



## Compliance with the Anti-trafficking Protocol

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### ABSTRACT

The Anti-trafficking Protocol reflects the interests of the major countries. Due to the high costs of compliance, countries will strategically select those obligations that will satisfy the major countries most efficiently with lower costs of compliance. Among the three main obligations of the Protocol – prevention, protection and prosecution – we predict that ratification leads to the strongest effect on compliance with the prevention policy because prevention reflects the key interests of the major countries, while triggering less domestic resistance and political costs to implement. Therefore, it is the most 'efficient' form of compliance. We empirically test this hypothesis by employing panel data from 147 countries during the period of 2001–2009. As the theory predicts, the ratification of the Protocol has the strongest effect on the prevention policy of a member state compared to protection and prosecution.

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### 1. Introduction

In the compliance literature, many studies argue that a human rights treaty is an empty promise (Haftner-Burton and Tsutsui, 2005) because the major countries do not have a great interest in imposing better human rights practices on other countries (Krasner, 1993). However, when it is in the interests of the major countries to do so, the question on compliance becomes more complex. Do member states comply due to pressure from the major countries? More importantly, how do they comply if compliance causes financial and political costs, as well as domestic resistance? An analysis on the impact of the Anti-trafficking Protocol (2000) provides a rich opportunity to answer this question.

Human trafficking is a growing transnational crime worldwide, threatening national security, causing economic losses by enlarging the shadow economy, and damaging the domestic human rights reputation of a country. According to Interpol (2009), it is the third largest transnational crime, providing some billion dollars of profit for operators of such illicit business activities. As a policy response, the United Nations General Assembly adopted the *Convention against Transnational Organized Crime* and its *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children in 2000*. The Protocol is arguably the most important international system to combat human trafficking (UNODC, 2006). In particular, it provides an internationally recognized definition of human trafficking for the first time, with three important elements: acts of recruiting, transferring and receiving people; by the means of threat, force or deception; and for the purpose of exploitation (article 3 of the Protocol). Furthermore it regulates the obligations of member states in order to achieve its three objectives: preventing the crime of human trafficking; protecting victims; and prosecuting traffickers (the so-called 3Ps). The adoption of the Protocol is not only important because it provides a clear definition and

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policy objectives, but also because it advocates the state interests of the major countries. The Anti-trafficking Protocol is different from most other human rights treaties because the major countries, which receive huge trafficking flows, are directly affected by human trafficking problems originating elsewhere and therefore have a vested interest in the compliance of other countries. With this in mind, it can be argued that countries not only join the Protocol in order to signal their good will, but also to keep their promises once becoming a member.

Our paper aims to address the impact of the Anti-trafficking Protocol. At present, there are only two papers investigating the effect of ratification (Avdeyeva, 2010; Bartilow, 2010). However, these studies do not distinguish between differences across the 3Ps, despite the fact that the major countries are likely to have different levels of interests in each objective, prioritizing national security over human rights concerns (Simmons and Lloyd, 2010). In fact, the objectives of the three policies are different and can even conflict each other. Prosecution and prevention policies aim to reduce human trafficking flows, meeting the immediate need of the major countries, while protection policy aims to protect the human rights of victims, which may encourage illegal migration, possibly increasing human trafficking flows. In our study, we take these differences into account and empirically estimate the impact of the Protocol on each policy area. To do this we employ the newly developed Anti-trafficking Policy Index measuring policy performance in each of the 3Ps (Cho et al., 2011).

To the best of our knowledge, our study is the first to assess the potentially distinguished impact of ratification of the Protocol on prevention, protection and prosecution policies, respectively. This distinction is crucial given the different policy goals and costs of compliance of each. In our analysis, we focus on two important aspects explaining compliance, namely the interests of the major countries – reflecting pressure to comply – and the financial and political costs of compliance, constraining states' compliance decisions. In fact, compliance is generally very costly, requiring the amendment of national law and budgetary allocation for new policy programs, putting political and monetary burdens on member states (Hathaway, 2007). Therefore, compliance decisions are not always straightforward and countries will tend to strategically deliberate and select the most efficient way of complying, i.e., by meeting the demands of the major countries while, at the same time, incurring the lowest possible political and financial costs in the domestic setting. We predict that prevention policy is arguably the first candidate for such 'efficient compliance'. Prevention policy, including border and travel document control, can be a quick solution to cracking down on human trafficking flows, fulfilling the needs of the major countries. In addition, prevention policy mainly consists of public awareness campaigns, border controls, information exchange and international cooperation, which can be implemented without the adoption of new legislation and does not involve great risks in terms of conflicting with other existing laws. On the other hand, prosecution and protection policies require a substantial reform in existing immigration, criminal and labor law, creating greater burdens in domestic settings, while the effects to reduce trafficking flows may take longer time to realize or the impact can even be uncertain (in Section 2 we will explain in more detail about the content, and costs of complying with each policy). With this in mind, we hypothesize 'efficient compliance' and predict that member states, pressured and constrained, select prevention policy over the other two. Following Cho et al. (2011), we distinguish between compliance in each of the 3Ps. However, our main question is different from theirs. We investigate the effect of the international law – i.e., whether and how member states of the Protocol keep their promises towards anti-trafficking – while Cho et al. (2011) focus on more general spatial effects that spread anti-trafficking policies.

To foreshadow our results, using panel data from 147 countries for the 2001–2009 period, we find that ratification of the Protocol has a positive, significant effect on the prevention policy of a country, but not on the other two policies, confirming our hypothesis of 'efficient compliance'. Our paper continues as follows. In Section 2, we present our theoretical arguments and hypotheses. Section 3 describes the methodologies of measuring anti-trafficking policies (3Ps) and ratification of the Protocol. Section 4 follows with estimation strategies. In Section 5, we present the empirical results and then check for robustness in Section 6. In Section 7, we conclude with policy implications.

## 2. Hypothesis: 'efficient compliance'

Whether ratification of a human rights treaty can create an effect on compliance is a recurring question in the literature. Countries can, of course, comply without joining a treaty, however the most essential question here is whether countries keep their promise prescribed by the treaty, despite the absence of punishment for violators. Weak enforcement is a feature shared by most human rights treaties, and if this is the case, why do they observe their promise? According to normative approaches, international treaties are a tool for processing international norms of critical agendas in the contemporary world; countries sign and ratify these treaties if they embrace these norms and are willing to reform domestic policies accordingly. Thus, treaties can function as a guide for 'sincere ratifiers' who want to improve their policy (Simmons, 2009). However, in reality, whether member states actually comply upon ratification depends on many different aspects. First, the real motivation of a state for joining a treaty is crucial. A member state may be a 'sincere ratifier', but it can also be possible that one joins the treaty to avoid criticism for neglecting international agendas, or even use the membership to disguise violations of such norms (Hathaway, 2002; Vreeland, 2008). In most human rights treaties, there is no enforcement mechanism to punish violators; therefore, such 'insincere' ratification can, in fact, easily occur. In this case, ratification by some countries may even lead to deterioration in compliance. On the other hand, compliance also depends on costs of compliance, given that countries are constrained by their resources and capacities and face domestic challenges in implementing international law (Hathaway, 2007). With this in mind, the expected effect of a human rights treaty is not very optimistic and as realist tradition points out (Krasner, 1993), compliance towards human rights protection does not necessarily reflect the interests of many states. Furthermore, the major countries, who can

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