# The UNODC and the Human Rights Approach to Human Trafficking: Explaining the Organizational (Mis)Fit

by Jean-Pierre Murray

*There has been intensive debate about the framing of human trafficking with scholars such as Janie Chuang and Elizabeth Bruch arguing it was ill-conceived to treat a predominantly human rights issue in a Protocol to the Convention on Organized Crime, under the aegis of the United Nations Office on Drugs and Crime (UNODC). This paper explores the alleged organizational misfit and addresses whether it has been detrimental to the pursuit of a human rights frame. The paper uses a functionalist theoretical lens in conjunction with theories of IGO bureaucracies to examine the creation and evolution of functional organizations to respond to global transformations. The case study uses primary and secondary sources to trace the emergence of trafficking as an agenda item contextualized in broader developments in organized crime, as well as the creation of the UNODC to facilitate a coordinated response. It explores factors shaping the organization and its agenda, and assesses its suitability for addressing trafficking-related human rights issues. The UNODC is presented as an example of dynamic organizational changes indispensable to the ever-changing global governance sphere. An examination of its pursuit of a human rights frame for trafficking demonstrates how organizations shape their own agendas and adapt to suit new contexts and issues with which they deal.*

**Introduction**

Human trafficking, long considered an issue falling under international human rights law, was dramatically framed as of the mid-1990s as a form of transnational organized crime requiring law enforcement and criminal justice responses. This frame is however contested, and critics ranging from scholars to Non-governmental Organizations (NGOs) and Inter-governmental Organizations (IGOs) have decried the lack of attention to the significant human rights abuses directly associated with human trafficking. Furthermore, there is well-founded concern that it was ill-conceived to treat a human rights issue in a Protocol to the Convention on Transnational Organized Crime, under the aegis of an office whose primary responsibilities are crime prevention and drug control – the United Nations Office on Drugs and Crime (UNODC).

This paper sets out to investigate the assumption that there is an organizational misfit which would be detrimental to the pursuit of a human rights frame. Starting with a functionalist theoretical framework, and engaging with theories of IGO agency – in particular, IGO bureaucracies – this paper demonstrates how the UNODC emerged as an actor almost simultaneously with the emergence of transnational crime as a salient issue on the international agenda. Firstly, the paper reviews the literature on functionalism, then seeks to place the framing of trafficking into the broader context of developments in organized crime in the late 1980s through to the 1990s. This is followed by an analysis of the agenda-setting and issue framing which ultimately brought human trafficking on the agenda of transnational

organized crime. It is argued that contrary to the assumption that trafficking was reframed as a criminal justice rather than human rights issue, there had always been a dual frame of trafficking with one or the other being emphasized depending on the context. The remaining sections of the paper explore the organizational development that led to the creation of the UNODC, and by focusing on the factors driving this organizational development, the paper ultimately assesses the appropriateness of the organization for the human rights approach to human trafficking.

**Review of Functionalism**

The literature on functionalism paints a picture of a theory that has already seen its apical days and has declined in relevance. Works largely coalesce around two key authors and two major processes of international organization in the 20th century. The work of David Mitrany serves as an illustration of traditional functionalism which has largely focused on the processes of international organization linked to the specialized agencies of the United Nations System and its predecessor, the League of Nations, and the pacifying effects they have on international relations. Neofunctionalism leans heavily on the writings of Ernst Haas and was closely linked to the unification of Western Europe. Consequently, it has dealt predominantly with questions of regional integration, proposing that through functional cooperation issue entanglements result in spill over into other domains leading to both wider and deeper integration. The linchpins of these two schools are the notions that international organizations are desired for their function, that their design flows organically from function, and that they will socialize states into cooperating in an increasing number of issue areas, which ultimately will lock them into peaceful interdependence.

However, although there seemed to have been a spike in the use of functionalism since the 1950s, interest in the theory has waned since the latter decade of the 20th century. In fact, whereas comprehensive texts on International Organizations argue that functionalism is a core theory, they dedicate very little space to exploring it and invariably focus on Mitrany and Haas without evoking other scholars who have contributed to this theory (Archer 2014; Barkin 2015; Karns, Mingst and Stiles 2015). This may be the result of a chronic dependence on these works in the literature in general.

*Key Propositions of Functionalism and Neo-functionalism*

There are two broad approaches which may be called traditional functionalism and neofunctionalism. Functional international organization is a process that arises from the growing incapacity of the state to respond to all the welfare demands of its population, as well as from the opportunities which technology presents for cooperation (Mitrany 1948, 1966; Goldmann 2002). Starting with economic and social issues and ignoring the political issues, functional organizations would be apolitical and would offer technical solutions to technical problems (Mitrany 1948, 1966; Goldmann 2002; Barkin 2015; Karns, Mingst and Stiles 2015). Ultimately, through the web of functional international organizations (peace by pieces) and through the bureaucratic spill overs (peace by planning), a ripple effect will result in ever widening cooperation, and increase peaceful relations (Kihl 1963; Mitrany 1966).

Traditional functionalism has at least four key propositions. Firstly, states create international organizations because there is a need for functional governance, which is a kind of deterritorialization of welfare-creating functions, linking authority to specific activities performed by specialized institutions rather than by national governments within sovereign



territories (Mitrany 1948, 1966; Taylor and Groom 1975). Functionalism followed a technical demand for international governance and proposed that technical institutions would become agenda centers for advancing functional integration (Barkin 2015). Secondly, there is the principle of action and performance, based on the idea that international organizations facilitate peace through coactivity of states rather than through coexistence. The organizations matter because they perform some well-needed action, and are supposedly effective because they use technical expertise to tackle specific technical problems (Mitrany 1948, 1966; Haas 1964; Taylor and Groom 1975; Kim 1984). Thirdly, there is the principle of natural selection of common interest whereby international organizations are developed around common interests rather than politically divisive issues, creating the proper means of attaining particular end goals. Thus, the mandate of the organization is dependent on the problem at hand (Mitrany 1948, 1966; Taylor and Groom 1975; Jacobson, Reisinger and Mathers 1986). Finally, there is the principle of technical self-determination – form follows function. Functional action will naturally lead to the formation of the kind of institutional machinery it requires – structure and procedure evolve from the function of the organization (Mitrany 1948, 1966; Taylor and Groom 1975; Kim 1984).

Neofunctionalism, however, is sceptical of the apolitical nature of traditional functionalism and suggests that functional organizations deal with both technical and political problems. Cooperation in areas of common interest spills over into other areas and ultimately leads to the formation of a political community (Haas 1964; Heathcote 1975; Moravcsik 2005). Functional integration is a product of interest politics – states construct an idea of "the common good" based on individual interests, and try to find convergences among these interests. Therefore, functional cooperation does not always arise in an easily identifiable technical area since issues are often contested and defining the problem is a political process of interacting and competing interests. Governance patterns can evolve within existing organizational structures without necessarily resulting in new organizations, and organizations can also take political leadership in shaping the process of integration and determining the areas for further cooperation (Haas 1964; Barkin 2015).

Recognizing that cooperation could still be a contested space, neo-functionalism suggests that integration should start with social and economic tasks first and it would gradually spill-over into the political. Incremental decision-making takes priority over grand designs, and as cooperation takes place in narrow issue areas, more controversial, system-transforming policies emerge, and may ultimately result in the emergence of a new central authority (Haas 1971). This was certainly the case with European integration which started with cooperation in the areas of coal and steel, and subsequently spilled over into areas such as agriculture and trade. Institutional structures such as those of the European Community and their decision-making processes provided frameworks for elite behavior, including both political actors and civil servants. Integration was centred around a procedural consensus which allowed states, civil society actors, and institutions to pursue their interests through commonly agreed upon frameworks. Another key point is that civil society actors could now pursue their interests at the international or supranational level through these organizations, rather than just lobbying their national governments (Haas 1964, 1971; Nye 1971; Heathcote 1975; Taylor 1983).

*Functionalism in Practice*

Whereas there was a systemic, constitutional dimension to the United Nations system (Onuf 1994; Ikenberry 1998), there was also more generally a clear functionalist logic in the development of IGOs in the 20th century. Most took on functionalist economic tasks, consistent with the logic of tackling the social and economic tasks first. There was also an increase in the number of special purpose organizations, as well as organizations emanating from already existing organizations, which suggested that there was functional intensification and specialization (Shanks, Jacobson and Kaplan 1996). Functional programmes within the UN experienced steady enlargement and diversification (Claude 1971; Luard 1983; Kim 1984). Furthermore, membership in IGOs seemed to have welfare increasing effects as well as pacifying effects on state interactions (Jacobson, Reisinger and Mathers 1986). In fact, not only does membership in IGOs result in a greater likelihood of peace, but also pacific relations encourage greater participation in IGOs (Russett, Oneal and Davis 1998). However, this has not been tested more recently since this latter work which was still largely focused on the late 1950s to the mid-1980s.

Functional organizations seemed to be more effective because of the attitudinal changes that they caused, the cooperation that they engendered, and the possibility they presented for avoiding political conflicts (Kim 1984; Malenfant 2001). It was the functional specialized agencies of the League of Nations which saved the reputation of the organization when it collapsed, supposedly because of their effectiveness in carrying out their functions, and they served as practical tests of the idea that form follows function (Claude 1971; Ghebali 1975). However, specialized agencies in the UN system, while staying true to their functional goals, have not significantly contributed to further integration because their functional tasks have become ends in themselves, rather than means to spill over into broader integration (Weiss and Siotis, 1975). Furthermore, there is concern about lack of coordination, as well as significant overlaps in some areas which result in an ineffective and inefficient distribution of resources in the UN system (Claude 1971; Luard 1983; Barkin 2015). This could be a potential drawback with regards to the touted effectiveness of functional cooperation. Furthermore, there may still be concerns about the concrete functions of these organizations which may have seen a relative increase in their authority, but remain "largely confined to helping governments to help themselves and encouraging governments to help each other" (Claude 1971, 395).

*Criticisms of Functionalism and Gaps in the Literature*

Functionalism appears to have several flaws, which may or may not explain the apparent decline in its usage since the 1990s. Firstly, the process of gradual integration through spill-over was not as automatic as anticipated and has not always translated into the kind of political cooperation that was seen as the end result (Luard 1983; Malenfant 2001; Karns, Mingst and Stiles 2015). In fact, seamless integration was not evident in the European case, contrary to the predictions of the theory. Rather there was a series of stops and starts, and pushbacks from states that feared deeper integration would lead to loss of autonomy to supranational institutions. This reality later led Haas to modify his theorizing on “spillover”, and coin terms such as “spill back” to explain this pushback from states that led to a reversal of integration in some cases; “and spill-around” to explain how cooperation didn’t automatically spillover into challenging areas such as a common defence policy in Europe, but that rather it bypassed these areas and continued in less controversial ones (Heathcote 1975; Moravcsik 2005). One author asked: “if economic and social organization is indeed the horse, can it in fact pull the political cart?” while arguing that a functional order cannot guarantee “that one thing leads to another inexorably and interminably in international relations” (Claude 1971, 389).



Furthermore, functional international organizations, particularly the UN specialized agencies, are increasingly politicized. Despite the assumption that they are apolitical, even proponents of functionalism such as Haas recognize that politics within them is inevitable (Haas 1971; Moravcsik 2005). In fact, the most widely held critique in the literature is that the supposed separability of human activity into the political and the functional does not hold true in international organization (Kihl 1963; Haas 1964; Malenfant 2001; Barkin 2015; Karns, Mingst and Stiles 2015). Politics is such an important feature that “functional activity is more dependent on the political weather than determinative of the political weather” (Claude 1971, 407).

Functionalism may have been intended to remedy virulent nationalism, however it has only somewhat mediated rather than bring an end to strong territorial links, sovereignty and nationalism, and how these play out in cooperation and integration. Although Mitrany (1948, 1966) proposes that functionalism will cause people to identify less and less with national identities and transfer their loyalties to the international organizations which provide welfare benefits, there is evidence to the contrary (Moravcsik 2005; Archer 2014; Karns, Mingst and Stiles 2015). In the case of the European Union, a response to deeper integration has been a strong sentiment of nationalism, and a renewal of revindications of national autonomy in policy-making. This runs parallel to the emergence of a shared – albeit weak – EU identity. In fact, Moravcsik (2005) argues that the major debate facing the EU is not how to foster deeper integration, but rather where to stop it, as there is fear of further deepening.

Finally, functionalism is relatively silent on organizational design, and while proposing that form follows function, it does not say much about the kinds of institutional structures that might be appropriate to particular functions. It is assumed that the specific functions of the organization will determine the form, but this is not sufficiently developed. Related to this question of institutional structure and mandates of the organizations, Karns (2000) highlights the need for exploring other factors such as how the ageing of organizations could affect their functions; or the impact that ballooning bureaucracies have on the effectiveness of organizations; or how agendas of organizations have broadened beyond their original functions.

*Functionalism and Organizational Progeny – IO Bureaucracies and Emanations*

Organizational theories are a useful complement to functionalism and offer insights into the behaviour of IOs from considering them as bureaucracies. Bureaucracies can be powerful actors to the extent that they shape the world by creating new categories of actors, forming new interests, providing common definitions for shared international tasks, and disseminating models of social organization. Power here is understood as the way social relations can shape the capabilities of actors to influence their own circumstances or the circumstances of others (Barnett and Finnemore 1999, 2004). Bureaucracies are influential at three levels – input where they shape policies and create norms, outcome in terms of concrete decisions and interventions, and impact, whether on state behavior or target populations (Biermann et al. 2009). They are also more influential depending on their level of autonomy or the level of discretion allowed by IO principals in delegating roles and functions to them (Johnson and Urpelainen 2014).

As IGO bureaucracies become more autonomous they develop generative power to create new actors, interests, and goals (Barnett and Finnemore 1999, 2004; Hawkins et al. 2006). IGO bureaucracies can and do create new organizations. These organizations born from other IGOs are called emanations (Shanks, Jacobson and Kaplan 1996) or progenies, and the whole process of producing new organizations is termed as organizational progeny (Johnson 2014). In fact, there has been a proliferation of IGOs since the second World War, most of which have been created by other IGOs rather than through treaties negotiated by states (Shanks, Jacobson and Kaplan 1996). This is consistent with functionalist ideas of international organizations having increasing influence in the issue areas in which they operate, but also spreading this influence by spilling over into other issue areas, thus creating new mechanisms, frameworks, fora, and institutions in which to cooperate in solving technical problems (Mitrany 1948; Haas 1964, 1971). Progenies, thereby created, seem to be more flexible – they are created at a much faster rate than traditional IGOs and they also die or change more rapidly. Bureaucrats in these organizations have much more influence in the design of emanations, actively participate in creating them, and may even put mechanisms in place to increase the organization's autonomy vis-à-vis states (Johnson 2014).

Driven by their functions, but also by self-preservation, and their own interests, bureaucracies shape agendas of the organizations they create and constitute, as well as of other organizations. In doing so, they provide definitions and classifications of problems. Bureaucracies can extend organizational mandates, and also often propose competing or contrasting frames to the dominant ones held by states. IO bureaucracies are also powerful because of the way they fix meanings and diffuse norms. They exercise power in classifying the world, creating new social categories and defining problems (Barnett and Finnemore 2004; Oestreich 2007).

Therefore, while exploring the continued utility of functionalism, organizational theories provide a useful complement for filling knowledge gaps about the context which drives the emergence and evolution of functional organizations; how issues arrive on their agendas; how they adapt to suit these changing issues; and the role bureaucracies play in shaping their functions. This combined theoretical frame will be used in assessing the UNODC's organizational (mis)fit for dealing with human rights related aspects of human trafficking.

**Methodology**

This paper uses a case study to test the suitability of the United Nations Office on Drugs and Crime for a human rights approach to human trafficking. Desk research was conducted, and the researcher consulted a combination of primary and secondary sources in order to trace both the emergence of human trafficking as an agenda item in the United Nations system, and the creation of the United Nations Office on Drugs and Crime under whose purview the issue of trafficking falls.

Having traced the emergence and framing of trafficking using secondary sources, this research examined how the UNODC was formed from functional commissions and their subsidiaries which were created to deal with issues of crime and criminal justice as well as drug control. A key component of the study was an examination of the factors driving organizational change. Document analysis was used, particularly of UN resolutions, reports, and accounts contained in UN Yearbooks to identify references needed for resources or for strengthening the relevant agencies.



Similarly, this research traced the presence of human rights in the work of the programmes which eventually formed the UNODC to identify whether a criminal approach to trafficking as contained in the Convention on Transnational Organized Crime precluded the organization from being sensitive to and responding to the need for a human rights frame.

The analysis derived from consulting these sources was compared with other factors such as the external pressures from other IGOs and NGOs, as well as competition from other IGOs in the issue area. This was used to explain whether the organization could adapt to suit the functions it was being called upon to execute, or whether it was ultimately unsuitable, and therefore a functional misfit.

**Developments in Transnational Organized Crime and the Framing of Human Trafficking**

*The Dark Side of Globalization: Crime Across Borders*

Globalization, trade liberalization, advances in technology and increased mobility have had fundamental effects on transnational flows. Parallel to the licit flows of goods and services in the formal economy, an informal economy emerged, fuelled by transnational actors capitalizing on the increased openness and facility of travel in order to move illicit goods across borders (Berdal and Serrano 2002). These actors operated through networks which sought profit to finance criminal activities including but not limited to terrorism and insurgency (Shelley 2010). This dark side of globalization and the networked operations of related actors were labelled as transnational organized crime and linked to drug trafficking, money laundering, and human trafficking (Miko 2007; Shelley 2010; Roth 2013).

The scale and scope of transnational organized crime expanded significantly in the latter decades of the twentieth century, totalling some $600 billion per year in revenue globally. The fall of the Soviet Union had a significant impact in Europe where massive immigration, the Balkan conflicts, and the resulting instability provided opportunities for narcotics, sex trafficking, arms smuggling and other forms of criminality. New markets in crime emerged, which threatened social order and social peace. From money laundering and corruption in the Middle East to the war on drugs in the Americas, to spikes in gun-related crimes linked to arms trafficking, there was widespread concern about organized crime. Furthermore, terrorist activities including the 1993 bombing of the World Trade Center and the federal building in Oklahoma City in 1995, raised international concerns of the growing transnational networks of criminal activity which posed unsettling new threats to states (Andreas 2002; Berdal and Serrano 2002; Köppel and Székely 2002; Taylor 2002).

*The UN at the Core of International Concern about Organized Crime*

The United Nations (UN) has played a pivotal role in shaping policy and discourse around transnational organized crime. Since 1955 it has organized quinquennial crime conferences, (United Nations Office on Drugs and Crime 2010), and provided the language and framework that have shaped thinking about crime and the corresponding norms and standards (Clark 1994). The Crime Prevention and Criminal Justice Branch in Vienna has primary responsibility for conducting Trends in Crime Surveys and disseminating reports (United Nations Office on Drugs and Crime 2017). Through these surveys and reports, the UN developed classifications of crime and shaped what was labelled as crime and what was excluded.

The term transnational organized crime was initially coined by the United Nations Crime Prevention and Criminal Justice Branch in 1974 to guide discussion at the United Nations Crime Congress of 1975 (Roth 2013). It was at this Congress that crime was first framed as a business, paving the way for further conceptualizing organized crime. Subsequently, at the 1985 Congress the Milan Plan of Action was developed, and it expressly included measures against organized crime and the need for strengthening international cooperation in this area (Vetere 1995). UN Secretary General Boutros Boutros-Ghali in his message to the Crime Congress of 1990 highlighted the need to examine key problems such as "terrorism, organized crime and corruption" (United Nations 1991, 698). The Congress proposed inter alia international cooperative arrangements to tackle the transnational dimensions of organized crime (United Nations 1991, 701). This was taken up by the UN General Assembly which underscored the increasingly transnational character and dimension of crime, and the resultant need for concerted international action (United Nations 1991, 704).

The year 1994 was a culminating moment for transnational organized crime on the international agenda, following the 1993 bombing of the World Trade Centre. The UN organized the International Conference on Prevention and Controlling Money Laundering and the Use of the Proceeds of Crime: A Global Approach; and the World Ministerial Conference on Organized Transnational Crime drafted the Global Action Plan Against Organized Transnational Crime. In addition, there were regional conferences in Europe, South Asia, and in the Americas where there was both a hemispheric conference and a conference in Central America, all focusing on drugs and organized crime (United Nations 1995). President Bill Clinton subsequently labelled transnational organized crime as a global security threat in 1995 with two major speeches at the United Nations, as well as at the G7 summit of 1995 where the label gained traction among European powers (National Research Council, Petrie and Reuter 1999; Charnysh, Lloyd and Simmons 2014). Organized crime accordingly became a highly salient issue and was an increasingly prominent reference in the UN system, especially in the General Assembly and Economic and Social Council (ECOSOC) (United Nations 1995, 1996, 1997, 1998).

Early definitions of transnational organized crime by the Crime Prevention and Criminal Justice Branch listed "criminality associated with migration" as one form of organized crime, without specific reference to human trafficking (National Research Council, Petrie and Reuter 1999, 7). Not surprisingly, there was an attempt to refine the definition of organized crime even as the variety of issues under consideration expanded significantly. The UN General Assembly provided an updated definition of transnational organized crime as: "offenses whose inception, prevention and/or direct effect or indirect effects involved more than one country" (United Nations Office on Drugs and Crime 2002, 2). This time, trafficking in persons was explicitly included on the list of transnational organized crimes, among others such as terrorist activities, sea piracy, and illicit arms trafficking.

*Setting the Agenda – States, IGOs, and NGOs*

Although there had been several international agreements about trafficking during the twentieth century, concern about human trafficking was not widespread and did not become a core issue on national and international agendas until the early 1990s (Gallagher 2010). The World Ministerial Conference on Transnational Organized Crime in 1994 marked a significant turning point in the antitrafficking regime. The issue came on the agenda because of efforts from a cross-section of state actors, NGOs, and IGO initiatives. NGOs such as Global



Alliance against Trafficking of Women, as well as states such as the United States (concerned about violence against women and girls) and Argentina (seeking to curb trafficking in minors) echoed the call for a focus on trafficking in persons. Feminist movements also played an instrumental role in this, primarily motivated by a moral desire to abolish prostitution, and somehow linked this to the increased feminization of migration. This resonated with puritan values in Western countries such as the United States and was stoked by fears of disease transmission through prostitution in the wake of the HIV/AIDS epidemic (Sharma 2005; Gallagher 2010; Shelley 2010; Charnysh, Lloyd and Simmons 2014).

IGO bureaucracies, through their influence in shaping conference agendas, also contributed to elevating human trafficking on the international agenda. The Commission on Crime Prevention and Criminal Justice which had primary responsibility for preparing the UN Crime Congresses, used this opportunity to highlight traffic in minors as a priority issue on the agenda of the 1995 Congress. The Commission justified this move by referring to the fact that states in the Americas had already been considering this as a problem area worthy of international attention, and had adopted, in 1994, the Inter-American Convention on International Trafficking of Minors (United Nations 1995, 1150). The Congress consequently adopted the agenda item and called for international cooperation and extensive research on organized crime and their links with drugs, arms trafficking, and international trafficking in minors (United Nations 1996, 1133).

Subsequently, human trafficking rose to the agenda of other IGOs including United Nations Children's Fund (UNICEF) and International Organization for Migration (IOM), and regional organizations in Europe and the Americas (Gallagher 2010). For example, the World Congress against Commercial Sexual Exploitation of Children was organized by Sweden in 1995, while Latin American and Caribbean States held a Regional Ministerial Workshop focusing specifically on international trafficking in children (United Nations 1997, 1034–35). These developments led to increasing linkages between trafficking in persons – not just minors – and organized crime. So much so that when the Expert Group on Transnational Organized Crime was set up to draft a framework convention, these linkages figured prominently. As an illustration of the decidedly salient space which trafficking came to occupy on the transnational organized crime agenda, Poland's proposal of the draft framework convention trafficking in persons. Furthermore, the United States' response to this framework convention also explicitly listed trafficking in persons as a form of transnational organized crime (United Nations 1998, 11325–35).

*Framing: Human Rights Versus Criminal Justice Tension*

Framing human trafficking as a criminal offense was not a new phenomenon in the 1990s. Since the early 20th century, multilateral agreements such as the 1904 Convention against White Slavery, the 1949 Convention for the Suppression of Traffic in Persons and Exploitation of the Prostitution of Others, and the 1979 Convention on the Elimination of Discrimination against Women and Children (CEDAW), had all emphasized the criminal side of human trafficking activities. Notwithstanding, these texts were all sources of international human rights law (Chuang 1998; Bruch 2004; Gallagher 2010). For example, although the United Nations established an ad hoc Advisory Committee of Experts to treat the issue of crime prevention in 1950, the 1949 convention was not addressed by this committee nor was it on the agenda at the corresponding quintennial Crime Congresses (Clark 1994). Thus, despite the strong focus on criminalizing the act of trafficking, the human rights frame enjoyed greater

traction, and therefore, trafficking was treated as primarily a subject for international human rights law. It was not until the 1994 Conference on Organized Transnational Crime that the emphasis shifted from the human rights frame, as trafficking became a more salient issue in the domain of international criminal law, especially after being listed as a form of transnational organized crime in the UN Crime Trends Survey in the previous decade (Gallagher 2010).

Human rights was the salient frame for human trafficking in international fora prior to the mid-1990s. There had been significant growth in human rights law since the 1970s. Advocacy groups had secured increasing influence on both the development of these laws and their implementation especially since this participation could, by some boomerang effect put pressure on states to act (Charnysh, Lloyd and Simmons 2014). Regarding human trafficking specifically, there was an overwhelming response from the NGO community, especially the Global Alliance Against Trafficking in Women (GAATW) and from a coalition of intergovernmental agencies (United Nations High Commissioner for Human Rights (UNHCHR), UNICEF, IOM, United Nations High Commissioner for Refugees (UNHCR)) known as the Inter-Agency Group. They were especially instrumental in lobbying for a strong human rights focus when examining the draft Protocols on Smuggling and Trafficking (Gallagher 2010; Gómez-Mera 2016).

The human rights frame was also a salient aspect of debates in the Third Committee of the UNGA – the Social, Humanitarian and Cultural Committee (SOCHUM) – as they elaborated resolutions on human trafficking. However, the criminal frame seemed to resonate more with member states concerned about the potential threat of trafficking to state authority and security (Charnysh, Lloyd and Simmons 2014). In a context of unbridled transnationalization of crime, states became more concerned about criminalizing trafficking than about protecting the victims. It certainly didn't help that the issue was raised in a forum on transnational organized crime which arguably narrowed the debate and provided a cognitive frame for those drafting the convention and protocols. Lloyd and Simmons (2014) demonstrate that there was acute convergence of norms regarding the legal response to trafficking. Linking human trafficking to transnational organized crime roused widespread support from governments who were more than willing to criminalize it, which explains how the criminal frame as opposed to the human rights frame came to be emphasized in creating a binding convention.

Therefore, human trafficking became an issue in international criminal law and was treated in the Protocol to Prevent, Suppress and Punish Trafficking in Persons (Palermo Protocol) which came into force in 2003, under the aegis of the United Nations Office on Drugs and Crime (UNODC) (Gallagher 2010). This was viewed as a defeat for the human rights frame particularly because the Protocol created legally binding obligations for states to prosecute perpetrators, while only using recommendatory, non-binding language with regards to protection of the victim (Bruch 2004; Gallagher 2010; Gómez-Mera 2016). It could be argued that non-binding language concerning victim protection may have been a reflection of disagreement about how best to protect victims, and may also have limited encroachment upon sovereignty by providing the spirit of victim protection in the text, and allowing states the freedom to elaborate the letter. Nonetheless, the underlying assumption of critics is that the criminal justice focus would overshadow human rights concerns and that ultimately there would be very little focus on the violated rights of the victim as well as his or her right to seek



recourse. Consequently, there is scepticism about the suitability of the UNODC as a forum in which to pursue a human rights approach to human trafficking.

**Emergence of the UNODC as the UN's Focal Point for Crime Prevention**

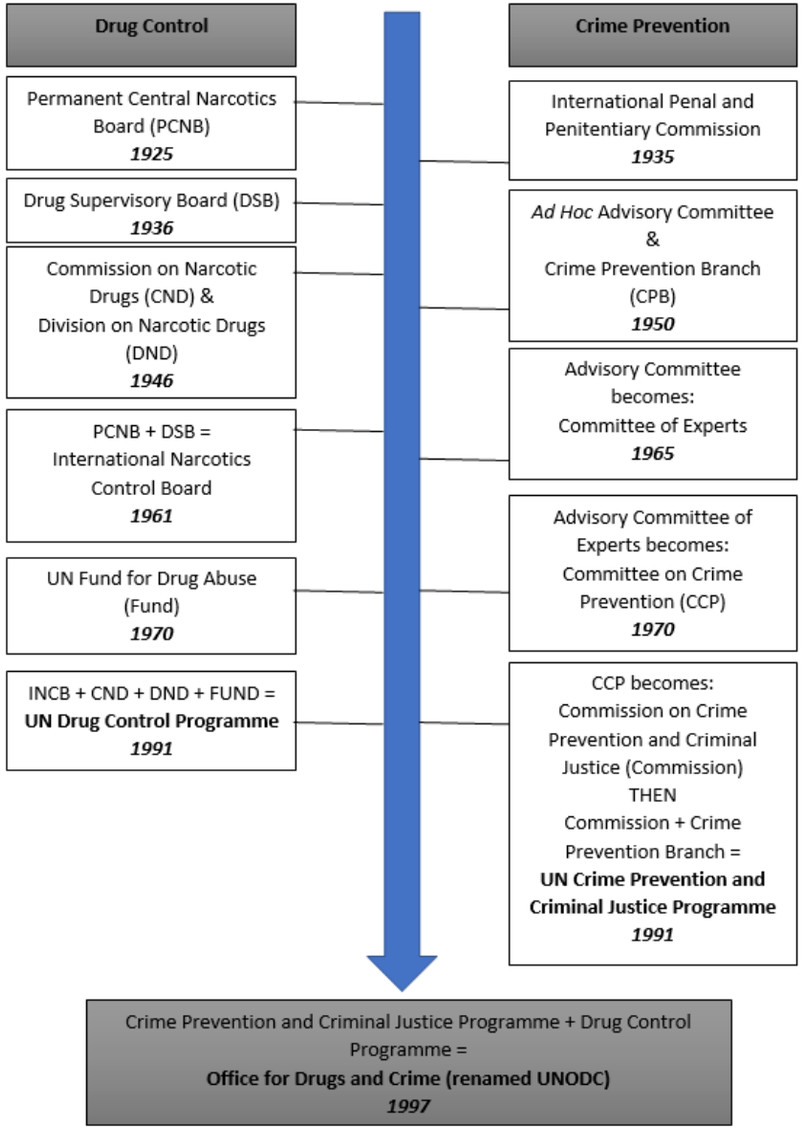
The United Nations has been particularly prolific at organizational progeny, and as Johnson (2014) points out, nascent UN bureaucracies have been creating new IGOs since the very founding of the organization. ECOSOC, for example, has created a host of functional commissions since its inception (Karns, Mingst and Stiles 2015). This is possible because the United Nations has broad prerogatives in engaging in structural innovation (Clark 1994). Article 22 of the UN Charter grants authority to the General Assembly to "establish such subsidiary organs as it deems necessary for the performance of its functions." Furthermore, ECOSOC, which has responsibility for the UN's work on crime and drugs, also has authority through Article 68 of the Charter, to "set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions."

The broad terms of these charter provisions leave ample room for the United Nations in general, and ECOSOC in particular to create functional mechanisms to deal with problems as they arise, and as the organization sees fit to achieve its mandates. Since the progeny which they create are products of resolutions and decisions taken within these bodies, states have less influence on their overall design and functions than if they were created by treaties negotiated, signed and ratified by governments. For the same reason, bureaucracies within the parent organizations play a major role in designing the progeny, in determining their prerogatives, and in ascribing their roles and functions. The UNODC is one such example of organizational progeny in the UN system. Its creation was the culmination of nearly half of a century of organizational creation and transformation by the Economic and Social Council as the United Nations system grappled with drugs and crimes with transnational reach and/or consequences.

*Tracing the Functional Origins of the Office of Drugs and Crime Prevention*

The Office of Drugs and Crime Prevention, predecessor to the UNODC, emerged from the fusion of two tracks of functional cooperation under the Economic and Social Council of the UN. On the one hand, there was cooperation to interdict narcotic drugs, and on the other hand there was cooperation in crime prevention and criminal justice. Figure 1 below gives a timeline of the organizational development and evolution related to this process which is then described in the subsections that follow.

**Figure 1: Two Tracks in the Organizational Development of the UNODC (1925 – 1997)**




*Commission On Narcotic Drugs And The UN International Drug Control Programme*

Functional cooperation in the area of drug control predates the United Nations, having started under the auspices of the League of Nations system which created the Permanent Central Narcotics Board and the Drug Supervisory Body. The United Nations continued and broadened this cooperation. In 1946, ECOSOC established a functional commission to oversee the implementation of the treaties on international drug control and to serve as the primary policy-making organ in the UN drug control efforts (United Nations Office on Drugs and Crime 2017). The Commission on Narcotic Drugs was created and served as the primary policy-making organ involved in UN efforts in drug control, with responsibility for creating drafts of treaties and presenting resolutions to ECOSOC. The Division of Narcotic Drugs was created to serve as the secretariat for this Commission (McAllister 1994; Fazey 2003).



A cluster of agencies emerged as the UN continued shaping policy in this area and created new norms through international conventions. In 1961 there was the Single Convention on Narcotic Drugs which resulted in the merger of the Permanent Central Narcotics Board, and the Drug Supervisory Body, to form the International Narcotics Control Board as an independent expert body that reports to ECOSOC (Fazey 2003; United Nations Office on Drugs and Crime 2017). In 1970, the United Nations Fund for Drug Abuse Control was created in accordance with growing concern about the deteriorating drug problem and the need to undertake urgent countermeasures. The fund would serve as a mechanism to facilitate research, foster technical cooperation, and increase personnel across the agencies of the United Nations system involved in drug control.

Concerns over effectiveness and efficiency led to calls for a coordinated, overarching structure in the area of drug control. As a result, three separate bureaucracies were combined to form a single programme – the United Nations Drug Control Programme – in 1991 (Clark 1994). These developments illustrate the foregoing arguments on the flexibility of emanations, and the possible agility they have in adapting and responding to changes in issue areas, in mandates, and functions. The preamble of United Nations General Assembly resolution 45/179, while underscoring the new developments in the drug problem and the need for a comprehensive approach, also pointed to the need for "a more efficient structure to ensure coordination, complementarity, and non-duplication of activities..." and a greater need for efficiency. Thus, even as critics of functionalism point to these problems of overlapping mandates and inefficiencies, organizations are concerned about these issues and respond to correct them. This is a recurrent theme in the design and creation of the UNODC.

*Commission on Crime Prevention and Criminal Justice and the Crime Prevention and Criminal Justice Division*

Similar to the issue area of Drug Control, Crime Prevention, and Criminal Justice were first treated as concerns requiring functional cooperation under the League of Nations System which established the International Penal and Penitentiary Commission, and organized the first conferences on the prevention of crime (Vetere 1995). The work of the UN in this area followed the precedence set by the League of Nations, and coalesced around quinquennial Congresses on the Prevention of Crime and the Treatment of Offenders, a committee of experts known as the Crime Prevention Committee, a small secretariat in Vienna known as the Crime Prevention and Criminal Justice Branch, and a set of institutes known as the Crime Prevention and Criminal Justice Program Network (Clark 1994).

In 1950, ECOSOC, created an ad hoc Advisory Committee to devise programmes and formulate policies on crime prevention and criminal justice. This Committee was enlarged in 1965 and renamed to Advisory Committee of Experts on Prevention of Crime and Treatment of Offenders. Responding to calls for a stronger programme on crime at the 1970 Crime Congress, ECOSOC once again increased the number of members on the Committee and renamed it to the Committee on Crime Prevention, while increasing its status to subsidiary organ. Its functions were also broadened to inter alia formulating standards and norms for

judging state behaviour in dealing with victims and perpetrators. Therefore, the organization did not just have a criminal law and justice perspective, it also had a human rights focus. In fact, the Crime Congress of 1990 set out an agenda to minimize crime and harmful consequences while increasing the fairness and effectiveness of the criminal justice system, with due protection of human rights (Clark 1989, 1994; Vetere 1995).

As transnational organized crime became an even more pressing item on the international agenda, ECOSOC once again responded by creating a new functional commission to incorporate the work of the committee on crime prevention in 1991. Part of this was the creation of a new Crime Prevention and Criminal Justice Programme. The programme was designed to "contribute to the...control of crime both nationally and internationally; strengthening of regional and international cooperation in crime prevention, criminal justice and the combating of transnational crime...with due respect for the rights of those affected by crime..." (United Nations 1992, 662). Once again, as the issues changed, the functional organizations were transformed to better suit them, and these new organizational developments were more sensitive to the linkages across issue areas. As an illustration, a key component of the Criminal Justice Programme was a strong focus on human rights. This was explicit in the founding resolution, General Assembly Resolution 46/152, which highlighted under programme priorities section D (e) "the protection of human rights in the administration of justice and the prevention and control of crime" (United Nations 1992, 665). This followed squarely in the vein of the Crime Congress of 1990 which had set out an agenda to minimize crime and harmful consequences while increasing the fairness and effectiveness of the criminal justice system, with due protection of human rights (Clark 1989, 1994).

## Reform, Rationalization and Valorization – the Creation of the UNODC

### *Kofi Annan's Reform Agenda and Transnational Organized Crime as a Priority*

Organizational progeny has produced pathological dysfunctions in the United Nations system where organs and agencies have significant overlaps in their functions, with a deficit in coordination, and ineffective distribution of resources (Claude 1971; Luard 1983; Barkin 2015). Such bureaucratic pathologies can lead to ineffectiveness, inefficiencies and lack of accountability (Barnett and Finnemore 1999, 2004). In fact, by the 1990s inefficiencies observed in the UN system stoked significant concerns about the organization becoming an unwieldy bureaucracy that had been unchecked in its expansion and self-reproduction.

Secretary General Kofi Annan came to office in a context of the need for imperative reforms and he formulated a plan within six months of taking office – Renewing the United Nations: A Program for Reform. As the first Secretary General from within the UN system, he had an intimate knowledge of the organizational structure and administration. His major focus was on better management and coordination across the UN system, as well as improving human rights promotion and peacekeeping operations. The UN had been experiencing severe fiscal challenges, compounded by the fact that a burgeoning international agenda had resulted in considerable expansion of its mandate. Kofi Annan, therefore, believed that the UN had to undertake comprehensive, rather than piecemeal reforms to respond more effectively. In his words, "the major source of institutional weakness in the United Nations is the fact that over the course of the past half century certain of its organizational features had become fragmented, duplicative, rigid, in some areas ineffective, in others superfluous" (Annan 1998, 128).



To tackle these weaknesses, the United Nations Secretary General (UNSG) proposed rationalizing and consolidating organizational structure to capitalize on synergies and to reduce overlap and inefficiencies. One of the highlights of the programme was the need to bolster efforts in combating crime, drugs, and terrorism. This was set as a priority of the medium-term plan for the period 1998-2001. Consistent with the increasing salience of transnational organized crime on the international agenda, Kofi Annan wanted the UN to play the central role in a coordinated international response (United Nations 1998).

The Economic and Social Council, coordinator of the UN's efforts on drugs and crime, was in need of urgent reform. It was suffering from crippling organizational overlaps and the accompanying inefficiencies. ECOSOC had previously been described as a "hodgepodge of subsidiary organizations created by the various principal organs of the United Nations" (Gordon 1994). Not surprisingly, it was part of the Secretary General's reform agenda. Among other initiatives targeting inefficiencies within ECOSOC, the pursued changes relevant to this discussion are the consolidation of the crime and drug programmes in Vienna through the creation of an overarching functional body, the Office for Drug Control and Crime Prevention which would serve as the focal point for the UN's efforts in the fight against crime, drugs, and terrorism (United Nations 1998).

This demonstrates evolving form following evolving functions and illustrates that as functions change and mandates expand, functional organizations can adapt and change to suit the requirements of the context. It can also be inferred that whereas the proliferation of functional organizations may result in overlaps and inefficiencies, organizations as actors consider these factors and will create and recreate emanations in order to improve their ability to carry out functional tasks. They will do so when they are faced with increasing demands from principals or from evolving issues which extend their mandates, and if they have broad prerogatives from principals to make decisions in organizational design.

### *Resources, Visibility and the Revitalization of the UNOV*

IGOs are purposive actors which act as much in their own interest and according to their own logics as they act in the interest of their state principals and according to the logic of narrowly – or broadly – defined functions (Barnett and Finnemore 1999, 2004). Not only do they create new organizations, but they also have their own interests, and agendas, and are concerned about their own survival. Hall's (2015) study of why organizations engage with the Climate Change regime demonstrates that functional organizations, driven by a need for greater visibility and increased relevance as well as a desire to secure funding for their activities, are eager to engage with new regimes and adopt new issue areas. This means that they are not just focused on their functions and purpose, but also on preserving their raison d'etre and perpetuating their relevance.

The questions of resources and increased visibility within the UN system were at the forefront of discussions about both the International Drug Control Programme and the Criminal Justice and Crime Prevention Programme. There were repeated calls from ECOSOC and the General Assembly for strengthening the programmes, enhancing their role in the UN system, and providing them with adequate financial resources to effectively carry out their functions (United Nations 1995, 1996, 1998). The Drug Control Programme was, however, much more robust than the Crime Prevention and Criminal Justice Programme, with a much larger secretariat at the Vienna office. Clearly then, this would be a factor for the Crime

Prevention and Criminal Justice Programme as it sought not just to increase its absolute visibility, but also its visibility vis-à-vis the United Nations Drug Control Programme.

Clarke (1994) points out that in the creation of the Crime Prevention and Criminal Justice Programme, comparisons were being made with the Drug Control Programme, and that there were suggestions that they should either mimic the Drug Control Programme by having a Ministerial Commission, or create a Specialized Agency to increase visibility and reinforce its position within the United Nations system. A review of the UN Yearbooks from 1990, when the programmes were being formulated, shows that the General Assembly, ECOSOC, and the Congress on Crime consistently raised the issue of strengthening the presence of the Crime Prevention and Criminal Justice Programme within the UN system and boosting its financial resources. In 1990, the Crime Congress recommended increased human and financial resources and called for bolstering the Crime Prevention strategy of the UN. This was the rationale for creating the Programme. In 1996, the Secretary General, responding to requests from ECOSOC, took steps to transform the Crime Prevention and Criminal Justice Branch in the Vienna Office into a Division, although this was crippled by cost-saving measures which froze the creation of new posts. This was accompanied by calls from the UNSG for greater collaboration with the Drug Control Programme and other UN bodies. All this culminated in 1997 with the UNSG's reform programme seeking to place the Vienna office at the core of UN efforts against crime, drugs and terrorism, and transforming the Criminal Justice Division into the Centre for International Crime Prevention, as part of the new Office for Drug Control and Crime Prevention (United Nations 1991, 1993, 1994, 1995, 1996, 1997, 1998).

There had also been concerns about the location in Vienna. Prior to 1977, the secretariats dealing with drug control and crime prevention operated out of the New York headquarters of the United Nations. However, in 1977 the government of Austria gifted a new headquarters building to the United Nations, and it was decided that the UN drug control units, the Industrial Development Organization, and the International Atomic Energy Agency would be housed there. As an afterthought, it appears, "when some hundred rooms remained vacant," the General Assembly voted to move the Social Sector of ECOSOC there as well. This would include the Division for the Advancement of Women, the Crime Prevention and Criminal Justice Branch and The Social Development Division. New Zealand objected to this move arguing that it was a misguided decision to separate the Economic from the Social, but they were solitary objectors and the move to the United Nations Office in Vienna was finalized (Adler and Mueller 1995, 10).

Consequently, the location became a predominant concern because of the much broader pathology of poor coordination across UN agencies. For example, although the Crime Prevention Branch had a human rights focus, it had largely been on the side-lines of human rights issues in the UN system and was mostly overlooked (Clark 1989, 1994). According to Clark (1994), a former member of the Crime Prevention and Criminal Justice Committee, Vienna was far removed from the rest of the UN system, and there had been concerns that the Crime Prevention and Criminal Justice Programme and the corresponding branch in Vienna would consequently be marginalized. This concern was especially important since, in 1993, Boutros Boutros-Ghali moved the UN Centre for Social Development and Humanitarian Affairs from Vienna to New York, leaving the very small secretariat of the Crime Prevention and Criminal Justice Programme alongside the much more robust International Drug Control Programme in Vienna. In fact, there were also strong criticisms for having the Committee on the Elimination of Discrimination against Women serviced from Vienna for the very reason that it would be on the fringes of the UN system (Clark 1994).



Therefore, in addition to increasing the visibility of these programmes, and consolidating resources and efforts, creating an Office for Drug Control and Crime Prevention in Vienna also served to revitalize the UNOV and reinforce its position in the United Nations system. A functionary with the rank of Under-Secretary General was appointed as Executive Director of the new office, and would also serve as the Director General of the United Nations Office in Vienna (UNOV). This office was to become the locus for United Nations efforts against crime, drugs and terrorism. Transnational organized crime was set to be one of the major agenda items of the UN moving forward, which would bring the marginal agencies and offices involved closer to the core of principal UN activities. The Office for Drug Control and Crime Prevention was further concretized as being at the core of a coordinated international approach to tackling drugs, crime and international terrorism, with the signing and ratification of the single United Nations Convention on Transnational Organized Crime, and the protocols thereto on Smuggling and Human Trafficking (Gallagher 2010). It was subsequently renamed as the United Nations Office on Drugs and Crime.

**The Persistence of the Human Rights Frame**

As discussed earlier in this paper, the Palermo Protocol failed to establish a strong human rights focus, and instead gave primacy to a criminal justice approach especially since it was linked to a convention on organized crime (Gallagher 2001, 2010; Jordan 2002). Scholars note this intrinsic flaw of a regime that privileges prosecution of the perpetrator over the protection of the victim (Gallagher 2001, 2010; Bruch 2004; Gómez-Mera 2016). Law enforcement measures ignore structural determinants of trafficking and the human rights abuses involved in the exploitative social systems, which comprise trafficking. Brysk (2012) and Obokata (2010) argue, accordingly, that the best policy to combat trafficking is universal, indivisible human rights.

*Global and Regional Human Rights Soft Law on Human Trafficking*

The prominence of the criminal justice approach to human trafficking did not entirely overshadow the extant human rights frame even as new norms were being codified. While the Convention on Transnational Organized Crime and its Protocols were being negotiated, the Office of Drug Control and Crime Prevention (subsequently UNODC) sparked the interest of other IGOs as well as the NGO community. NGO networks such as the Global Alliance Against Traffic in Women (GAATW) continued to disseminate publications on the negative human rights effects of anti-trafficking laws and continued to lobby for greater focus on these concerns (Gómez-Mera 2016). Similarly, an ad hoc Inter-Agency Group which included the United Nations High Commissioner for Human Rights, the United Nations Children's Fund, the International Organization for Migration, and the United Nations High Commissioner for Refugees played a major role in lobbying for a human rights focus, and kept this advocacy going after the ratification of the treaties (Gallagher 2001, 2010; Jordan 2002).

From a functionalist perspective, one may argue that human rights institutions would be more suitable for pursuing a human rights approach to trafficking, although there is no clear empirical support for their effectiveness in securing compliance to human rights norms (Dai 2014). However, the enduring tensions between human rights and national sovereignty have made it such that in designing human rights institutions, states have restricted their

enforcement capacity (Moravcsik 2000; Hathaway 2002). It is this same concern about sovereignty which resulted in the primacy of the criminal justice frame because states were more likely to respond when trafficking was framed as an affront to their sovereignty (Charnysh, Lloyd and Simmons 2014). Nonetheless, international human rights institutions have been gaining greater support from states and their expertise, normative persuasion, and work in the general socialization of states have made states more inclined to participate in human rights conventions even if participation does not forcibly lead to compliance (Moravcsik 2000; Cole 2005; Hafner-Burton and Tsutsui 2005; Neumayer 2005; Hathaway 2007; Munro 2009; Hafner-Burton 2012; Dai 2014). Furthermore, human rights have become a cross-cutting issue which different entities in the UN system use as a justification for the pursuit of their own interests and activities (Barnett and Finnemore 1999; Gutner and Thompson 2010). It is not surprising, therefore, that traditional human rights institutions, as well as other related entities, would continue to protect their interests and issue areas, and pursue the human rights frame in the antitrafficking regime, especially with a mandate from the UN Secretary General to incorporate human rights in activities across the UN system, and the constant NGO activism.

Consequently, various UN agencies as well as regional organizations have played an instrumental role in developing and spreading human rights norms related to trafficking and have, therefore, emerged as competing fora for rule-making. The UN General Assembly between 2002 and 2006 passed at least six resolutions dealing specifically with human trafficking, each emphasizing the importance of victim protection and underscoring the human rights focus. In 2002, the UN High Commissioner for Human Rights through its Recommended Principles and Guidelines on Human Rights and Human Trafficking sought to establish the primacy of human rights by placing it at the centre of all efforts to combat trafficking. This was in response to what the High Commissioner considered "the clear need for practical, rights-based policy guidance on the trafficking issue"(OHCHR 2010, 15). This document most notably introduced the principle of non-criminalization of victims of human trafficking (Hoshi 2013; Gómez-Mera 2016).

This was followed by the appointment of a Special Rapporteur on Trafficking in Persons by the Human Rights Commission – subsequently the Human Rights Council – at its 60th session in 2004 (Gallagher and Ezeilo 2015). The appointment, which was initially for three years, has had successive extensions with the latest three-year extension starting in July 2017. Appointing a Special Rapporteur with specific focus on human rights and human trafficking, giving increased credence and visibility to the human rights frame, especially since the Special Rapporteur mechanism has been one of the more effective tools used by the UN Human Rights system. She was tasked with monitoring, undertaking advisory functions, and reporting on this thematic issue based on the different entities and countries where her work would be undertaken. In her initial report, she highlighted that "despite the overwhelming human rights dimension, trafficking continues to be treated as mainly a 'law and order' problem" and, therefore, firmly expressed that her goal would be to bring human rights back to the heart of all antitrafficking initiatives (Gallagher and Ezeilo 2015).

Subsequently, Special Rapporteurs have established relations with NGOs, IGOs and national human rights organizations as a way of promoting the human rights aspect of human trafficking. They have used consultations with a variety of stakeholders, as well as country visits to capture the extent of the issue of human trafficking and to better frame their recommendations for corrective action in terms of the national frameworks necessary to



protect victim rights. Unfortunately, the country visits have been limited by the fact that states have to authorize official visits which has proven to be a barrier in some cases (Gallagher and Ezeilo 2015). Nonetheless, there have been 27 official visits to countries including Lebanon, Argentina, Australia, Philippines, United States and Nigeria. At least 15 countries have not granted visit requests, some of which were made as early as 2005 (OHCHR 2019).

One strategy of the Rapporteur has been to emphasize, in the annual and country reports, the embeddedness of the human trafficking regime in a broader human rights regime. Therefore, the reports have highlighted provisions enshrined in various human rights instruments which are pertinent to human trafficking. These instruments include the Universal Declaration of Human Rights; The Convention on the Elimination of All Forms of Discrimination against Women; The Convention on the Rights of the Child; International Labour Organization Conventions on Forced or Compulsory Labour and Child Labour among others. Identifying these linkages gives further credence to the argument for a human rights approach (Gallagher and Ezeilo 2015). Similarly, the Special Rapporteur adopted the strategy of identifying linkages across issue areas including development. Eliminating human trafficking appeared in the Sustainable Development Goals (SDG) as targets under three different goals: SDG5 – Gender Equality (elimination of all forms of violence against women and girls); SDG8 – Decent Work and Economic Growth (eradication of forced and child labour); SDG16 – Peace, Justice and Strong Institutions (ending abuse, exploitation, trafficking and violence against children). The Special Rapporteur's mandate has also contributed to a broader understanding of human trafficking – extending it beyond sexual exploitation of women – and it has been working at providing clarity on the rights of victims, and the responsibilities that states have towards them (Ezeilo 2015; Gallagher and Ezeilo 2015).

Other similar efforts on human trafficking were pursued through inter-agency collaboration formalized by an ECOSOC resolution in 2006. The General Assembly in 2007 formally established the Inter-Agency Coordination Group against Trafficking in Persons (ICAT) to provide a "comprehensive, coordinated and holistic approach to human trafficking … grounded in a human rights based-approach." The ICAT working group includes: Council of Europe, International Centre for Migration Policy Development (ICMPD), International Labour Organization (ILO), International Organization for Migration (IOM), Office of the High Commissioner for Human Rights (OHCHR); Organization for Security and Cooperation in Europe (OSCE), United Nations Children's Fund (UNICEF), UNODC, and UN Women. The membership extends to over 20 UN and other agencies and entities. From 2007 to 2010, ICAT was chaired by the UNODC. The chairmanship has since rotated to different agencies (ICAT 2019). It is important to note that the core mechanisms which the UN system has been establishing on human trafficking have been taking markedly human-rights inspired approaches to human trafficking, at least discursively. This has perhaps been one of the most effective mechanisms to ensure that human trafficking, especially from a human rights perspective, remains high on the agenda for the organizations concerned and to thereby socialize the respective entities into framing the issue as a human rights one and responding accordingly.

Through this collaboration, the UN Global Initiative to Fight Human Trafficking (UN.GIFT) was launched in 2007 with the following organizations: ILO, OHCHR, UNICEF, UNODC, IOM and the OSCE. UN.GIFT is a multi-stakeholder initiative which seeks to foster synergistic relations among UN agencies, other international organizations, private interests,

civil society groups and other stakeholders. Their mission explicitly focuses on providing support for victims and pursuing rights-based responses to human trafficking. Through this avenue, best practices on human rights in the antitrafficking regime have been developed and disseminated. Furthermore, inter-agency collaboration gained greater support from the Global Plan of Action to Combat Trafficking in Persons, established by General Assembly Resolution in 2010. This plan reiterated the fundamental human rights focus of antitrafficking efforts and, while acknowledging the central role of the UNODC in the regime, also underscored the indispensable role of the Human Rights Council, the Office of the High Commissioner for Human Rights, the International Labour Organization and the International Organization for Migration. The General Assembly, therefore, called for strengthening of the inter-agency work towards preventing trafficking, protecting victims and ultimately prosecuting perpetrators. ICAT has consequently become the primary forum for coordinating antitrafficking policy, even though the UNODC, as guardian of the Palermo Protocol, plays an instrumental role in assisting states with implementation.

In addition to these global initiatives, regional bodies produced soft law instruments on trafficking in persons which explicitly addressed linkages with human rights. The Organization for Security and Cooperation in Europe (OSCE) with its special office for combating trafficking, and the Council of Europe with its Convention on Action against Trafficking in Human Beings, promoted human rights norms specifically targeting victim protection. The OSCE appointed a Special Representative and Coordinator for Combating Trafficking in Human beings in 2003, which has played a significant role in coordinating regional and global efforts, and in promoting a dual vision of human trafficking as a human rights and security issue (Gómez-Mera 2016). The European Union (EU) has also contributed to the human rights soft law particularly through the 2011 EU Anti-trafficking Directive followed by the launch of the EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016. Whereas early efforts for addressing trafficking in persons in Europe were described as inadequate in the human rights-based protection components (Friesendorf 2007), more recent assessments such as Gómez-Mera's (2016) study have credited European efforts for significant contributions to the human rights soft law in the antitrafficking regime. Other regional initiatives have been launched in Africa, Latin America and the Caribbean, Asia-Pacific, Central Asia and the Middle East. These include the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution in South Asia; the Inter-American Convention on International Traffic in Minors and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women; a series of African Charters; Joint Plan of Action against Trafficking in Persons coming out of the Economic Community of West African States (ECOWAS). What becomes apparent is that there has been a diffusion of norm creation, in both global and regional fora, promoting a human rights approach. This, therefore, shifted antitrafficking norm creation away from the UNODC which was equated to a criminal justice forum (Gómez-Mera 2016).

*How the UNODC Adopted a Human Rights Frame*

As demonstrated in the preceding section, there has been a process of forum shopping whereby interested actors, including NGOs and IGOs, have sought to shift rule making on human trafficking to fora outside the UNODC that would embrace a human rights approach (Gómez-Mera 2016). As a result, there is an increasing body of soft human rights law being produced parallel to the Palermo Protocol (Gallagher 2010; Gómez-Mera 2016). It would



appear then that the UNODC has been crowded out of the human rights norm creation by other actors, which seem more functionally suitable for pursuing such an approach to human trafficking. However, the fact that the Palermo Protocol takes a criminal law approach does not doom the UNODC to being blind to human rights issues related to trafficking. As a purposive actor, it can adapt its functions to suit the complexity of the issues forming its mandate. While functionalism suggests that organizations are created for specific functions, a crucial observation is that organizations as creators themselves may change the content of these functions as well. Form and function mutually influence each other. Furthermore, organizational culture may play a role in how bureaucrats interpret and enact their mandates (Barnett and Finnemore 1999, 2004). Therefore, previous experience in dealing with human rights issues could mean that the bureaucracies which came together to form the UNODC could continue to pursue human rights approaches to trafficking. In addition, the organization may be persuaded to shift its focus because of added pressure from peer IGOs and/or from civil society.

Human rights as an issue area has long been a salient point for ECOSOC, and particularly its functional Commissions on Drugs and Crime. In fact, the Crime Congress of 1990 while calling for the intensification of efforts against organized crime, also highlighted the need for due regard for human rights. They also recommended that the UN set up a world foundation on crime control and assistance to victims (United Nations 1991, 699). Much of the work of the Committee on Crime Prevention and Control and its successor the Commission on Crime Prevention and Control, has been in creating human rights standards in criminal justice and seeking to implement those standards (Clark 1989, 1994). The Committee had contributed to the generation of several key human rights standards including: Standard Minimum Rules for the Treatment of Prisoners; 1975 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; The code of Conduct for Law Enforcement Officials; Standards Guaranteeing Protection of the Rights of Those Facing the Death Penalty; The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Clark 1989; Vetere 1995). Therefore, the bureaucracies in at least the Crime Prevention Programme had an established record of working with human rights issues.

An explicit part of the mandate of the UN's activities in crime prevention was directly related to human rights. Not only did the respective bureaucracies dealing with crime prevention facilitate coordination with the Centre for Human Rights in Geneva, but they also established human rights concerns as one of the pillars of technical assistance that they provided. They developed policies, procedures and model laws designed to protect victims. Also, they ensured that the linkages between crime prevention and human rights were a recurrent theme on the agenda of the Crime Congresses. As an example, the 1975 Crime Congress issued a Declaration on the Protection of All Persons from being Tortured…," mentioned supra, was subsequently developed by the Commission on Human Rights into a convention (Vetere 1995).

Furthermore, when the Crime Prevention and Criminal Justice Programme was created, Article 16(e) of the Statement of Principles and Programme of Action of the United Nations Crime Prevention and Criminal Justice Programme called for "due respect for the human rights of all those affected by crime..." The document underscored the need for focusing on human rights by placing it prominently under the Programme Priorities section, where Article 21(e) calls for protection of human rights not just in the administration of justice, but also in

the prevention and control of crime. This concern about human rights was supported by the General Assembly and ECOSOC and was a prominent part of Kofi Annan's reform agenda, which sought to enhance the human rights efforts of the UN and engender system-wide integration of human rights in its principal programmes and activities.

In addition to these internal considerations, exogenous factors in the constellation of multilateral and regional efforts to combat trafficking have also influenced the direction of the UNODC's agenda. The shift of rule making to fora outside the UNODC has impacted its control over this issue area (Gallagher 2010; Gómez-Mera 2016). This means that as the UN's focal point for crime and by extension, human trafficking, the UNODC would have seen a tendential erosion of its centrality in the human trafficking regime. A narrow focus on criminal justice would also leave it on the sidelines of emergent human rights norms. Consequently, it sought to affirm this central role through its participation in the inter-agency collaborative initiative, ICAT, which it chaired for the first four years of its existence. Although it is a rotating Chair, the UNODC continues to assert its coordinating role in this Inter-Agency group, while also serving as the financial adminstrator, host and member of the Steering Committee for the UN.GIFT multistakeholder mechanism (United Nations Office on Drugs and Crime 2019b). While the rule making shifted to other organizations and entities, therefore, the UNODC remained integrated in these processes through the consultative and coordinating activities of ICAT.

The preceding factors seem to have collectively influenced the work of the UNODC in promoting a human rights complement to the criminal law approach. On the one hand, the Crime Prevention and Criminal Justice Branch – now Centre for Criminal Justice and Crime Prevention – and its predecessors have had a history of contributing to the development of human rights norms and standards. On the other hand, other IGOs as well as NGOs , through their advocacy, have kept the human rights focus high on the agenda. Furthermore, forum shifting could threaten the central role it plays in the anti-trafficking regime. Consequently, as a purposive actor, not only carrying out its functional tasks but also seeking to preserve its interests, the UNODC has adopted a soft law human rights approach to human trafficking.

Since the Palermo Protocol was ratified, and especially since the establishment of ICAT, the UNODC has collaborated extensively with other multilateral and regional stakeholders. This collaboration has resulted in the publication of a series of human rights-based documents on human trafficking, incorporating new norms which were developed by these actors in different fora. These documents and norms are summarized below in Box 1. The first major initiative came in 2008 with the publication of the Toolkit to Combat Trafficking in Persons: Global Programme against Trafficking in Human Beings, which outlines measures to prevent trafficking, prosecute perpetrators and protect victims. It gave significant attention to victim identification and victim assistance. The UNODC also produced documents aimed specifically at helping legislators translate treaty and soft law provisions into national legislations to facilitate the implementation requirements. In this regard, in 2009, they published three major documents: Combating Trafficking in Persons: A Handbook for Parliamentarians; International Framework for Action to Implement the Trafficking in Persons Protocol; UNODC Model Law against Trafficking in Persons. These documents further developed provisions, standards, norms, and frameworks for preventing trafficking and protecting victims, and contributed to the diffusion of the norm of non-criminalization of victims.



That the UNODC chose an approach, which focuses on providing concrete tools for implementation, illustrates the argument that bureaucratic culture is an underlying determinant of the way an organization shapes its agenda and adjusts its functions. As discussed above, an important aspect of the work of the functional bodies on crime prevention within the UN system had been providing technical and legal assistance to member states to help them translate international norms and principles into domestic legislation and practice (Clark 1994; Vetere 1995). This, therefore, seemed to inspire not only the organization's inclination to pursue a human rights approach but also the practical approach which it employed in so doing.

**Box 1: Human Rights Norms Promoted by the UNODC**

**Human Rights Norms Promoted by UNODC**

**Norms in the *Palermo Protocol* (2001)**

- Protection of victims from harm (*Art. 6*)
- Temporary or permanent residency for victims (*Art. 7*)
- Right to repatriation (*Art. 8*)

**Norms in Subsequent Documents**

***(2008) - Trafficking Toolkit:*** Sections 5, 6 and 8
***(2009) - Combating Trafficking in Persons:*** Chapter 4; ***Framework for Action:*** Table 2; ***UNODC Model Law:*** Chapters 7 and 8

***Victim Identification, Protection, and Support***

- Non-coercion in provision of support; Legal assistance as victims and as witnesses
- Temporary residence permits; No detention of trafficked persons
- ***Non-criminalization of trafficked persons***

***Return of Trafficked persons***

- Due process and non-refoulement; Safe and voluntary return
- Right to remain during legal proceedings; Repatriation and Reintegration

***Remedies for Trafficking***

- Restitution; Compensation; Rehabilitation

More recently, the UNODC partnered with the European Union to launch the Global Action to Prevent and Address Trafficking in Persons and the Smuggling of Migrants (GLO.ACT). This four-year joint initiative is being implemented in partnership with the International Organization for Migration and the United Nations Children's Fund and will run through the end of 2019. The project adopts a dual prevention and protection approach which clearly outlines the need to protect the rights of vulnerable victims (United Nations Office on Drugs and Crime 2019a). Here again the UNODC aligns itself not only with the criminal justice frame but also with promoting human rights norms in antitrafficking work.

This promotion of human rights based soft law could have significant effects on the propensity of states to protect victims, and therefore, to adopt a human rights approach in dealing with trafficking despite their apparent preference for a criminal justice frame. Simmons (2009) submits that legalization of human rights has influenced the propensity of states to comply even in the absence of effective enforcement mechanisms. This is because ratification of the treaties may nudge states into action, or because advocates may better couch

their demands in the principles contained in international treaties, or because of the opportunity it creates for victims of human rights abuses to pursue their interests through litigation. It further suggests that these treaties may have an existential effect; that is, their very existence could provide cognitive frames for policy makers and shape conceptions of appropriate or inappropriate behaviour.

Whereas soft law texts may not carry the same level of legalization and binding obligations as treaty law, this latter existential effect may be quite applicable to the human trafficking related human rights norms promoted by the UNODC. The very existence of these norms in the form of model laws and guidelines may prompt states to implement them. Although it is not yet clear the extent to which these norms are being respected, what is clear is that states are more likely to apply them if they are adopted into domestic law. Derenčinović (2014) demonstrates that the inclusion of a clause of non-punishment or non-criminalization of victims in state legislation in the European context saw a greater likelihood of states applying this norm in dealing with victims of trafficking. Therefore, the practical guidelines developed by the UNODC to facilitate the translation of international anti-trafficking rules and norms, both from the criminal justice and human rights perspectives, represent a significant step towards encouraging compliance.

**Conclusion**

The UNODC appeared to be a misfit for pursuing a human rights approach to human trafficking. However, this study has demonstrated that there are several factors which may ultimately determine whether an organization can and will pursue desired functions: salience of the issue; organizational culture; self-preservation and prestige; external pressure from other organizations (NGOs and/or IGOs). Prior experience working with human rights issues, combined with a need to carve out a prominent space in the UN system, as well as competition and pressure from other organizations, together have resulted in assiduous human rights norm creation from the UNODC. Here functionalist theory is enhanced by a perspective which views organizations as actors in their own right – as bureaucracies affected and driven by multiple factors including survival, and not just concerned with narrow functions for which they were created.

Assessing an organization's suitability for a specific function requires moving beyond a static vision of functional organizations. Global governance is a dynamic sphere in which problems are constantly emerging and transforming. International organizations must be nimble enough to respond to these rapid changes. Therefore, if the technical issues that an organization should deal with keep shifting, then the organization is called to adapt. As seen in the case of the UN's efforts to combat crime and control drugs, organizations use their authority to create emanations that they deem to be best suited to carry out specific functions. These functions may evolve, may overlap with others, and may create inefficiencies. However, the possibilities for evolution create opportunities for restructuring and collaborating to create synergistic responses to complex and cross-cutting issues.

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