN itself is a potential indicator of the limitations of the intergovernmental approach. Intergovernmentalism may have succeeded in raising anti-trafficking policy from non-existent to an established area of concern, but integrated policy at a supranational level may be necessary. The need for integrated supranational policy responses to transnational threats is also indicated by the case study of the EU's anti-trafficking policies.

Chapter Four: The European Union's Response

Introduction

Approximately 90% of European states (in and out of the EU) have anti-trafficking legislation that criminalizes human trafficking as a specific offense. The specific criminalization of trafficking has become more and more uniform across Europe (and the rest of the world) following the 2003 adoption of the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons. The only European countries that currently lack offense-specific legislation are Poland and Estonia.

The 2009 US State Department Trafficking in Persons Report lists 17 EU countries in its Tier 1 category for states that fully comply with the US's TVPA standards (themselves very similar to the standards contained in the UN's Protocol). The remaining seven EU countries— mostly newer members in Central and Eastern Europe—fall under Tier 2, meaning that they are judged not to fully comply with anti-trafficking standards, but are making significant effort to do so. Latvia is the only EU country on the Tier 2 Watch List for countries that do not comply and are not making efforts to do so. Latvia shares this category with known trafficking centers such as Cambodia, Philippines, the UAE, and Qatar among others. No EU member states are listed on Tier 3.

The State Department's figures for prosecutions and convictions tell an equally mixed story. Figures for Europe (including non-EU states in Eastern Europe) show an increase of prosecutions from 2231 to 2808 between 2003 and 2008. Convictions from these prosecutions increased approximately 15% from 1469 to 1721 over the same five-

year period.[112] This seemingly small increase in prosecutions across Europe coincided

with a decrease in overall crime within the EU itself, from approximately 17.5 million

total crimes in 2003 to approximately 16.3 in 2007, however violent crime increased

moderately from approximately 930,000 incidents to 978,000 between 2003 to 2007.[113]

Specific data on human trafficking are not available through Eurostat. The lack of

meaningful statistics on human trafficking within the EU, comprised largely of relatively

wealthy and democratic states provides a sharp reminder that this phenomenon is difficult

to track even for governments with relatively robust resources. The European

Commission admits this knowledge gap; saying that reliable figures for total volume of

trafficking in Europe is "probably around several hundred thousand, mostly for

prostitution." Adding that in 2006, the last year that it has statistics on trafficking

prosecutions, "prosecutors brought just 1 500 criminal trafficking cases to court in the

whole of the EU."[114]

Human Trafficking Policy in Europe: A Post-Soviet Context

    Beginning in the 1990s three factors began to converge in greater Europe that drove

the human trafficking phenomenon into public awareness, two of which are directly

linked to the collapse of the Soviet Union. These are the loss of economic security and a

simultaneous breakdown in public order. External to these two post-Soviet factors was

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112. Department of State, 2009, 53

113. European Commission, "Crimes Recorded by Police," under "Documents," http://epp.eurostat.ec.europa.eu/portal/page/portal/crime/documents/total_crime.pdf, (accessed April 11, 2010).

114. European Commission, "Protecting the Weakest," http://ec.europa.eu/news/justice/100329_en.htm, (accessed April 11, 2010).

the general phenomenon of a shrinking world. Advances in telecommunications and the internet, coupled with the easing of travel and visa restrictions within Europe created a perfect storm of highly vulnerable economic migrants from the Eastern Bloc states, an economic and politico-legal system which could no longer account for their welfare and a world of unprecedented interconnection between people (and criminals) and permeable borders.

As the world began to get accustomed to this new world order (anarchic as it was, compared to the relative rigidity of the Cold War era) a new set of opportunities and perils presented themselves. The opportunities are well accounted for in the existing narratives—both supportive and critical— about neoliberalism, and do not need to be recounted here. Along with new business opportunities and new wealth, came problems that were either completely new by type, or new in their increased severity. The traffic in drugs, guns, and people, the laundering of criminal proceeds across the world, a growing interconnectedness between organized crime groups, and a more diffuse and sophisticated kind of transnational terrorism were a new reality that even the world's most powerful states found themselves frequently ignorant of and ill-equipped to combat.

The political situation of the early post-Soviet years was captured well in a statement from then UN Secretary-General Boutros Boutros Ghali at a UN conference on organized crime in late 1994. Ghali said: "The collapse of communism and the disintegration of the Soviet Union have led to a weakening of institutional structures and a loss of social and ideological benchmarks in Eastern Europe," he added that international criminal groups had expanded "traditional spheres of activity such as

prostitution, the arms trade and trafficking in drugs" to "money-laundering, the trade in nuclear technology and human organs, and the transporting of illegal immigrants".[115] Ghali's reference to "transporting illegal immigrants" is telling. At the time, and in many cases up until the international standardization of the crime by the Palermo Protocol, human trafficking was often undistinguished from the more innocuous-sounding offenses of "smuggling" or "transporting." The slavery aspect of the crime was not fully appreciated.

Capturing the newness of human trafficking, or of uncontrolled irregular migration generally, a CSIS paper also from November 1994 mentions instances of law enforcement authorities in Austria, Spain, and Sweden being "alarmed" after discovering that their border had been compromised by smuggling networks spanning across Eurasia, but invariably running through Russia among other transit points.[116] The paper cites chronic official corruption and revolutionized means of communications and transportation before writing that "no factor is perhaps more critical to this trade than the global surge in emigration," and that population increase, lack of employment, and poverty in the developing world were prompting millions of people worldwide to become economic migrants.[117] Per an estimate by the ILO at the time, there were 125 million international migrants in the world, with that figure expected to "soar" in the years to come. Unsurprisingly, with mobile migrants comes a nativist backlash against them.

115. John Phillips, "Mafias replace Marxism as invasion threat from East," The Times (London), November 22, 1994.

116. Paul J. Smith, "The Rising Tide of Human Smuggling," Christian Science Monitor, November 30 1994.

117. Ibid., Smith

This anti-immigrant sentiment was visible in Europe in the early and mid 1990s. The restrictions that accompany this sentiment play directly to the advantage of criminal people smugglers, or human traffickers, to whom aspiring emigrants must turn for assistance when their efforts at normal migration are stymied by restrictions.

As in SE Asia, it was (and still is) this convergence of a need to emigrate, but not the means, and the willingness of unscrupulous people to exploit this, that creates the dynamic of vulnerability that can so quickly turn a would be worker into a slave. As an *Economist* article from August 1995 put it, "as Western Europe puts up shutters against legal immigration, illegal immigration is rising, and the people-smuggling business is booming, especially in Eastern Europe, where border controls are chaotic and visa requirements lax. It is a business that offers no guarantees to its human cargoes; it can even turn into a new form of slavery."[118] Aside from the ready supply of vulnerable people that could be easily victimized, the criminal organizations involved in the burgeoning slave business were also attracted by the enormous and easy profits and the very low risk.

Trafficking in arms and drugs were relatively well-understood forms of crime by the 1990s, even if they were expanding into new modalities. Human trafficking was not well understood, as the frequent conflation of it with mere smuggling indicates. Trafficking was not universally understood as slavery either. The *Economist* article cited above states that in the Czech Republic (both an origin and transit point in the 1990s) human trafficking was punished as a misdemeanor, while in Poland (equally a source and

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118. "The new trade in humans," The Economist, August 5, 1995.

transit country) there were no laws against it all. This situation reinforces the point made

previously in the paper that human trafficking's growth was facilitated by a policy

vacuum in which it was not understood by policy makers, not identified in criminal

statutes, and generally lacked a political character. Again, we see how human trafficking

emerged as a political problem in so far as it was enabled by a failure of policy making.

The same article also illustrates the deeply transnational nature of the crime, as it

was beginning to be understood at the time, describing networks that ran from Central

Asia through Moscow to Norway, from Vietnam and China through Poland, Hungary and

the Czech Republic, the "Balkan route" from the war-torn Balkans through Turkey to

Hungary to Germany, used by Balkans as much by Africans or Chinese. With such

diversified trafficking networks it is easy to see how the ILO's estimate of 2.5 million

illegal immigrants in Europe in 1993 may in fact have been short by half. The equation is

simple enough: ever-increasing numbers of economic migrants seeking to benefit from

Europe's wealth and prosperity were running up against a European unwillingness to

accept them.[119] As one newspaper headline from May 1993 read, "Refugees pay high

price as Europe raises drawbridge."[120] When the immigrants who did manage to get in

illegally arrived, they found themselves still vulnerable to the victimization of their

smugglers/traffickers, often finding themselves in what was starting to be described in the

media as "human slavery."

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119. This was by no means limited to Europe, a 1995 interagency report from the INS, CIA, FBI and
Coast Guard cited the role that Eastern Europe played as a "major gateway to the US for illegal
immigration," adding that Moscow had emerged as major transit hub with a transient population of 200,000
illegal migrants at any given time. William Branigin, "US Urges War on the Body Trade," The Guardian,
December 29, 1995.

120. Andrew Marshall, "Refugees pay a high price as Europe raises the drawbridge," The Independent,
May 28, 1993.

Of the multiple forms of enslavement to which irregular immigrants to Europe found themselves subject to, it was human trafficking for the purposes of sexual exploitation—mostly of women and girls—that rapidly garnered the larger share of attention. There are several reasons for this. Bearing in mind that Europe was beset with economic migrants, it is worth remembering that unemployment in the former Soviet Union was probably twice as high for women as it was for men. When jobs were available, they were low paying, even for more educated women. The advertisements for dancers, waitresses, au pairs, even brides—promising good pay as well as excitement and glamour in rich Western European cities—that began to bombard Eastern Europeans were understandably attractive to young women facing unemployment and privation in drab, broken, former Communist states. Also, somewhat contradictorily given the notoriously clandestine nature of trafficking, was the visibility with which so many of these young women found themselves channeled into the sex trade, particularly in the Netherlands where prostitution was legalized in 1994. By 1993 the Guardian ran an article proclaiming Amsterdam the "centre for the latest line in the slave trade," noting that the workers in this sex-industry were no longer exclusively from Asia or Latin America, but from Central and Eastern Europe, leading the spokeswoman for a Dutch government funded NGO providing assistance to sex workers to proclaim the influx of women from Central and Eastern Europe to be an "epidemic."[121]

A more authoritative work supporting this growing conventional wisdom came from an influential IOM report in 1995.[122] The report analyzed case studies of 155

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121. Jon Henley, "Sex Trafficking in Europe," The Guardian, September 10, 1993.

women who were trafficked into the Netherlands in 1994, finding that approximately two-thirds of them were from Central or Eastern Europe. Cases of women trafficked from Central and Eastern Europe had tripled in the Netherlands and doubled in Belgium in the several years preceding the study. Most were thought by authorities interviewed for the report to have been trafficked by organized crime groups. Without belaboring this history, available elsewhere, it is important to note that patterns of human trafficking in Europe changed dramatically following the collapse of the Soviet Union and its satellite governments in Eastern Europe. This new phenomenon of trafficking soon attracted the attention of some national governments in Europe, and of the European Union's Council, Commission, and Parliament.

Onto Policy

The early efforts to make human trafficking the subject of European level policy were headed largely by Anita Gradin, Commissioner for Justice Affairs for the European Commission and in the European Parliament by Mary Banotti, MEP from Dublin. Gradin's efforts seem to have begun in earnest in late 1995, in conjunction with growing interest in trafficking from within the European Parliament. Banotti led a fact-finding mission of several MEPs to Netherlands to assess the state of sex trafficking, and was joined by Gradin. The trip provided an opportunity to elevate trafficking as an issue that fell under the EU's purview. Gradin stated that she was "convinced that there is scope for action on our part," claiming that the "Commission has competence in a number of areas, such as the social sector, relations with countries in central and eastern Europe and

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122. IOM 1995

other third countries… we also have the possibilities within the Third Pillar."[123]

Of the three courses mentioned by Gradin—the social sector, international relations, and what was then called the third pillar—the appropriation of the so-called "social sector" by the EU that would quickly emerge as the most prominent feature of European-level attempts to combat trafficking. The most truly transnational approach to combating trafficking, acting under what was then still referred to as the third pillar of European integration—justice and home affairs— proved problematic from the beginning. Variously described as cumbersome or even non-existent by some reporters at the time, the third pillar covered areas like law enforcement and legal issues, notably extradition, that some states guard very closely. The third pillar was introduced by the Treaty on European Union in 1993 and was recently done away with in December 2009 when the Lisbon Treaty came into effect. What was formerly the third pillar of Justice and Home Affairs is now known as Police and Judicial Cooperation on Criminal Matters. Although now outdated terms, third pillar and JHA will be used at various points in this chapter when referring to historical facts and policies made when the third pillar was still in effect.

Cooperation on third pillar issues was critical to establishing a regional effort against trafficking. The question of harmonization of national anti-trafficking laws loomed large. By late 1996 as the EU member states prepared to send their representatives to the Vienna Conference only Belgium, Netherlands and Austria had domestic laws against human trafficking. On the rare occasions when other EU countries tried to prosecute a trafficking case they did so under a mix of inadequate pandering and

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123. Patrick Smyth, "Dancers required- no experience necessary," Irish Times, December 8, 1995.

prostitution statutes. Citing an illustrative example from her native Sweden, Gradin said

"In Sweden you can get 10 to 12 years in jail for serious drug crimes, but the maximum

for smuggling people is one to two years."[124] This issue was articulated formally in the

Commission's important November 20, 1996 Communication: "Traffickers will continue

to take advantage of gaps and limits of the national judicial systems unless judicial

cooperation between EU States is improved."[125]

The most thorough way to ensure full harmonization of anti-trafficking legislation

between the EU's members would have been to implement an EU-wide policy that would

have been adopted under the *acquis communitaire*. This was not an option in the 1990s

because of stiff opposition to third pillar supranationalism, most significantly from

Britain. Third pillar policies were particularly opposed by the Eurosceptic John Major

Government in the UK, which "opposed EU intervention in what it considers internal

matters—such as the security and judicial systems," and threatened to block proposed

initiatives against sex trafficking and pedophilia. [126]

Reflecting the currently understood nature of human trafficking patterns in

Europe, EU anti-trafficking policy is marked by one key characteristic: the EU's

understanding of human trafficking is very gendered. That is, because of the

preponderance of trafficking for sexual exploitation in Europe and the relatively low

incidence of various forms of slave labor (or at least the limited recognition of it), women

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124. Mark Franchetti and Peter Conradi, "Europe's Roaring Trade in Sex Slaves," The Sunday Times (London), June 9, 1996.

125. European Commission, "Communication (96) 567:Trafficking in Women for the Purposes of Sexual Exploitation; Communication from the Commission to the Council and the European Parliament," 13, http://aei.pitt.edu/6286/ (accessed April 27, 2010).

126. Stephen Bates, "Tracking EU's 'Lost' Children," Guardian, September 19 1996.

and children are perceived as being the most frequent victims of human trafficking. For this reason, human trafficking is more frequently conceptualized as a phenomenon related to gender and sexual violence. This assumption, accurate or not, has shaped the EU's anti-trafficking policies since the mid-1990s when the issue first began to gain prominence in European policy circles.

Although human trafficking assumed more prominence in 1996, its roots as an issue within European Union policy can be found in the Treaty of European Union, adopted in 1992. Trafficking was mentioned in the TEU language introducing the "area off freedom, security, and justice," or AFSJ. Title VI, Article 29 of the TEU states:

> Without prejudice to the powers of the European Community, the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia. That objective shall be achieved by preventing and combating crime, organised or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud…[127]

The mention is generic, and as is common for governmental entities around the world when they first become aware of human trafficking, it appears grouped with terrorism, arms trafficking, and other transnational crimes. As with ASEAN, or even the United States, expanding the consensus understanding of human trafficking from a criminal and law and order perspective to a more holistic one takes time. The necessity of a more holistic and multi-disciplinary, multi-sector approach was articulated a few years later at the Vienna Conference on Trafficking in Women, held in June 1996 under

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127. "Treaty of European Union," February 7, 1992, Official Journal C 191, Title VI, Article 29.

the auspices of the European Commission and the IOM. Two key points emerged from the meeting that shaped the European consensus on human trafficking for years to come. First, in pursuit of a multidisciplinary approach, the conference brought together representatives from various sectors such as universities, NGOs, police, immigration services, and parliamentary and governmental officials. Second, the conference explicitly characterized European human trafficking as a gendered phenomenon affecting primarily women.[128] These two central points, as well as other proposals and decisions from the conference were formalized in the key official communication issued from the Commission to the Council and Parliament on 20 November 1996.

The communication re-enforced and formalized the two key points mentioned above. Part I of the communication states that "trafficking in women for the purposes of sexual exploitation," is a growing crime within Europe and makes explicit the EU's then current understanding of human trafficking as a phenomenon that primarily exploited women for sexual purposes:

> Any initiative to combat this form of international crime must devote central attention to the devastating effect it has on the victims. The rights of women include their right to have control over, and decide freely on matters relating to their sexuality… free of coercion, discrimination and violence. The Communication will thus be limited to the particularly serious abuse of human rights which is involved in trafficking for sexual purposes.[129]

Further emphasizing this narrow understanding of trafficking that would inform EU policy, the communication goes on to formally define trafficking as, "the transport of

128. European Union, "Legislation Summary: 'Trafficking in women for the purpose of sexual exploitation,'" under "Employment and Social Policy, Equaltiy Between Men and Women," 'http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/l33095_en.htm (accessed April 25, 2010).

129. Commission, Communication, 1996

women from third countries into the EU for purposes of sexual exploitation."[130] This is a

primitive definition of trafficking, typical of anti-trafficking policy before the TVPA and

the Palermo Protocol codified a more sophisticated understanding of trafficking as

slavery, emphasizing the use of coercion and fraud to enslave people, rather than

emphasizing the more superficial sexual and movement aspects of the phenomenon.

Nonetheless, this "Vienna Consensus" (as I will refer to it) on human trafficking has to be

accepted as a product of its time and appreciated as the basis for increasing policy

responses over the next decade in Europe.

Other pieces of the Communication can also be identified as setting the stage for

European anti-trafficking policy, notably the emphasis on a multi-sector approach

dependent on the heavy involvement of NGOs and the tension between the need to

implement many nuts and bolts anti-trafficking measures at the national level and the

simultaneous need to address this "transfrontier" crime at the supranational level.

According to the Communication, the "main conclusion" of the Vienna Conference

was that a "multidisciplinary and coordinated approach" involving all actors was needed

to effectively tackle trafficking.[131] Special consideration was given to the role of NGOs,

saying that the Commission "attaches special importance to the work of NGOs and civil

society in combating trafficking," because of their demonstrated ability to devise

innovative ways of assisting trafficking victims.[132] This emphasis on the capabilities and

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130. Ibid.

131. Ibid.

132. Ibid.

expected role of NGOs would be central to the development of the first Community-wide anti-trafficking frameworks, STOP and Daphne, discussed below.

Also of note from the Communication was the delineation of national versus supranational activity in the early stages of the anti-trafficking fight. Likely reflecting the political impossibility of a third pillar anti-trafficking policy and the simultaneous need for national level policy harmonization, the Commission noted "a lead responsibility for the Member States," but also a need to complement national policies by initiating policy at the European level.

A September 1998 Communication from the Commission to the Council reflects the continuation of the Vienna Consensus official understanding of trafficking in Europe in the late 1990s, saying "Since the Commission's first Communication at the end of 1996 on trafficking in women for the purpose of sexual exploitation, public concern about this matter and, in the same period, international co-operation have risen considerably."[133] The continued focus on trafficking as primarily a form of gender violence is reflected when the Communication goes on to say, "In particular, the European Institutions as well as European NGOs have actively contributed, to the increase in the general awareness of this unacceptable violation of women's human rights."[134]

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133. European Commission, "Communication (98) 726: "For Further Actions in the Fight Against Trafficking in Women: Communication from the Commission to the Council and European Parliament," September 18,1998, http://aei.pitt.edu/3424/01/000575_1.pdf (accessed April 27, 2010)

134. Ibid., Communication 726

The Great Europol Controversy

One significant key to the development of transnational crime in Europe is the dissolution of internal borders brought about by the Schengen agreements in 1985 and 1990, and the institutionalization of the agreements in the Amsterdam Treaty.   Although movement must not be over-emphasized in defining the crime of human trafficking, and does not need to be present in order for an individual to have been trafficked, the physical relocation of people across borders is an obvious component of human trafficking and its cousin offense, facilitated illegal migration (people smuggling). The opening of European borders brought about by Schengen enormously facilitated the movement related aspects of human trafficking.[135] This created an area of assisted movement for criminal groups in Western, and later Central Europe, effectively acting as a major factor in the transnationalization of crime in Europe.   As a 2009 Europol fact sheet states, "the freedom of movement across the EU offered by the Schengen Convention and the EU's exposure to organised criminality has never been greater. *The removal and relaxation of internal border controls within the EU has resulted in a significant reduction in opportunities for many EU law enforcement agencies to intercept traffickers and identify victims of trafficking* (emphasis added)."[136]

If the Schengen regime benefited commerce and allowed a level of free movement appropriate to a region entering into monetary union, then it also gave transnational

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135. Agnieszka Biegaj, ed., "Ten Years of Europol," (Hague: Europol Corporate Communications 2009) 16.

136. Europol, "Trafficking in the European Union, a Europol Perspective," http://www.europol.europa.eu/publications/Serious_Crime_Overviews/THB_Fact_Sheet_2009%20EN.pdf (accessed April 29, 2010).

criminal actors a significant advantage over European law enforcement, which was still

based one level of organization lower, at the national level.   This imbalance between the

activity level of the criminals and the activity level of law enforcement meant that the

criminal elements were basically operating above the visibility, as well as the operational

capabilities, of European police forces.

　　To make matters worse, Schengen also lowered the bar for criminal entry into

transnational, or at least cross-border, activities. As the same fact sheet goes onto say,

"Before 'Schengen', only the more sophisticated crime groups could operate at a cross

border level. Thus, the absence of physical border controls provides significant

opportunities for smaller or mid-level groups and individuals to operate in more than one

country."[137] Enlargement into Central and Eastern Europe further exacerbated this

increasing regional vulnerability to trafficking, "In addition, many former 'markets' and

source countries are now part of the European Union. Other major source countries such

as the Russian Federation, Ukraine, Belarus, Turkey, Moldova, and the Western Balkans

as a region, are now one border crossing away."[138]

　　The easy intraregional movement created by Schengen functioned as a

"pull" factor in tandem with the socio-economic "push" factors in Central and Eastern

Europe, discussed previously. The freedom of movement created by the Schengen

agreements and Amsterdam contributed to Europe's vulnerability to human trafficking.

As with the dissolution of Communist Party authority in the East, politics was yet again

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137. Ibid., 2

138. Ibid., 2

creating the basic conditions under which transnational crime (among other non-traditional security threats) would develop in reach and sophistication, and further entrench itself in the socio-economic fabric of Europe. An individual studying this problem—whether a police officer, a politician, or an academic—might intuitively assume that any law enforcement response to this criminal phenomenon would have to match the criminal practice in its transnational reach. As the political debate in Europe in 1997 shows, the development of a transnational (that is, in terms more appropriate to the EU, supranational) law enforcement response to transnational crime, including trafficking, was not a foregone conclusion.

In early 1997 a debate developed concerning the nature of the powers given to the Europol Drugs Unit, which at the time was a meagerly staffed and funded clearinghouse for drug related criminal intelligence. The debate was largely conducted at the EU ministerial meeting in The Hague in April 1997. Netherlands, which held the EU Presidency at the time, called upon the ministers at the conference to take a number of steps to assist in combating human trafficking such as allowing trafficking victims to stay in the country where they were discovered in order to testify, the appointment of dedicated national rapporteurs for the issue, and that Europol should extend its mandate beyond drugs intelligence and store trafficking related information in its centralized databases.[139]

At the conclusion of the conference the ministers announced that Europol would be granted so-called "operative" powers that turned what one reporter called an "obscure

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139. "Trafficking in Women is Slavery: EU Conference," Deutsche Presse-Agentur, 25 April 25, 1997.

collector of data in the Hague [into] a force directly involved in solving crime."[140] Under

the role established for it at The Hague, Europol would be granted the authority to assist

member state law enforcement agencies by analyzing and disseminating intelligence

providing subject matter expertise, and acting as a liaison element. Journalistic hyperbole

(and the express desire of Germany) aside, Europol was chartered as anything but a

"European FBI." "Operative" was merely a bureaucratic euphemism for constrained.

Unlike the FBI, Europol would not have law enforcement agents who could operate

unilaterally throughout the EU, let alone do so with powers of arrest. Europol's role as

an information clearinghouse was greatly expanded, but Europol to this day is basically

an intelligence analysis organization which can only participate in law enforcement

activities in member states with the approval and invitation of national governments.

Moreover, unique for an organization tasked with extensive intelligence analysis, Europol

does not have its own collection assets, relying instead on information of intelligence

value that is fed to it by member state law enforcement entities.

Europol's constrained nature is representative of the concern about a truly

European police force, expressed most vocally by Britain in 1997. Then British Home

Secretary Michael Howard who claimed that the limited role for Europol was a victory,

stated that giving "'operative powers working together with national authorities,' to

Europol, as agreed in the declaration, was completely different from giving it 'operational

powers', as wanted by Germany.'"[141] Howard added, "we do not think it is appropriate

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140. Peter Conradi and Stephen Gray, "European FBI Takes First Steps,", The Sunday Times (London), April 27, 1997.

for there to be a European police force."[142]

Britain's objections to creating an operational European police force were not isolated, but reflected widespread concern among many EU countries about ceding authority in sensitive third pillar competencies like immigration and law enforcement. Concerns about ceding home authority to a supranational Justice and Home Affairs pillar are clearly represented in Europol which is a completely intergovernmental organization, entirely controlled by Member States, not Brussels.

Intergovernmentalism in Europol

Europol is intergovernmental in both its composition and mandate. Europol's roots are in article K1 of the Treaty on European Union, which mandates police cooperation on drug trafficking, terrorism and other international crime through a European police force. The Council stood up the Europol Drugs Unit in 1993 and later that year established its headquarters in The Hague. It was not until October 1, 1998 that the Europol Convention entered into force and formalized Europol's existence and role. It is Article V of the Europol Convention that truly institutionalizes the organization as intergovernmental and controlled entirely by member states, not only through its accountability to the Council, but also in its dependence on member states to approve its involvement in investigations that occur within their territory. National level control over Europol is considerable, with it being "accountable to the EU Council of Ministers for Justice and Home Affairs and governed by a Management Board composed of one

141. Ibid., Times

142. Ibid., Times

representative of each member state."[143] Moreover, the Council appoints Europol's Director and three Deputy Directors.

As an information collation and analysis organization, it is understandable that oversight of Europol focuses on its information storage. To this end a Joint Supervisory Body comprised of two representatives from each member state is tasked to ensure that "the rights of the individual are not violated by the storage, processing and utilisation of the data held by Europol."[144] The Management Board also oversees the Financial Controller who is appointed by the Management Board to monitor Europol's income and expenditures. The Financial Controller is composed of one representative from each member state and has full authority over Europol's budget and expenditures. Slightly over a hundred member state representatives are assigned to provide oversight of an organization whose full time staff, including liaison officers from member state law enforcement agencies, numbers around 630.

Article 3 of the Convention establishes Europol's core competencies to facilitate information exchange between member states, to provide full cycle intelligence support, to aid investigations by member states by providing them with intelligence, and maintain a criminal intelligence database. Extrapolating from these mandated competencies, the Management Board in 2000, "identified information exchange and operational analysis as Europol's core activities and developmental priorities."[145] This was re-iterated in 2003 in the so-called Rhodes Vision that stated, "the core business of Europol is receiving,

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143. Europol, 2009, 24

144. Ibid., Europol, 2009, p24

145. Ibid., Europol, 2009, p27

exchanging and analysing information and intelligence."[146]

Europol's management and accountability changed significantly on January 1, 2010 when Council Decision 2009/371/JHA took effect.[147] The Decision makes Europol a formal EU institution; subject to the EU's *acquis communitaire* as well as normal EU financial management, drawing its funding from the EU's general budget and thus allowing budgetary oversight from the Parliament. This will not change the powers of the organization. Europol does not have any supranational characteristics in the way that it is organized or in its mandate.

Europol's writ is intergovernmental—either bi or multilateral in nature— but not properly transnational. Because of Schengen and EMU, combined with excellent transportation and communications networks, everything from people, to money, to goods, to criminals of all varieties and levels of sophistication, can move freely in the European Union. The exception to this unparalleled freedom of movement and operations is European law enforcement and intelligence organizations. This policy imbalance will likely remain unaddressed for the foreseeable future, given the persistent sensitivity of EU Member States about ceding sovereignty on third pillar issues.[148]

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146. Ibid., Europol, 2009, p27

147. European Council, "Council Decision 2009/371/JHA, Establishing the European Police Office," April 6,2009.

148. Both the European arrest warrant, authorized by Framework Decision 2002/584/JHA and Eurojust, authorized by Council Decision 2002/187/JHA, are steps in the direction of a coordinated third pillar. However, both are purely intergovernmental in nature.

Lisbon and the EPP: Tentative Steps

The enactment of the Lisbon Treaty in December 2009 has brought with it a change that may, in the future, have an enormous impact on how transnational crime is dealt with in the European Union: the proposed European Public prosecutor.

The EPP is allowed by language in Article 86 of the Lisbon Treaty: "In order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust."[149] The EPP must be established by unanimous consent in the European Council, with consent of the European Parliament, or failing that, by an "enhanced cooperation" procedure between the Council, Commission, and Parliament.[150] Currently, the EPP is only a proposed agency.

Although the EPP, once established, could pave the way for supranational action against a variety of transnational crimes, it was initially proposed to specifically "combat crimes affecting the financial interests of the Union."[151] Extending the EPP's writ to other transnational crimes would require revisions to paragraphs one and two, following the same unanimous consent procedure in the Council that was required to establish the office in the first place. Although the language in Lisbon allowing for the establishment of the EPP is a significant step toward addressing the imbalance between the supranationalism of crime and law enforcement in the EU, it is important not to overstate

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[149]. Treaty of Lisbon, Article 86, http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri= OJ:C:2008:115:0047:0199:EN:PDF

[150]. Ibid., Article 86

[151]. Ibid., Article 86

the significance of Lisbon's adoption for the battle against transnational crime in Europe.

STOP and Daphne

The emphasis on trafficking that emerged in 1996 was not mere talk; 1997 proved to be a busy year for European Union anti-trafficking policy. True to the distinction made between national policy to be enacted at the individual Member State level, and transnational policy to be enacted at the European level, the Commission and Parliament started two distinct anti-trafficking programs in 1996-1997. Both programs adhere very closely to the 1996 Communication's recommendation for multidisciplinary and coordinated action between all relevant players in the anti-trafficking community, reflecting the Vienna Consensus.

STOP (Stopping Trafficking of Persons) was adopted by Council Joint Action Initiative 96/700/JAI on 29 November 1996[152] to "encourage practical cooperation between Member State authorities for action against trafficking in humans and the sexual exploitation of children, by financing activities involving judges, public prosecutors, police departments, immigration officials, civil servants and other concerned public services."[153] From early on, the STOP program was weighted toward programs focused

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152. European Commission, "Commission Staff Working Paper, Third Report of the Commission to the European Parliament and the Council on the Implementation of the Grotius, STOP, and Oisin Programmes," http://ec.europa.eu/justice_home/funding/expired/guidelines/2002/reporttotal_1999_en.pdf (accessed April 14, 2010).

153. European Commission, Committee on Civil Liberties and Internal Affairs, "Report on the Communication from the Commission to the Council and the European Parliament on Trafficking in Women for the Purpose of Sexual Exploitation (the Waddington Report)," http://www.europarl.europa.eu/sides/getDoc.do;jsessionid=98BE2C0DF2D8A9CDF7EFBE8BB0EAF11B.node1?pubRef=-//EP//TEXT+REPORT+A4-1997-0372+0+DOC+XML+V0//EN&language=EN (accessed

on stopping child trafficking at the expense of programs countering broader human trafficking, leading the Commission's Rapporteur on trafficking to express concern about the neglect of other kinds of trafficking.[154]

Accompanying and augmenting STOP and STOP II were the Daphne Initiative and Programmes. The Daphne Initiative was authorized by the European Parliament in 1997 with an initial budget of 3 million euros and ran from 1997 to 1999. In 2000 the Initiative was replaced by the Daphne Programme, a much more robust piece of policy which was allocated 20 million euros for the 2000-2003 period. The Daphne Initiative adhered very closely to the 1996 emphasis on recruiting civil society into the anti-trafficking fight, limiting its grant disbursements to NGOs. This changed with the introduction of the Daphne Programme in 2000, when local public agencies were also allowed to apply for Daphne money as project leaders rather than just partners. Additionally, in recognition of the fact that regional trafficking was not bound by the EU's borders, EFTA/EAA and CEEC countries could also apply for Daphne Programme funding.

Intended to complement the STOP and AGIS programs that focused on human and child trafficking at the national level, Daphne sought to establish "networks at European level between NGOs and promoting co-operation between NGOs and the appropriate authorities," exchange information and best practices, and raise public awareness. What separates Daphne from its sister programs at the Member State level is a very broad mandate that is not limited to trafficking at all. Daphne explicitly targets all

April 14, 2010).

154. Ibid., Report, Section 5.1, 1997

kinds of violence, not just sexual violence whether linked to human trafficking in the EU, or not. Daphne's linkage to trafficking should be viewed as the funding that it provides to NGOs that support the rehabilitation and reintegration of victims of violence, notably victims of human trafficking. This role coincides well with the victim centered approach that was gaining prevalence in Europe in the late 1990s and that would be simultaneously codified by the both the US and the UN in 2000, though a mandate to cover rehabilitation was only added after the 1997 Rapporteur's report criticizing its initial absence.

By the time Daphne II drew to a close in 2004, over 40 million euros had been spent funding 303 programs, staffed by hundreds of workers from all sectors of society, and assisting untold thousands of people in and outside of Europe. Although a seemingly impressive program, it is not Daphne's accomplishments that this paper is concerned about, but its character as a policy set. Daphne is an inherently supranational policy set. The Daphne Initiative in 1997 was ushered into existence under the leadership of European Commissioner Anita Gradin, in response to a widespread and heightened awareness of violence against women—and following the high profile murders of young girls in Belgium in 1996—also of children. Nestled with this broad concern about violence toward women and children was the more specific, but still nascent, awareness of human trafficking of women and children for the purposes of sexual exploitation within Europe.

Introduced by Gradin under the Commission's Justice and Home Affairs competence, the Daphne Initiative sought to bring together NGOs from at least two Member States in a conscious effort to make the resulting project transnational. The

Commission's goal with Daphne was not just to create programs in more than one Member State at a time, but also to create programs that would develop a Europe-wide capacity to gather information on violence against women and children and establish best practices. The Community-wide focus of the Initiative and Program can be seen in 2 of the 4 goals of the 2000-2003 Daphne Program, which sought to "extract and deduce policy issues, wherever possible, from the work achieved by funded projects, with the aim of suggesting common policies on violence at Community level," and to "disseminate, on a Europe-wide scale, good practices."[155]

A pan-regional character for Daphne and its funded programs was consciously sought after by the Commission, and submissions for funding were judged on whether or not they were sufficiently transnational, or European. A statement from a 2004 EU policy review document titled "The Daphne Experience" clearly illustrates this strong desire to develop transnational institutions under a supranational authorization: "Submissions continued to fail because they were local and did not attempt to explore the potential of 'European-ness'. However, those projects that did make efforts to 'be European' achieved some success and, as monitoring visits, final reports and evaluations demonstrated, there began to be a growing understanding of the value of truly 'European' action."[156] "The Daphne Experience" report went on to say that, "Although much remained to be learned about what being a 'European project' entailed, *there were clear signs by 2000 that many organisations had grown, as a result of Daphne support, into*

155. European Commission, Commission Final Report to the European Parliament and the Council on the Daphne Program 2000-2003 (Brussels: Commission, 2004).

156. European Commisson Directorate for Freedom, Justice and Security, The Daphne Experience (Brussels: Commission, 2005).

organisations whose impact was European rather than national or even local [emphasis added]."[157] This is a significant statement because it indicates that transnationally focused, issue-oriented policy was developing a transnational, non-governmental response capacity where none had previously existed. Daphne's purpose of developing a European response to violence against women (and its related topic of trafficking) was apparently successful.

Daphne III was authorized by the European Council and Parliament in June 2007 by Council Decision 779. The program will run through 2013 as a subsidiary portion of the broader Fundamental Rights and Justice General Programme. As with its three Daphne predecessor programs, Daphne III seeks to "to contribute to the protection of children, young people and women against all forms of violence."[158] As before, human trafficking is viewed as one especially serious form of violence, among many, and as before the crime is viewed as a primarily gender-based phenomenon, "the estimated number of trafficking victims in the EU is over 100.000 per year, and 80% of these are women and girls."[159] Additionally, the Commission's efforts to ensure a community-wide policy also continued, and were reflected explicitly in language in Decision 779:

> Since the objectives of this Decision, namely to prevent and combat all forms of violence against children, young people and women, cannot be sufficiently achieved by the Member States because of the need for an exchange of information at the Community level and for the Community-wide dissemination of good practices, and can be better achieved at Community level due to the need for a

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157. Ibid.

158. European Commission, "Prevent and combat violence against children, young people and women and to protect victims and groups at risk," http://ec.europa.eu/justice_home/funding/daphne3/wai/funding_daphne3_en.htm (accessed April 10, 2010)

159. Ibid.

coordinated and multidisciplinary approach and by reason of the scale or impact of the programme, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives.[160]

Daphne III was a specific program that itself was part of a larger policy effort in 2007, the General Programme called "Fundamental Rights and Justice." Other General Programmes were also approved by Council decision in 2007, notably the General Programme on Security and Safeguarding Liberties, and its subsidiary Specific Programme for the Prevention of and Fight against Crime in Council Decision 2007/125/JHA. Decision 125 recognized transnational crime, like violence against women and children, as a problem requiring concerted action at the Community level to supplement and harmonize individual Member State policies. In language very closely mirroring Decision 779, the Council writes:

> Since the objectives of this Decision, particularly the prevention of and the fight against organised and transborder crime, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or impact of the programme, be better achieved at the level of European Union, the Council may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty establishing the European Community, made applicable to the Union by Article 2 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in Article 5 of the Treaty establishing the European Community, this Decision does not go beyond what is necessary to achieve those objectives.[161]

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160. European Parliament, "Decision 779/2007/EC," http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007D0779:EN:NOT (accessed April 14, 2010). Decision No 779/2007/EC of the European Parliament and of the Council of 20 June 2007 established for the period 2007-2013 a specific programme to prevent and combat violence against children, young people and women and to protect victims and groups at risk (Daphne III programme) as part of the General Programme Fundamental Rights and Justice, 20 June 2007.

161. European Council, "Decision 2007/125/JHA," http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:058:0007:0012:EN:PDF (accessed April 14,

Human trafficking was not always divorced from a transnational crime context the way it was in the Daphne policy sets. In a 2007 Council decision, human trafficking is mentioned as a type of transnational crime. Article 2 of Decision 125 explicitly mentions human trafficking as a subject of the Fight Against Crime Special Programme, saying: "The Programme shall contribute to a high level of security for citizens by preventing and combating crime, organised or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud.[162] The Fight Against Crime Special Program was intended by the Council to replace the AGIS program. Given its birth as a council product, the intent of the Special Programme is very much one of intergovernmental coordination.[163] Despite this, elements from supranationalism did creep into it.

Daphne language is further repeated in the Fight Against Crime decision in subsequent articles, for instance Article 4b states that: "transnational projects, which shall involve partners in at least two Member States, or at least one Member State,"[164] and Article 4d states that "operating grants for non-governmental organizations pursuing on a non-profit basis objectives of the Programme on a European dimension."[165]

Decision 125 almost exactly mimics the multi-sector and multidisciplinary

2010).

162. Ibid., 2007/125/JHA, Article 2, 2

163. European Council, "Specific programme: preventing an combating crime (2007-2013)," http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_organised_crime/l33263_en .htm accessed May 31, 2010)

164. 2007/125/JHA, Article 4-1(b), 3

165. 2007/125/JHA, Article 4-1(d), 3

language of the previous Daphne authorizations in Article 5, stating "the Programme is destined for law enforcement agencies, other public and/or private bodies, actors and institutions, including local, regional and national authorities, social partners, universities, statistical offices, non-governmental organisations, public-private partnerships and relevant international bodies."[166]

Finally, like the Daphne and STOP programs, the Fight Against Crime Special Programme would also be monitored by the Commission and assessed for effectiveness, as mandated in Article 15:

> 1. The Programme shall be monitored regularly in order to follow the implementation of activities carried out there under.
> 2. The Commission shall ensure regular, independent and external evaluation of the Programme.
> 3. The Commission shall submit to the European Parliament and the Council:
> (a) an annual presentation on the implementation of the Programme.[167]

Human trafficking, while not the subject of its own exclusive piece of policy at the European level, is none the less addressed by the EU— Commission, Council, and Parliament—in a continuous and gradually expanded fashion from 1997 onwards, following the subject's serious introduction into EU policymaking after the 1996 Vienna Conference. The EU's view off human trafficking may be criticized for its heavy and intentional gender bias, though this gender bias should not be assumed to be an attempt to ignore male victims of trafficking in Europe. On the contrary, the female-oriented bias in EU anti-trafficking policy reflects what is widely assumed to be the disproportionately

166. Ibid., 2007/125/JHA, Article 5-1, 3

167. Ibid., 2007/125/JHA, Article 15, 6

gendered nature of human trafficking in Europe where approximately 80% of victims are assumed to be women enslaved for purposes of sexual exploitation. In light of this, the gender bias that exists in EU anti-trafficking policy may be largely explained. Nonetheless, this female focus does risk institutionalizing a permanent underestimation of male victim hood in Europe and should be questioned accordingly.

The second notable feature of the EU's anti-trafficking policy is that it clearly understands human trafficking as a transboundary issue affecting all of Europe. Brussels seems to understand that looking at trafficking only as a national issue removes it from its inherently transnational context and makes a full appreciation of the crime's scope impossible. The information sharing and best practices exchanges conducted under STOP and Daphne auspices are a direct attempt to prevent this tunnel vision and to ensure that a field-tested corpus of best practices is available throughout the region, for the benefit of all practitioners in the fight against trafficking.

Third, the EU's understanding of human trafficking and its approach to fighting it has been from the start a multidisciplinary and multi-sector effort that recruits expertise from all quarters of society to fight trafficking. This approach should be viewed as a strength in any effort to combat a crime that is as famously nebulous and variable as human trafficking. The European multidisciplinary approach also makes sense in light of this paper's understanding of human trafficking (and non-traditional security threats in general) as a subject that can fruitfully be analyzed from multiple academic perspectives.

Related to the third characteristic, is the central role that NGOs play in European anti-trafficking efforts. As in other regions, European NGOs represent a deep well of

practical expertise on human trafficking (and all forms of social violence, as included in the Daphne model). Moreover, NGOs are geographically dispersed and expert in the intricacies of socio-criminal patterns in their locale. By funding the activities of these local actors (though across borders, as required by Daphne rules) the EU is able to conduct direct action without developing a massive bureaucracy at local levels for the execution of one policy set. NGOs give the European anti-trafficking response agility and specificity. The NGO-centered response of the Daphne policy sets is also a way for the Commission to successfully develop a supranational response to a transnational problem.

An Unresolved Question of Causality

It is plausible that the Commission was actually the transnational entrepreneur here, creating a civil society-led mechanism of transnational governance. Put differently, the Commission knew full well that it did not have the mandate or means to create supranational governmental mechanisms to address a transboundary security problem like trafficking, so it recruited an innocuous proxy who could simultaneously raise awareness of the problem, (thus generating pressure on national level authorities to act) and also offer the means of action in the form of NGOs funded with Commission money. Concurrence with this Commission-presented course would be inescapable for the national governments: the Daphne model of NGO recruitment offered a "solution" to the problem which required neither direct action (that is, funding) from the Member State, nor acquiescence to Commission supranationalism creeping into the ever-sensitive third

pillar.

A conceptual re-arrangement along the lines of the kind described by Keck and Sikkink did take place in Europe in 1996 on the issue of human trafficking. Sorting out who led the conceptual re-arrangement, or change of discursive positions, on trafficking that seems to have taken place in 1996 is difficult, and is complicated by the way the issue was pushed from within the EU's Commission, and to a lesser degree Parliament, by Justice Commissioner Anita Gradin and MEP Mary Banotti, respectively. Gradin's apparent claims to ownership of the Vienna Conference provide little indication that she was convinced or pushed by advocacy networks:

> A year and a half ago, I organised a major conference in Vienna on Trafficking in women, in co-operation with the International Organisation of Migration and the Austrian government. Representatives from all governments in the European Union, as well as the applicant states, participated, together with non-governmental organisations, experts and researchers. The recommendations from this conference served as a basis for the Commission's Action Plan against Trafficking in Women for Sexual Exploitation, that was presented in November last year.[168]

The presence of NGOs is not being denied, but the question of their policy initiation is. In a different press release Gradin said, "The project DAPHNE is running for the first year. It is intended for non-governmental organisations working against violence and exploitation of children and women. We have met with an enormous interest, and have barely been able to support ten per cent of all applications. To me, this shows the need of the activities of the NGOs in this field."[169] Again, NGOs are present

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168. Anita Gradin, "Speech at the Vienna Conference," (speech, Conference on Trafficking in Women, Vienna, June 10, 1996).

and highly valued, but they are portrayed as responding to opportunities offered them by

the Commission, and not necessarily driving the creation of those opportunities.

The question of initiative is key here; the EU under Gradin's own advocacy seems

to have demonstrated a lot of initiative to tackle a problem that it had been struggling to

understand for the previous five years. This does not seem to be a case of an advocacy

network having to generate interest in policy makers by arousing popular anger over the

issue. A more cooperative dynamic was probably in effect, perhaps even a symbiotic

relationship where the European Commission and the NGOs used each other's means to

effect a transnational policy response that would not have been possible with purely

governmental or non-governmental means.

Final Thoughts on Functionalism in the EU Response

The EU's anti-trafficking policy response is a bit of a phenomenon in of itself.

Superficially, the EU's anti-trafficking response, dominated as it is by the STOP and

Daphne policy programs, might seem to miss the mark on being suitably functionalist.

This judgment might be made by an observer who notes that the Commission itself does

not directly employ or control the people who do the bulk of anti-trafficking work at the

European level. This would be inaccurate. A deeper consideration of the EU's

recruitment of civil society as the proxy by which Commission money is spent to combat

trafficking (among other ills) is perfectly consistent with Mitrany's assumption that

issues lacking political, ideological, or conflictual aspects would be handed over to

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169. Anita Gradin, "Trafficking in Women," (speech, Conference of the International Association of Women Judges, Rome, 28-29 November 1997).

technical specialists. There is no requirement that these technical specialists be government employees. The key to functionalism is simply that the people with the necessary specialist knowledge to address a given problem be tasked with doing so. This has plainly happened in Europe. The pool of specialist knowledge required to assist victims of trafficking was found in the "social sector." The recruitment of this civil society expertise has given the EU the kernel of a regional anti-trafficking response, and should be recognized as a fine policy accomplishment.

However, the civil society-as-proxy response is only half of the equation. Admitting the usefulness of the civil society response does not mean ignoring the enormous gap that exists in the law enforcement end of the anti-trafficking response. Right now the EU really only has a regional policy set to address what happens after people are trafficked. As long as a European FBI remains politically impossible, the criminals will have the upper hand, and options to prevent, let alone decrease human trafficking in Europe will be sharply limited. This is a failure of supranationalism and integration, but not necessarily a refutation of functionalism. Europol, though lacking sufficient mandate to capture or kill traffickers, is nonetheless a steadily developing pool of apolitical technical specialists engaging in highly technical work. Moreover, if their writ is limited, it is still solidly transnational and regional. Functionalist principles have been applied where political actors in Brussels have found it possible to apply them. Europol's evolution is not complete, but its nearly twenty year lifespan so far does seem to reflect Mitrany's expectations that functional cooperation would expand in response to the ever increasing difficulties of modern political life.

Advocacy Networks As a Model for EU Anti-Trafficking Policy

The policy history and characteristics discussed above are consistent with the basic expectations of Mitranian functionalism. However, the prominence of non-governmental organizations in the development of the EU's regional anti-trafficking policies seemed to offer an interesting opportunity to try to apply a less well-known and narrower, more specialized model. The concept of transnational advocacy networks is discussed at length by Margaret Keck and Kathryn Sikkink in their 1998 book *Activists Beyond Borders: Advocacy Networks in International Politics*.

Keck and Sikkink define these advocacy networks as "networks of activists, distinguishable largely by the centrality of principled ideas or values in motivating their formation."[170] These networks are assumed to be of significance internationally and domestically, because by "building new links among actors in civil societies, states, and international organizations, they multiply the channels of access to the international system."[171] According to Keck and Sikkink these networks and their component actors, fall outside of the rationalist expectations of liberal internationalism because they are motivated by deeply held ethical values rather than wealth, power, professional esteem, or other rationalist motivations.

A characteristic of the advocacy networks that aligns with the human trafficking policy situation in Europe in the 1990s is that "a transnational advocacy network includes those relevant actors working internationally on an issue, who are bound together by

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170. Keck, Margaret and Sikkink, Kathryn, Activists Beyond Borders: Advocacy Networks in International Politics (Cornell University Press, 1998), 1.

171. Ibid., 1

shared values, a common discourse, and sense exchanges of information and services. Such networks are most prevalent in issue areas characterized by high value content and informational uncertainty."[172]

Information uncertainty certainly characterized the debate about human trafficking in European policy circles in the early and mid-1990s. Definitions of human trafficking were not standardized, and as discussed above, often non-existent. Human trafficking was irregularly and incompletely separated from smuggling. The link between sex trafficking and legal sex industries, for instance in the Netherlands, was not fully understood, as evidenced by pushes to legalize prostitution. Some European national governments did not even recognize human trafficking as a widespread criminal phenomenon. Informational uncertainty contributed on the supply end of the trafficking routes as well. The young women who were most vulnerable to being trafficked in the early 1990s were often too isolated in their post-Soviet societies to be aware of the threat that was targeting them.

High value content can be understood as the degree to which values-based judgments inform debate about a given issue. Human trafficking is unquestionably a high value content topic in the sense that a number of non-controversial normative value statements are associated with it. For instance, few people would question normative statements condemning slavery, rape, sexual abuse, and brutal workplace environments. Few people would disagree with the general assertion that such wrongs should be combated. The high value content of an issue like human trafficking gives activists a

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172. Ibid., 2

stable moral high ground from which to work, and an easy source of leverage which they can use to influence policy makers. No politician or bureaucrat wants to be known for resisting policy action that would help rape victims or child laborers. The value content of an issue like human trafficking and its associated evils of rape and slavery likely keep it alive as a policy issue despite the apparent difficulty of making policy that effectively combats it.

As communicators, activists raise awareness of issues that may not have visibility in policy circles or that may not be uniformly understood by policymakers. Advocacy networks "contribute to changing perceptions that both state and societal actors may have of their identities, interests, and preferences, to transforming their discursive positions, and ultimately to changing procedures, policies, and behavior."[173] In the context of 1990s Europe this transformation of "discursive positions" occurred at the June 1996 Vienna Conference that was sponsored by the European Commission and the IOM. What I have termed the "Vienna Consensus" emerged as a commonly held understanding of human trafficking by European-level policy makers, which went on to directly inform the specifics of policymaking in the following years.

On a related point, "activists interpret facts and testimony, usually framing issues simply, in terms of right and wrong, because their purpose is to persuade people and stimulate them to act."[174] Persuasion is an important, even central, aim for most NGOs, and for all activists. Keck and Sikkink provide an example of how women's rights activists in the mid-1970s were able to reframe the then unknown practice of female

173. Ibid., 3

174. Ibid., 19

genital circumcision into "female genital mutilation," thus invalidating the practice as a cultural or familial prerogative and recasting it as an act of sexual violence against women. Such a level of conceptual rearrangement and persuasion was also necessary in clarifying the trafficking phenomenon for Western policy-makers in the 1990s.

A key act of the conceptual rearrangement was separating human trafficking (or more narrowly, in the European context of the time, sex trafficking) from voluntary illegal migration, or smuggling. A specific policy argument that developed from this goal was to allow trafficking victims (women in the case of the discussion then) to remain legally in the destination country to receive rehabilitation assistance and to testify against their victimizers. These concessions would not have been available to a smugglee, but were argued to be due to victims of severe and traumatic violence from traffickers. Such concessions are a universal standard today, owing to their codification in the UN's 2000 Palermo Protocol. This previously "unheard" issue was injected into policy-making consciousness by NGOs and activists, who worked in rehabilitating trafficking victims and expressed policy wishes based on difficulties they had encountered in caring for their charges.

That a conceptual rearrangement took place at Vienna seems fairly clear, but we may be erring in ascribing this too much to the participation of advocacy networks and their discourse changing activities. By assuming the applicability of Keck and Sikkink's model to the human trafficking issue in Europe, we may be supposing a level of NGO or activist entrepreneurship that was not present in the EU in the early and mid-1990s. We may be facing an issue of causality. Did the way the EU structured its Daphne policy set

recruit NGOs and activists who had previously been either passive or unorganized (or non-existent), or did the Commission structure Daphne specifically to recruit an already latent and semi-developed pool of expertise and labor into transnational governance activities?

The pre-existing transnational nature of the NGOs in 1997 may be somewhat called into question by the fact that many of the first wave of applications for grant money were turned down for failing to meet the Commission's explicit criterion that the proposed work be "transnational" (or at least multi-state) in nature. Did the dangling carrot of EU money in fact prompt the development of international linkages and transnational competency where neither had previously been very developed? If so, this would not be entirely congruent with Keck and Sekkink's hypothesis.

Chapter Five: Conclusion

Trafficking, perhaps more than other types of transnational crime, seems to be perfectly nebulous, a blob that sprawls across borders, regions, and continents, slipping through whatever cracks exist in governance and latching onto whatever weakness or wants may make a person vulnerable. Given this complexity and nebulousness, trafficking has steadily expanded itself as the 21st century's modality of slavery, with little regard for the increasingly sophisticated and coordinated responses from more and more states and their non-governmental partners. If supranationalism in governance (or government, perhaps) is a variable that will one day stem the growth of this transnational threat, it may still be a while coming. The only firm conclusion that this paper can draw about the efficacy of supranational governance as a way to thwart this transnational threat, is that the mechanisms of supranationalism (primarily governmental) will need to develop more first.

In so far as Daphne is basically a transnational policy set that was initiated and funded by the EU's supranational bureaucracy—the Commission—then some of the expected supranationalism-transnationalism symmetry discussed in the introduction is present in the EU's policy response to human trafficking. However, this symmetry is incomplete because it extends only to policy that deals with human trafficking after the fact. The supranational response does not extend to a preemptive set of policies, which in this instance would basically center on law enforcement activity. If this null finding fails to support the hypothesis, it at least does not contradict or invalidate it. In fact if there is a

demonstrated shortfall in the expected degree of policy supranationalism, and this shortfall is linked to the failure to curtail the threat, then hypothesis remains a valid open question. The hypothesis can apparently only be conclusively supported or invalidated by the actual implementation of a supranational law enforcement response in the EU, or someday, even ASEAN.

The recruitment of civil society by the EU in order to execute technical, issue oriented actions has been shown to be a useful way to work around member state concerns over ceding authority to the EU on certain issues. Civil society functionalism is a kind of functionalism by proxy, and has been a valuable and interesting development in the EU's supranational governance.

Functionalism by proxy may be similarly useful to ASEAN. Because of ASEAN's still strict norm of non-intervention, it is difficult to imagine member states supporting a "Southeast Asian FBI," for instance. Just as a European one was sharply opposed in the 1990s. It is not difficult to imagine a more economically and financially integrated ASEAN, a decade or two in the future, finding the same kind of limitations on functional cooperation that the EU faces today. Truly difficult and sensitive issues will not be able to be depoliticized enough to transfer from the national-political to the transnational-functional.

ASEAN, which may always have a more acute supranationalism deficit than the EU, may find that formalizing the large amount of non-governmental expertise and capability latent in the region could provide it with regional governance tools with which to address transnational threats. If we hope that ASEAN can duplicate some of Europe's

success with the functionalism by proxy model, then we can also expect them to encounter many of the same limitations.

Even though the paper's hypothesis was not supported by the research and findings, this paper still successfully tested the hypothesis. The null result suggests that a higher degree of supranationalism in regional governance is not, by itself, sufficient to ensure a commensurately supranational response to a transnational security threat. In hindsight, the expectation of the supranationalism dividend was overly simplistic. Supranationalism has to exist in key areas of functional cooperation. It must be targeted.

This paper was also intended as a partially exploratory effort to link transnational policy issues to correspondingly transnational governmental responses, or to the apparent lack thereof. The misalignment between state-based regional responses to transnational security threats and the cross-border nature of these threats is an important question raised by this paper. The capacity for transnational threats to thrive and grow in scope and severity in the face of *national* efforts to counter them raises the important question of the necessity of developing supranational governance. An implied question is whether the runaway nature of many transnational security threats is an early signal event of the coming obsolescence of nation-states. That is a very big conceptual leap to make based on this paper, but it is one that I have thought about throughout this project.

The writing of this paper also uncovered several potentially fruitful avenues for further research. The question of supranational governance by proxy was raised by the apparent reliance of the EU on non-governmental and/or activist groups to do much of the day to day, practitioner level work in addressing human-trafficking (among other

social ills) through its Daphne series of policies. NGOs may be studied as a "shortcut" to transnational governance that sidesteps the issues of sovereignty that complicate the imposition of supranational governance by governmental, formal means. Due to the highly technical nature of non-traditional security threats, it is also possible that the subject matter experts required of functional cooperation will be found increasingly in non-governmental organizations. If this were the case then NGO recruitment and partnership by regional governmental organizations could provide a way to combat not only trafficking, but also other non-traditional security threats. An even more interesting question is if the future of functional cooperation will be more and more non-governmental in nature.

The EU case, specifically the issues surrounding Europol's blocked expansion in 1997, also raised the tension between wanting to fight transnational threats and the anxiety that states feel over surrendering the necessary competencies to create a supranational response to these threats. Threats, whether from criminals or pollution, exist without regard for state borders or jurisdictions. States (and their citizens) will be at a disadvantage until they learn to respond in kind. How states will reconcile their precious sovereignty with an increasingly apparent need to disregard it is a question that will remain relevant and pressing for decades to come.

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